



# Parliamentary Joint Committee on Corporations and Financial Services

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Regulation of the use of financial services such as credit  
cards and digital wallets for online gambling in Australia

November 2021

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# Committee membership

## Chair

Mr Andrew Wallace MP LNP, QLD

## Deputy Chair

Mr Steve Georganas MP ALP, SA

## Members

Ms Angie Bell MP	LNP, QLD
Senator Andrew Bragg	LP, NSW
Mr Julian Hill MP	ALP, VIC
Mr Bert van Manen MP	LNP, QLD
Senator Nick McKim	AG, TAS
Senator Deborah O'Neill	ALP, NSW
Senator Louise Pratt	ALP, WA
Senator Paul Scarr	LP, QLD

## Secretariat

Patrick Hodder, Committee Secretary  
Jon Bell, Principal Research Officer  
Ash Clements, Senior Research Officer  
Shelby Bassett, Administrative Officer  
Eleonora Fionga, Administrative Officer

Suite SG.64  
PO Box 6100  
Parliament House  
Canberra ACT 2600

Telephone: +61 2 6277 3583  
Fax: +61 2 6277 5719  
Email: [corporations.joint@aph.gov.au](mailto:corporations.joint@aph.gov.au)  
Website: [www.aph.gov.au/joint\\_corporations](http://www.aph.gov.au/joint_corporations)



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# Abbreviations

the ACMA	the Australian Communications and Media Authority
ALNA	Australian Lottery and Newsagents Association
BNPL	Buy Now Pay Later
BIN	Bank Identification Number
MCC	Merchant Category Code
NAB	National Australia Bank
National Framework	National Consumer Protection Framework
T&E cards	Travel and Entertainment Cards





# List of Recommendations

## Recommendation 1

2.67 The committee recommends the Australian Government prioritise the collection of data on online gambling in Australia, including the size and growth of the online gambling market, online gambling with credit, and the extent and nature of the associated harms.

## Recommendation 2

4.49 The committee recommends that the Australian Government develop and implement legislation to ban online gambling service providers of wagering, gaming and other gambling services (but not lotteries) from accepting payment by credit cards, including via digital wallets.

## Recommendation 3

4.50 The committee recommends that the Australian Government ensure that, in designing and implementing recommendation 2, these measures have no adverse consequences for lotteries, including the activities of not-for-profits, charities and newsagents.



# Chapter 1

## Introduction and report structure

### Duties of the Committee

1.1 The Parliamentary Joint Committee on Corporations and Financial Services (committee) is established by Part 14 of the *Australian Securities and Investments Commission Act 2001* (ASIC Act). Section 243 of the ASIC Act sets out the committee's duties as follows:

- (a) to inquire into, and report to both Houses on:
  - (i) activities of ASIC or the Takeovers Panel, or matters connected with such activities, to which, in the Parliamentary Committee's opinion, the Parliament's attention should be directed; or
  - (ii) the operation of the corporations legislation (other than the excluded provisions); or
  - (iii) the operation of any other law of the Commonwealth, or any law of a State or Territory, that appears to the Parliamentary Committee to affect significantly the operation of the corporations legislation (other than the excluded provisions); or
  - (iv) the operation of any foreign business law, or of any other law of a foreign country, that appears to the Parliamentary Committee to affect significantly the operation of the corporations legislation (other than the excluded provisions); and
- (b) to examine each annual report that is prepared by a body established by this Act and of which a copy has been laid before a House, and to report to both Houses on matters that appear in, or arise out of, that annual report and to which, in the Parliamentary Committee's opinion, the Parliament's attention should be directed; and
- (c) to inquire into any question in connection with its duties that is referred to it by a House, and to report to that House on that question.<sup>1</sup>

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<sup>1</sup> *Australian Securities and Investments Commission Act 2001*, s. 243.

## Terms of Reference

- 1.2 The terms of reference include: current section 15C of the *Interactive Gambling Act 2001* that makes it illegal for providers of online wagering services to provide or facilitate lines of credit to gamblers, with an exemption for independently issued credit cards; and possible amendments to section 15C proposed by Committee Chair, Mr Andrew Wallace MP.
- 1.3 On 25 March 2021, the committee self-referred an inquiry into the regulation of the use of financial services such as credit cards and digital wallets for online gambling in Australia, including:
- (d) the extent of consumer detriment;
  - (e) the level of existing voluntary bans by Australian financial institutions;
  - (f) existing consumer protections;
  - (g) the potential for a mandatory industry code;
  - (h) regulatory approaches used in other relevant jurisdictions;
  - (i) the provisions of the attached draft legislation to amend section 15C the *Interactive Gambling Act 2001*; and
  - (j) any related matters.

