

IMPACT OF ILLEGAL OFFSHORE WAGERING
Submission by Nick Xenophon, Independent Senator for South Australia

Introduction

1. I provide this submission to the Department of Social Services in its Review of the impact of illegal offshore wagering. Examining the impact of illegal offshore wagering is important, but this is also a critical opportunity to review legal online wagering in Australia.
2. At the outset I am concerned that the terms of reference to this review are too narrow and ambiguous in relation to the impact of legal online wagering given the devastation caused to individuals and their families from legal onshore online gambling sites, authorised under the *Interactive Gambling Act 2001*. This review would lack fundamental credibility unless it gives equal attention to those onshore sites as well. Indeed the terms of reference do make reference to the Coalition's commitments prior to the 2013 Election that also include legal onshore sites.
3. In order to inform this element of the online wagering debate, I attach a draft copy of my Interactive Gambling Amendment (Sports Betting Reform) Bill 2015 together with its draft Explanatory Memorandum which will be introduced into the Senate on 23 November 2015. The aim of this Bill is to implement a number of harm minimisation measures into the *Interactive Gambling Act 2001* in relation to online wagering and sports betting. This Bill places a number of obligations on online bookmakers (called 'restricted wagering services') and creates offences for non-compliance with several sections inserted into the *Interactive Gambling Act 2001* by the Bill.
4. Restricted wagering services will be required to provide training to their employees to enable them to identify problem gambling behaviour and offer the necessary referrals for the person demonstrating this behaviour to seek help.
5. This Bill prohibits restricted wagering services from:
 - Offering inducements to individuals to gamble;
 - Providing credit to individuals in order to place bets;
 - Offering or accepting micro bets (which includes bets made after a sporting event has commenced and bets placed on a contingency that may or may not happen during the event);
 - Increasing an individual's betting limit unless that person has requested the increase;
 - Offering an inducement for an individual to increase their betting limit;
 - Permitting a person to exceed their betting limit; and
 - Disclosing information about an individual for marketing purposes.
6. This bill will require individuals to nominate monthly and yearly pre-commitment limits when opening a betting account. Monthly and yearly limits can be increased

once every 12 months at the request of the individual. Monthly limits can be increased 7 days after the request for the increase. Yearly limits can be increased 14 days after the request for the increase. Requiring notice to be given before limits can be increased will help to ensure a gambler does not attempt to chase losses and bet more than they had originally intended.

7. This Bill establishes an Interactive Gambling Regulator whose responsibilities will include administering a National Self-Exclusion Register. Once a person has registered their details with the National Self-Exclusion Register a restricted wagering service is prohibited from opening an account for that person. All restricted wagering services will also be required to include a link to the National Self-Exclusion Register's website on their website in order to alert customers to the NSER. Restricted wagering services will also be required to verify a person's identity and submit an individual's personal details to the NSER before opening an account for that individual.
8. An Interactive Gambling Regulator will administer the NSER and will also monitor, promote, investigate and enforce compliance with new Parts 7B and 7C of the Interactive Gambling Act 2001 (which are inserted by this bill). The Interactive Gambling Regulator will also provide advice to the Minister in relation to the operation of the Interactive Gambling Act, and in particular the operation of the NSER. It will also develop a code of practice relating to problem gambling in consultation with industry (including restricted wagering services and services that offer counselling to problem gamblers).
9. Of particular relevance to this inquiry is a provision in the Bill that enables the Interactive Gambling Regulator to apply to block transactions between Australian banks and gambling services already prohibited by the *Interactive Gambling Act 2001* (such as online casinos). These are known as 'prohibited wagering services'. In order to block such transactions, the Interactive Gambling Regulator must apply to the Federal Circuit Court of Australia for an injunction. Several matters must be taken into account by the Federal Circuit Court when determining whether to grant an injunction, including whether it is in the public interest to do so and whether prohibiting transactions is a proportionate response in the circumstances.
10. I trust the Bill and its Explanatory Memorandum are fully considered by this inquiry. I will provide the tabled copy of the Bill and its Explanatory Memorandum next week.
11. I will now respond to the specific terms of reference of the review below:

Question 1: What are the factors that lead people to use illegal offshore wagering operators?

12. When examining the factors that lead people to use illegal offshore wagering operators, it is worth exploring the reasons why more and more people are turning to online gambling in general. Ease of access through advancements in technology, in particular the ability to bet over the internet using a mobile phone is a huge

contributor to the increase in the take-up rate of problem gambling. A study by Deloitte published in 2012 reported that online gambling is the only form of gambling that has seen an increase in participation rates over the past decade. In fact, online gambling expenditure doubled between 2005-2006 and 2011-2012.

13. Advertising of online gambling, in particular sports betting is another contributing factor to this form of gambling's popularity. Currently wagering services are prohibited from advertising live odds during a sporting event, however advertising their services in general is not prohibited. My Interactive Gambling Amendment (Sports Betting Reform) Bill 2015 seeks to prohibit advertising of online wagering services during broadcasts of sporting events or G-rated programs. Given children are often viewers of sports matches and G-rated programs it is inappropriate to be advertising a gambling product during those programs.

