

Communications Law Centre, UTS

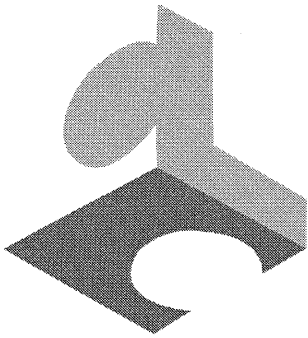
Submission to Senate Community Affairs Committee:

The Prevalence of Interactive and Online Gambling in Australia

20 August 2010

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Executive Summary

- 1.1. CLC considers that online wagering providers may use exemptions under the Interactive Gambling Act 2001 (Cth) ("IGA") to provide casino-like services over smart and mobile phones.
- 1.2. CLC recommends that the definition of a 'telephone betting service' under the IGA be amended to specifically prohibit the use of voice recognition software for the purposes of engaging in real time bets over smart and mobile phones.
- 1.3. CLC recommends tighter regulations be introduced to restrict wagering operators from advertising their services over smart phone devices.
- 1.4. CLC considers that wagering over interactive television will transform the family living room into a class room in which children will familiarise themselves with the culture of betting.
- 1.5. CLC considers that the prohibition of international gambling sites has been largely ineffective.
- 1.6. CLC recommends that overseas international gaming sites be blocked in Australian jurisdictions. Failing this, payments from financial institutions to internet gambling sites should be prohibited.

1. Introduction

- 1.1 The IGA prescribes the ways in which online wagering and gambling services can be offered to Australian residents¹.
- 1.2 The IGA makes it an offence to provide and advertise 'interactive gambling services' to customers that are physically present in Australia².
- 1.3 Whilst the IGA defines 'interactive gambling services' in a broad sense³, it essentially prohibits the advertising and provisioning of online casino gambling (including table games and poker machines).
- 1.4 The IGA therefore creates a distinction between interactive gambling services and wagering services.

¹ Woolley R, Mapping Internet Gambling: Emerging Modes of Online Participation Wagering and Sports Betting, *International Gambling Studies*, Vol. 3, No. 1, June 2003, at 6

² *ibid*

³ *ibid*

- 1.5 The advertising and provisioning of online wagering services is not prohibited under the IGA. However a prohibition remains in respect of online wagering offering continuous play options to the user.
- 1.6 The purpose of the IGA is not to criminalise Australian gamblers but to target and prohibit the advertisers and providers of online casino style gambling.

2. Current Legislation

- 2.1 The current legislation which regulates online gaming sites is the *Interactive Gambling Act 2001*. This Act creates an offence where:

A person is guilty of an offence if:

- (a) the person intentionally provides an interactive gambling service; and
- (b) the service has an Australian-customer link.⁴

- 2.2 Under this Act a number of gambling services are excluded from the prohibition under s8(A), such as horse racing, greyhound racing, sporting events and betting on events.
- 2.3 Consequently, the resulting prohibition relates predominately to 'casino' type games and can apply to content which is hosted overseas 'because the advertisement is published in Australia.'⁵

3. Online Gambling in Context

Ease of Access

- 3.1 Gambling websites may be accessed by underage individuals who have been able to obtain valid credit card details, whether that be from a parent or another party. At brick and mortar establishments, this ease of access is minimised through security and identification checks.
- 3.2 Online gambling also removes possible geographical limits to access to brick and mortar gambling locations. Where in the past individuals have had to travel to gambling arenas (particularly an issue with regional locations), online gambling removes this barrier opening the possibility of an increase in problem gambling.⁶

Unlimited Access

- 3.3 Unlike many physical gambling arenas (with the exception of a number of major casinos), an online environment enjoys unlimited access, in that it never closes. This creates an obvious issue for problem gamblers who can continue to gamble whereas many physical locations close.

Gambling on Credit

⁴ *Internet Gambling Act 2001* (Cth) s15(1)A.

⁵ Christina Franngard, 'Issues of jurisdiction and enforcement in Internet Gambling 10 *Internet Law Review* 86.

⁶ Productivity Commission, Australian Government, *Gambling* (2010) [15.8].

3.4 The utilisation of online gambling with the requirement of a credit card to play is a concern with respect to problem gamblers. Although gambling on credit is unlikely to pose a problem for leisure gamblers, the Productivity Commission argues that gambling on credit may exacerbate financial hardship by causing problem gamblers to gamble with borrowed funds.⁷

4. Periodic Gambling versus Continuous Gambling

4.1 A central policy consideration for permitting online wagering under the IGA was that the characteristics of wagering, as opposed to gambling, manifest an 'inherently lower potential for problem gambling behaviour'⁸. This lower risk is due to the following three characteristics:

- i. wagering tends to occur periodically, rather than continuously, as there is a temporal interval between bet placement and the outcome of the event;
- ii. wagering is based on the outcome of an independent contingency; and
- iii. wagering incorporates an element of skill as opposed to chance.

4.2 CLC considers that the periodic nature of online wagering is now evolving into a casino-like continuous paradigm in which gamblers can bet, at any time, over all mediums and on all aspects of sports, politics and life.

4.3 CLC further considers that the element of skill in wagering is now eroding into a game of chance as wagering operators provide services that allow gamblers to bet, not only on the outcome of a game, but continuously on real-time events occurring during that game.

Telephone Exemption

4.4 The IGA currently allows for continuous sports wagering by voice calls over telephones. This exception is based on the premise that gamblers are provided with a number of sequential temporal breaks which instil a periodic element to the bet⁹: to place a bet, a gambler must first dial, connect, navigate the automated voice menu, enter credit card details, confirm a single bet and view the outcome.

4.5 The CLC considers that wagering providers may seek to exploit the telephone exemption via service offerings designed specifically for mobile and smart phones.

