

# Update of Developments in the Online and Mobile Gambling Space

By Tony Rein

In recent years the Australian Federal Government has set its focus on tackling problem gambling on many fronts, with particular emphasis most recently on the online and mobile gambling space. As a result, debate, inquiries, legislative reform and publicity in these areas of the gaming and wagering industry have been rife. With the online and mobile wagering and social gaming markets growing exponentially in both presence and value, there is a need to stay on top of emerging legal developments and attitudes to maintain an understanding of the evolving regulatory landscape. This update provides a summary of the recent key developments in the Australian space.

## Crackdown on bookmaker advertising

On 7 June 2013, as a result of public and political concern, the Joint Select Committee on Gambling Reform (the Committee) released its inquiry (the Inquiry) into the prevalence of sports betting advertising and its impact and effects on children, problem gamblers and the integrity of, and attitudes towards, sport.

The Inquiry also sought to determine whether the *Broadcasting Services Amendment (Advertising for Sports Betting) Bill 2013* (the BSA Bill) should be passed into law. The BSA Bill seeks to ban live odds broadcasting, TV and radio advertising and promotion of sports betting services during children's viewing hours before 9:00 PM, and by commentators and guests during sports broadcasts.

The Committee made the following nine key recommendations to the Australian Government:

1. Review self-regulatory action within the industry with regard to the advertisement of gambling products in an environment which includes children, and legislate if necessary;
2. Review and encourage public consultation regarding gambling advertising during sporting programs;
3. Undertake or commission a study into long-term effects of gambling advertising during sports and its effects amongst children, particularly with regard to the normalisation of gambling during sport;
4. Work to implement nationally consistent responsible gambling message requirements as an effective harm minimisation strategy;
5. Review and encourage public consultation regarding the promotion of betting at venues and on sporting uniforms in family environments;
6. Review the availability for purchase of sporting merchandise featuring sports betting logos and/or brands;
7. Undertake or commission further research into mobile phone applications' effects on problem gambling, and harm minimisation and legislative strategies;
8. Consult with stakeholders to increase amateur sport participants' awareness of risks and threats to the integrity of their sport (such as match fixing); and
9. Not allow the BSA Bill to pass before more research into the Bills' likely effectiveness is carried out.



The Committee suggests regulating and restricting sports betting advertising, as opposed to imposing a blanket ban during sports broadcasts. The recommendations recognise the importance of harm minimisation whilst also recognising the need for further research into the long term effects of sports betting advertising and the detrimental financial impact a blanket ban would likely have on Australian sporting. The Inquiry's recommendations displeased anti-gambling campaigners and have not yet received a response from the Australian Government, which is currently in full election mode.

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### Review of the Interactive Gambling Act

There was a degree of overlap between the Inquiry mentioned above and the 2011 review of *The Interactive Gambling Act 2001* (IGA). The IGA was passed in 2001 with the aim of minimising problem gambling among Australians and criminalising the provision of interactive gambling services, such as online casino type games, and certain types of online “in-play” wagering to customers physically present in Australia.

The review was undertaken against a backdrop of growing numbers of Australians gambling in unregulated and so called “unsafe” overseas online environments in which harm minimisation methods are not implemented or required. The project was undertaken by the Australian Department of Broadband, Communications and the Digital Economy (the Department). The Department made the following recommendations in its report (the Report):

- Legalise and license unlicensed and prohibited online gambling service providers on the proviso that they:
  - restrict the services offered to lower risk gambling (like online tournament poker) to the exclusion of higher risk gambling (like online slot machines); and
  - adopt the proposed national standard on harm minimisation and consumer protections recommended in the Review.

- Strengthen enforcement actions available against online gambling service providers (and their principals and directors), that contravene the IGA, potentially including placement of their details on the Australian Movement Alert List, which alerts authorities to the entry to Australia of non-citizens who are of character concern;

- Prohibit “micro-betting” on particular high frequency events in sports, such as the results of individual balls in cricket, through all electronic platforms;

- Allow “in play” sports wagering after the commencement of play, irrespective of the electronic platform by which bets are placed, if allowed by the relevant Australian state/territory regulatory authority and/or relevant sports controlling body; and

- Limit all sports wagering types to those approved by the relevant state/territory regulatory authority and where appropriate the relevant sports controlling body.

