

Chapter 6

Key issues raised with the committee

6.1 This chapter covers the main issues raised with the committee in relation to the bill. The key concern was the scope of the bill and the effect it may have on the interactive entertainment industry, including non-gambling style games.

Scope of the bill

6.2 The bill seeks to change the current definition of a 'gambling service' as defined in the *Interactive Gambling Act 2001* (IGA). Currently the IGA defines a 'gambling service' as follows:

- (a) a service for the placing, making, receiving or acceptance of bets; or
- (b) a service the sole or dominant purpose of which is to introduce individuals who wish to make or place bets to individuals who are willing to receive or accept those bets; or
- (c) a service for the conduct of a lottery; or
- (d) a service for the supply of lottery tickets; or
- (e) a service for the conduct of a game, where:
 - (i) the game is played for money or anything else of value; and
 - (ii) the game is a game of chance or of mixed chance and skill; and
 - (iii) a customer of the service gives or agrees to give consideration to play or enter the game; or
- (f) a gambling service (within the ordinary meaning of that expression) that is not covered by any of the above paragraphs.¹

6.3 The bill proposes to change this definition by including the following after 'anything else of value' in (e)(i):

'anything else of value (including virtual credits, virtual coins, virtual tokens, virtual objects or any similar thing that is purchased within, or as part of, or in relation to, the game)'.²

6.4 The Australian Psychological Society (APS) supported the intent of the bill to ensure that games 'where players can participate in gambling or gambling-type activities using virtual items purchased with cash currency are appropriately regulated as 'gambling activities''. It noted the importance of:

...protecting consumers, particularly minors by the appropriate regulation of online gambling and gambling activity.³

1 IGA, Part 1, section 4.

2 Proposed Schedule 1.

6.5 However, most submitters did not support the bill, arguing that the proposed change would expand the definition of an interactive gambling service to include a broader category of services that do not contain gambling references.

6.6 As noted by the Game Developers' Association of Australia (GDAA) the effect of the proposed change would be to 'essentially prohibit a large category of games, particularly those that rely on in-app purchases, from being accessible in Australia'.⁴ The GDAA argued that the proposed change to the definition would 'radically expand the definition of gambling services and the respective prohibitions beyond gambling style games'.⁵ It added:

With the expanded scope of section 4(e)(i) the Bill would likely prohibit a large range of games, including non-gambling style games, particularly those games that use the free-to-play or freemium business models. This is likely to have a devastating impact on the interactive entertainment industry, particularly in the mobile games market.⁶

6.7 This view was supported by the Australian Interactive Media Industry Association Digital Policy Group (Digital Policy Group) which listed some of the games/apps that may be affected: Angry Birds, Farmville, Monopoly, Tetris, UNO, Pac-man, Candy Crush Saga, Lord of the Rings, Words with Friends, The Simpsons, Temple Run, the Sims, FIFA Ultimate Team and Smurfs Village.⁷ The following in-game purchases may also be affected:

- avatars (in-game representation of players) and clothing for avatars;
- power ups that allow a player to purchase help dealing with difficult portions of a game;
- virtual items generally, such as tractors and purple cows in Farmville.⁸

6.8 The International Social Games Coalition (ISGC) also mentioned in-game items such as extra lives, tools or maps which expand the game experience.⁹ The ISGC submitted that the proposed change would mean that:

...almost any social game played online, such as footy tipping to the Smurfs to Jetpack Joyride, which have a paid-for element would fall under the scope of the Interactive Gambling Act (IGA). By being considered gambling, they would be put at risk of an outright ban.¹⁰

6.9 The ISGC did not support the proposed amendment to the IGA and argued:

3 Australian Psychological Society, *Submission 4*, p. 2.

4 GDAA, *Submission 1*, p. 4.

5 GDAA, *Submission 1*, p. 6.

6 GDAA, *Submission 1*, p. 6.

7 Australian Interactive Media Industry Association Digital Policy Group, *Submission 2*, p. 2.

8 Australian Interactive Media Industry Association Digital Policy Group, *Submission 2*, p. 3.

9 International Social Games Coalition, *Submission 3*, p. 4.

10 International Social Games Coalition, *Submission 3*, p. 5.

Social games and gambling are fundamentally different. Gambling typically requires consideration, chance, and prize. Even though some social games do have the ability to allow players to pay for elements in a game, they do not have all of these elements.¹¹

6.10 These issues with the coverage of the bill were acknowledged by the Department of Broadband, Communications and the Digital Economy (DCBDE):

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.¹²

6.11 By way of explanation, the department noted the use, purchase or winning of virtual items varies and provided a list of some of the possible characteristics of different games. These include:

