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Ms Lyn Beverley
Committee Secretary
Joint Select Committee on Gambling Reform
PO Box 6100
Parliament House
CANBERRA ACT 2600
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Dear Ms Beverley,

Inquiry into the Interactive Gambling and Broadcasting Amendment (Online Transactions and Other Measures) Bill

The Australian Bankers' Association (ABA) appreciates the opportunity to provide comments to the inquiry into the *Interactive Gambling and Broadcasting Amendment (Online Transactions and Other Measures) Bill 2011*.

The ABA notes that on 19 August 2011 the Federal Government released the terms of reference for a review of the *Interactive Gambling Act 2001*[1]. The review was announced as an outcome of the Council of Australian Government's Select Council on Gambling Reform meeting in May 2011.

The ABA acknowledges the Federal Government's commitment to address problem gambling as a social policy concern. We support encouraging socially responsible programs and effective and workable strategies for addressing problem gambling. A national approach to developing harm minimisation strategies which promote responsible gambling should be adopted through a shared response from governments, business (in particular providers of gambling services) and the community.

The ABA believes that the terms of reference[2] for the review of the *Interactive Gambling Act 2001* would readily enable a thorough consideration of harm minimisation measures, consumer protections and regulation of online gambling. We consider that it is essential for a review to recognise the importance of giving close consideration to research and harm minimisation strategies as well as carefully examining international responses to regulation of online gambling, in particular the feasibility of overseas approaches being applied in Australia.

[1] http://www.minister.dbcde.gov.au/media/media_releases/2011/235
[2] http://www.dbcde.gov.au/broadband/online_gambling/2011_review_of_the_interactive_gambling_act_2001

General comments

Research

The ABA believes that the Federal Government should conduct a thorough analysis of telephone and Internet gambling in Australia and overseas gambling services used by Australians in relation to consumer interests (including fairness, protections) and other impacts (including technology and operations, licensing, supervision, investigation, enforcement, money laundering, taxation). We consider that it is important for consumers to be fully aware of their consumer rights and responsibilities.

The ABA is concerned that public policy may be implemented without fully appreciating the specific and broad implications of certain interventions, in particular in the banking and payments system. If an approach was adopted as contained in the *Interactive Gambling and Broadcasting Amendment (Online Transactions and Other Measures) Bill 2011* and Australia was identified as a jurisdiction where payment obligations may not be fulfilled in a certain and timely manner (or at all), it is possible that merchants and online service providers will refuse to accept business and payments from customers designated as originating from Australia. This would have a significant impact on the contestability of Australian businesses as well as the ability for Australian consumers to purchase online goods and services.

Harm minimisation

The ABA believes that the Federal Government, as part of the review of the *Interactive Gambling Act 2001*, should give consideration to understanding issues regarding use of online gambling services. It is important to ensure that harm minimisation measures and consumer protections translate from physical gambling to the 'virtual' gambling environment. We suggest assessment of existing harm minimisation strategies should investigate the particulars of online gambling services, including:

- What assurances are provided to the player;
- What registration, identification and security procedures are adopted by the provider;
- How is personal and financial information stored;
- What payment processes are adopted;
- What payout processes are adopted; and
- What targeted measures will have a real impact on addressing problem gambling.

The ABA is concerned that public policy may be implemented without fully appreciating the extent to which existing harm minimisation and regulation of online gambling may provide a more targeted response than proposed changes to the banking and payments system as contained in the *Interactive Gambling and Broadcasting Amendment (Online Transactions and Other Measures) Bill 2011*. We suggest that the feasibility of technology restrictions needs to be assessed in discussion with representatives from the gambling industry, debit and credit card schemes, and Internet and telecommunications industry.

1. Specific comments

The ABA limits our comments to the provisions within the proposed legislation which would involve amending the *Interactive Gambling Act 2001* to require a "financial transaction provider" to restrict a financial transaction being made to a prohibited Internet gambling service (as prescribed). We do not intend to provide comments as to the merit of the proposed legislation.

