

Chapter 15

Interactive Gambling and Broadcasting Amendment (Online Transactions and Other Measures) Bill 2011: Introduction and IGA amendments

Background

15.1 The Interactive Gambling and Broadcasting Amendment (Online Transactions and Other Measures) Bill 2011 (the bill) was introduced in the Senate on 20 June 2011 by Senator Xenophon and referred to the committee through the committee's resolution of appointment. 16 submissions were received on the bill.¹

Purpose of the bill

15.2 The bill covers a number of issues. It aims to prohibit certain bet types being offered by gambling operators; provide financial protections to Australians who participate in prohibited interactive gambling; place restrictions on gambling advertising during sports and G-rated television programs and on inducements to gamble; and create a criminal offence for match-fixing activity. Apart from the financial protections measure, the other issues have been introduced and covered in previous chapters. However, the committee comes to specific conclusions on the provisions of the bill in these chapters.

15.3 The bill comprises four schedules consisting of amendments to the *Interactive Gambling Act 2001* (IGA), the *Broadcasting Services Act 1992* (Broadcasting Act) and the *Criminal Code Act 1995* (Criminal Code):

- Schedule 1—amendments to the IGA relating to online transactions;
- Schedule 2—amendments to the IGA relating to inducements to gamble;
- Schedule 3—amendments to the Broadcasting Act relating to broadcasting about gambling; and
- Schedule 4—amendments to the Criminal Code about obtaining a financial advantage by deception in relation to a code of sport.

15.4 Clause 3 of the bill also prohibits gambling operators from offering specific types of betting services.

15.5 The issues raised by the bill will be dealt with over two chapters. After covering general concerns, the rest of this chapter will focus on the provisions in the bill relating to amendments to the *Interactive Gambling Act 2001*. The following

1 Throughout chapters 15 and 16, submission numbers in footnotes refer to the submissions for the bill inquiry, except where otherwise specified.

chapter will focus on the bill's prohibition of certain bet types, restrictions on gambling advertising and the creation of match-fixing offences.

General concerns

15.6 Some submitters provided general comments on the bill as a whole. Betfair did not support the overall intent of the bill, stating that:

...it does not provide effective protections around problem gambling, offshore wagering operators and gambling related cheating and corruption in sport and fails to address many of the complex issues that are presently being considered by a number of committees and inquiries.²

...It is important for the Committee and the Federal Government to take advice and canvass views from all stakeholders in the gambling industry rather than pre-emptively introduce legislation. The Draft Bill appears to be largely at-odds with a majority of the submissions made to the Committee – including those submissions made by sports governing bodies and responsible gambling advocacy groups.³

15.7 Betfair's view was that the bill would be ineffective in addressing problem gambling, stating that its elements:

- adopt a broad-sweeping prohibition approach that is likely to encounter similar enforcement issues to the current IGA provisions and mean that Australia will be forced to remain reliant on overseas regulatory support to be successful, particularly in the online sector;
- do not address the key issues associated with problem gambling and will do little to reduce the prevalence of problem gambling in Australia;
- are discriminatory against corporations and place certain Australian wagering operators at a competitive disadvantage;
- have been introduced prematurely given the current work being done by a number of committees and inquiries; and
- are not grounded in a Constitutional Head of Power raising significant concern over the Federal Parliament's constitutional ability to enact such legislation.⁴

15.8 The Tasmanian Inter-Church Gambling Taskforce noted several issues in the bill that require further clarification, particularly given that many of the definitions are not contained in the primary legislation but left to be prescribed by regulations:

...the ultimate effects of this Bill would very much depend on the associated regulations. These would need to be carefully drafted to avoid unintended consequences. How, for example, would betting on a losing outcome be

2 Betfair, *Submission 3*, p. 2.

3 Betfair, *Submission 3*, p. 3.

4 Betfair, *Submission 3*, p. 3.

distinguished from betting on a winning outcome in team or one-on-one sporting contests where for one side to win the other must inevitably lose? And could a sporting team that uses a confidential report that one of its players will be unfit to bring in another player it believes will maximise its chances of winning, thereby gaining a financial advantage in the form of winning payments, fall foul of the Act if it is so amended?⁵

Schedule 1—Ability to suspend or cancel online gambling transactions

15.9 In an attempt to reduce losses resulting from interactive and online gambling, the bill establishes provisions to allow consumers to cancel regulated financial transactions to international gambling websites provided the transactions have not been completed.