- games that are free to play where a certain number of virtual credits are provided to the player at the start and they may be earned during the game. However, additional credits cannot be purchased without switching to a closely associated 'real money' online gambling service, for example, pokerstars.net.¹³

6.12 The department advised that where these online games are closely associated with a similar 'real money' gambling site, ACMA has found these to be an advertisement for a prohibited interactive gambling service. The review of the IGA (see further below) recommended that 'there would be merit in clarifying the precise nature of the advertising provisions in terms of such online games'.¹⁴ The department highlighted other possible game characteristics:

- games that are free to play where a certain number of virtual credits are provided at the start and may be earned during the game but additional credits may be purchased, for example, Slotomania, Zynga Poker, DoubleDown Casino, PyramidSolitaire Saga, Scrabble and Fishworld;
- games that have a cost to play where a certain number of virtual credits are provided at the start and virtual credits may be earned but additional credits cannot be purchased, for example, Monkey Money Slots;
- games that have a cost to play where a certain number of virtual credits are provided at the start and virtual credits may be earned and additional credits may be purchased, for example, Running with Friends;

11 International Social Games Coalition, *Submission 3*, p. 5.

12 Department of Broadband, Communications and the Digital Economy, *Submission 5*, p. 4.

13 Department of Broadband, Communications and the Digital Economy, *Submission 5*, p. 4.

14 Department of Broadband, Communications and the Digital Economy, *Submission 5*, p. 4.

- role playing or adventure games that may include simulated gambling-type elements in the game, for example, purchasing additional spins for Squeal of Fortune or chances to win virtual items in Runescape; and
- role playing or adventure type games where virtual items can be directly purchased to speed up the game or unlock features, for example, Farmville.¹⁵

6.13 The department advised that a key issue with the legislation would be defining game types to capture the games it intends to ban while not inadvertently capturing other games that do not contain gambling-type elements or may do so but they 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).¹⁶

6.14 The bill was also not supported by Clubs Australia which has established:

a Social Gaming Working Group to examine the many issues associated with gambling-style social gaming and establish whether it should be considered a responsible and appropriate option for clubs.¹⁷

Government action

Review of the IGA

6.15 Following a meeting of the COAG Select Council of Gambling Reform in May 2011, a review of the IGA was announced. On 19 August 2011, the Minister for Broadband, Communications and the Digital Economy released the terms of reference for the review. On 24 August 2011, a discussion paper was released and submissions were sought. On 29 May 2012 an interim report was released for public comment. The final report was released 12 March 2013.¹⁸

6.16 When the review was completed, the minister announced that the government will work with the states and territories to implement a national harm minimisation

15 Department of Broadband, Communications and the Digital Economy, *Submission 5*, pp 4–5.

16 Department of Broadband, Communications and the Digital Economy, *Submission 5*, p. 5.

17 Clubs Australia, *Submission 6*.

18 Department of Broadband, Communications and the Digital Economy, *Review of the Interactive Gambling Act 2001, Final Report 2012*, pp 22–25.

and consumer protection standard for all licensed online gambling activities.¹⁹ 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.²⁰

Games played with virtual currency

6.17 The area of games played with virtual currency was included in the review of the IGA and Senator Xenophon's concerns were noted:

The issue of gambling simulation services utilising virtual credits (or chips) was highlighted by Senator Nick Xenophon with respect to DoubleDown Casino, which allows consumers to purchase additional credits to continue to play once a certain amount of credit is used. Slotomania...and Zynga Poker are other examples of services where virtual currency can be purchased with real money.²¹

6.18 The final report highlights that the decision to play games like DoubleDown Casino and Zynga Poker, where additional virtual chips can be purchased, is currently a matter of consumer choice (and parental guidance where children are involved).²²

6.19 The final report summarised the characteristics of such games that cause concern:

- the games look very much like many real casino games and some may use a simulated rate of return that gives players an unrealistic impression of the rates of return for actual online casinos;
- there is an incentive to use virtual chips to unlock elements of the game (eg. new levels, items) and the fastest way to do this is to purchase additional virtual chips with real money; and
- if a player loses all their virtual chips, they are able to purchase more chips to continue playing the game.²³

IGA definition of gambling service

6.20 The DCBDE final report explained that currently games played with virtual currency do not fall under the definition of gambling under the IGA as virtual currency is not redeemable for real money or anything else of value. DCBDE

19 Senator The Hon Stephen Conroy, 'Strengthened consumer protection for online gambling', *Media Release*, 12 March 2013.

