

**Department of Broadband,
Communications and the Digital Economy**

**Submission to the Joint Select Committee on
Gambling Reform's Inquiry into the
*Interactive Gambling Amendment
(Virtual Credits) Bill 2013***

June 2013

Introduction

The Department of Broadband, Communications and the Digital Economy (the department) oversees the *Interactive Gambling Act 2001* (IGA) which aims to minimise the scope for problem gambling by limiting the provision and advertising of interactive gambling services that are not permitted to be provided to Australians.

The department recently conducted a review of the IGA. On 12 March 2013, the Minister for Broadband, Communications and the Digital Economy released the department's final report on the review. An outcome of the review is that the Commonwealth Government (the government) is consulting with states and territories on the development and implementation of a national standard for harm minimisation and consumer protection that would cover all licensed online gambling activities. The government is also further examining the recommendations of the review with respect to enforcement and deterrence, advertising, education and awareness and social media, in consultation with states and territories.

The Explanatory Memorandum to the *Interactive Gambling Amendment (Virtual Credits) Bill 2013* indicates that the aim of the proposed amendment to the IGA is to “ensure that games allowing players to gamble with virtual items are appropriately regulated.”¹ There appear to be a number of possible reasons why the Parliament should take action in relation to online games that allow ‘gambling’ with virtual items:

- such games may normalise gambling for children, and increase the likelihood they will gamble with ‘real money’ gambling services;
- such games may give a false impression that money put into these online games (to purchase virtual items) can be cashed-out;
- in some instances, such online games can be advertisements for ‘real money’ interactive gambling services and therefore may act to increase the use of associated interactive gambling services that are unlawful; and
- such games may be used to provide a false impression to consumers of the ease of winning. That is, the payout ratios for ‘free-play’ games that are played for fun (paying-out only virtual credits) may be higher than the pay-out ratios of ‘real money’ online games that are played for real money.

The proposed amendment, if it was adopted, may also increase the range of ‘gambling’ services that are unable to be advertised under the existing advertising prohibitions contained in Part 7A of the IGA.

An effective ban of anything on the internet is notoriously difficult. Before the Parliament moves to implement the proposed ban, it is important that Parliament is satisfied:

- there is robust evidence of harm from the internet content that is to be banned;
- the target of the ban can be tightly defined, without creating unintended consequences;
- the ban can be effectively enforced; and
- there are no better ways of dealing with the issue.

¹ Explanatory Memorandum, *Interactive Gambling Amendment (Virtual Credits) Bill 2013*, p2

There is also merit in considering overseas experience with banning similar online games by other countries. To date, the department has been unable to identify any other countries that have implemented a similar ban of simulated online gambling games.

Evidence of harm

The department's review of the IGA closely considered the issue of children playing casino-style gambling simulations. While there has been some recent research which suggests that young people who engage in 'free-play' gambling-style games are more likely to report gambling with real money² the research evidence in this area is still at a very early stage.

A study currently being conducted by Dr Daniel King from the University of Adelaide, *Youth gambling via social media and other digital technologies*³, aims to determine to what extent young people are involved in new forms of 'gambling' (for example, via social media) and the impact that this has on their behaviour and attitudes towards real money gambling.

Preliminary results from the study found a significant proportion of young people aged 12-17 are playing simulated gambling games via social media, smartphone apps and online video games. Of the teenagers surveyed, around 40 per cent who played online games involving an element of simulated gambling reported a 'preoccupation with gambling' or an intention to gamble with real money in the future. The study also found that players who use 'free-play' services may be more likely to display risky gambling behaviours when they begin to use real-money services.

The preliminary results of the study also indicated that simulated gambling games available on social media and mobile devices are:

- making gambling more accessible and attractive to young people;
- promoting false information about gambling – in particular in relation to 'pay out' amounts being at an inflated rate; and
- making gambling more prolific and socially acceptable.

This study is being peer reviewed, and it is understood that a second wave of data collection will be undertaken later this year to further explore these issues.

What online games are being targeted by the proposed amendment?

