**Submission to Review of the Interactive Gambling Act 2001**

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**Introduction**

1. The Interactive Gambling Act 2001 (the Act) provides for the Commonwealth to exercise control over gambling provided by interactive means, including by telecommunications and via the internet.

2. In Australia, the Act limits gambling offerings via the internet to wagering.

3. The Act does not regulate organisations offering gambling services, leaving such regulation to the States. However, the Commonwealth clearly does have the constitutional authority to regulate such providers, relying on its corporation powers. In any event, gambling offered via the internet is already subject to Commonwealth regulation. This is entirely appropriate, given that the High Court’s decision in Betfair Pty Ltd vs. Western Australia provides for such services to be available to all Australian residents regardless of the state or territory jurisdiction where the provider is registered and licensed, or where the user resides.

4. The review of the IGA currently under way apparently seeks to address issues arising from the provision by offshore providers (i.e., gambling operators not registered or licensed in an Australian jurisdiction) rather than seeking to review the issues arising from the current gambling services provided by those providers already licensed in Australian jurisdictions.

5. There are undoubtedly risks to Australians arising from the offering by offshore providers of gambling services. These should be addressed. However, the issues arising from existing Australian licensed providers are clear and significant, and have not been effectively and comprehensively addressed by existing state regulators. This is despite some appropriate remedies being the policy of the current Australian government, including the prohibition of credit betting.

6. This submission focuses on point 4 of the Terms of reference for the review. This focus is derived from the demonstrated harm associated with interactive gambling provided by existing providers licensed in Australian jurisdictions. However, it also addresses some issues arising from possible ‘solutions’ to the harms associated with ‘illegal offshore’ gambling providers.

7. It should also be noted that most harm caused by gambling in Australia (75%, according to the Australian government’s problem gambling website) is derived from the use of electronic gambling machines. Expenditure (user losses) on this form of gambling in 2013-14 was over $11 billion p.a. Expenditure on sportsbetting in Australia in that year was about $625 million p.a., and losses on racing were about $2.8 billion. If expenditure on ‘illegal’ offshore gambling is in the range of $1 billion, this amounts to less than 5% of Australia’s $21 billion annual losses on gambling. It may well be that ‘illegal’ offshore gambling presents Australia with a serious problem. However, it is far from the most significant gambling problem currently facing Australia.

**Harmful practices of the existing interactive gambling industry**

8. At present, there is ample evidence that certain existing practices of interactive gambling businesses licensed and regulated by Australian authorities are harmful.

9. These practices include:

1. Provision of credit for gambling without reasonable consideration of the capacity of individuals to repay such debts, and not subject to Australian consumer credit law;
2. Canvassing of individuals to gamble via telephone and otherwise, including by offering inducements such as ‘free bets’;
3. Apparent trading of client details between gambling providers;
4. Delaying appropriate identification of clients for up to 45 days, thus allowing minors to open accounts and gamble;
5. Transferring funds from credit cards;
6. Apparent links to ‘payday’ and other high interest fringe lenders;
7. Lack of an effective ‘self-exclusion’ system;
8. Lack of a national pre-commitment system, and essentially unlimited maximum bets;
9. Saturation advertising utilising the loophole of sports broadcasts to advertise to a large audience of minors before 8:30 pm;
10. Extensive sponsorship of elite sport by interactive gambling providers, again allowing for the effectively unrestricted promotion of gambling to minors via highly influential and well-known sporting figures;
11. Marketing of technologies that have the potential to provide for continuous and highly intense forms of gambling, thus emulating the intensity and potential harm of electronic gambling machines;
12. Potential expansion of the ‘fantasy’ gambling market with significant potential for harm and exploitation.

10. These practices have been documented by a recent research report prepared by Financial Counselling Australia (2015). There is also anecdotal but nonetheless clear evidence that sportsbetting and other interactive gambling provided by existing, Australian licensed providers is increasingly the cause of serious gambling problems amongst a new cohort of younger male gamblers.

11. Neglecting these harms and focusing on ‘illegal’ offshore providers as the culprits in the dangers of interactive gambling would be a serious error in my submission.

**What are the potential solutions?**

12. Fortunately, there is a range of measures available which could significantly reduce the harms associated with interactive gambling as currently provided by Australian licensed operators.

13. The first of these is a national regulatory system for interactive gambling. Current state-based regulatory systems are ineffective and inconsistent, permitting some operators to offer inducements whereas others, registered in different jurisdictions, are prohibited from doing so. It is clearly within the power of the Commonwealth to regulate interactive gambling and it should do so.

14. A national regulator should license, regulate and tax all interactive operators consistently. Tax derived from such operations could be returned to the states and territories using a method similar or identical to the grants commission formula, once the costs of regulation and a levy for treatment and prevention services are deducted.

15. Australian law should prohibit the provision of credit by gambling operators, and require that deposits of funds for gambling be made by direct credit or otherwise than by the use of credit cards. In other words, gambling using credit should be prohibited. At the very least, the provision of credit by gambling operators should be subject to the provisions of Australian consumer credit legislation.

16. Further, links, or any form of cross promotion between gambling providers and third party credit providers (such as payday and other fringe lenders) should be prohibited.

17. Under national regulation, an effective and universal national pre-commitment scheme should be established. This would require all clients of interactive gambling service providers to register with adequate identification and to establish limits (daily, weekly, annual) to their gambling expenditure. Such limits should not be subject to increase other than at predetermined intervals.

18. This system (to be effective) must operate across all licensed interactive gambling providers, and be operated independently of those providers, preferably by the national regulator. Given the technological platform on which interactive gambling operates, this is not technically difficult to achieve.