20 Department of Broadband, Communications and the Digital Economy, *Submission 5*, p. 2.

21 Department of Broadband, Communications and the Digital Economy, *Review of the Interactive Gambling Act 2001, Final Report 2012*, p. 139.

22 Department of Broadband, Communications and the Digital Economy, *Review of the Interactive Gambling Act 2001, Final Report 2012*, p. 142.

23 Department of Broadband, Communications and the Digital Economy, *Review of the Interactive Gambling Act 2001, Final Report 2012*, p. 141.

emphasised that the terms and conditions make it clear that virtual currency cannot be redeemed for real money, goods or other items of monetary value.²⁴

6.21 DCBDE also advised that consumers can choose to purchase virtual chips but it is possible to play many of these games without making these purchases.²⁵

Available evidence

6.22 One of the reasons given for regulating such games is that gaming simulations potentially normalise gambling for children. The DCBDE final report noted that the research evidence to support this view is 'at an embryonic stage'. It noted that no other countries have banned such gambling simulations or are considering doing so. However, the UK Gambling Commission has indicated that it is monitoring developments in this area.²⁶

6.23 The Australian Psychological Society (APS) acknowledged the lack of current evidence regarding 'prevalence, harm and associated policy responses in relation to online gaming opportunities, particularly given rapid technological advances'.²⁷ The APS called for:

Further independent research [to be] undertaken to investigate the participation in, and impact of interactive and online gaming and gambling, particularly to monitor and assess any harm caused by gambling, and any grooming effects of interactive gaming using virtual credits as a direct or indirect (symbolic) stimulus for involvement in online gambling. The outcomes of this research should inform appropriate policy responses, particularly relating to regulation.²⁸

Issues

6.24 The DCBDE final report detailed what would be required to ban such gambling simulations and the two areas of difficulty: suitable definitions that did not inadvertently capture other games; and enforcement.

Suitable definition

6.25 The characteristics of these games would need to be identified and defined in the legislation. The DCBDE Final Report acknowledged the potential for such a definition to inadvertently capture other games:

A key difficulty in attempting to prohibit gambling-like applications that allow the purchase of virtual currency with real money would be defining

24 Department of Broadband, Communications and the Digital Economy, Review of the Interactive Gambling Act 2001, Final Report 2012, p. 141.

25 Department of Broadband, Communications and the Digital Economy, Review of the Interactive Gambling Act 2001, Final Report 2012, p. 141.

26 Department of Broadband, Communications and the Digital Economy, Review of the Interactive Gambling Act 2001, Final Report 2012, p. 141.

27 Australian Psychological Society, *Submission 4*, p. 1.

28 Australian Psychological Society, *Submission 4*, p. 6.

such games in a way that did not inadvertently capture other games that contain some gambling elements. For example, while some games may require payment of an entry fee, and elements of chance for progress in the game, they are not seen as traditional gaming (e.g. playing board games which can be played online or as tournaments). The constant evolution of social gaming and consumer trends would also pose difficulties in applying an effective definition.²⁹

Enforcement

6.26 In addition to finding a suitable definition to ban these services, another area of difficulty would be the identification of how any legal requirements to ban such games would be enforced such that the access to these games by Australians (or by Australian children) could be prevented by the platforms on which these games are delivered.³⁰ The DCBDE Final Report highlighted that:

...the global nature of the platforms through which they are accessed, and the global nature of the developers that create them, would pose challenges for enforcement. Platforms and developers would be required to comply with a legal requirement for access to their services by Australians (or Australian children) which does not currently exist in any other jurisdiction. Such requirements are likely to be resisted strongly and would require a high level of co-operation with platforms and providers to put in place, particularly as most of the relevant global platforms operate under the laws of other countries. The challenges associated with extra-territoriality outlined in Chapter 4 [of the DCBDE Final Report] would also be relevant.³¹

6.27 The department also emphasised the enforcement challenges in its submission to the inquiry.

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.

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.

29 Department of Broadband, Communications and the Digital Economy, Review of the Interactive Gambling Act 2001, Final Report 2012, p. 142.

30 Department of Broadband, Communications and the Digital Economy, Review of the Interactive Gambling Act 2001, Final Report 2012, p. 141.

31 Department of Broadband, Communications and the Digital Economy, Review of the Interactive Gambling Act 2001, Final Report 2012, p. 142.