15.10 A regulated transaction is defined in the bill as follows:

regulated transaction means a financial transaction effected using a regulated payment system, and includes but is not limited to:

- (a) extending credit, or proceeds of credit, to or on behalf of a person, including through the use of credit card;
- (b) an electronic fund transfer from or on behalf of a person;
- (c) a transaction of a kind prescribed by the regulations for the purpose of this definition.⁶

15.11 Theoretically, this would enable individuals to cancel 'incomplete' financial transactions made to interactive gambling service providers by credit, EFTPOS or another form of transaction via telecommunications services, including the internet and phone. It is not clear whether payments via financial intermediaries like PayPal would also be considered 'regulated transactions', although the regulations could in theory apply to such payments.

15.12 The bill also amends the IGA to provide protections for financial providers so they would not be liable for suspended or cancelled payments to international online gambling operators resulting from the above amendments.⁷

15.13 In the Second Reading Speech, Senator Xenophon predicted that the ability for gamblers to cancel transactions in this manner would 'most likely lead [overseas] sites to ban Australian gamblers, because they know if they lose they won't pay up'.⁸

5 Tasmanian Inter-Church Gambling Taskforce, *Submission 7*, p. 3.

6 Interactive Gambling and Broadcasting Amendment (Online Transactions and Other Measures) Bill 2011, Schedule 1, pp 3–4.

7 Interactive Gambling and Broadcasting Amendment (Online Transactions and Other Measures) Bill 2011, Schedule 1, p. 4.

8 Senator Xenophon, Second Reading Speech, *Journals of the Senate*, 20 June 2011, p. 3272.

Issues raised with the committee

15.14 Submitters put forward different views on this provision, some of whom supported the amendments as a worthwhile step to limit problem gambling and enhance consumer protection. Others rejected the idea, arguing that there were serious practical impediments to such a measure and that it could even have the perverse effect of encouraging more reckless gambling behaviour.

15.15 The Responsible Gambling Advocacy Centre stated that such legislation would help problem gamblers:

Giving the consumer the option to prevent future transactions from particular websites could also prove instrumental in preventing problem gamblers from spending excessive amounts of time and/or money on interactive online gambling websites.⁹

15.16 The Social Issues Executive, Anglican Diocese of Sydney, also strongly supported the proposed amendments, stating that allowing the cancellation of gambling transactions would provide a major disincentive for overseas gambling providers to offer services to Australians:

We applaud the proposed amendments to the *Interactive Gambling Act 2001* providing that customers may request a financial transaction provider to suspend or cancel an interactive gambling payment. We note with approval the further amendment that financial transaction providers will not be held liable for such cancellations. These measures may surprise uninformed observers, and attract complaint from ideologues committed to complete freedom of the market. Even so, we urge our political representatives not to resile from them. We note that they are completely consonant with the intention of the *Interactive Gambling Act 2001* to prohibit online gaming services in Australia. Cessation of payment, and protection for financial service providers, is the most effective means to provide a disincentive to illicit gambling providers. In addition, it will provide a welcome 'circuit breaker' for problem gamblers.¹⁰

Financial transaction controls in the United States

15.17 As covered in greater detail in chapter five, section 5363 of the United States' *Unlawful Internet Gambling Enforcement Act of 2006* (UIGEA) makes it a crime for a financial transaction provider to 'knowingly accept' credit, electronic fund transfers, cheques, or other forms of financing as payment in connection with the participation of another person in unlawful internet gambling.¹¹

9 Responsible Gambling Advocacy Centre, *Submission 4*, p. 5.

10 Social Issues Executive, Anglican Diocese of Sydney, *Submission 9*, p. 1.

11 US Treasury Department, *Unlawful Internet Gambling Enforcement Act*, Examination Handbook, Section 770, May 2010, <http://www.ots.treas.gov/files/422372.pdf> (accessed 27 September 2011), p. 770.1.

15.18 However, in the US, the laws around financial transaction controls make the financial institutions liable if they process transactions that are outlawed under the UIGEA. This is not what is proposed in the amendment before the committee.

15.19 FamilyVoice Australia supported the amendment, noting the US legislation and stating that the bill 'takes a modest step towards preventing overseas purveyors of online gambling from preying on Australians'.¹²

15.20 The Australian Racing Board acknowledged the effectiveness of the US financial transaction controls and argued that similar controls in Australia would be an effective consumer protection and prevention measure for gamblers. Its submission supported the amendments and also suggested that the Australian Prudential Regulatory Authority be empowered 'to require Australian financial institutions to not facilitate transactions with known unauthorised gambling service providers'.¹³

15.21 Giving evidence to the committee, Mr Andrew Harding, Chief Executive Officer of the Australian Racing Board, argued that the US controls had been 'demonstrably effective':