4.6 With the advent of innovative smart phone technologies, such as 'Google Voice', in which users may speak to their phones in order to carry out data intensive tasks, the CLC considers the telephone exemption to be technologically outdated.

⁷ Productivity Commission, Australian Government, *Gambling* (2010) [15.8].

⁸ Department of Families, Housing, Community Services and Indigenous Affairs, *Review of Current and Future Trends in Interactive Gambling Activity and Regulation*, available at: http://www.facs.gov.au/sa/gamblingdrugs/pubs/review_trends/Documents/chap2.htm.

⁹ Department of Communications Information Technology and the Arts, *Review of the Operation of the Interactive Gambling Act 2001*, Canberra, at 29.

- 4.7 CLC considers that online wagering providers may use the telephone exemption to provide continuous play services to customers using smart and mobile phones that would have otherwise have been prohibited in an online environment.
- 4.8 CLC considers that the ability of the IGA to prevent the growth of 'continuous play' online wagering will diminish over time due to the constant growth and enhancement of digital communications and media.
- 4.9 To modernise the Telephone Exemption, CLC recommends the definition of a 'telephone betting service' under section 4 of the IGA be amended to specifically prohibit the use of voice recognition software for the purposes of engaging in real time bets over smart and mobile phones.

Smart Phones as a New Medium

- 4.10 Mobile phone gambling is best suited for race and event betting because it is easy, convenient and allows gamblers to place a bet within minutes. Advances in mobile and data technologies have the potential to allow users to watch sporting events live on their phones while wagering in real time¹⁰.
- 4.11 CLC notes global trends in which institutions such as jockey clubs provide SMS services in which patrons are informed of real time odds as well as 'dynamic' bets that are specific to a real-time period within an event.
- 4.12 As the cost of data transfer and mobile data usage plans reduce over time, CLC considers there to be more incentive for online wagering operators and private betting facilities to stream and send live sports vision to patrons, thereby allowing problem gamblers a further medium over which to place bets.
- 4.13 To limit the presence of wagering in a person's digital life, the CLC recommends that tighter regulations be put in place to prevent wagering operators from advertising their betting services over smart phone devices.
- 4.14 CLC considers that such tighter regulations are required to prevent the growth of continuous wagering methods over smart phone media.

5. Inducements over Television and Limiting the Culture of Wagering

- 5.1 It is now commonplace for sporting telecasts to include commentators previewing odds and enticing viewers to place bets with their sponsored betting associates. Commentators often provide guidance on how to read odds as well as step by step directions as to how viewers can place bets.
- 5.2 CLC considers the advent of interactive television will provide further opportunities for wagering products to be integrated within sporting and political coverage.
- 5.3 CLC further considers that bets that are induced by or placed via interactive television will become a primary source of revenue for wagering providers.

¹⁰ Griffiths M, *Internet Gambling: Issues, Concerns, and Recommendations*, Cyberpsychology & Behaviour, Volume 6, Number 6, 2003, at 565.

- 5.4 CLC considers that the unregulated provision of interactive television wagering will transform the family living room into a class room in which children will familiarise themselves with the culture of betting.
- 5.5 CLC considers that significant long term social harms may result from instilling a culture of wagering as a family activity in the living room.

6. Inherent International Weakness

- 6.1 The prohibition of online Australian interactive gambling forces Australians to use offshore sites, many of which have poor harm minimisation features and unscrupulous business practises.¹¹ Australians who frequent offshore gaming sites are continuously at risk due to jurisdictional issues and lack of regulation of some of these overseas websites.
- 6.2 Australians gambling within an online area are seen as easy targets to be exploited for a number of reasons which have been detailed within the Productivity Commission's June paper. The lack of consistent (and in most cases non-existent) international laws that govern online gaming, combined with the absence of a governing body without the power to enforce such laws, has left Australian gamblers within a 'wild west' scenario absent of any governance. Further, many Australians will not know or understand the gambling laws governing the jurisdiction in which overseas sites operate, and this only increases Australians' risk for exploitation.¹²
- 6.3 Although the IGA also nominally prohibits the provision of gaming services by overseas companies to Australians it provides no meaningful way of enforcement.
- 6.4 CLC considers that the prohibition of international gambling sites has been largely ineffective as the rate of Australian access to such sites continues to increase over time.¹³ As indicated within the IGA, prohibition can be applied to any site which can be accessed by an Australian customer. Although this means that there is the possibility for a ban on overseas websites, 'there have been no significant attempts by Australian authorities to enforce the law beyond its borders and no real issues of jurisdiction or law enforcement have yet arisen.'¹⁴ Further, it has been shown that since the introduction of the IGA this has not affected Australians visiting internet gambling sites.¹⁵
- 6.5 CLC considers that casino-style websites pose a significant risk to the financial and mental state of problem gamblers and pose a significant risk of social harm.

¹¹ Productivity Commission, Gambling, Report no. 50, 2010, Canberra. Chapter 15 Part 18

¹² Productivity Commission, Australian Government, *Gambling* (2010) [15.19]

¹³ *id* Chapter 15 Part 1

¹⁴ Christina Franngard, 'Issues of jurisdiction and enforcement in Internet Gambling 10 *Internet Law Review* 86.

¹⁵ *Ibid.*

6.6 CLC considers that denying Australians access to overseas gambling sites to be a practical and effective approach to minimising the growth of Australian participation in online interactive gambling.

6.7 CLC recommends that overseas international gaming sites be blocked in Australian jurisdictions to minimise the potential risks and social harms caused by continuous online gambling. Failing that, transfer of funds from financial institutions (in the form of credit card payments, electronic funds transfers or cheque) to internet gambling sites should be prohibited.

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