### Current section

Part 15C; Credit not to be provided to customers of certain interactive wagering services.

- (1) A person commits an offence if:
- (a) the person intentionally provides a regulated interactive gambling service that is a wagering service; and
  - (b) either:
    - (i) the person provides, or offers to provide, credit in connection with the service to a customer, or prospective customer, of the service who is physically present in Australia; or
    - (ii) the person facilitates or promotes the provision of credit (other than by way of an independently issued credit card), by a third person, in connection with the service to a customer, or prospective customer, of the service who is physically present in Australia

### Possible amendments to the *Interactive Gambling Act 2001*

- At 15C(1)(b)(ii), delete the words “(other than by way of an independently issued credit card)”;
- At 15(C)(1)(b)(ii), after “physically present in Australia” insert “or”;
- After 15C(1)(b)(ii), insert: “(iii) where the service is provided online, the person accepts credit as a form of payment for the service.
- After 15C(1)(b)(iv), insert “For the avoidance of doubt, 15C(1)(b)(iii) does not apply to debit payments.”

## **Conduct of the inquiry**

- 1.4 The committee advertised the inquiry on its webpage and invited submissions from a range of stakeholders. The committee set a closing date for submission of 25 June 2021.
- 1.5 The committee received 22 submissions, which are listed in Appendix 1. The committee also received additional information, including answers to questions taken on notice (as listed at Appendix 1).
- 1.6 The committee held public hearings in Canberra via videoconference on 13 August 2021 and 3 September 2021 (as listed at Appendix 2).

## **Structure of the report**

- 1.7 This report is divided into the following chapters:
  - Chapter 1 covers administrative information about the inquiry.
  - Chapter 2 covers the industry structure, the role of the regulator, and summarises consumer harm from online gambling with credit.
  - Chapter 3 considers the online payment system, the current bans on using credit for gambling in Australia, and the limitations of the system.
  - Chapter 4 discusses policy options for banning online gambling with credit.

## **Acknowledgements**

- 1.8 The committee thanks all individuals and organisations who participated in the inquiry, especially those who made written submissions and appeared as witnesses in public hearings.

## **Notes on references**

- 1.9 References to the Committee Hansard are to the Proof Hansard. Page numbers may vary between Proof and Official transcripts.



# Chapter 2

## Background

### Introduction to the problem addressed in the inquiry

2.1 This inquiry aims to address two related problems. First, the substantial harm suffered by a cohort of citizens arising from the ability to access credit when engaging in online gambling. Second, the striking disjuncture in the current regulatory landscape where the use of credit cards is allowed for online gambling even though states and territories have banned the use of credit to pay for in-venue gambling services.

2.2 Ms Anna Bligh, Chief Executive Officer of the Australian Banking Association, described the Association's view of how this anomalous situation arose:

As the rise in online gambling accelerates so too does our understanding of the considerable harm that it does to some Australians. Today in Australia if you are at a racetrack, in a TAB or at a casino, you cannot use a credit card to gamble. This ban was put in place by state and territory governments in the early 2000s. But if you are at the same racetrack or the same TAB or the same casino and you have your mobile phone with you, there is nothing to stop you from logging into your favourite app and placing a bet using your credit card. This anomaly poses, I think, a very simple question for this committee to consider: why are citizens prohibited from doing something in the physical world which they can do with impunity in the virtual world? In the view of the Australian Banking Association, that answer's simple: it's because when the use of credit cards for gambling was banned by state and territory governments of all political persuasions, some two decades ago, online gambling didn't exist.<sup>1</sup>

2.3 The cost-benefit trade-off of addressing this regulatory anomaly by banning the use of credit cards to pay for online gambling services has changed significantly over the last two decades because of:

- an increase in the use of online gambling services;
- an increase in harm from the regulatory gap that allows the use of credit cards for online gambling; and
- significant reductions in the impacts of implementing a ban on the use of credit for online gambling because:
  - customers can make online cash transfers into their accounts with gambling service providers using BPAY;<sup>2</sup>

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<sup>1</sup> Ms Anna Bligh, Chief Executive Officer, Australian Banking Association, *Committee Hansard*, 13 August 2021, p. 40.