It is not a cost on government; the financial houses are responsible for complying with the legislation and not facilitating wagering and gambling that is not permitted. The business of the companies that were providing illegal gambling to American citizens dried up. There is some level of it—it is not being suggested that it is going to be 100 per cent efficacious—but it dropped like a stone in the US. We know the Australian Bankers' Association think it is inconvenient and they would not embrace the idea of doing it, but it simply cannot be said that this cannot be done. The US has done it and is doing it, and it is working.¹⁴

15.22 At the hearing, Mr Harding was questioned as to why such an approach should be pursued:

Mr CIOBO: ...What about financial transactions controls? Even though the bulk of transactions occur with PayPal and, for example, use front organisations, should we still pursue those even though they are highly ineffective?

Mr Harding: They will make it inconvenient, and that, together with criminalising the conduct and criminalising the advertising of the offering—this basket of measures—is the stick which is the companion to the carrot of giving the tick of approval to those who elect to do the right thing.

...If I can again look to the US experience, one arrest sent a powerful message. One Gibraltar based gambling operator being arrested while

12 FamilyVoice Australia, *Submission 11*, p. 2.

13 Australian Racing Board, *Submission 5*, p. 3.

14 Mr Andrew Harding, *Committee Hansard*, 19 August 2011, p. 5.

travelling through America had a powerful impact within the gambling industry. It said, 'Sure, with these criminal measures they are not going to come to Gibraltar and arrest us, but if we ever travel through America then we have a serious problem.' So I accept that the AFP is not going to devote enormous resources to try to prosecute people based in Vanuatu, but the criminalisation of this conduct does have some impact.¹⁵

15.23 The Australian Racing Board also noted that there was a lack of clarity in the bill around legal requirements applying to financial transaction providers:

The bill exempts the financial transaction provider from any liability in proceedings brought against it by the unpaid gambling operator.

...We note in passing that the clause 15B (2) provides that:

*“the customer...may **request** a financial transaction provider giving effect to the transaction to suspend or cancel the transaction.”* (our emphasis)

The bill does not make any provision for what a financial transaction provider should do upon receiving such a request. It is likely that market forces will influence financial transactions providers to act on such requests. Even so consideration might be given to going further than the bill does at present and spelling out the legal requirements that apply to financial transaction providers where a request is made pursuant to clause 15B.¹⁶

15.24 Its submission also noted that the bill's provisions should apply not only to interactive gambling services but also to wagering operators (which are currently exempt from the IGA).¹⁷

15.25 Critics of these amendments argued that similar financial control measures overseas had not been proven to work effectively. Also the ability for customers to suspend or cancel gambling transactions raised concerns about 'moral hazard' and the risk that such measures may actually encourage gambling, as the perceived risk of losing money could be decreased. Other criticisms of the bill's provisions were that the measures were not targeted well enough at protecting problem gamblers and that such restrictions may adversely affect Australians making financial transactions who were not even involved in gambling.

15.26 Betfair argued that the proposed amendments were actually 'contrary to the promotion of responsible gambling and may even create a new wave of problem gamblers':

By allowing Australian residents to cancel deposits to an interactive gambling provider, the Draft Bill is effectively encouraging Australians to participate in these activities under the mis-apprehension that there is no

15 Mr Steven Ciobo MP and Mr Andrew Harding, *Committee Hansard*, 19 August 2011, p. 7.

16 Australian Racing Board, *Submission 5*, p. 4.

17 Australian Racing Board, *Submission 5*, p. 4.

risk of suffering losses. This scenario is clearly contrary to the intention of the Draft Bill which is to reduce the incidence of problem gambling amongst Australian residents.

We also note that the relevant financial transaction provider is not compelled under the Draft Bill to cancel or suspend the transaction. This, in addition to being a significant cause of uncertainty to the practical operation of the provision, may also cause Australians to gamble more than they can afford to lose because they believe that the transaction will be cancelled. In circumstances where the financial transaction provider does not cancel the transaction, individuals are likely to suffer significant losses as a direct result of this legislation.¹⁸

15.27 The Australian Bankers' Association (ABA) also alluded to what was seen as a heightened risk of 'moral hazard':

...if Australians felt that they were able to cancel a transaction having entered into it and having actually gambled on a site, potentially it actually makes it less risky for you: if you win then you take the money and if you lose then you seek to have the transaction voided.¹⁹

15.28 iBus Media, an online poker media company, was sceptical that the amendments would have a positive effect, suggesting that ways to evade the restrictions would be easily found:

These measures, which target interactive gambling payments, will have limited effect. It is easy to evade a number of these controls. Indeed, some of the controls which currently exist through credit cards and other means of payment, for example age verification, limits on the amounts which may be paid, will be removed as a result of these forms of prohibitions and may have the effect, inadvertently, of potentially exacerbating any harm that may result.²⁰

15.29 Mr Jamie Nettleton, appearing on behalf of iBus Media, elaborated further during a public hearing on how such restrictions would be circumvented:

Senator XENOPHON: ...your submission, with respect to the bill, notes that the financial transaction regulation proposed in the bill would be reduced by the failure of gambling merchants to code internet gambling transactions correctly. Could you elaborate on that? And are you in fact suggesting that this would be deliberate by internet gambling operators?

