

Interactive and online gambling and gambling advertising

Submission to the Joint Select Committee on Gambling Reform

Inquiry into the prevalence of interactive and online gambling in Australia and gambling advertising

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Office of Regulatory Policy

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This paper forms the Queensland Government's submission to the Joint Select Committee on Gambling Reform's inquiry into interactive and online gambling and gambling advertising. This submission addresses some of the matters raised by the terms of reference of the inquiry.

Introduction

Advances in technology present new challenges for gambling policy makers and regulators. New technology, such as internet gambling, mobile gambling and interactive television gambling, present new opportunities to gamble. It also presents challenges in terms of accessibility, increased opportunities to promote gambling advertising, maintaining integrity of systems, and regulation through state and territory borders, particularly due to the internet. Some emerging technological trends may be beyond the scope of regulation, but warrant attention by governments due to the potential for these technologies to contribute to gambling problems in vulnerable persons, particularly youth who may be more familiar or comfortable with emerging technologies.

Online gambling poses particularly unique risks. Current unregulated forms of online gambling, usually overseas casino or gaming machine internet gambling sites, mean players can gamble 24 hours a day, youth may play without sufficient age verification and there may be no guarantee over the security of player funds or privacy of sensitive player information.

On 23 June 2010, the final report from the Productivity Commission's inquiry into gambling was publicly released. The Productivity Commission recommended the staged liberalisation of online gambling, starting with online poker (recommendation 15.1). The Commission has recognised the potential harm from the liberalisation of online gambling, but noted that Australians are already using offshore gambling sites, some of which have poor harm minimisation features and unscrupulous business practices and saw regulation as a possibility to divert Australian consumers from unsafe sites to sites that meet stringent Australian probity and consumer safety standards. Accordingly, the Commission recommended liberalisation under a stringent regulatory regime that mandates strict probity standards and high standards of harm minimisation.

Queensland has been collecting data on levels of participation in online and interactive gambling through the Queensland Household Gambling Survey.

These findings indicate that the proportion of people who use the internet for any gambling activity is low, with only 2.4 per cent of all respondents saying they had used the internet to gamble in 2008-09. However, this was an increase from the previous survey conducted in 2006-07 which showed that 1.5 per cent of all respondents had used the internet to gamble.

In terms of what the Queensland respondents were using the internet to gamble on, results show that using the internet to bet on sporting events was the most popular form of internet gambling. Of those who had bet on sporting events in the last 12 months, 20.5 per cent in the 2008-09 survey had mainly used the internet to place their bets¹.

¹ Note the question was about where a person *mainly* places their bets, and not about all the methods that they use for placing bets.

Of those who had bet on horse or greyhound races in the last 12 months, 2.7 per cent in the 2008-09 survey had usually used the internet to place their bets².

Of those who had played casino table games in the last 12 months, 87.8 per cent in the 2008-09 survey had never used the internet to play casino style table games. Some 12.2 per cent of those who had played casino table games in the last 12 months had used the internet to play casino style table games rarely, sometimes, often or always. However, no data has been collected on those who may use the internet to gamble on casino games but *have not* played casino table games in the last 12 months. It is possible the type of player who gambles on internet casino games may not physically visit a casino or be old enough to gain access to a casino to gamble on casino table games.

Australians are easily able to access unlawful interactive gambling through a variety of sources, despite the Australian Government's ban on the provision of interactive gambling services to Australians, through the *Interactive Gambling Act 2001*. Given the potential for emerging technologies to increase access to gambling opportunities which could heighten the risk of gambling related harm, governments cannot afford to ignore emerging technology.

Most state and territory governments recognised the threat that emerging technologies could place on vulnerable persons in the mid 1990s as well as the potential that new technology offered to enhance consumer protection, and have implemented appropriate regulatory safeguards through legislating interactive gambling licensing and regulatory regimes. For example, in 1998 the Queensland Government enacted the *Interactive Gambling (Player Protection) Act 1998*. The Act seeks to put in place a licensing and regulatory regime that provides the necessary consumer protection and game integrity requirements to address the risks from new technology.