<sup>2</sup> Tabcorp, *Making a deposit*, <https://help.tab.com.au/s/article/Making-a-Deposit#TABVenues> (accessed on 8 October 2021).

- the use of credit cards in online gambling is declining relative to debit cards;<sup>3</sup> and
- digital wallets, such as Apple Pay, can distinguish between debit and credit cards.<sup>4</sup>

2.4 Further, there are likely to be less gamblers moving to illegal offshore online gambling sites as those sites are now subject to:

- successful blocking of hundreds of illegal offshore online gambling sites by the regulator, the Australian Communications and Media Authority (the ACMA);<sup>5</sup> and
- card network rules which prohibit acquirers from submitting illegal transactions into the card network payment system (as acquirers<sup>6</sup> must ensure that their merchants' transaction activity is legal in both the buyer's and seller's jurisdiction).<sup>7</sup>

2.5 To provide some context for the committee's consideration of the problems outlined above, the remainder of this chapter provides background on the following:

- gambling industry structure;
- the prevalence of online gambling;
- the role of the regulator; and
- the harm caused by online gambling with credit.

## **Gambling industry structure**

2.6 Gambling refers to a range of activities that involve staking money on chance events. The Productivity Commission used the following definition of gambling in its 2010 inquiry:

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<sup>3</sup> Mr David Attenborough, Managing Director and Chief Executive Officer, Tabcorp, *Committee Hansard*, 3 September 2021, p. 1. For wagering in FY21 through Tabcorp, the proportion of account deposits via credit card was 13.7 per cent and via debit card was 64.4 per cent. Tabcorp, answers to questions on notice, 14 September 2021 (received on 21 September 2021).

<sup>4</sup> Apple, answers to questions on notice, 14 September 2021 (received 29 September 2021).

<sup>5</sup> Mr David Attenborough, Managing Director and Chief Executive Officer, Tabcorp, *Committee Hansard*, 3 September 2021, p. 5; Dr Brent Jackson, Chief Executive Officer, Responsible Wagering Australia, *Committee Hansard*, 13 August 2021, p. 6; Dr Mark Zirnsak, Board Director, Alliance for Gambling Reform, *Committee Hansard*, pp. 20, 25.

<sup>6</sup> Acquirers are financial institutions that acquire the rights to a merchant account that allows them to service and manage the merchant's bank account related to customer electronic payments. Julia Kagan, *Acquirer*, Investopedia, <https://www.investopedia.com/terms/a/acquirer.asp> (accessed 17 November 2021).

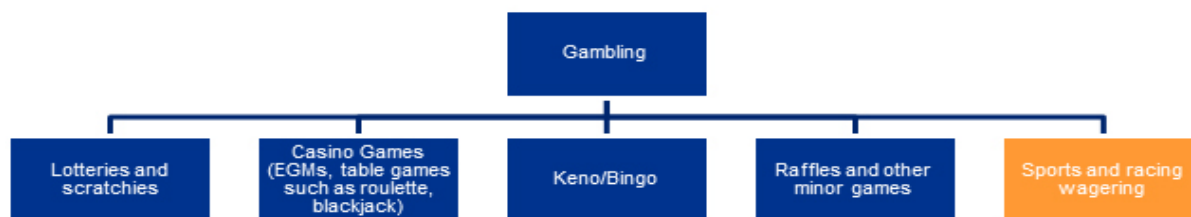
<sup>7</sup> Visa, answers to questions on notice, 20 September 2021 (received 28 September 2021).



Entertainment based on staking money on uncertain events driven by chance, with the potential to win more than staked but with the ultimate certainty that gamblers will lose over time.<sup>8</sup>

- 2.7 Gambling takes multiple forms, with sports and racing betting and wagering among the gambling offerings shown in Figure 2.1 below.

**Figure 2.1 Categories of gambling in Australia**



Source: The Hon Barry O'Farrell, *Review of Illegal Offshore Wagering*, 18 December 2015, p. 30.

