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Mr Barry O'Farrell  
Chair, Illegal Offshore Wagering Review  
Department of Social Services  
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Canberra Business Centre ACT 2610  
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Dear Mr O'Farrell

## Impact of Illegal Offshore Wagering

The Australian Bankers' Association (**ABA**) appreciates the opportunity to make a submission to the review of illegal offshore wagering. This review is investigating methods to strengthen enforcement of the *Interactive Gambling Act 2001* and looking to ensure Australians are protected from illegal offshore wagering operators.

With the active participation of 25 member banks in Australia, the ABA provides analysis, advice and advocacy for the banking industry and contributes to the development of public policy on banking and other financial services. The ABA works with government, regulators and other stakeholders to improve public awareness and understanding of the industry's contribution to the economy, and to ensure Australia's banking customers continue to benefit from a stable, competitive and accessible banking industry.

In 2012, the ABA made a number of submissions to the then Department of Broadband, Communication and the Digital Economy as part of the review of the *Interactive Gambling Act 2001*. We would be pleased to provide the review with copies of these submissions.

### Introductory comments

The ABA acknowledges the Government's overall commitment to:

- Minimising access to illegal wagering and gambling operators to ensure appropriate commercial and consumer protections are upheld, and
- Addressing problem gambling as a social policy concern often resulting in significant community detriment.

The ABA supports encouraging socially responsible programs and developing effective and workable strategies for ensuring appropriate consumer protections and addressing problem gambling. We believe, therefore, this review should give close consideration to research about online wagering or gambling, carefully consider consumer protections and the regulatory framework of online wagering or gambling, and carefully examine international responses and regulation of online gambling.

### Intervention in the banking and payments system

There have been a number of reviews looking at intervention in the banking and payments system as an effective way to regulate online wagering and gambling services. To date, a case has not been made to use the banking and payments system to regulate these services with alternative responses deemed as more appropriate.



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## Financial transactions

Financial transactions can be made in a number of ways including a direct debit from a bank account, the use of a debit or credit card, and the use of alternative payment methods.

An electronic transaction that directly debits a bank customer's account is a transaction which is authorised by the customer to transfer their monies to make a payment for a good or service (known as a direct electronic funds transfer). This payment is made instantaneously and the customer's bank account debited according to the instruction given by the customer.

The customer provides bank and account details, not names, to facilitate the transaction. Payment instructions for a direct electronic funds transfer in Australia are based on industry standard codes and transaction data set by the Australian Payments Clearing Association (**APCA**).

International money transfers are generally executed via the SWIFT<sup>1</sup> platform. SWIFT financial messages contain data to ensure the correct transfer of monies takes place between the customer and the beneficiary.

A transaction conducted via scheme debit or credit cards are processed through a proprietary network, such as Visa, MasterCard and American Express. The customer provides a merchant (or service provider) with the 16 digital card number, expiry date and security code (where required) to set up the transaction.

The customer initiates the transaction with the merchant; whether this is due to a recurring payment (regular purchase of goods and services) or upon separate instruction and based on the details held on file by the merchant. For each payment, the merchant seeks authorisation from the card issuer. The issuer provides authorisation for the transaction (approve or decline). The merchant settles the transaction with the acquirer. The acquirer will then settle the transaction with the card scheme. The scheme will then settle with the issuer. The issuer will then debit the transaction to the cardholder. The payment cannot be reversed ('charged back') if the customer changes their mind, but a charge back can be requested if the transaction is not authorised.

## Proposal to restrict financial transactions

Blocking, suspending, cancelling or otherwise restricting financial transactions from a bank or other financial institution to an online wagering or gambling operator, either onshore or offshore, is problematic.

There are a number of technical, practical and legal considerations, including:

- Lack of technology across the interbank system. Technology to restrict financial transactions to a certain business name or type in real time is not currently available,<sup>2</sup>
- Technology would be costly and complicated to implement, and impact on the efficiency of the banking and payments system for all transactions and all customers, and
- Technology would be incomplete and haphazard as it would only apply to direct electronic funds transfers, not payments made via proprietary networks or alternative payment methods.

The ABA does not support intervention in the banking and payments system as an effective way to regulate online wagering and gambling.

## International approaches

The ABA is aware there are overseas jurisdictions that have implemented restrictions on financial transactions to online gambling sites.

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<sup>1</sup> Society for Worldwide Interbank Financial Telecommunications (SWIFT).

<sup>2</sup> Payments are made in accordance with the bank and account number details provided as part of the payment instruction.



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For example, in the United States, the major credit card industry participants have restricted the use of credit cards for Internet gambling.

For full service credit card companies that issue their own cards and license merchants to accept cards, policies have been implemented prohibiting customers from using their cards to pay for Internet gambling transactions and they will not licence Internet gambling sites.

Additionally, credit card associations (such as, Visa and MasterCard) have instituted a transaction coding and blocking system. This system enables association members (such as, card issuers), at their discretion, to deny authorisation of properly coded Internet gambling transactions. It uses the merchant category code (**MCC**) and further blocking technology to delineate illegal from legal gambling service providers so the use of a card for this service is restricted.

However, the transactions coding and blocking system has been compromised in the following two ways:

1. By internet gambling service providers disguising transactions by miscoding them, and
2. By cardholders who attempt to circumvent the system by using online payment providers, including third party payment methods (e.g. 'e-wallets') and other intermediaries (e.g. money transfer operators, remittance dealers, and other telegraphic transfer options).

In light of these challenges in the United States regime, the ABA recommends that careful consideration be given to implementing similar technology to block transactions on credit cards in Australia.

