

# What Does the Abbott Government Mean for Online Gambling?

Jessica Azzi considers what the recent Federal election may mean for businesses in the online gambling industry.

## Introduction

The Abbott Government has not made any public announcements relating to online gambling. However, the Coalition released two campaign policies during its election campaign, the Helping Problem Gamblers Policy (**Gambling Policy**) and the Policy to Enhance Online Safety for Children (**Online Safety Policy**) (collectively, the **Policies**), which may be a sign of what the Government has in store not just for the online gambling industry, but for any brand involved in the development or supply of gaming content, including social games.

The Gambling Policy suggests that the Coalition will adopt a conservative approach to online gambling reform. This means that the Government may be unlikely to support existing proposals to amend the Interactive Gambling Act 2001 (Cth) (**IGA**), including the proposals to liberalise online poker and to remove the existing prohibition on online in-play betting.

## the Coalition's position that it will not support the future liberalisation of online gambling lowers any expectations in respect of the liberalisation of online in-play betting and online poker

The adoption of this approach is inconsistent with regulatory approaches in a number of countries and would result in the current regulatory framework being maintained. Various parties have suggested that the current framework does not strike the correct balance between:

- the provision of a regulated and competitive Australian online gambling market to Australian residents (which would eliminate the incentive for Australian gamblers to gamble with offshore operators. Extreme difficulties exist in enforcing prohibitions in Australian law, including consumer law prohibitions and gambling law prohibitions, against those operators);
- implementing measures to address problem gambling and harm minimisation which are based on research; and
- in the context of wagering, integrity concerns.

Any framework which is more prohibitive than the one currently in place would be even more removed from this balance.

## Background

The IGA prohibits the provision and promotion of "interactive gambling services" (see below) to Australian residents. Both online bet-

ting<sup>1</sup> and lotteries are exempt from this prohibition, however, online in-play betting, that is, betting on the outcome of an event after that event has commenced, is not included in this exemption. Operators are permitted to accept in-play bets over the phone. Similarly, totalisators (for example, the TAB), which have a monopoly on retail betting in each State/Territory, are permitted to accept in-play bets over the Counter.

In the 2011-12 financial year, \$5.7 billion in turnover was wagered with corporate bookmakers licensed in the Northern Territory. This includes bets on both sport and racing. These licensees include Sportsbet, Sportingbet, bet365, Unibet, Betstar and TomWaterhouse.com.au. These operators, pursuant to their NT licenses, can only accept bets online or via telephone.<sup>2</sup>

It is unknown how much money Australians spend betting online with offshore wagering operators. However, the industry view is that this figure would be substantial and that a significant proportion of this amount is in respect of in-play bets.

Similarly, figures are not available to indicate how much money Australians spend with offshore providers on other types of online gambling, such as online poker and casino games. However, it has been suggested that around 2200 online gambling service providers offer services to Australians in breach of the IGA.<sup>3</sup>

The Department of Broadband, Communications and the Digital Economy (**DBCDE**), the Commonwealth Department responsible for overseeing the IGA, concluded its review of this legislation in early 2013. Its report was published in March 2013 (**DBCDE Report**) and included a number of recommendations, such as:

- that the IGA be amended in respect of in-play betting services to allow online in-play betting, subject to a blanket ban on all micro-betting. A micro bet is, for example, a bet on the outcome of the next ball in cricket or the next point in tennis; and
- the conduct of a 5 year pilot in respect of the licensing of online poker operators which will enable the provision of online poker tournaments, by these licensed operators, to Australian based consumers.

However, on the same day that the DCBDE Report was released, Senator Stephen Conroy, then the Minister for the DCBDE, announced that the focus of the Commonwealth Government would be on developing and implementing a national standard for harm minimisation and consumer protection that covers all licensed online gambling activities. Further, Senator Conroy announced at the time that the Government of the day would not consider the recommended changes relating to online poker or "in-play" sports wagering until agreement is reached in respect of a nationally consistent approach to harm minimisation.

1 Wagering is regulated by State/Territory laws, subject to the prohibition on in-play betting contained in the IGA.

2 We note that both Tom Waterhouse and Alan Eskander (of Betstar) each have a Victorian bookmaking licence in their personal capacity. This licence permits them to take bets on-course in Victoria.

3 DBCDE Report. Page 6.

4 <http://www.liberal.org.au/helping-problem-gamblers>

## Driving Australian gamblers offshore?

The Gambling Policy<sup>4</sup> suggests that the Coalition:

- is concerned about the growth of online gambling and that it will be investigating methods of strengthening the enforcement of the IGA to ensure "Australians are protected from illegal online gambling operators";
- will not be supporting any future liberalisation of online gambling; and
- is concerned about the increasing popularity of sports betting and the increase in gambling advertising.