Mr Nettleton: This is a comment which comes out from the review of the Interactive Gambling Act that was conducted back in 2004. At that time, a finding was made by the department that one of the issues which could be faced in respect of the feasibility of these forms of transactions was the ability and the suggestion that certain operators code transactions

18 Betfair, *Submission 12*, p. 7.

19 Mr Steven Munchenberg, *Committee Hansard*, 16 September 2011, p. 23.

20 Mr Jamie Nettleton, *Committee Hansard*, 19 August 2011, p. 10.

incorrectly to ensure payments are received. That is much more likely the case in respect of the rogue operators, and by that I am talking about the ones which are not regulated in a First World jurisdiction where those sorts of issues would give rise to concern under the licence under which they operate. The point to make here is that, in connection with a number of the transactions which occur over the e-commerce, initially they may not in fact be a gambling transaction and there is a question mark about whether or not they fall within the gambling categorisation, so those obviously are a separate issue.²¹

15.30 During the hearing, iBus Media also argued that the experiences in both the US and Norway to undertake similar controls had been unsuccessful:

Senator XENOPHON: What knowledge do you have of what has occurred in the US and/or Norway? There are other commentators who believe that it has, as imperfect as the US regulations are, acted as a fetter to the larger expansion of online gambling.

Mr Nettleton: ...The position in respect of Norway is perhaps quite illustrative. It is a country which has specific financial controls in respect of online gambling. At the time financial controls in relation to online gambling were introduced, they were resisted strongly by the financial institutions in Norway, and a lot of that would be a matter of public record that can be accessed by the committee. What has occurred in practice has had limited effect, as you will see in one of the submissions, I think, from the Australian Internet Bookmakers Association. A report has come out from the regulators in Norway in respect of the amount of wagering. Fifty per cent of wagering is taking place with offshore operators. And that activity is targeted by the financial controls which are in place under the law. In other words, despite the best efforts of the law, it has not had any impact on the practice of Norwegian customers accessing offshore wagering sites and using means of payment to settle a transaction.

Senator XENOPHON: Are you basing your views on empirical data about the growth of online gambling in Norway and the US or on anecdotal evidence from those involved in the industry there?

Mr Nettleton: The reference I was making has come from information from the Norwegian regulator. So it is not empirical data which I have to hand, even though it is in second-hand, it is from the report of the actual regulator, who obviously conducted their own industry research to come to that view.²²

15.31 The ABA summed up its overall objection to the amendment, citing technological costs and the impracticality to be imposed on banks and financial institutions:

21 Senator Xenophon and Mr Jamie Nettleton, *Committee Hansard*, 19 August 2011, p. 11.

22 Senator Xenophon and Mr Jamie Nettleton, *Committee Hansard*, 19 August 2011, p. 11.

The ABA believes that it is unclear whether the substantial technology and payments infrastructure changes and the consequent costs involved in technology and system changes across the payment system, software development, operational implementation and administration by banks and financial institutions would deliver the benefits being sought to address concerns with interactive gambling. Even if a customer had restrictions placed on their use of an interactive gambling website, these restrictions would not necessarily apply uniformly. It should be recognised that it is unreasonable and impractical for banks and financial institutions to implement restrictions on electronic transactions made to interactive gambling services.²³

15.32 Explaining that electronic transactions involve various parties, the ABA argued that there was simply no practical window of time in which to request a reversal of a transaction:

The processing of an electronic transaction can involve at least five parties:

- the customer (cardholder);
- the institution that issues the card to the cardholder (card issuer);
- the institution that acquires the transaction (acquirer);
- the company that facilitates the processing of data and the settlement of transactions (card scheme); and
- the company that supplies goods and services (merchant).