- 2.8 Section 4 of the *Interactive Gambling Act 2001* (Interactive Gambling Act) defines online gambling services as wagering services (4(a & b)), gaming services (4e), lotteries (4(c & d)), and other gambling services (4f).
- 2.9 The distinction between wagering and gaming is:
- Wagering or betting involves staking something (usually money) on the outcome of a contest or any uncertain event. The principal types of wagering are racing and sports betting.
  - Gaming includes all other forms of gambling such as Electronic Gaming Machines (EGMs), lotteries, keno, table games (such as blackjack) and minor gaming such as raffles.<sup>9</sup>
- 2.10 Several types of gambling are available online. Interactive gambling (also known as online gambling or remote gambling) refers to gambling conducted using an internet carriage service, any other listed carriage service, a broadcasting service, a datacasting service, or any other content service.<sup>10</sup>
- 2.11 In 2018–19, total gambling turnover in Australia was \$225 billion. Racing accounted for approximately \$27 billion, gaming \$187 billion and sports betting \$11 billion.<sup>11</sup> Total customer losses in 2018–19 were approximately

<sup>8</sup> Productivity Commission, *Gambling*, 2010, p. 1.4.

<sup>9</sup> The Hon Barry O'Farrell, *Review of Illegal Offshore Wagering*, 18 December 2015, p. 34.

<sup>10</sup> The Hon Barry O'Farrell, *Review of Illegal Offshore Wagering*, 18 December 2015, pp. 8–9.

<sup>11</sup> Australian Gambling Statistics, 1993–94 to 2018–19, 36<sup>th</sup> edition, Summary table A—Total gambling Turnover 2018–19, published 28 April 2021.

\$25 billion.<sup>12</sup> The size and growth of online gambling is discussed in the section below on interactive (online) gambling.

### *For-profit lotteries*

- 2.12 There are over 4000 lottery retailers and newsagents in Australia. Lottery sales are the primary traffic driver in many Australian Lottery and Newsagents Association (ALNA) members' stores, and retail face-to-face lottery sales account for approximately two-thirds of domestic lottery sales.<sup>13</sup>
- 2.13 Up to 40 per cent of ALNA customers purchase lottery tickets with a credit card and 43 per cent buy other non-lottery products in the same sale.<sup>14</sup>
- 2.14 Tabcorp indicated that 32.8 per cent of its lotteries business (by turnover) is conducted through online channels. Tabcorp estimates that around 30 per cent of not-for-profit lottery sales are now conducted online.<sup>15</sup>

### *Not-for-profit and charitable organisations*

- 2.15 Operators of many charitable organisations use lotteries, art unions and raffles as fundraising activities. These activities rely on electronic ticket sales with over 90 per cent (on average) being paid by credit card in Australia. Debit cards are not seen as a viable payment alternative by not-for-profit and charitable organisations.<sup>16</sup>

### *Interactive (online) gambling*

- 2.16 The committee received little direct evidence on the overall size of the online gambling industry. However, the Tabcorp annual report for 2021 reported:
- digital wagering turnover grew 27 per cent to \$9.5 billion;
  - active digital customers grew 9.7 per cent to 784 000; and
  - the digital share of wagering turnover was 57.7 per cent, up 27 per cent.<sup>17</sup>

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<sup>12</sup> Australian Gambling Statistics, 1993–94 to 2018–19, 36<sup>th</sup> edition, Summary table D—Total Gambling Expenditure 2018–19, published 28 April 2021.

Expenditure (gross profit) relates to the net amount lost or, in other words, the amount wagered less the amount won, by people who gamble. Conversely, by definition, it is the gross profit (or gross winnings) due to the operators of each form of gambling. Australian Gambling Statistics, 1993–94 to 2018–19, 36<sup>th</sup> edition, *Explanatory Notes*, p. 2.

<sup>13</sup> Mr Benjamin Kearney, Chief Executive Officer, Australian Lottery and Newsagents Association, *Committee Hansard*, 13 August 2021, p. 57.

<sup>14</sup> Mr Benjamin Kearney, Chief Executive Officer, Australian Lottery and Newsagents Association, *Committee Hansard*, 13 August 2021, p. 57.

<sup>15</sup> Tabcorp, answers to questions on notice, 14 September 2021 (received on 21 September 2021).