19. A national pre-commitment system would also provide the basis for a truly effective self-exclusion system. Those who wish to exclude themselves from gambling would simply set a zero limit. Third parties affected by gambler behaviour (such as close family) should be empowered to initiate restrictions on gambling expenditure, subject to demonstration of the effects of such behaviour. A system of this nature currently operates in South Australia, with some apparent success.

20. Further, given that existing interactive gambling platforms record all gambling data at the individual level, it is feasible to require all gambling operators to subject such data to analysis for the purposes of identifying problematic gambling behaviour as it emerges. At present, such data are used for marketing purposes. It is entirely feasible to utilise such data for the purposes of identifying emerging problems and it should be the responsibility of gambling providers to do so, to advise their clients accordingly, and to refrain from offering gambling services to those reasonably likely to be experiencing gambling related harm.

21. The promotion of gambling via advertising should be restricted until at least 8:30 pm, thus closing the existing loophole in otherwise reasonable advertising restrictions. Current levels of gambling advertising during sporting broadcasts cause considerable community disquiet. This is well-founded; such advertising normalizes gambling as an activity associated with sport, and reaches an audience which includes considerable numbers of minors, to whom the promotion of gambling is otherwise prohibited.

22. Sharing of information about clients between gambling providers should be prohibited, as should the offering of inducements to gamble, and any form of encouragement to gamble including contacting clients to ask why they haven’t recently gambled.

**What should not be done?**

23. It is likely that the gambling industry (including current interactive gambling providers, as well as other gambling industry operators including clubs, hotel chains and casinos) may seek licenses to operate virtual, online casinos.

24. The argument for this is that, as such services are currently operated by ‘illegal’ offshore providers, providers licensed in Australia can’t compete, and that it would be preferable for ‘properly’ regulated providers, licensed in Australia, to be licensed to operate such services.

25. Unfortunately, this argument fails to take account of the numerous flaws in the regulation of existing interactive gambling providers identified above. Operators licensed in Australia do not demonstrate best practice, by any means.

26. Permitting them to operate extended interactive gambling services would be a serious error, in my submission, because it would permit a significant expansion of gambling services to a nation that already loses more to gambling than any other country.

27. This is attributable to the provision of gambling services at saturation levels. Australians are no more ‘natural’ gamblers than any other people; we simply have ubiquitous gambling opportunities. Expanding these without rectifying the significant problems with existing interactive gambling providers would simply compound existing problems.

28. It is not difficult to imagine the extensive promotion that would accompany the licensing of such services to Australian companies. If the Australian government were minded to permit interactive gambling providers to extend their operations to a full range of gambling modes (including, for example, on-line gambling machines, and table games) the result would be saturation advertising and significantly increased levels of harm.

29. In the current straitened financial environment, expansion of gambling revenue may be appealing to the states. Unfortunately the costs of this would be considerable and are likely to be externalized to community organisations, welfare services, and the families of those affected.

30. The most recent review of the Interactive Gambling Act essentially proposed a cautious approach to the legalization of further gambling opportunities in Australia. There is no reason to think that such an approach is less advisable now than it was at that time. In fact, the explosion of gambling opportunities in Australia since the early 1990s has already been associated with extensive community disquiet and substantial harm, as well documented by the Productivity Commission’s two inquiries into the area.

**Appropriate responses to ‘illegal offshore’ gambling providers**

31. Appropriate responses to the provision by offshore providers of gambling services are possible, but require international co-operation.

32. The obvious and most appropriate remedy involves the negotiation of multi-lateral agreements to effectively regulate the provision of gambling services across national borders.

33. Such agreements should incorporate a package of reasonable standards for harm minimisation. Elements of this are outlined above.

34. Effective enforcement of international agreements relies on co-operation between regulatory authorities and law enforcement agencies. Clearly this should be emphasised in any multi-lateral agreement.

35. The Australian government is generally well respected internationally and has the capacity to lead the discussions required to establish such multi-lateral agreements and associated co-operative activity.

36. On the other hand, unilateral action to limit the provision of services via the internet is likely to prove costly, ineffective and largely futile. This is not to say that identification of offshore gambling sites and promotion of the dangers of using them should not be attempted.

37. It does mean that ensuring the establishment of best practice gambling services within the jurisdiction of the Australian government should be the first priority, if the intention of the Australian government is to reduce the harms associated with interactive gambling.

38. Fortunately, this is feasible and achievable. The current review offers an opportunity for Australia to demonstrate how interactive gambling can be effectively regulated and provided safely, responsibly and fairly.

39. If this approach is taken, the costs and harm associated with this activity will be minimised, and the benefits maximised. Unfortunately, this is far from the case at present

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**About the Author**

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Dr Livingstone’s principal research interest is in gambling studies, particularly the relationship between poker machine gambling and socio-economic disadvantage and health inequality, and in the development and implementation of relevant harm minimisation policy and strategies. He has also researched the structural characteristics of poker machines and the relationship of these, and the structure of gambling systems, to the development of gambling problems. His current research is focused on mechanisms of gambling industry influence re: public policy, and on regulatory issues around development of best practice gambling policy.

He has also undertaken extensive research in health services policy and health financing and has a particular interest in health insurance research.

He was a member of the Australian Government’s Ministerial Expert Advisory Group on Gambling in 2010-11. His research has been funded by the Victorian Gambling Research Panel, the Independent Gambling Authority of South Australia, the Australian Research Council, local governments and primary care partnerships, the Victorian Department of Human Services, VicHealth and UnitingCare Australia.

Charles is a member of the Public Health Association of Australia and provided submissions to the Productivity Commission’s two inquiries into gambling (1999 and 2010), as well as to numerous state and federal government Parliamentary inquiries and to members of parliament. He is a regular contributor to public debate on the issues of gambling reform.