The threats and opportunities posed by emerging technology were considered more recently at a national level by the Ministerial Council on Gambling Electronic Gaming Machine Consumer Protection Working Group in 2009. The Working Group acknowledged that emerging forms of gambling have the capacity to be delivered via platforms beyond the control of state and federal gambling regulators or policy makers e.g. mobile phones, television. The Working Group suggested a new working group be established to specifically examine new technologies and emerging trends, and to develop a set of consumer protection principles that could be applied to any new form of gambling as it emerges. However, the Working Group warned against developing burdensome consumer protection principles that may have the effect of driving consumers to unregulated gambling via the internet or other telecommunication channels:

These emerging forms of gambling have the capacity to be delivered via platforms beyond the control of state and federal regulators. Consequently, consumer protection measures on gambling activities within Australian jurisdictions should not have the effect of driving consumers to unregulated gambling via internet or other telecommunication channels. A clear statement of consumer protection principles can provide consumers with information about which activities are safe and fair and which activities present potential dangers³.

² Note the question was about where a person *usually* places their bets, and not about all the methods they may use for placing bets.

³ Ministerial Council on Gambling Electronic Gaming Machine Consumer Protection Working Group (10 July 2009) *Pathways to EGM Consumer Protection*, p23

The work of the Ministerial Council on Gambling has now been subsumed by the Council of Australian Governments Select Council on Gambling Reform. However, a statement of consumer protection principles to apply to any emerging technologies that facilitate gambling could be of continued benefit.

The Commonwealth Interactive Gambling Act

The Commonwealth Interactive Gambling Act prohibits the provision of interactive gambling services to customers physically present in Australia⁴. An interactive gambling service is a gambling service provided in the course of carrying on a business that is provided to customers by way of an internet or other listed carriage service, a broadcasting or other content service, or a datacasting service⁵. The Act also makes it an offence to advertise an interactive gambling service in Australia⁶. There are a number of services that are exempted from the operation of these provisions. They include:

- a telephone betting service
- an excluded wagering service
- an excluded lottery service
- an excluded gaming service
- services that have a designated broadcasting or datacasting link, including:
 - a program or series of programs broadcast on a broadcasting service
 - programs or content transmitted on a datacasting service
- certain contracts (including options and futures contracts) that are exempt from gaming or wagering laws under the *Corporations Act 2001*
- any service declared exempt by the Minister⁷.

There are a number of additional exemptions to the prohibition on advertising interactive gambling services, which include political communication, advertisements deterring the use of gambling services, advertisements for products or services that have the same name as an interactive gambling service but are not an interactive gambling service, and publication of an interactive gambling service name in a telephone directory⁸.

The Queensland Government is concerned over adequate enforcement of the prohibition on the provision of internet gambling services to Australians. Despite the prohibition, Gainsbury and Blaszczyński (2010) have estimated that Australians have unprotected access to over 2,176 internet gaming sites⁹. The lack of enforcement of the Interactive Gambling Act led the researchers to suggest that enforcement of gambling regulation is best aligned with an agency that has specific purposes and powers focused on the policy area.

Strengthened enforcement against illegal online gaming sites may assist to restrict the availability of online gambling to susceptible people and help to address growing concerns over the prevalence of problem gambling amongst those who choose this form of gambling. Susceptible or vulnerable people includes youth or those people spending long periods of time at home including the ill, disabled, socially isolated or people with significant caring responsibilities.

The Queensland Government acknowledges that enforcement of the Commonwealth Interactive Gambling Act is complex and resource intensive. However, if the prohibition is to remain in place, enforcement may be more effective if responsibility for it rests

⁴ section 15, *Interactive Gambling Act 2001* (Cth)

⁵ section 5, *Interactive Gambling Act 2001* (Cth)

⁶ sections 61DA, 61EA, *Interactive Gambling Act 2001* (Cth)

⁷ section 5(3), *Interactive Gambling Act 2001* (Cth)

⁸ sections 61BB – 61BGA, 61CC – 61CF, *Interactive Gambling Act 2001* (Cth)

⁹ *Submission to the Australian Senate Community Affairs Committee Inquiry into the Prevalence of Interactive and Online Gambling in Australia*, p1.

with an agency/body that has specific purposes and resources targeted to upholding and enforcing the policy.