Previous Australian Communications and Media Authority (ACMA) investigations have found that online games do not fall within the definition of a (prohibited) gambling service under the IGA where they are played for virtual credits, virtual coins, virtual tokens, virtual objects or any similar things, on the basis that these games are not played for money or 'anything else of value'. The Explanatory Memorandum for the IGA states that a game is only played for money or anything else of value if the game is played for some kind of prize which is of monetary value. As the virtual credits, virtual coins, virtual tokens, virtual objects or any similar things won in these games cannot be cashed out or converted to cash, the ACMA concludes that the games are not played for

² *Gambling habits are learnt early*, Sun Herald, 19 May 2013, page 3

³ Study is being peer reviewed

something of value.

The department understands the intention of the proposed amendment is to broaden the current legislation to include these sorts of online games within the definition of a (prohibited) interactive gambling service.

It should be noted that there are a range of online games that involve the use or possible purchase of virtual credits, virtual coins, virtual tokens, virtual objects or any similar things. It is not clear to what extent the proposed amendment is intended to cover the full range of such online games.

The range of online games that involve the use, purchase or winning of virtual items varies, and some of the possible characteristics of different games are set out below:

- games that are **free to play or enter**; a certain number of virtual credits are provided to the player at the start of the game, and then may be earned within the game, **but additional credits cannot be purchased without switching to a closely associated ‘real money’ online gambling service** (for example, pokerstars.net and pokerstars.com⁴). Where these online games are closely associated with a very similar ‘real money’ gambling site, the ACMA has previously found that these are an advertisement for a (prohibited) interactive gambling service). The department’s review of the IGA recommended that there would be merit clarifying the precise nature of the advertising provisions in terms of such online games;
- games that are **free to play or enter**; a certain number of virtual credits are provided to the player at the start of the game, and then may be earned within the game, **but additional credits may also be purchased** (for example Slotomania⁵, Zynga Poker⁶, DoubleDown Casino⁷, Pyramid Solitaire Saga⁸, Scrabble⁹ and Fishworld¹⁰);
- games that have a **cost to play or enter**; a certain number of virtual credits are provided to the player at the start of the game, and virtual credits may then be earned within the game, **but additional credits cannot be purchased** (for example, Monkey Money Slots available in the Apple App Store¹¹ and Google Play Store¹²);
- games that have a **cost to play or enter**; a certain number of virtual credits are provided to the player at the start of the game, and virtual credits may also be earned within the game. **Additional credits may also be purchased** (for example, Running with Friends (Paid)¹³ on the Apple App Store);
- online games that involve role playing/adventure types games, but may include

⁴ <http://www.pokerstars.net/about>, accessed 29/5/2013

⁵ <http://www.slotomania.com>, accessed 29/5/2013

⁶ <http://company.zynga.com/games/zynga-poker>, accessed 29/5/2013

⁷ <http://doubledowncasino.com>, accessed 29/5/2013

⁸ <https://www.facebook.com/appcenter/pyramidsolitairesaga>, accessed 29/5/2013

⁹ <https://www.facebook.com/ScrabbleEA/info>, accessed 29/5/2013

¹⁰ <https://itunes.apple.com/au/app/fish-world/id367939271?mt=8>, accessed 29/5/2013

¹¹ <https://itunes.apple.com/au/app/monkey-money-slots/id306270740?mt=8>, accessed 29/5/2013

¹² <https://play.google.com/store/apps/details?id=com.pokiemagic.MonkeyMoney&hl=en>, accessed 29/5/2013

¹³ <https://itunes.apple.com/app/id577634379>, accessed 3/6/2013

simulated gambling-type elements within the game (for example, purchasing additional spins of the wheel in ‘Squeal of Fortune’ within the game ‘Runescape’¹⁴ which gives players additional chances to win virtual items for use within the game); and

- online games that involve role playing / adventure types games, where **virtual items can be directly purchased** to help speed up the game or unlock additional features (for example Farmville¹⁵).

A key difficulty in expanding the legislation to prohibit any or all of these game types is defining these in a way that captures the games that are intended to be banned (that is, those that are considered would cause gambling related harm), while not inadvertently capturing other games that may not contain any simulated gambling-type elements or contain some of those elements but are not viewed as potentially causing harm. For example, the proposed amendment could arguably cover some online games that require payment of a fee to play or enter the game, and include elements of chance for progress in the game, but would not be seen as traditional online gaming (for example, playing a game of Monopoly online as part of a tournament).