Based on the above, this Gambling Policy, if adopted by the Abbott Government, is likely to have a restrictive impact on the Australian online gambling sector. In particular, the Coalition's position that it will not support the future liberalisation of online gambling lowers any expectations in respect of the liberalisation of online in-play betting and online poker.

However, this position is at odds with the overseas experience which indicates that blanket prohibitions, such as those contained in the IGA, have been unsuccessful in practice in minimising problem gambling.

Further, commentary surrounding recent match-fixing scandals strongly suggests that Australian licensed betting operators assist in the identification of suspicious betting patterns and will report these patterns to the relevant sport's governing body. On the other hand, offshore operators have limited concern (if any) about the protection of the integrity of Australian sport.

Nevada and New Jersey have recently taken steps to regulate both online poker and wagering. There are reports that California, Hawaii, Illinois, Iowa, Massachusetts, Mississippi, Pennsylvania and Texas may follow. Any approach by the Government to limit or halt the Australian market is likely to be inconsistent with measures taken by other jurisdictions to move away from prohibition and towards providing players and operators with the benefits that a regulated jurisdiction brings.

## Beyond online gambling

The Online Safety Policy<sup>5</sup> does not refer expressly to gambling but is likely to be of relevance to the social games sector (or any brand which provides games via social media).

A social game has characteristics including that it is offered and hosted by a social networking platform (eg Facebook) or a social gaming platform (eg Xbox Live), it is available for access through a mobile phone app and it places a heavy emphasis on social interaction (eg a player will be encouraged to invite their Facebook friends to play). Examples of popular social games include Slotomania, Candy Crush Saga and Angry Birds.

To fall within the scope of an "interactive gambling service" under the IGA, the "game" must:

- (a) be a game of chance or of mixed chance and skill; and
- (b) involve consideration; and
- (c) be played for money or anything else of value.

If any one or more of these elements is missing, then the game does not constitute an interactive gambling service and does not fall under the ambit of the IGA's prohibitions.

The vast majority of online social games on social networking platforms such as Facebook are legal in Australia as they do not fall within the IGA's definition of "interactive gambling service". This is

because they are played for free and, even if there is an initial purchase, the games do not allow players to receive a prize in the form of money, or in a form that can be exchanged for money or anything else of value. That is, online social games fail to satisfy the second and third requirements of a "gambling service".

However, concern has been expressed about certain online social games feature a casino-style or gambling-like content. For example, over the past few years, Senator Nick Xenophon has taken consistently the stance that online social games constitute gambling and are therefore prohibited by the IGA.<sup>6</sup>

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The Online Safety Policy indicates the Coalition's intention to strengthen online safety measures to "protect their children from inappropriate material".<sup>7</sup> These proposed measures include:

- the introduction of internet "adult content filters" that will allow consumers to "opt-in" and turn on these filters on their mobile phone and tablet devices or home based internet, to filter out the "inappropriate material";
- establishing a new Children's e-Safety Commissioner, responsible for monitoring online concerns in respect of children; and
- the introduction of a new complaint system, backed by legislation, aimed at removing "harmful material down fast from "large social media sites"". The Policy indicated that, as part of this new complaints system, the Children's e-Safety Commissioner would have the power to direct material to be taken down from the "large social media sites".

The Online Safety Policy does not clarify the scope of "adult content" or "inappropriate or harmful material," however, these measures, particularly the new complaint system, may apply to the online social games sector insofar as they advertise and offer social games on "large social media sites". If concerns such as those held by Senator Xenophon are adopted by the Government, the Online Safety Policy may have a significant effect on the availability of games through channels as mainstream as Facebook and iTunes.

## Conclusion

It will be interesting to see what measures, if any, the Government adopts in respect of online gambling reform and whether these measures are balanced and consistent with regulatory changes taking place internationally.

Additionally, it will be important to monitor measures to ensure that the distinction between online social games and online gaming remains clear and that the online social games sector is not unduly covered, inadvertently or intentionally, by proposed amendments to the IGA and made subject to the strict prohibitions that apply generally to online gambling.

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5 <http://lpaweb-static.s3.amazonaws.com/Coalition%202013%20Election%20Policy%20-%20Enhance%20Online%20Safety%20for%20Children.pdf>

6 'Nick Xenophon in Bid to Close Gambling App Loophole', The Australian (online), 13 January 2013 <<http://www.theaustralian.com.au/national-affairs/nick-xenophon-in-bid-to-close-gambling-app-loophole/story-fn59niix-1226552960088>>

7 Please see the Coalition Policy to Enhance Online Safety for Children at:

<http://lpaweb-static.s3.amazonaws.com/Coalition%202013%20Election%20Policy%20-%20Enhance%20Online%20Safety%20for%20Children.pdf>