It is noted the Australian Federal Police, responsible for a range of high priority national issues including national security and counter-terrorism, are tasked with enforcing the Commonwealth Interactive Gambling Act where the internet gambling content is hosted in Australia. The Queensland Government is particularly concerned about the limited enforcement of internet gambling accessible by Australians that is hosted outside Australia. Complaints made to the Australian Communications and Media Authority about internet gambling content that is hosted outside Australia are notified to the internet industry that provides filtering services. This is of no assistance to susceptible people who do not utilise internet filtering systems or wish to avoid the use of internet filtering systems. The Communications and Media Authority may also refer the matter to the Australian Federal Police or to state or territory police forces, but it is understood this has only occurred on very limited occasions.

It could be possible to enhance the prohibition on internet gambling services by prohibiting financial institutions from processing payments associated with unlawful interactive gambling services in a similar manner to the United States *Unlawful Internet Gambling Enforcement Act*. However, before committing to such action, due consultation with financial institutions should be pursued and consideration afforded to the potential compliance cost of monitoring transactions as well as the practicalities of enforcement against financial institutions.

It is noted that in 2009, a Bill was proposed for consideration by the United States Congress to 'provide for the licensing of internet gambling activities by the Secretary of the Treasury to provide for consumer protections on the internet, to enforce the tax code, and for other purposes'¹⁰.

Given the prevalence and accessibility of online gambling sites to Australians, the Queensland Government welcomes and supports the recent commitment by the Australian Government for the Department of Broadband, Communications and the Digital Economy to review the effectiveness of the Commonwealth Interactive Gambling Act.

That review may wish to consider the liberalisation of online gambling under a regulatory regime that seeks to ensure the probity and ongoing integrity of online betting operations with minimum consumer protection requirements, similar to the existing regime established under the Queensland Interactive Gambling Act and associated technical requirements. The review should consider whether liberalisation may assist to mitigate some of the harm that might be experienced from gambling on unregulated gambling sites.

¹⁰ *Internet Gambling Regulation, Consumer Protection, and Enforcement Act* (HR 2267) (United States of America).

The Queensland Interactive Gambling Regulatory Framework

The Queensland Interactive Gambling Act was designed to regulate gambling activities which may be accessible in private residences via interactive means, such as internet gambling, telephone betting, betting via new technologies incorporating television and including, for example, future developments in the use of cable television. Some amendments may be required to the Act if the model was to be used to cover mobile interactive devices. The Interactive Gambling Act is supported by the *Interactive Gambling (Player Protection) Regulation 1998*.

The Queensland Interactive Gambling Act applies to prohibit a person from conducting an interactive game in Queensland or allowing a Queensland person to participate in an interactive game, unless the person holds an interactive gambling licence.

The definition for interactive game is very broad so that it may include a casino game or racing or sporting event if a bet on the event is accepted by way of a telecommunications device or over the internet. However, the Queensland Interactive Gambling Act incorporates a number of exemptions which apply to allow persons to place bets through online gambling sites and other telecommunications devices, such as via telephone, as follows:

- on a racing or sporting event through a licensed on-course bookmaker during a race meeting under the provisions of the *Racing Act 2002*, but not online
- on a racing or sporting event or other contingency through a company that holds a wagering licence under the *Wagering Act 1998*
- on a game under the *Charitable and Non-Profit Gaming Act 1999*
- on a lottery through a company that holds a lottery operator's licence under the *Lotteries Act 1997*
- on a game authorised under a gaming Act in which the players may participate by means of telecommunication devices but only from designated commercial sites connected to a telecommunication network.