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.³²

IGA review conclusions

6.28 The review acknowledged that some games are starting to push the boundaries between games and gambling. It also noted major global gambling companies purchasing free or virtual games which may signal a move to offer paid gambling games on social networking sites or through mobile devices. However, it concluded that further research is required to inform policy decisions in this area and noted Gambling Research Australia is considering commissioning research into social media and gambling. Its recommendations on this issue are:

Recommendation 30: Popular social media services, mobile content providers, console providers and online game developers closely monitor the impact of their user policies regarding the provision of online gambling services (both licensed and unlicensed) as well as gambling-style services that are popular with children to ensure the implementation of these policies aligns with Australian laws and community expectations. In particular, these providers should closely monitor gambling-style services to ensure that they are not inappropriately targeting younger children or that they possess simulated payout ratios that differ significantly from actual gambling services as a means of misleading children about their prospects for success with real gambling services.

Recommendation 31: In addition to Recommendation 30 and subject to the outcome of proposed GRA research in this area, the department should consult with gambling regulators in like-minded countries regarding potential measures to address the access and marketing of online gambling-style services to children.³³

6.29 The committee discussed this issue with the department during its previous inquiry. Mr Abul Rizvi, Deputy Secretary, DCBDE, indicated the minister is raising the issue with a range of social media sites:

Mr Rizvi: ... There is a recommendation in the report which goes to the issue of gambling simulation games that are provided on social media sites as well as on other platforms. In the context of the review, concerns were raised about those. We looked at those issues and concluded that, in the current circumstances, the best way to approach that would be to go to the relevant social media sites and other platform providers to inquire of them as to what they are doing to deal with the concerns that have been raised in this space before deciding where to go further at this point.

32 Department of Broadband, Communications and the Digital Economy, *Submission 5*, pp 5–6.

33 Department of Broadband, Communications and the Digital Economy, *Review of the Interactive Gambling Act 2001, Final Report 2012*, p. 145.

Ms BRODTMANN: In terms of social media sites, is that specific gambling sites? Who will you be targeting?

Mr Rizvi: The range of social media sites—obviously the most popular being Facebook—but also platforms such as the Apple apps platform, the Android platform and those sorts of sites, as well as games such as online games that can be played which have, as a subset, an element of simulated gambling.

Ms BRODTMANN: And the time line for those sorts of consultations?

Mr Rizvi: The minister will be writing to those social media platforms in the very near future.

Ms BRODTMANN: And the expectation on the length of the consultation?

Mr Rizvi: It is hard to say at this stage. The minister has not set a time line on that, but clearly we would be expecting a response from the social media sites in the near future.³⁴

6.30 The GDAA noted that the Interactive Games and Entertainment Association (IGEA) is a member of the DCBDE's Consultative Working Group which is working on matters raised in the review of the IGA.³⁵

Other mechanisms to address the issue

Assist parents with more information

6.31 The DCBDE Final Report emphasised the ability of children to purchase virtual chips and the role of parents in deciding whether children should have access to these games. To purchase virtual chips or other items, the individual must have access to a credit card or another form of online payment system and this would involve some form of parental input and consent:

The child may either have access to their own credit card/online payment account (with the parent's consent), or be using their parent's card/account with or without consent. Payments for these games could also be made by using emerging mobile phone payment methods. The latter may be easier for some children to access but would show up on the mobile phone bill that parents receive (if the parent has provided the mobile phone to their child). The case may be that the parent does not clearly understand the purchases being made by the child as they are for what is viewed to be a game rather than a gambling-like service.³⁶

6.32 The DCBDE Final Report noted the need for more education and awareness for parents around these issues. For example, it highlighted the ability for parents to block access to websites and services they feel are inappropriate for their children

34 Mr Abul Rizvi, *Committee Hansard* (Inquiry into the advertising and promotion of gambling services in sport), 19 March 2013, p. 11.

35 GDAA, *Submission 1*, p. 6.

36 Department of Broadband, Communications and the Digital Economy, *Review of the Interactive Gambling Act 2001, Final Report 2012*, p. 142.

using approved family-friendly filters, or by disabling in-app purchases for gambling-like applications.³⁷

6.33 The department noted that parents should be provided with better information on online games to assist them to be more vigilant. As an example it highlighted a DCBDE publication, 'Easy Guide of Social Networking Sites'.³⁸

6.34 The DCBDE Final Report also pointed out age verification measures are a potential solution to better limit access by children to gambling-like applications. This would require cooperation with providers to put in place mechanisms that would operate effectively.³⁹

Stakeholders respond to emerging research

6.35 The department suggested that providers should be encouraged to monitor the research in this area and to block access to games that are identified as likely to have a negative effect on children. This would involve further consultation between researchers and social media services.⁴⁰

Consumer protection

6.36 It was pointed out that these games must comply with the consumer protection regulation, advertising regulation and other applicable laws.⁴¹ The Digital Policy Group highlighted current consumer protections:

Australian consumers benefit from strong legal and regulatory protections today, under the Australian Consumer Law and the Interactive Gambling Act. There is no evidence of deception by operators as to whether virtual goods will in fact be convertible to money or money-like 'value', or as to players being misled as to whether virtual goods will in fact be convertible to money or money's value. If misleading statements were made by operators of games sites where virtual goods may be used, the Australian Consumer Law would empower the ACCC to take appropriate enforcement action.⁴²

Consumer affairs advisory council inquiry

6.37 Given the focus of the bill on consumer protection, the committee notes wider issues with in-app purchases. The Commonwealth Consumer Affairs Advisory Council is conducting an inquiry into the issue of app purchases by Australian consumers on mobile and handheld devices. The inquiry commenced on 5 November

37 Department of Broadband, Communications and the Digital Economy, Review of the Interactive Gambling Act 2001, Final Report 2012, p. 143.

38 http://www.dcbde.gov.au/easyguide/social_networking (accessed 6 June 2013)

39 Department of Broadband, Communications and the Digital Economy, Review of the Interactive Gambling Act 2001, Final Report 2012, p. 143.

40 Department of Broadband, Communications and the Digital Economy, *Submission 5*, p. 6.

41 International Social Games Coalition, *Submission 3*, p. 6.

42 Australian Interactive Media Industry Association Digital Policy Group, *Submission 2*, p. 4.

2012, an issues paper was released and the formal consultation period ended on 31 January 2013.⁴³

6.38 The issues paper noted that the purchase of apps is generally accompanied by download and payment notifications but only a very low percentage of users read the terms and conditions. It advised:

...concerns that the way apps and in-app features are marketed or supplied may be confusing or misleading and could entice consumers (including children) to access in-app features without knowing they will incur costs.⁴⁴

6.39 The issues paper noted that games targeted at children can have options to purchase items within the app and in some cases this has led to children incurring costs without the knowledge of the parent.⁴⁵

6.40 Consumers have complained about confusing language when referring to the currency used to purchase in-app items as it may take the form of diamonds, coins or other virtual items.⁴⁶

6.41 Submissions to the inquiry have highlighted the need for consumer information around costs to be clearer and more accessible. The issues paper highlighted the legal framework for consumer protection in relation to mobile apps and in-app purchases. It noted that telecommunications companies provide a number of guides for parents to help them to manage mobile devices and set up controls. It also highlighted access controls and restriction options available to consumers to limit app and in app purchases. However, users need to actively enable these restrictions.⁴⁷

Committee view

6.42 The committee welcomes the work being undertaken by the Consumer Affairs Advisory Council to address wider consumer issues around in-app purchases.

6.43 The committee notes the lack of research in the area of social media and gambling and would support work being undertaken by Gambling Research Australia or the Australian Gambling Research Centre to assist with the development of effective policy responses.

6.44 The committee notes the need to define the characteristics of these gambling-like games in any legislation to ensure other games are not inadvertently captured. The

43 See <http://ccaac.gov.au/2012/12/12/app-purchases-by-australian-consumers-on-mobile-and-handheld-devices/> (accessed 4 June 2013)

44 Commonwealth Consumer Affairs Advisory council, Issues Paper, *App purchases by Australian consumers on mobile and handheld devices*, December 2012, p. 6.

45 Commonwealth Consumer Affairs Advisory council, Issues Paper, *App purchases by Australian consumers on mobile and handheld devices*, December 2012, p. 6. See also Sarah Whyte, 'Toddler spends big bucks on 'free' iPad app', *The Age*, 3 June 2013.

46 Commonwealth Consumer Affairs Advisory council, Issues Paper, *App purchases by Australian consumers on mobile and handheld devices*, December 2012, p. 6.

47 Commonwealth Consumer Affairs Advisory council, Issues Paper, *App purchases by Australian consumers on mobile and handheld devices*, December 2012, pp 7–10.

committee supports work underway by DCBDE following the review of the IGA to consult with relevant social media sites and platform providers regarding gambling simulation games.

6.45 Given the definitional and enforcement difficulties, the committee supports addressing the issue through the provision of better information to parents, targeted research and enlisting the cooperation of the relevant stakeholders.

Recommendation 3

6.46 The committee recommends that the Interactive Gambling Amendment (Virtual Credits) Bill 2013 not be passed.

6.47 While signing this report as Chair of the committee, I do not support the conclusions reached by the committee. Instead, my position on the legislation is covered in a following dissenting report.

Mr Andrew Wilkie MP

Chair