1.1 Background—electronic transactions and payments system infrastructure

The processing of an electronic transaction can involve at least five parties:

- the customer (cardholder);
- the institution that issues the card to the cardholder (card issuer);
- the institution that acquires the transaction (acquirer);
- the company that facilitates the processing of data and the settlement of transactions (card scheme); and
- the company that supplies goods and services (merchant).

Electronic transactions that directly debit the customer's account (direct electronic funds transfer) are authorised by the customer and a transfer of funds (payment) is made instantaneously and the customer's account debited according to the instructions authorised.

Electronic transactions conducted via scheme debit or credit cards are processed through the electronic payments network. The customer initiates the transaction with the merchant. The merchant seeks authorisation from the issuer. The issuer provides authorisation (approve or decline). The merchant settles the transaction with the acquirer. The acquirer will then settle the transaction with the scheme. The scheme will then settle with the issuer. The issuer will then debit the transaction to the cardholder.

There are around 4.15 billion transactions[3] conducted using a debit or credit card each year. Obviously, the vast majority of these transactions are unrelated to online gambling (or being made to an interactive gambling service). <u>Electronic transactions are authorised by the cardholder and cleared within seconds by the merchant – therefore, there is no opportunity for a customer to subsequently suspend or cancel an electronic transaction</u>.

1.2 Proposal to restrict financial transactions

The ABA believes that the proposed legislation is problematic. The legislation suggests using the payments system to restrict financial transactions – this is not straightforward.

Electronic transactions are authorised and debited/cleared instantaneously or within seconds depending on the type of electronic transaction. The technology and payment systems infrastructure for a card issuer to approve or decline a transaction at the point the merchant seeks authorisation for a transaction which has been authorised by the cardholder is not currently available. The rules for a card issuer to reverse or refund a transaction subsequent to the customer authorising the transaction and payment do not

[3] RBA statistics show that over the 12 months to June 2011, there were 1.64 billion credit card transactions and 2.51 billion debit card transactions.

currently exist. ABA believes that new systems and processes for all electronic transactions would be operationally complicated, administratively costly, and legally convoluted.

Specifically, the ABA notes the following points:

- There are no processes for a card issuer to suspend/cancel an electronic transaction after it has been authorised by the cardholder. Depending on the transaction (debit and credit), it may take between 1 and 3 business days for the transaction to appear on the cardholder's statement. When the transaction is transmitted to the cardholder is dependent on when the merchant settles with their acquirer. However, the authorisation and the obligations for payment between the parties are generally instantaneous – that is, a merchant will process the transaction immediately, and therefore there is no opportunity to void the transaction or intercept an individual transaction.

  It would be extremely difficult and costly for a card issuer to establish a process to suspend/cancel a transaction using the existing payment system infrastructure and rules. In practice, it would be possible to decline a transaction, known as a "declined authorisation", however, such an approach would need to be made pursuant to identification of "illegal sites" and at the time the card issuer receives the electronic message to authorise the transaction from a particular merchant a system would need to be implemented to approve/decline an individual transaction. Merchant category and access codes would be needed to identify such websites. In reality, online gambling service providers would be constantly updating their payment details and identifications, and therefore it would be difficult for a list of "illegal sites" to be maintained.

  If a card issuer "declined authorisation", based on a flag to identify a transaction as associated with a certain merchant category code, the issuer would be at risk of legal action from the merchant (and possibly other parties for failure to comply with payment obligations and their individual contractual obligations). Additionally, it is likely that an issuer would need to direct resources away from core business activities and system monitoring (i.e. fraud detection) to investigate these declined transactions.

- There are no processes for a third party payment method or "e-wallet" to suspend/cancel a transaction after it has been authorised. There is no reversal after the transaction has occurred, unless agreed by the merchant or alternatively guaranteed by a facility which acts as an intermediary between the transactions (e.g. as part of its service agreement with users, E-Bay will reverse the transaction in certain circumstances, i.e. if the goods or services are found to be inauthentic as provided to a buyer by a E-Bay seller). (We note that it is unclear how (legally and practically) other transactions/payments might be caught within the proposed legislation, including international telegraphic transfers, electronic funds transfers conducted via money remitters (e.g. Western Union), third party payment methods and "e-wallets" (e.g. BPay, Pay-Pal, Clickandbuy, Neteller, FirePay), alternative payment currencies (e.g. Google money, Facebook credits, etc), and cheques).