The Minister may declare a charitable and non-profit game to be an 'interactive game' so that it falls within the requirements of the Interactive Gambling Act, although no such declaration has been made.

The Act incorporates best practice harm minimisation and consumer protection measures that are reflective of the risk posed by internet gambling (such as the requirement to provide limit setting facilities (i.e. pre-commitment)). The Act also provides a regulatory framework that seeks to ensure the probity of licensed interactive gambling providers and the ongoing audit of their activities as well as a legislative complaints process.

Controls in the Interactive Gambling Act over advertising and marketing of interactive gambling were also incorporated to ensure that any advertising of interactive gambling products is conducted responsibly and appropriately. Consistent with other gaming legislation in Queensland, credit betting is prohibited and controls to ensure the privacy of personal information are also included.

The Act provides for a mechanism of mutual recognition for a company that is appropriately licensed in another jurisdiction if the Governor in Council declares the jurisdiction in which they are licensed a participating jurisdiction by regulation. This can only occur where the Minister has entered into an agreement with the participating jurisdiction's interactive gambling regulator about matters including tax sharing,

administrative acts and mutual recognition of licences. A mutual recognition agreement would only be entered into with another jurisdiction if the harm minimisation and consumer protection standards applicable in that jurisdiction reflect the high standards applicable in Queensland.

The Queensland interactive gambling legislation is supported by a series of technical requirements that were developed by Australian gaming regulatory bodies in the late 1990s. The technical requirements outline to industry the level of functionality expected by state and territory governments of interactive gambling systems with a focus on system and game integrity and player protection.

The technical requirements represent the forward thinking of state and territory governments in the area of interactive gambling, and outline a number of detailed and consumer protection focused requirements that are now inherently required in gaming machines or are now the subject of national discussion. For example, the technical requirements provide that interactive games include information on how to limit bets per game (a form of pre-commitment), invoke self exclusion arrangements and contact points for problem gambling help services (standard 2.17). In addition, the requirements provide that players must be able to preselect the duration of a session of play (a pre-committed time limit; standard 2.22), players must be able to initiate a break in play of a chosen length (standard 2.25) and warning messages must appear at the beginning of a session and at the end of a break which warns the player that excessive gambling can be harmful (dynamic warning messages; standard 2.25.2).

The interactive technical requirements applicable to Queensland are:

- *Principles for Functionality of Interactive Gambling Systems*
- *Principles for Functionality of Interactive Gambling Systems; Queensland Specific Appendix.*

The Australian Government subsequently prohibited the provision of internet gambling services in Australia through the Commonwealth *Interactive Gambling Act 2001*, thereby resulting in no current interactive gambling licences issued in Queensland.

Prior to the Australian Government prohibition, Queensland had one interactive gambling licensee and a number of applications under consideration which were subsequently withdrawn. Queensland's sole licensee surrendered its licence on the enactment of the Australian Government prohibition.

Sports Betting and other Contingency Betting in Queensland

TattsBet Limited is authorised in Queensland to conduct wagering on sporting events through its sports wagering licence issued under the Queensland Wagering Act. There are no legislative provisions under the Queensland wagering legislation which directly prohibits TattsBet from accepting wagers on certain bet types in relation to sporting events. For example, TattsBet may offer spot betting on sporting events. However, the Commonwealth Interactive Gambling Act prohibits a wagering operator from taking 'in the run' or 'live' bets or bets on the outcome of a sporting event over the internet once the event has already commenced¹¹. Wagering operators are not restricted from taking 'in the run' or 'live' bets over the telephone, and this service is commonly advertised in-commentary during broadcasts by media or sports personalities through agreements with wagering operators. 'In the run' or 'live' bets are not restricted from being taken over the telephone because only interactive gambling services are prohibited under the Commonwealth Interactive Gambling Act¹². The definition of 'interactive gambling services' does not include a gambling service provided to customers over the telephone¹³.

