

Review of the *Interactive Gambling Act 2001* - Release of the Final Report of DBCDE - Implications for Online Gambling in Australia

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Overview and Executive Summary

On 12 March 2013, the Department of Broadband, Communications and the Digital Economy (DBCDE) released the Final Report (**Final Report**) to its review of the *Interactive Gambling Act 2001* (Cth) (**IGA**).

The Final Report makes a number of recommendations which, if implemented by the Federal Government, could significantly change Australia's regulatory landscape in respect of online gambling. Of particular note are the following recommendations:

- The development of a national standard for harm minimisation and consumer protection which would be applicable to all Australian licensed interactive gambling service providers;
- The implementation of a 5 year pilot in respect of the licensing of online poker operators which will enable the provision of online poker tournaments; and
- Amending the IGA to include a blanket prohibition on all micro-betting (regardless of the channel used for such betting).

Background

In 2011, the DBCDE announced its review of IGA. The IGA generally prohibits the provision of Internet gambling services to customers in Australia, subject to a few exceptions. On 12 March 2013, the DBCDE released the much anticipated Final Report as part of its review.¹

Key Recommendations

The recommendations made in the Final Report were unsurprising as they generally aligned with the findings in the DBCDE's interim report released on 29 May 2012 (**Interim Report**).² Notably, the DBCDE recommended the following key changes which would have significant implications for the Internet gambling sector:

- the development of a national standard which will be applicable to all Australian licensed interactive gambling service providers and establish a framework for minimum harm minimisation and consumer protection measures;
- a prohibition against interactive gambling service providers that do not become licensed by an Australian state/territory jurisdiction and thus, do not comply with the national standard;
- the introduction of civil penalties and other enforcement measures under the IGA, to be administered by the Australian Communications and Media Authority (ACMA), which will operate in addition to the existing criminal penalties to strengthen the effectiveness of the prohibitions contained in the IGA;
- the introduction of an industry code of conduct to be developed by the Australian-licensed online gambling industry to ensure that advertising is not contrary to community standards and expectations;
- an amendment to Part 7A of the IGA by additionally prohibiting advertisements for free-play sites that are associated with prohibited "play for money" sites;
- the conduct of a 5 year pilot in respect of licensing operators in the business of providing online poker tournaments to Australian-based customers;
- an amendment to the IGA in respect of in-play betting services so to include a blanket ban on all micro-betting (regardless of the channel used for such betting) and to change the rules with respect to other forms of in-play betting in accordance with the principle of platform neutrality; and
- closer scrutiny and further consultation in relation to the treatment of fantasy sports under the IGA.

Government Response

In a media release dated 12 March 2013,³ Senator Stephen Conroy, the then Minister for Broadband, Communications and the Digital Economy, indicated that the priority for the Federal Government is seeking commitment from the States and Territories to develop and implement a national standard for harm minimisation and consumer protection. Until this is achieved, the Federal Government will not be pursuing the recommended changes relating to online tournament poker or in-play betting. This approach is consistent with the recommendations of the Final Report where it was concluded that any liberalisation of the IGA should not be carried out until the establishment of a framework for a minimum set of harm minimisation and consumer protection measures to be imposed on all Australian-licensed interactive gambling providers.

Realistically, the adoption of the findings contained in the Final Report is unlikely to be immediate, especially in light of the impending Federal election.

The Final Report's Key Recommendations

National Harm Minimisation and Consumer Protection Standard

The Final Report proposes a set of national harm minimisation and consumer protection measures. This is nearly identical to those set out in the Interim Report. This national harm minimisation and consumer protection standard would be applicable to all Australian-licensed interactive gambling providers. The measures that would be implemented as part of this standard include:

- the requirement for standardised and significantly more prominent responsible gambling messages;
- restrictions on the provision of credit;
- limits on offering betting inducements, particularly in relation to encouraging the opening of accounts;
- pre-commitment measures to be made available for players including the ability for users to set their own deposit limits;
- controls relating to the protection of customer funds;
- measures in connection with the protection and storage of customer information in accordance with Australian privacy principles;
- requirements to make data available relating to the use of harm minimisation measures for research purpose;
- mandatory identity verification requirements on sign-up;
- the establishment of a national self-exclusion database;
- the implementation of a high accessible spend-tracking facility;

- a requirement for alerting players to gambling behaviour that is indicative of problem gambling;
- the provision of gambling helpline messages/links; and
- making available complaints facilities.