- There are no processes for a direct electronic funds transfer or direct debit (e.g. 'BillPay', 'Pay Anyone') transaction to be suspended/cancelled after it has been authorised. Following authorisation by the customer of a direct electronic funds transfer, payment is made instantaneously. If a customer has a BSB and account number it is possible for a payment to be made to an online gambling service provider. There is no reversal, unless agreed by the merchant.

- There are no chargeback rules for a customer that has "changed their mind" after authorising a transaction on their credit card. If a cardholder wants to dispute a transaction, there are existing scheme rules and financial institution processes. However, customers/cardholders do not have scheme chargeback protection once a transaction has occurred and has been authorised by the cardholder. There is no refund, unless agreed by the merchant.

1.3 Implications of a proposal to restrict financial transactions

The ABA is unable to provide comments on the systems and processes that are currently in place and used by online gambling services. However, we are aware that generally these providers and services require the lodgement of a payment (cleared and processed) prior to a bet being made.

The following outlines the technology, practical and legal considerations of a proposal to restrict financial transactions.

Technology and system considerations

Transactions would need to be identified as being made to an "interactive gambling service". This would require a new technology solution to identify these providers and services via a merchant category code (MCC) and a system to "flag" all transaction categories – that is, identify whether a transaction is restricted or whether a transaction is unrestricted – a system to automate a decision to approve/decline. Switch processes and banking platforms would need to be significantly reprogrammed.

A central body would need to be established to collate and monitor designations and data/codes. An information database or list of "illegal sites" (interactive gambling service) would need to be maintained and interfaced with the payments system. Data would need to be constantly monitored and added to the payments system so that real time automated decision protocols could be executed at the time of every electronic transaction by every card issuer. Codes would need to be consistent with existing rules and protocols.

Tracking and monitoring in real time to ascertain direct electronic funds transfers and direct debit transactions would not be possible with current legacy switching, batch and processing systems. Interoperability across electronic payment networks would not be possible.

Interoperability between payments systems would need to be enhanced. Electronic transactions can be completed using different processes and systems. Changes would need to be made to all these systems, in particular payment systems infrastructure. Notwithstanding, it is likely that alternative payment arrangements would be used by gamblers/interactive gambling services.

APCA rules would need to be changed. Changes to the payments system would require new rules, in particular for recovery of payments. Front-end and back-end technology changes would need to be made by every financial transactions provider (banks, building societies, credit unions, and other card issuers). Introducing and maintaining such a system would be extremely onerous on every financial transactions provider, in particular smaller banks.

Practical considerations

Without constant tracking and monitoring of all electronic transactions and data/codes, it is unlikely that a financial transaction provider would be able to restrict financial transactions. A process of "authentication" of every electronic transaction would need to be based on lists and rules about types of transactions that are allowed/not allowed, however, because a system would necessarily be imperfect, this would likely result in many legitimate transactions being declined. Bank-customer relationships would likely be adversely impacted.

Interactive gambling services are likely to change settings which would mean they would no longer trigger the "flagged" transaction category – that is, replicate using an alternative MCC. Additionally, some interactive gambling sites are likely to use masking or other security/technology techniques to prevent detection, and therefore become unidentifiable undermining any system to flag transactions.

Transactions may be authorised, however, subsequently the customer would be able to request a financial transaction provider to suspend/cancel the transaction. Requests made by customers will have timing and authorisation complexity for banks. In addition to technology and systems changes, procedural and operational changes would be needed to manually manage any customer requests and/or communications.

Regulation which restricts the operations of interactive gambling services is likely to drive these websites into a "black market". In doing so, it could result in amplified risk of consumer detriment, underage gambling, problem gambling and money laundering. Regulation of online gambling services would provide a more viable alternative. Additionally, the ability for a customer to knowingly participate in gambling through an Internet gambling service and then subsequently decide (assuming after there have been losses) to suspend or cancel these transactions creates significant moral hazard, and could possibly lead to greater gambling recklessness.