Question 2: What do you consider are the impacts of illegal offshore wagering and associated financial transactions on the Australian economy, legitimate Australian wagering businesses, sporting organisations and the integrity of Australian sport, and consumers?

14. The absence of a regulator who has jurisdiction over illegal offshore wagering websites creates difficulties for consumers when disputes arise in relation to the dealings with these services. While some of these websites may ostensibly be regulated by an authority within the country that they are licenced, consumers may not know that authority exists. Even where a consumer is aware of the authority it can be difficult for them to communicate with it as communication is limited to email. Where disputes involve money consumers are at a massive disadvantage as it is often very difficult for them to pursue the dispute.

Question 3: What measures could be implemented to improve the enforcement of the Interactive Gambling Act 2001 and any other relevant legislation (Commonwealth, state and territory) including any enhancements to presently existing prosecution, investigation and complaints handling processes? What legislative, prosecutorial, investigative or complaint handling measures have been implemented in international jurisdictions that may work in the Australian context?

15. In order to effectively enforce our existing laws the agencies responsible for enforcing them must be appropriately resourced. The Australian Communications and Media Authority is able to make a determination as to whether an online gambling service is a prohibited gambling service for the purposes of the Interactive Gambling Act 2001. However, once the ACMA has made its determination it must refer the matter to the Australian Federal Police for investigation (see section 24 of the Interactive Gambling Act 2001). However, it is my understanding the AFP has not conducted any investigations into offshore prohibited wagering services.

16. Recently the AFP declined to investigate a referral by the ACMA in relation to the online bookmaker William Hill. Currently the IGA prohibits in-play bets being placed unless the bets are placed in person or over the phone. William Hill was allowing customers to make in-play bets over the internet using their mobile phones but argued these bets were not prohibited because the customer had kept their microphone on. In relation to this decision the AFP said “Following evaluation, in line with the AFP’s case categorisation and prioritisation model, this matter was not accepted by the AFP for further investigation”.¹

17. That approach is clearly unsatisfactory.

18. ISPs also can have a key role to play in conjunction with the Commonwealth to be involved in blocking illegal gambling websites.

Question 4: Are there non-legislative options, such as technological and financial innovations, that could be implemented to limit the access to illegal offshore wagering sites by Australian based customers? What non-legislative measures have been used in international jurisdictions that may work in the Australian context?

19. One measure my Interactive Gambling Amendment (Sports Betting Reform) Bill 2015 implements is the ability of the Interactive Gambling Regulator to apply to the Federal Circuit Court for an injunction to prohibit transactions between banks and prohibited wagering services (such as online casinos or illegal offshore wagering services).

20. During a hearing of the former Joint Select Committee on Gambling Reform the CEO of the Australian Bankers Association, Mr Steven Munchenberg discussed the possibility of banks blocking transactions between their customers and illegal offshore gambling websites based on a list merchant numbers belonging to those websites. An excerpt from this interchange is attached, but in summary Mr Munchenberg stated that if a list of merchant numbers could be provided to banks, it would be “relatively straightforward” to block transactions to the accounts attached to the merchant numbers.

21. I encourage the Department to examine the proposal to block transactions between Australian banks and specified merchant numbers where those merchant numbers belong to an illegal offshore gambling website.

Question 5: What approaches could be implemented to encourage offshore wagering providers to comply with Australian laws, and would this require

¹ Perry Williams, ‘Tom Waterhouse wins betting battle with authorities’, 28 October 2015, Sydney Morning Herald, available at <http://www.smh.com.au/business/tom-waterhouse-wins-betting-battle-with-regulators-20151028-gkkri.html>, accessed 13 November 2015.

measures to assist in ensuring domestic providers would not be operating at a disadvantage to offshore providers?

22. At the outset, I take issue with the underlying premise of this question. Surely the primary question ought to be what measures should be in place to protect Australian consumers from the harm that arises all too frequently from legal onshore online gambling. I am concerned that the question is implying a dangerous race to the bottom in terms of minimising consumer protections.
23. If the financial transactions and business models of offshore online gambling businesses are effectively disrupted then in a sense this question would be superfluous.
24. In terms of offshore wagering providers complying with Australian laws, this involves aggressively pursuing the directors of those illegal offshore businesses for prosecution, including extradition to Australia. Whilst that may be seen as an overreaction to some I believe it is entirely justified given the level of harm online gambling can cause, including significant financial losses, bankruptcy and most tragically of all, suicide.
25. A public education campaign funded from a levy paid by legal online gambling companies (but not controlled by them) should warn of the dangers of both illegal online casinos with a parallel campaign to warn of the risks of legal online sites. There also needs to be a hotline that consumers can call for assistance if they have suffered harm from online gambling (both legal and illegal).

Question 6: Are there education and awareness initiatives that could be implemented by industry, consumer groups or government to alert Australians to the risks associated with offshore gambling operators?

26. One element of any education and awareness campaign should be around the difficulty individuals may have pursuing complaints against illegal offshore gambling providers, particularly if the disputes centre around funds lost.

Question 7: What initiatives could be used to alert offshore gambling providers to Australian interactive gambling provisions?

27. Offshore gambling providers need to be aware of their risk of prosecution and extradition if they continue to offer their misleading and harmful products to Australian consumers.



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