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Chair and Agency Head

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Inquiry Secretary
Environment and Communications Legislation Committee
PO Box 6100
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Canberra ACT 2600

By email: ec.sen@aph.gov.au

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Dear Ms Dunstone

Inquiry into the Interactive Gambling Amendment (Prohibition on Credit Card Use) Bill 2020

Thank you for your invitation to make a submission to the Environment and Communications Legislation Committee's inquiry into the Interactive Gambling Amendment (Prohibition on Credit Card Use) Bill 2020 (the Bill).

As the regulator for interactive gambling under the *Interactive Gambling Act 2001* (IGA), the Australian Communications and Media Authority (ACMA) has a number of observations and a current review which may be of interest to the Committee.

The ACMA's role

The IGA prohibits illegal interactive gambling services from being provided or advertised to Australians. The ACMA enforces the IGA by disrupting illegal gambling services through:

- > conducting targeted investigations, including into affiliate services that promote illegal gambling services.
- > engaging with payment processors to identify transactions to illegal providers.
- > engaging with other third-party providers such as software companies that provide their services to the illegal sites.
- > requesting internet service providers to block the websites of services found to be in breach of the IGA (as at 20 April 2021, a total of 263 websites have been blocked at the ACMA's request).

The ACMA also has a role in minimising harm from online wagering and is responsible for two key measures under the National Consumer Protection Framework¹ for online wagering. These measures prohibit licenced interactive wagering services² from providing 'credit betting' via:

- > credit to customers; or
- > facilitating credit by third parties (such as so called 'payday lenders').

¹ [National Consumer Protection Framework for Online Wagering | Department of Social Services, Australian Government \(dss.gov.au\)](https://www.dss.gov.au/national-consumer-protection-framework-for-online-wagering)

² Exceptions apply to some wagering operators. See sections 15D and 15E of the IGA.

Prohibition on credit betting

The credit betting prohibitions under the IGA do not currently extend to the use of credit cards issued by third parties (independent of the wagering provider) as they are explicitly excluded from the offence provisions in section 15C of the IGA.³

The ACMA has received limited complaints about the provision of credit (by credit card or other means) by online wagering operators since the commencement of the applicable provisions in February 2018. Most contacts to the ACMA have sought clarification about whether the prohibitions apply to the use of independently issued credit cards.

However, we have undertaken several self-initiated investigations to test compliance with the rules and conducted a review of wagering operators' terms and conditions. Overall, we have seen a good level of compliance by wagering operators with the existing laws in this respect.

The ACMA is currently conducting a statutory review of the operational effectiveness of the credit betting prohibitions, as required by section 15G of the IGA. We released a public consultation paper⁴ on 17 February 2021 and are now reviewing the 12 submissions received. We are required to provide a report on the review to the Minister for Communications, Urban Infrastructure, Cities and the Arts by 17 August 2021. Subsequently, the Minister will table the report in each House of Parliament and the ACMA will publish the report on its website.

As the scope of the above statutory review is focused on the operation of the current legislation, it does not address the use of independent credit cards. However, we anticipate that any submissions that raise credit-card related issues will be considered in our report to the Minister. Key observations in our consultation paper cover:

- > The definition of 'credit' – we note that it can be difficult to establish the existence of an agreement, arrangement or understanding required by the legislation. We invited stakeholder views on whether an alternative approach to the definition would be more effective.
- > Withdrawal of funds from customer accounts – some wagering operators allow customers to reverse a withdrawal of funds after it has been processed from their account. We invited stakeholder views on whether this practice should be prohibited.

The proposed new prohibition

The ACMA supports measures that provide protections for Australians that choose to gamble online.

The National Consumer Protection Framework for Online Wagering: Baseline study (Final report, June 2019)⁵ found around half of the study's 5,076 participants were classified as being at risk of or already experiencing gambling-related harm. Over 7% of participants (393) reported they had suffered increased credit card debt because of online gambling.

The proposed amendments in the Bill seek to reduce this harm by prohibiting licensed Australian wagering providers from accepting payments by credit card. In

³ Paragraphs 15C(1)(b)(ii) and 15(3)(b)

⁴ Consultation paper is available at <https://www.acma.gov.au/consultations/2021-02/credit-betting-prohibitions-interactive-gambling-act-consultation-42021>

⁵ National Consumer Protection Framework for Online Wagering: Baseline study, June 2019
https://www.dss.gov.au/sites/default/files/documents/11_2019/d19_887121_final_baseline_study_-_national_consumer.pdf

this context, we note that illegal offshore gambling services often allow consumers to use Australian credit cards to deposit money into their accounts.

The providers of these illegal offshore services are typically located in jurisdictions with limited regulatory oversight and minimal or no consumer protections.

Complaints received and investigations undertaken by the ACMA to date, indicate that consumers face heightened risks due to offshore activity because of lack of regulation and oversight. These risks include:

- > unauthorised use of credit cards
- > refusal to pay all or part of winnings
- > lack of responses to customer enquiries

Accordingly, we note that the potential benefits of banning the use of credit cards for online gambling domestically need to be balanced against the risk of consumers moving their gambling activities to offshore providers that pose significant additional risks to the consumers.

The ACMA has engaged with the Australian Banking Association and credit card schemes about ways that payments to illegal services using Australian credit cards can be disrupted. We understand, through this engagement, that when an illegal service provider uses a gambling Merchant Category Code (MCC) it is possible to identify and disrupt the transaction.

However, we have observed that these illegal gambling providers are increasingly using third party payment processors⁶ to mask their gambling services and the MCC can reflect services other than gambling. This can make it difficult for credit card providers, or indeed those potentially charged with regulatory oversight, to identify the illegal activity and take disruptive action.

These matters may assist the Committee to consider where any potential interventions are most appropriately placed to help ensure any future disruption is efficient and effective.

The ACMA is available to provide any additional information the Committee may require.

Yours sincerely

Nerida O'Loughlin PSM

26 April 2021

⁶ Illegal operators may use an established non gambling entity to act as an intermediary to accept payments, in return for a fee or commission, to mask their gambling activities.