The ABA supports further consultation with the card schemes on implementing a transaction coding and blocking system to prevent Australians using their credit cards for illegal online wagering and gambling. Furthermore, we support further consideration of existing technologies that could be used to block access to illegal (offshore) wagering and gambling sites by Internet Service Providers (**ISPs**), building on their existing Code.

## Research

The ABA believes that policy responses should be based on addressing a clearly identified and defined problem. There currently is a lack of research and evidence about online wagering and gambling. We consider that the Government should conduct a thorough analysis of Internet wagering and gambling operators used by Australians, whether these are based in Australia or overseas.

Research should focus on consumer interests (including fairness, protections) and other impacts (including technology and operations, licensing, supervision, investigation, enforcement, money laundering, taxation). Additionally, the research should focus on identifying the level of awareness by Australians of the legal obligations contained in the *Interactive Gambling Act 2001* and state-based legislation, and their potential breaches of these statutes by knowingly transacting with illegal (offshore) wagering and gambling operators. We consider that it is important for consumers to be fully aware of their consumer rights and responsibilities when using these services.

The ABA is concerned that social policy responses may be implemented without fully appreciating the specific and broad implications of certain interventions, especially where these interventions could transfer the problems of certain commercial operators onto the banking industry or where proposals could result in costs and inefficiencies being imposed across the banking and payments system.

## Education and support

The ABA and our member banks believe gambling can have serious detrimental consequences, not only to those who experience financial and emotional deterioration through a gambling addiction, but also on their families and society. We strongly support strategies with the greatest likelihood of having a real impact on addressing the incidence of problem gambling.



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## Harm minimisation strategies

Responsible gambling programs and harm minimisation measures that consider cognitive and behavioural factors contributing to problem gambling have proven to be the most effective. Harm minimisation strategies should be developed with a focus on providing problem gamblers with the tools to manage their own gambling expenditure, gambling counselling services, and gambling support programs.

## Financial literacy tools

Financial literacy programs should also be a focus to assist people get a clear picture of their financial situation and develop some strategies to help them get back in control of their money or address a financial crisis caused by gambling.

Financial literacy is one of the banking industry's long-term priorities. We are committed to continuing to invest in financial literacy programs and activities to help all Australians take control of their money and finances.

The ABA and our member banks have published a variety of financial literacy resources and provided financial capability education programs to help consumers effectively manage and take control of their own financial affairs.<sup>3</sup>

These resources include the ABA's consumer booklet *Smarter Money: Take control and stay on top of your finances*,<sup>4</sup> which provides information on building a budget, putting in place financial goals, applying savings strategies, using debt effectively, identifying warning signs if people feel out of control with their finances, putting in place ways to manage money, and getting in touch with a financial counsellor.

## Financial hardship programs

The ABA recognises that gambling addiction and its financial consequences can result in financial hardship. Financial hardship is when a customer is willing but unable to meet their contractual debt obligations because of unexpected events or unforeseen changes that impacts their financial situation.

Banks have financial hardship programs to support their customers experiencing financial difficulties.<sup>5</sup> The banking industry has developed a package of materials to promote best practices in supporting customers who may be experiencing financial difficulties, including industry commitments which go beyond the law.<sup>6</sup>

In addition, banks have been working with financial counsellors to ensure banks' hardship programs are effective and respond to the needs of their customers as well as community expectations. Financial counsellors provide an essential public service to help people struggling to make ends meet and deal with broader social issues, including mental health, addiction, etc.

## Additional measures

Banks are also able to provide assistance to customers who are struggling with managing their finances, including debts and gambling expenditure.

Banks have implemented various policies and procedures to enable their customers, upon request, to place restrictions on their accounts, including limiting overdraft facilities, lowering the maximum daily withdrawal limit on their deposit accounts, and lowering the credit limit on their credit cards.

<sup>3</sup> For more information, see <http://www.bankers.asn.au/Consumers/Financial-Literacy>

<sup>4</sup> For more information, see <http://www.bankers.asn.au/Consumers/Financial-Literacy-Program/Booklets/Smarter-Money>

<sup>5</sup> For more information, see the ABA's Doing It Tough website at <http://doingittough.info/>

<sup>6</sup> For more information, see <http://www.bankers.asn.au/Consumers/Are-you-experiencing-financial-difficulty->



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The ABA supports further consideration of comprehensive responses which focus on consumer protections and requiring wagering and gambling operators to provide information, education and support programs to their customers.

## Conclusion

The ABA believes that measures taken to address the incidence of problem gambling in Australia should properly target measures at the potential detriment and properly implement remedies without interfering with, or imposing undue costs across, the banking and payments system and subsequently the wider community.

Specifically, the ABA does not support intervention in the banking and payments system as an effective way to regulate online wagering or gambling. It is unclear whether the substantial technology infrastructure and payment rules changes required to the banking and payments system would deliver the benefits being sought to address concerns with online wagering and gambling. The costs involved in technology and system changes across the payments system as well as the software development, operational implementation, manual processes and administration by banks and other financial institutions to their banking systems would be substantial.

The ABA believes that the Government should consider a national approach to conducting further research and developing education and support programs, including harm minimisation strategies. Any further actions should be adopted through a shared response from governments, the community, and businesses, and in particular, providers of gambling services.

The ABA would be happy to discuss any of the issues raised in this submission with you further. If you have any questions or would like to set up a meeting, please contact Lena Rizk, Policy Manager – Retail Policy on (02) 8298 0419 or [lrizk@bankers.asn.au](mailto:lrizk@bankers.asn.au).

Yours sincerely

A handwritten signature in black ink that reads 'Diane Tate'.

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