...There are around 4.15 billion transactions conducted using a debit or credit card each year. Obviously, the vast majority of these transactions are unrelated to online gambling (or being made to an interactive gambling service). Electronic transactions are authorised by the cardholder and cleared within seconds by the merchant – therefore, there is no opportunity for a customer to subsequently suspend or cancel an electronic transaction.²⁴

15.33 The ABA's submission also detailed the practical difficulties with the provisions:

There are no processes for a card issuer to suspend/cancel an electronic transaction after it has been authorised by the cardholder. Depending on the transaction (debit and credit), it may take between 1 and 3 business days for the transaction to appear on the cardholder's statement. When the transaction is transmitted to the cardholder is dependent on when the merchant settles with their acquirer. However, the authorisation and the obligations for payment between the parties are generally instantaneous – that is, a merchant will process the transaction immediately, and therefore there is no opportunity to void the transaction or intercept an individual transaction.

23 Australian Bankers' Association, *Submission 15*, p. 8.

24 Australian Bankers' Association, *Submission 15*, p. 3.

...If a card issuer “declined authorisation”, based on a flag to identify a transaction as associated with a certain merchant category code, the issuer would be at risk of legal action from the merchant (and possibly other parties for failure to comply with payment obligations and their individual contractual obligations). Additionally, it is likely that an issuer would need to direct resources away from core business activities and system monitoring (i.e. fraud detection) to investigate these declined transactions.²⁵

15.34 The ABA also noted that it was unclear how third party payment methods such as PayPal would be affected:

There are no processes for a third party payment method or “e-wallet” to suspend/cancel a transaction after it has been authorised. There is no reversal after the transaction has occurred, unless agreed by the merchant or alternatively guaranteed by a facility which acts as an intermediary between the transactions (e.g. as part of its service agreement with users, E-Bay will reverse the transaction in certain circumstances, i.e. if the goods or services are found to be inauthentic as provided to a buyer by a E-Bay seller). (We note that it is unclear how (legally and practically) other transactions/payments might be caught within the proposed legislation, including international telegraphic transfers, electronic funds transfers conducted via money remitters (e.g. Western Union), third party payment methods and “e-wallets” (e.g. BPay, Pay-Pal, Clickandbuy, Neteller, FirePay), alternative payment currencies (e.g. Google money, Facebook credits, etc), and cheques).

There are no processes for a direct electronic funds transfer or direct debit (e.g. ‘BillPay’, ‘Pay Anyone’) transaction to be suspended/cancelled after it has been authorised. Following authorisation by the customer of a direct electronic funds transfer, payment is made instantaneously. If a customer has a BSB and account number it is possible for a payment to be made to an online gambling service provider. There is no reversal, unless agreed by the merchant.²⁶

15.35 A submission from VISA also noted that this provision of the bill 'rests on several false understandings of how the payments system works and the role played by transacting consumers within it'.²⁷

15.36 The ABA also raised a number of questions 'left unanswered by the bill':

...around things like what happens if a customer does request that the bank cancel a transaction but, for whatever reason, the bank does not act in time to stop that transaction once the process has already started—is the bank liable there? Notwithstanding the bill declaring that the bank will not be liable for blocking any of these transactions, we still believe there is a risk of litigation overseas against Australian banks. Courts overseas, particularly

25 Australian Bankers' Association, *Submission 15*, p. 4.

26 Australian Bankers' Association, *Submission 15*, p. 4.

27 VISA, *Submission 16*, p. 1.

in the US, are not averse to passing judgment on Australian banks and then seeking to have those judgments enacted.²⁸

...We are not sure, based on the legislation before the committee, whether the attempt in there to indemnify us from legal action would necessarily provide us with perfect indemnification around the world.²⁹

15.37 However, despite raising practical, technical and legal objections to the amendment, the ABA did concede that such a system would not be impossible to design:

If intervention in the banking and payments system was deemed appropriate, it would be necessary for the Government to: (1) designate (and clearly define the criteria for designation) certain sites to be restricted from use by Australian residents (“illegal sites”); (2) maintain a list of “illegal sites” and provide that list to all financial transaction providers; (3) monitor, correlate and update data and codes (based on existing codes and protocols) on “illegal sites” and provide that list to all financial transaction providers so systems can be set to approve or decline based on designation and codes; and (4) provide statutory protection for financial transaction providers from breaches whereby the designation and/or codes lists provided to financial transaction providers are found to be incomplete, inaccurate or somehow deficient.³⁰

15.38 This alternative model was discussed during the ABA's evidence at the committee's public hearing.

An alternative model – blacklisted merchant numbers

15.39 When Mr Steven Munchenberg, Chief Executive Officer of the ABA, spoke to the committee, an alternative model emerged. Instead of enabling the customer to reverse an authorised transaction, an alternative approach would involve the government maintaining and updating a 'blacklist' of merchant numbers and providing the list to financial institutions to enable them to block transactions to those numbers. Mr Munchenberg summarised how such a system would work in practice for direct payments involving financial institutions and credit card providers:

Mr Munchenberg:...the process is that a customer gets a credit card from a bank; that bank is referred to as the issuing bank. The customer goes online and they provide their credit card details. The merchant—the provider of the online service—then puts that into the payment system. It goes back to the issuing bank, and then at that point the issuing bank has the opportunity to decline the transaction, which you can do for all sorts of reasons—if I have a \$5,000 limit on my card and I am trying to make a \$20,000 purchase, it is going to get knocked back at that point. At that point, as I

28 Mr Steven Munchenberg, *Committee Hansard*, 16 September 2011, p. 23.

29 Mr Steven Munchenberg, *Committee Hansard*, 16 September 2011, p. 24.

30 Australian Bankers' Association, *Submission 15*, p. 7.

understand it, the bank will be able to say, 'No, we're not allowed to transact with that merchant, because the numbers raise a red flag.' So the bank will then decline that transaction. The merchant then goes back to the customer and says, 'Your transaction was declined.' That can all happen in a matter of seconds. So in that situation the Australian customer is blocked from accessing that site or making payments to that site so long as that site uses a black-listed merchant number to try to get that authorisation through.

CHAIR: But why wouldn't such legislation be better directed at the credit card provider rather than the financial institution?

Mr Munchenberg: ...Again, my understanding is that really the role of Visa and MasterCard is reconciling all of these transactions between financial institutions, so it is not up to Visa or MasterCard to approve or not approve a transaction; it is up to the issuing bank.³¹

15.40 Mr Munchenberg also acknowledged that, conceptually, the 'blacklist' system proposed was not 'necessarily different from an international anti-terror organisation becoming aware that a terrorist organisation is funding itself through a certain vehicle', with regulators then alerting financial institutions to prohibit transactions through that vehicle.³² He noted that Australian financial institutions already undertake to block transactions in relation to terrorism, organised crime and money-laundering activities.³³

15.41 However, the ABA did stress that the 'blacklist' system proposed, despite being an improvement on the approach in the bill, could never be considered 'failsafe' as merchant identification numbers could be changed:

Mr Munchenberg: If the government were to provide us with a list of merchant identifiers and said in a regulation to your legislation—or however it would be done—that payments to these were prohibited my understanding is that that would be a relatively straightforward thing to deal with. But they are merchant identification numbers; they are not necessarily corporate or entity identifiers. An entity may have multiple or ever-changing ones. That would become an exercise, then, in trying to catch up. If there were a number of large global players that saw Australia as a relatively small market on a global scale and who therefore would not go to the trouble of trying to constantly change their merchant identifications just to get around the law then it may well have an impact. If an overseas provider of gambling services, for want of a better term, was determined to target the Australian market and therefore had an interest in constantly reinventing its identity in the payments system then they would be able to relatively easily get around that sort of scheme.

31 Mr Andrew Wilkie MP and Mr Steven Munchenberg, *Committee Hansard*, 16 September 2011, pp 29–30.

32 Mr Steven Munchenberg, *Committee Hansard*, 16 September 2011, p. 29.

33 Mr Steven Munchenberg, *Committee Hansard*, 16 September 2011, p. 29.

Senator XENOPHON: You could presumably catch up with them within a 24-hour period. They presumably would not change their merchant numbers every 24 hours. You would be able to establish—

Mr Munchenberg: My understanding is that we see the merchant numbers. We do not have to know or necessarily understand who is behind those numbers. The whole system works around number identification.³⁴

15.42 Mr Munchenberg also emphasised to the committee that such a system could never perfectly capture all transactions to 'blacklisted' merchant numbers and would require the cooperation of international third party payment companies in cases of 'indirect payments'. For example, when customers use financial intermediaries such as PayPal and Western Union to transfer money, these companies act as a screen or 'black box' to guard the security of the purchaser's banking details. Under the 'blacklist' system, banks would not be able to determine the vendor's details (i.e. the online gambling provider) so in the case of international third party payment companies, the responsibility for identifying merchant numbers would have to fall to the financial intermediaries themselves.³⁵

15.43 The ABA summed up its preference for the 'blacklist' model discussed during the committee's hearing instead of the model proposed in the bill:

I think there is a distinction to be drawn between [customers requesting reversal of transactions] and what is potentially a relatively straightforward model where the bank is dealing directly with an overseas merchant and we have a list of black-listed merchant numbers. On the surface, at least, that seems a relatively straightforward and manageable proposition. Move much beyond that and I think we run into all sorts of complexities around the adequacy of the systems to deliver in a timely way, because do not forget we are dealing with transactions that fly around the world, almost instantaneously in some cases, and a mismatch might arise between a customer's expectations and what the payment system's technology is able to deliver as well.³⁶

15.44 The Tasmanian Inter-Church Gambling Taskforce noted that the proposed amendments on suspending and cancelling transactions were 'perhaps the most contentious in the bill' and also put forward an alternative approach, similar to that outlined by the ABA:

Their aim seems to be to foil any attempt to offer illegal interactive gambling services to Australians by allowing the gamblers to back out of uncompleted transactions to pay for their losses. In principle, they seem to mean that gamblers could collect any winnings but would have an avenue to avoid full payment of any debts they incur. We believe that a better

34 Senator Xenophon and Mr Steven Munchenberg, *Committee Hansard*, 16 September 2011, p. 25.

35 Mr Steven Munchenberg, *Committee Hansard*, 16 September 2011, p. 27.

36 Mr Steven Munchenberg, *Committee Hansard*, 16 September 2011, p. 28.

approach would be a blanket prohibition on financial transaction providers making payments to the providers of prohibited online gambling services.

Once a gambling service had been identified as inconsistent with Australian law its operators would then know that they could not gain access to gamblers' funds through Australian financial transaction providers and would presumably take steps to ensure that Australians did not access that service.³⁷

Committee majority view

15.45 The committee majority believes that the bill's amendment to allow customers who play on interactive gambling websites to suspend or cancel their transactions presents a number of impracticalities. These include the fact that electronic transactions involving multiple parties are conducted in a matter of seconds, making a request to suspend or cancel them unfeasible. The committee majority also has concerns about the element of moral hazard inherent in this proposal. Allowing gamblers to bet large amounts of money on websites, knowing that if they lose they can request a reversal of the transaction, may well lead to greater risk-taking and more reckless gambling behaviour.

15.46 Regarding the alternative model proposed during the committee's public hearing and discussed with the Australian Bankers' Association, the committee majority does not believe that such a scheme is worth pursuing. Setting up a system to monitor and block financial transactions to deter people from accessing overseas-based interactive gambling websites would never be completely effective, as those customers most determined to circumvent the system would be likely to do so using other methods. The committee also notes the difficulty in gaining cooperation from international financial intermediaries such as PayPal to comply with such a system were it to be introduced under Australian law. As discussed in chapter seven, given the limited effectiveness of current enforcement mechanisms to prevent Australians accessing online gambling websites, the committee believes that a total ban cannot be achieved and devoting additional resources to keep track of changing merchant identification numbers on a blacklist would not be worth the expense and effort.

15.47 In summary, the committee majority does not support the introduction of any form of financial transactions or payment controls.

15.48 Additional comments on this issue have been provided by the Chair and Senator Xenophon, which follow this report.

Schedule 2—Inducements to gamble

15.49 Schedule 2 of the bill amends the IGA, making it an offence to offer customers an inducement to gamble.

37 Tasmanian Inter-Church Gambling Taskforce, *Submission 7*, p. 3.

15.50 The amendments define a game as an 'inducement to gamble' if the game is a game of chance, or a game of mixed chance and skill, and where the game is provided with the intention of inducing a customer to gamble.³⁸

15.51 A game is considered to be an inducement to gamble if:

- the game is provided by a person who also provides a gambling service; or
- the game contains elements encouraging or inviting the customer to use a gambling service; or
- a feature of the way the game is provided invites a customer to use a gambling service; or
- any feature of the service for the conduct of the game provides direct or indirect links to a gambling service.³⁹

15.52 The amendment establishes that a game is an inducement to gamble regardless of whether it is played for money or anything else of value, or regardless of whether the customer agrees (or agrees to give consideration) to play the game.⁴⁰

15.53 In practice, this amendment will prohibit gambling service providers offering customers incentives to gamble, including free games and links to online gambling websites. This would include websites or phone applications which offer 'practice' sites where people can participate without winning or losing money (as discussed in chapter nine).

Issues raised with the committee

15.54 Submitters put forward divergent views on whether inducements to gamble should be prohibited. Arguments for and against inducements to gamble are also covered in greater detail in chapters nine and 12. However, it should be noted that the bill's amendments would apply only to interactive gambling services regulated under the IGA. Sports betting and wagering services are exempt from the IGA and are currently regulated by state and territory legislation.