Under the Wagering Act, TattsBet may also offer wagering on events or contingencies not related to sports or racing. For example, TattsBet may wish to offer wagering on political elections or interest rate changes. However, approval of the Minister responsible for the regulation of wagering is required for TattsBet to conduct wagering on these types of events¹⁴. As at the date of this submission, TattsBet has only received approval to conduct wagering on the Academy Awards as a non racing or sporting contingency.

Under the Act, the Minister must not give an approval for an event or contingency the Minister considers to be offensive or contrary to the public interest. The Minister may place conditions on the approval that she or he considers necessary or desirable for the proper conduct of wagering or considers desirable in the public interest¹⁵.

Submissions from TattsBet to conduct wagering on non racing or sporting events or contingencies would be carefully considered based on the possibility the confidentiality of results could be compromised from some of these bet types. To mitigate these risks, conditions may be placed on an approval for the contingency. The types of conditions may include:

- the submission of terms and conditions for the event outlining the controls in place to ensure the integrity of results (where possible), and rules regarding the payment and refunding of bets prior to the commencement of wagering on the event
- immediate notification of any known or suspected evidence the result of the event may be compromised.

¹¹ section 8A, *Interactive Gambling Act 2001* (Cth)

¹² section 15, *Interactive Gambling Act 2001* (Cth)

¹³ section 5, *Interactive Gambling Act 2001* (Cth)

¹⁴ section 57, *Wagering Act 1998* (Qld)

¹⁵ section 58, *Wagering Act 1998* (Qld)

In considering an application from TattsBet to conduct betting on other contingencies the Office of Liquor and Gaming Regulation (OLGR) would, prior to seeking Ministerial approval, consider the merits of each proposal on a case by case basis. OLGR would also consider whether the submission is appropriate having regard to the nature of the proposed contingency from an integrity perspective as well as in terms of alignment with harm minimisation and responsible gambling objectives. This is the decision making approach provided for in Queensland's gambling legislative framework.

Match-fixing and Spot-fixing in Sport

The Queensland Government recognises the risk that match-fixing and spot-fixing poses to the integrity of sport.

Existing provisions in the Queensland Wagering Act and *Criminal Code* may be relied on to take action against match or spot-fixing in Queensland.

Section 217 of the Queensland Wagering Act prohibits a person from dishonestly obtaining a benefit by an act, practice or scheme in relation to approved wagering. The maximum penalty for breaching section 217 is two years imprisonment or 200 penalty units (equivalent to a \$20,000 fine).

Section 408C of the Queensland *Criminal Code* provides for the offence of fraud. It is an intentionally broadly drafted offence in the conduct that it covers. Specifically, with regard to match-fixing, the offence applies to any person who: dishonestly gains a benefit or advantage, pecuniary or otherwise, for any person; or causes a detriment, pecuniary or otherwise, to any person. The offence is a crime and carries a maximum penalty of five years imprisonment. However, the maximum penalty increases to 12 years imprisonment if a circumstance of aggravation as listed in subsection (2) applies. It is a circumstance of aggravation if the yield to the offender from the dishonesty or detriment caused is of a value of \$30,000 or more.

However, given the global environment of internet betting and the global conduct and broadcast of sporting matches, a cooperative international effort is likely to be the most effective.

It is noted that at a meeting of the Sport and Recreation Ministers' Council on 10 June 2011 Ministers agreed to a nationally consistent approach to deterring and dealing with match-fixing in Australia through a national policy on match-fixing. Ministers also agreed to establish a cross jurisdictional working group to provide an implementation work plan to Sports Ministers within three months (by end September 2011), which will include an assessment of the readiness of the sporting organisations and the betting industry to pursue the requirements under the national policy on match-fixing. Ministers also agreed to active participation in international efforts to combat corruption in sport including an international code of conduct and an international body.

On 21 and 22 July 2011 the Standing Council on Law and Justice agreed to establish an additional national working group to develop a proposal and timetable for achieving nationally consistent legislative arrangements for criminal offences relating to match-fixing. The Queensland Government supports further work on the appropriate approach to addressing match-fixing through these working groups.