The Final Report provides for more comprehensive requirements with respect to pre-commitment and self-exclusion with the inclusion of mandatory deposit limits and the establishment of a national self-exclusion database to be funded jointly by state/territory governments and industry participants in proportion with their share of online gambling revenue.

At first glance, two key issues arise from these recommendations. First, it is problematic for this national standard to be applied as a blanket approach to all online gambling operators without proper consideration of the differences in risk between the various categories of online gambling and the likelihood of resultant problem gambling. Second, the national harm minimisation and consumer protection standard does not appear to apply to terrestrial gambling operators, which may limit the effectiveness of this national standard as Australian-based customers would not be afforded consistent protection when gambling through different channels.

Enforcement

The DBCDE considers that the enforcement of the IGA can be strengthened by amending the IGA to include a provision to enable directors, principals or other persons acting in an official capacity of a gambling service provider to be issued with a notice requiring them to cause the provider to cease offering services in breach of the IGA. Failure to comply with the notice would attract strict liability offences and allow Australian law enforcement authorities to take action if the opportunity arises. This means that, if any person who is issued a notice and continues to act in contravention of the IGA, enters into Australia, that person is at risk of being charged by the relevant Australian law enforcement authority in respect of the online gambling service operator's breach of the IGA.

Also, to protect financial institutions against claims made, it was recommended that the IGA should be amended to provide a safe harbour so that financial institutions can choose voluntarily to block financial transactions between Australian-based consumers and unlicensed online gambling operators.

Online Poker

In recommending that a five-year pilot be implemented to enable the licensing of operators to provide online poker tournaments to Australian-based customers, the DBCDE emphasised that its conclusion was based on the fact that the IGA has had little impact in limiting the provision of online gaming services by overseas-based operators. Given the large number of Australian consumers accessing prohibited online gaming services and the lack of sufficient harm minimisation and consumer protection measures taken by these overseas operators, the DBCDE

considered it obvious that the status quo could not be allowed to remain and that a more appropriate approach was to change from regulation based on prohibition to one of permissive regulation.

The DBCDE concluded that online tournament poker was the least-risky form of online gaming based on the research that has been conducted. For this reason, only online tournament poker should be liberalised, while online cash poker should continue to be prohibited. Further, the DBCDE clarifies that the benefits of limiting this pilot solely to online poker tournaments was that:

- this type of online gaming had less characteristics associated with problem gambling;
- the number of consumers that play online tournament poker is relatively small and thus, suitable for a pilot; and
- despite the prohibitions in the IGA, some jurisdictions may view tournament poker as a form of competition as opposed to gambling since it is a game that is partly of skill.
- It was proposed that the five-year pilot be subject to various limitations, including:
 - licensed online gambling operators must cease offering higher-risk online gaming services to Australian-based customers;
 - licensed online gambling operators must comply with the proposed national harm minimisation and consumer protection measures;
 - there must be a minimum break in play for players after they have completed a tournament and have been playing for a defined period;
 - player returns must be transparent to players before they enter tournaments;
 - television advertising of the services must not be permitted other than on programs that broadcast poker tournaments; and
 - licensed online gambling operators must make an appropriate contribution to fund support services for problem gamblers.

In the submissions received in response to the Interim Report, the Northern Territory government expressed its interest and willingness to be the host jurisdiction of any pilot trial of online poker to be provided by Australian-licensed online gaming operator.⁴

The proposed five-year pilot raises uncertainties in respect of the commercial viability of being an Australian-licensed online gaming operator due to the limited return available from the conduct of online poker tournaments (as compared to cash poker games). Further, there is a risk that the licensing regime may not be extended at the expiration of the five-year pilot. As a result of this possibility, operators may be reluctant to apply for a licence.