<sup>16</sup> Not-for-profit and charitable organisations, *Supplementary Submission 22.1*, pp. 1–2; *Submission 22*, pp. 1–2; see also *Submissions 4, 9, 15, 18* and evidence from yourtown, Mater Foundation, Endeavour Foundation and RSL Queensland, *Committee Hansard*, 13 August 2021.

<sup>17</sup> Tabcorp, *Annual Report 2021*, p. 18.

- 2.17 Financial Counselling Australia, the Consumer Action Law Centre and the Financial Rights Legal Centre submitted that online gambling has changed the way people in Australia gamble. The COVID-19 pandemic accelerated those changes as public health measures, such as lockdowns, closed physical gambling venues. Their joint submission noted the following online gambling industry data for Australia:
- A joint study by credit bureau Illion and analytics firm AlphaBeta reported a 67 per cent rise in online gambling in Australia during the first week of April 2020.
  - Entain which owns Australian brands Ladbrokes and Neds reported Australian online revenue growth of 55 per cent in 2020, compared to 27 per cent in the UK.<sup>18</sup>
- 2.18 In June 2019, the *National Consumer Protection Framework for Online Wagering—Baseline Study Final Report* found that, while less prevalent than other forms of gambling, online wagering was the fastest growing segment of the Australian gambling market.<sup>19</sup>
- 2.19 Based on an online survey of 5076 people aged 18 and over who wagered online in Australia over a 12-month period, the report found:
- around one third (34 per cent) of people who placed a bet on sports, racing or other events in 2017–18 did so via the internet, double the 16 per cent reported six years earlier (in 2011–12); and
  - the majority (80–90 per cent for each activity) reported having placed bets online using mobiles/smartphones, followed by computers (40–50 per cent), with around one-quarter each also betting via self-service terminals or in-person.<sup>20</sup>
- 2.20 Finally, the report noted that the accessibility of online—and especially smartphone—wagering facilitated the placing of bets via various locations. These included home (80–90 per cent), licenced venues (30 per cent),

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<sup>18</sup> Financial Counselling Australia, Consumer Action Law Centre and Financial Rights Legal Centre, *Submission 19*, p. 1; see Businesswire.com, *Global Online Gambling Market Report 2020-2025 - COVID-19 has Led to a Sudden Rise in Revenues with Some Studies Reporting 67% Increase*, 23 October 2020; Daniel Boyle, *Entain revenue flat in 2020 amid year of change*, *igamingbusiness.com*, 4 March 2021.

<sup>19</sup> Australian Government—Australian Institute of Family Studies and Australian Gambling Research Centre, *National Consumer Protection Framework for Online Wagering—Baseline Study Final Report*, June 2019, p. 80.

<sup>20</sup> Australian Government—Australian Institute of Family Studies and Australian Gambling Research Centre, *National Consumer Protection Framework for Online Wagering—Baseline Study Final Report*, June 2019, pp. 80–82.

work (25 per cent), friend/family home (23 per cent), and sporting event/racetrack (23 per cent).<sup>21</sup>

- 2.21 The Australian Gambling Research Centre and Australian Institute of Family Studies surveyed over 2000 people who gambled from across Australia during June-July 2020. This research found that even though access to physical venues was limited, ‘overall, participants gambled more often during COVID-19’, and that the proportion who gambled four or more times a week increased from 23 per cent to 32 per cent.<sup>22</sup>
- 2.22 The research found young men aged 18–34 years were the group most likely to sign up for new online accounts and had increased their spending on gambling from \$687 to \$1075 a month.<sup>23</sup>

### **Which gambling services are regulated in Australia?**

- 2.23 Most of the gambling services provided in Australia are regulated, including sports and race wagering, in-venue casinos, lotteries, and the gambling activities provided by charitable organisations offered from within Australia.
- 2.24 Some of the regulations are within the jurisdiction of states and territories, such as the regulation of in-venue gambling services. Others, such as the regulation of online gambling services are covered by Commonwealth legislation (the Interactive Gambling Act).
- 2.25 Some gambling services offered from overseas, including online casinos and online poker, are currently illegal under the Interactive Gambling Act.<sup>24</sup>

### **The role of the Australian Communications and Media Authority**

- 2.26 The ACMA is the regulator for the Interactive Gambling Act and publishes a register of Australian-licensed interactive wagering service providers.
- 2.27 In 2017, the Interactive Gambling Act was amended with the aim of combatting groups outside Australia that provide illegal gambling services over the internet. The ACMA disrupts illegal gambling services through:
- targeted investigations, including into affiliate services that promote illegal gambling services;

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<sup>21</sup> Australian Government—Australian Institute of Family Studies and Australian Gambling Research Centre, *National Consumer Protection Framework for Online Wagering—Baseline Study Final Report*, June 2019, p. 82.