15.55 In a submission to the reference inquiry, Betchoice stated that the term 'inducement' is too broad, covers a range of standard business practices and may disadvantage gambling operators:

38 Interactive Gambling and Broadcasting Amendment (Online Transactions and Other Measures) Bill 2011, Schedule 2, p. 5.

39 Interactive Gambling and Broadcasting Amendment (Online Transactions and Other Measures) Bill 2011, Schedule 2, pp 5–6.

40 Interactive Gambling and Broadcasting Amendment (Online Transactions and Other Measures) Bill 2011, Schedule 2, p. 5.

A prohibition on all inducements would, if taken literally, extend to preventing operators from lowering prices to respond to competitive pressures or to pass on production savings. It makes no sense in a liberalised environment, such as wagering, to prevent so broad a range of standard business practices.⁴¹

15.56 Betfair argued similarly that the offering of inducements was commonplace in business and should not be restricted:

Wagering operators, like any other legal business, have the right to advertise their services responsibly. The offering of inducements is common place and legitimate for all types of businesses and as such, operators should be permitted to offer inducements to attract customers – provided such offerings are responsible.

Gambling related inducements are presently regulated on a state-by-state basis and Betfair welcomes the proposed nationally consistent approach. However the draft provision in the Bill is both confusing and limited in its application. Betfair implores the Committee to reject this provision and to develop a coherent national framework for the offering of inducements by wagering operators, which reflects both the wagering operators' right to advertise and the importance of promoting gambling in a responsible manner.⁴²

15.57 Other submitters, such as the Responsible Gambling Advocacy Centre, the Tasmanian Inter-Church Gambling Taskforce and FamilyVoice Australia⁴³ supported the amendment to the IGA:

An offer of 'free gambling' up to a certain monetary or time limit often draws the consumer in and prompts them to continue to play beyond the inducements. Inserting 'inducement to gamble' as a gambling service into the Act is supported by the Centre.⁴⁴

...We strongly support the inclusion of a measure such as is incorporated in Schedule 2. Online inducements to gamble, which are accessible to all including children, should not be permitted. The inclusion of 'inducement to gamble' as a gambling service would ensure that a site which offered such inducements and provided a link to a gambling site could not escape the prohibition on the grounds that it was not itself a gambling service.⁴⁵

...Particularly invidious inducements can be found on 'freeplay' sites that offer unrestricted access to anyone (including children) to play EGMs with all the features of the real ones except that 'credits' are used in place of real

41 Betchoice, *Submission 43* to the Inquiry into Interactive and Online Gambling and Gambling Advertising, p. 15.

42 Betfair, *Submission 3*, p. 7.

43 FamilyVoice Australia, *Submission 11*, p. 2.

44 Responsible Gambling Advocacy Centre, *Submission 4*, p. 6.

45 Tasmanian Inter-Church Gambling Taskforce, *Submission 7*, p. 3.

money. Players may be enticed with free credits to get started. As well as all the usual appealing features these sites may have the odds heavily loaded in the player's favour so that, directly contrary to what happens when playing with real money, it is virtually impossible to lose. They may then provide a link to a site where one can play with real money, contrary to the existing provisions of the Act. Their clear intention is to entice players into believing that if they can achieve large wins with credits only then they ought to be playing with real money. We can be confident that once they did so the odds would be dramatically reversed. It is crucial to ensure that such deceitful inducements do not become more widespread.⁴⁶

Committee majority view

15.58 As discussed in detail in chapter nine, the committee is particularly concerned about the practice of prohibited interactive gambling service providers offering inducements. The committee agrees that inducements to gamble such as: free games; offering credit; free credit; free money to play; deposit matching to recruit new customers; and practice sites encourage people to gamble, to gamble for longer and in some cases, beyond their means. It agrees that the IGA should be strengthened in order to ensure that along with advertising, inducements for a prohibited interactive gambling service are banned.

15.59 The committee majority therefore supports the intent of the amendment to the *Interactive Gambling Act 2001* proposed in the bill to prohibit inducements to gamble. It notes, however, that there is still some work to do around clarification of what would be defined as an inducement, which providers would be targeted and whether there would be any exclusions. The committee majority recommends that consideration of this amendment be deferred until the government's review of the IGA has been completed. The amendment could then be considered along with any amendments proposed by the government arising from the review.

Recommendation 18

15.60 The committee majority recommends that consideration of the amendment to the *Interactive Gambling Act 2001* (IGA) in relation to inducements be deferred until the review of the IGA being undertaken by the Department of Broadband, Communications and the Digital Economy is completed. This would allow the amendment to be considered along with any further amendments proposed by the government arising from the review.

46 Tasmanian Inter-Church Gambling Taskforce, *Submission 7*, p. 4.