Online Wagering

The principle of platform neutrality was applied by the DBCDE in its Final Report. With respect to betting, this means that a category of bets will be treated the same way regardless of the channel on which betting took place. The DBCDE's proposed changes would impact primarily on in-play betting, which includes:

- betting on the final outcome of an event;
- betting on particular contingencies such as who will score the next goal; and
- betting on the outcome of the next ball in cricket or the next point in tennis (i.e., micro-betting).

There are three main elements of the amendments proposed by the DBCDE in respect of in-play bets, namely:

1. Prohibitions on some types of in-play betting which take place via the Internet should be relaxed;
2. State/Territory regulatory authorities and sports controlling bodies should have greater power in approving bet types;
3. All types of micro-betting should be banned. The DBCDE considered this type of betting to pose the greatest risks to problem gamblers.

To clarify the last recommendation, micro-bets are bets where the timeframe between placing a bet and knowing the outcome is very short. The Minister responsible for administering the IGA will be conferred with the power to determine whether bets are micro-bets. However, no guidance was given as to how the Minister should exercise his/her discretion.

Developments

Since the Final Report, the Joint Select Committee on Gambling Reform ("JSCGR") has released its sixth and final report. Of particular note are the comments made by the Chair of the JSCGR, Mr Andrew Wilkie, who stated that "*the best response [to online gambling] is not to liberalise the Australian market, but rather to tighten it up and put in place strategies to deter Australians from accessing the dangerous offshore sites.*"⁵

It appears that Mr Wilkie has changed his original stance that the best response would be to allow Australian licensed operators to offer limited gaming options, provided that there are adequate harm minimisation and consumer protection measures in place. Relevantly, this demonstrates that despite consistent recommendations by government bodies such as the Productivity Commission and the DEBCDE, that the prohibitions under the IGA should be liberalised, there is still significant resistance from many politicians.

Conclusion

The Final Report generally reflects the recommendations of the Interim Report and the sentiment of the majority of submissions received in response to the Interim Report. There is a growing recognition at the Federal level of the increasing demand for online gambling services and the need to move away from a prohibition approach to regulating the online environment in a consumer-friendly manner. It would be interesting to see how these recommendations will be addressed after the Federal election. Stakeholders should reflect on their policies when planning future business in Australia and closely monitor the developments in Australia's online gambling regulation.

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¹ DBCDE Final Report:

http://www.dbcde.gov.au/_data/assets/pdf_file/0007/162277/Final_Report_-_Review_of_the_Interactive_Gambling_Act_2001.pdf

² Further background and analysis of the Interim Report's recommendations is set out in a series of articles published by Addisons entitled "Australia – Review of the Interactive Gambling Act by the Department of Broadband, Communications and the Digital Economy – Interim Report Released - What does it mean for the Online Gambling Sector?" (General summary of the Interim Report), "DBCDE Inquiry into Interactive Gambling Act – Interim Report Released – What Does it Mean for Online Gaming in Australia?" (Focusing on the Online Gaming sector) and, "DBCDE Inquiry into Interactive Gambling Act – Interim Report – What Does it Mean for Wagering Operators in Australia? – Potential for Change in Australian Online Gambling Regulatory Landscape" (Focusing on the Online Wagering sector). See also, J Nettleton and M Huang, "Review of the Interactive Gambling Act 2001: Implications for Internet Gambling in Australia", Gaming Law Review and Economics, Volume 17, Number 2, 2013

³ Media Release dated 12 March 2013:

http://www.minister.dbcde.gov.au/media/media_releases/2013/035

⁴ Submission by the Northern Territory Government:

http://www.dbcde.gov.au/_data/assets/pdf_file/0004/155974/Northern_Territory_Government_-_Submission_on_the_interim_report.pdf

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http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=gamblingreform_ctte/completed_inquires/2010-13/virtual_credits/report/b01.htm