Transactions being restricted (blocked, suspended or cancelled) may have significant ramifications for the reputation of the Australian payments system. If technology and legal issues were resolved via clear statutory provisions and costly new systems and payments infrastructure, the consequent transaction delays and additional transaction costs associated with validating a payment (as permitted) or voiding a payment would likely result in an unreliable payments system, which would have implications for all Australian businesses and consumers.

Legal considerations

Even though the proposed legislation provides a general protection from liability for financial transaction providers from proceedings about the suspension or cancellation of transactions by or on behalf of an interactive gambling service, these providers or services may be based in Australia or overseas. Suspending or cancelling payments will have extra-territorial legal complexity for financial transaction providers.

Given that suspending or cancelling payments to interactive gambling services may not be complete given that these online service providers are likely to change their business model, data/access codes, and payment details and identification, it is unclear the protections available to financial transaction providers if a customer requests that the transaction be suspended/cancelled and subsequently the banking platform allows the transaction to be completed.

Summary

If intervention in the banking and payments system was deemed appropriate, it would be necessary to address and resolve significant practical, technical and legal issues, such as distinguishing between merchants and online gambling services, the feasibility of identification of legitimate or illegitimate transactions, implications for transaction costs, implications for privacy (i.e. monitoring customer data and making judgments about customer spending), implications for possible failure to execute transactions, etc. We note that blocking and/or voiding transactions at the point of the bank (card issuer) would be extremely problematic.

In the absence of existing technology and payment system infrastructure and rules to enable a bank or other financial institution ("financial transaction provider") to restrict a transaction to certain online service providers ("interactive gambling service"), it would be necessary for an arrangement to be implemented to monitor all electronic transactions and for new technology and payments infrastructure to be introduced to enable a bank or other financial institution to decline a transaction upon request by a merchant to authorise based on existing coding. It should be noted that such an arrangement would necessarily create transaction delays and additional transaction costs for all electronic transactions and for all customers. Banks and financial institutions would need to make substantial changes to their systems and processes so that a specific designation and code was able to be instantly recognised and the according transaction approved or declined. Obviously, this would have a significant impact on every bank and financial institution, especially smaller financial institutions.

If intervention in the banking and payments system was deemed appropriate, it would be necessary for the Government to: (1) designate (and clearly define the criteria for designation) certain sites to be restricted from use by Australian residents ("illegal sites"); (2) maintain a list of "illegal sites" and provide that list to all financial transaction providers; (3) monitor, correlate and update data and codes (based on existing codes and protocols) on "illegal sites" and provide that list to all financial transaction providers so systems can be set to approve or decline based on designation and codes; and (4) provide statutory protection for financial transaction providers from breaches whereby the designation and/or codes lists provided to financial transaction providers are found to be incomplete, inaccurate or somehow deficient.

The ABA believes that contemplation of restricting financial transactions and/or prohibiting the use of debit and credit cards for Internet gambling services requires:

- Further consideration of current practices undertaken by online service providers to manage accounts;
- Further consultation with the debit and credit card companies;
- Furthermore consideration of technologies implemented by Internet Service Providers (ISPs).

2. Concluding comments

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 systems and the wider community. We consider that the most appropriate regulatory outcome is for restrictions to be imposed on online gambling services and harm minimisation strategies to be implemented.

The ABA believes that it is unclear whether the substantial technology and payments infrastructure changes and the consequent costs involved in technology and system changes across the payment system, software development, operational implementation and administration by banks and financial institutions would deliver the benefits being sought to address concerns with interactive gambling. Even if a customer had restrictions placed on their use of an interactive gambling website, these restrictions would not necessarily apply uniformly. It should be recognised that it is unreasonable and impractical for banks and financial institutions to implement restrictions on electronic transactions made to interactive gambling services. We consider that the review of the *Interactive Gambling Act 2001* should give thorough consideration to harm minimisation measures, consumer protections and regulation of online gambling.

Yours sincerely

Steven Münchenberg