Gambling Advertising

Most Queensland gambling Acts prohibit advertising of gambling that is indecent or offensive, that is factually incorrect and is false, deceptive or misleading in a material particular. The Acts also provide the power for the chief executive to direct a person responsible for authorising the advertisement to take the appropriate steps to stop or change the advertisement.

Queensland has also developed an *Advertising and Promotions Guideline* to assist gambling operators with what is regarded by government as acceptable and unacceptable advertising practices. The *Advertising and Promotions Guideline* was developed to support gambling operators in implementing section 6 'Advertising and Promotions' of the *Queensland Responsible Gambling Code of Practice*. Section 6 requires gambling providers to develop and implement strategies to ensure advertising and promotions are delivered in a responsible manner with consideration given to the potential impact on people adversely affected by gambling. The Guideline applies to advertising and promotions in all sectors of gambling in Queensland, including wagering and interactive gambling. However, in recognition of the diversity within the gambling industry, the Guideline reflects the Code of Practice in recognising that some practices apply to all sectors of the industry while others apply only to particular sectors.

With the onset of television gambling advertising and increasing avenues for gambling advertising through emerging technologies, particular attention should be paid to the effect such advertising has on vulnerable people.

Gambling advertising during sporting programs appears to be of most immediate significance.

The Queensland Government is concerned that children are particularly susceptible to gambling advertising, particularly during sports programming, which may lead to the development of gambling problems in some young people. It is particularly concerning the current *Commercial Television Industry Code of Practice* provides an exemption from advertising gambling or betting during 'G' classification periods during a sporting program.

The Productivity Commission suggested in the 2010 report from its inquiry into gambling that gambling advertising can have adverse effects on susceptible people. The Commission recommended a review of the 2010 Commercial Television Code of Practice to determine whether the current exemptions relating to the promotion of gambling products during key children's viewing periods (amongst other exemptions) are appropriate (recommendation 8.6). The Queensland Government supports a public review specifically focused on the exemptions in the Commercial Television Code of Practice relating to advertising of betting or gambling.

Officials from the Queensland Department of Justice and Attorney-General are members of the National Wagering Advertising Working Party which has examined ways to introduce a consistent approach to responsible wagering advertising across Australia. The Working Party was convened in response to a resolution of the 5 December 2008 Australasian Racing Ministers Conference to adopt a national approach to advertising by wagering operators.

One of the key issues in the examination by the Working Party is the effect of wagering promotions on gambling behaviour, with a particular focus on in-commentary promotion. This matter is now being considered by the Council of Australian Governments Select Council on Gambling Reform.

Queensland's wagering legislation currently does not prohibit in-commentary endorsement or discussion of wagering products or odds during sporting programs or events. The Queensland Government strongly supports a national approach to reduce and control the promotion of live odds during sports coverage.

The Queensland Government welcomes and supports the Australian Government's announcement, arising from the May meeting of the Council of Australian Governments Select Council on Gambling Reform, to consider legislation to ban the promotion of live odds during sports broadcasts if industry does not voluntarily take action on this matter by the end of June 2012.

Inducements to Bet on Sporting Events Online

Inducements to bet on sporting events have been discussed at a national level both through the Australasian Racing Ministers Conference and through the National Wagering Advertising Working Party.

It is understood that at a meeting of the Australasian Racing Ministers Conference in December 2008, state and territory Ministers indicated their support for a national approach to prohibiting the advertising of inducements to open new wagering accounts. Specifically, a prohibition on offers of any credit, voucher or reward as an inducement to participate, or to participate frequently, in any gambling activity or to open a betting account was supported.

At a meeting of the National Wagering Advertising Working Party in December 2010, participants raised that the definition of 'inducement' could be open to interpretation and suggested a nationally consistent definition be adopted.

The offering of inducements for gambling is not unlawful in Queensland. However, given that online gambling has no jurisdictional boundaries and there is a need for constitutional adherence with free trade requirements, if restrictions are to be placed on inducements to bet on sporting events online, a consistent national approach is warranted.