On the other hand, games with strong gambling characteristics that are free to enter and where virtual credits or similar could not be purchased would not be captured, as the payment of consideration to play or enter the game is a key component of the existing definition (see subparagraph (e)(iii) of the definition of ‘gambling service’ in section 4 of the IGA – which would not be altered as a result of the proposed amendment).

Enforcement

If a suitable definition could be developed to ban simulated gambling services that are viewed as causing harm, there would still be significant challenges for enforcement. The challenges associated with enforcing the existing provisions of the IGA are well known and were outlined in the department’s final report on the review of the IGA. These challenges would continue to apply if additional services were caught by an expanded definition of ‘gambling service’. For example, if the ACMA finds that a URL provides access to a prohibited internet gambling service, the URL is notified to the Australian Federal Police (AFP). The AFP then notifies relevant overseas law enforcement bodies regarding online gambling services prohibited by the current legislation. So far as the department is aware, such notifications have not led to prosecutions being commenced.

In circumstances where certain behaviour is not criminalised to the same degree as Australia, or at all, there is no ‘dual criminality’ attached to the offence and accordingly the international jurisdiction is unlikely to investigate, or provide assistance to Australia to investigate, matters not criminalised in that country. The lack of dual criminality in relation to online interactive gambling in most foreign countries demonstrates the practical barriers obstructing the AFP from progressing investigations in relation to these referrals.

¹⁴ <http://www.runescape.com>, accessed 28/5/2013

¹⁵ <http://company.zynga.com/games/farmville>, accessed 28/5/2013

It is unlikely that overseas law enforcement agencies would take any action against ‘free-play’ games hosted in their jurisdictions when they are reluctant to take action in relation to ‘real money’ gambling services currently.

It is also relevant that, to the department’s knowledge, no other countries have, at this stage, been identified as having banned such gambling simulations or are considering doing so. This would create a further practical obstacle to securing cooperation from overseas law enforcement bodies.

Though the ACMA and the department have been successful in procuring the agreement of specific parties to disable access for Australians, remove games from their websites or to cease advertising prohibited services, there have been no successful criminal prosecutions in Australia under the IGA.

Success in relation to the removal of advertising has been achieved notwithstanding the difficulties in interpreting the website advertising prohibition under the IGA. The IGA restricts website advertising of prohibited services only where the website is taken to be ‘published in Australia’. The test for such publication in section 61EA(3) of the IGA is unclear and does not follow the approach adopted in other Australian legislation. A simple amendment to the IGA, which would facilitate the enforceability of the advertising prohibition and which could be considered generally in the context of the response to the department’s review of the IGA, would be to replace section 61EA(3) with a much clearer definition, such as that used in the *Tobacco Advertising Prohibition Act 1992*.

Alternative ways of addressing this issue

Alternative approaches to dealing with the concerns identified in the research would be to:

- encourage and assist parents to be more vigilant in the types of online games their children play and be provided with better information on these (including via tools such as the Easy Guide to Social Networking Sites, available at www.dbcde.gov.au/easyguide/social_networking). For example, parents should consider more carefully when their children ask for additional money to play online simulated gambling games. They can also use online tools to limit the range of such online games that their children play; and
- encourage popular social media services, mobile content providers, console providers and online game developers to closely monitor the impact of their user policies regarding the provision of these games to ensure that they align with Australian laws and community expectations, as set out in recommendation 30 of the department’s final report on the review of the IGA.

There is merit in these providers monitoring the research in this area and blocking access to simulated online gambling games that are identified by the research as likely to have a negative impact on children. Further consultation between researchers and social media services, etc would be appropriate.

Conclusion

In conclusion, the department considers:

- there is emerging research that suggests there is a public policy issue regarding simulated online gambling services that requires further consideration;
- there are significant challenges in defining the types of simulated online gambling services that could be banned without major unintended consequences;
- enforcement of any such ban would be extremely difficult and highly unlikely to attract the needed support from overseas law enforcement bodies; and
- there are better ways of addressing this issue than changing the definition of gambling in the IGA - this includes encouraging greater vigilance by parents and by relevant social media platforms, etc being more responsive to the findings of emerging research in this area.