The Government's response to the Report constituted a disappointing, albeit predictable, result. Ex-Minister for Broadband, Communications and the Digital Economy, Senator Stephen Conroy, announced in a responding press release that the Australian Government would only be working to develop and ultimately “implement a national harm minimisation and consumer protection standard for all licensed online gambling activities” at this stage. Assumedly this means all other recommendations are being placed on the back burner, at least for now.

The development of a national standard was a key objective of the Report, recommending several key protections, including the extension of pre-commitment capability to online gambling and adding mandatory maximum deposit limits. However, it appears that the Federal Government, at this stage, will leave it to the individual Australian

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states and territories to negotiate and implement the national standard, although uniformity amongst the states and territories is desired. The upcoming federal election and current political environment create uncertainty as to whether any of the Report's recommendations will be adopted into law.

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## The rise of social gaming – a trend to put your bets on

FarmVille, Words with Friends and Draw Something quickly took the ever-expanding social gaming market by storm, with that market set to reach \$6 billion in revenue in 2013 and growing at an average rate of 184.3% per year since its 2007 beginnings. Social games, electronic games played on social network-

ing platforms, range from farming and simulation type games like FarmVille, where real money is used to buy virtual currency known as “farm coins” which only have value within the game, to casino style games like Slotomania, Zynga Poker and DoubleDown Casino, where real money buys virtual currency used to place bets within the game.

The appeal of some of these games to children through the use of colourful cartoon characters, and the ease by which they can be accessed, creates a fear in some that their widespread use will result in the normalisation of gambling amongst children. Also, the inflated odds within such games appear to create a risk for problem gamblers. In light of this, the *Interactive Gambling Amendment (Virtual Credits) Bill 2013* (IGA Bill) was introduced to protect these vulnerable groups. The IGA prohibits “interactive gambling services” within Australia. Interactive gambling services are:

- games of chance, or mixed chance and skill;
- that are (generally) provided via Internet or mobile phone/ android technology;
- which require or allow a player to in effect “buy in” with real currency, and
- are played for money or anything else of value (or have a “cash out” element).

Social games that adopt a virtual currency not redeemable for “money or anything else of value” are not currently prohibited under the IGA. However, the IGA Bill seeks to close this “loophole” and prohibit games which are played for virtual credits, coins, tokens or objects or any similar virtual item purchased within, as part of or in relation to the game.

The Committee's June 2013 review (the Review) of the IGA Bill suggested that the proposed amendment casts the net too wide and would ultimately pro-

hibit “freemium” or free-to-play style social games that allow in-game purchases but do not require them, while failing to prohibit casino-style games that involve gambling with virtual currency but do not allow in-game purchases of such virtual currency. The latter, in terms of the normalisation and encouragement of gambling, appears likely to cause greater harm than the former.

The Review also found that the global nature of the platforms on which social games and gambling services are offered, coupled with the lack of prohibitive legislature similar to the IGA in other jurisdictions, provides a practical barrier to the enforcement of the proposed laws. As such, the Review recommended that the IGA Bill not be passed. The Australian Government is yet to respond to the recommendations.

## Conclusion

The importance of problem gambling as a public issue and the size and value of the Australian and international online and mobile gambling markets means that this will undoubtedly remain a hot button topic and at the forefront of the public and political agenda until an appropriate way forward is determined.

There appears to be a consensus amongst most parties involved in discussion and debate thus far that more research is required to determine the extent of the long term harm on children, problem gamblers, and the integrity of sport caused by the promotion of and participation in gambling, online gaming and sports betting. Although it remains unclear as to whether regulation or prohibition will prove most effective in addressing these issues, it is clear that the enforcement of either approach will be no easy feat. The availability of foreign and unregulated substitutes in the international market and the quickly evolving technological age will remain the Australian Government's greatest challenge with regard to attempting to protect Australians from problem gambling. ♣