<sup>22</sup> Australian Government—Australian Institute of Family Studies and Australian Gambling Research Centre, *Gambling in Australia during COVID-19*, Research Summary, October 2020, p. 1.

<sup>23</sup> Australian Government—Australian Institute of Family Studies and Australian Gambling Research Centre, *Gambling in Australia during COVID-19*, Research Summary, October 2020, p. 1.

<sup>24</sup> The Australian Communications and Media Authority, answers to questions on notice, 14 September 2021 (received 2021).

- engaging with payment processors to identify transactions to illegal providers;
- engaging with other third-party providers, such as software companies, that provide their services to illegal sites; and
- requesting internet service providers to block the websites of services found to be in breach of the Interactive Gambling Act.<sup>25</sup>

2.28 The ACMA noted illegal offshore gambling services often allow consumers to use Australian credit cards to deposit money into their accounts. The providers of illegal offshore services are typically located in jurisdictions with limited regulatory oversight and minimal or no consumer protections. Complaints received, and investigations undertaken by the ACMA to date, indicate that consumers face heightened risks due to offshore activity because of lack of regulation and oversight. These risks include:

- unauthorised use of credit cards;
- refusal to pay all or part of winnings; and
- lack of responses to customer enquiries.<sup>26</sup>

2.29 Since the 2017 reforms, over 140 online gambling services have withdrawn from the Australian market. Since the blocking of illegal online gambling websites began in 2019, 295 such sites have been blocked.<sup>27</sup>

2.30 The ACMA also has a role in minimising harm from online wagering and is responsible for two key measures under the National Consumer Protection Framework for online wagering. These measures prohibit some licenced interactive wagering services from providing credit betting via:

- credit to customers; or
- facilitating credit by third parties (such as payday lenders).<sup>28</sup>

2.31 Since the credit betting provisions commenced in 2018, the ACMA has undertaken seven investigations into potential breaches of these prohibitions.

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<sup>25</sup> Australian Communications and Media Authority, *Submission 1 to Senate Standing Legislation Committee on Environment and Communications inquiry into the Interactive Gambling Amendment (Prohibition on Credit Card Use) Bill 2020*, p. 1.

<sup>26</sup> Australian Communications and Media Authority, *Submission 1 to Senate Standing Legislation Committee on Environment and Communications inquiry into the Interactive Gambling Amendment (Prohibition on Credit Card Use) Bill 2020*, pp. 2–3.

<sup>27</sup> Australian Communications and Media Authority, *ACMA requests internet service providers block more illegal gambling websites*, 1 September 2021.

<sup>28</sup> Australian Communications and Media Authority, *Submission 1 to Senate Standing Legislation Committee on Environment and Communications inquiry into the Interactive Gambling Amendment (Prohibition on Credit Card Use) Bill 2020*, p. 1. Some exceptions apply to some wagering operators under section 15D and 15E of the *Interactive Gambling Act 2001*.

In six of those investigations, no breaches were found, while in the other case, the provider was found to have been non-compliant in 33 instances.<sup>29</sup>

## **Harms from gambling**

2.32 The harms from gambling can extend far beyond those persons termed ‘problem’ gamblers. As the Productivity Commission noted in its 2010 report, the term problem gambler is problematic and needs careful interpretation. For example, the term ‘can lead to an excessive focus on the individual traits—such as prior mental health conditions—that may precipitate gambling problems’.<sup>30</sup> However, the Productivity Commission noted that gambling technologies, venue behaviours and other aspects of the gambling environment are all factors that can lead to harmful outcomes for gamblers.<sup>31</sup>

2.33 The Productivity Commission also observed that the term implies that problems are exclusive to problem gamblers. Yet:

...ostensibly ‘non-problem’ gamblers sometimes account for more than half of those affected by some specific harms. For instance, around 60 per cent of those who admit they are experiencing health problems arising from their gambling are not categorised as problem gamblers.<sup>32</sup>

2.34 The 2010 Productivity Commission inquiry found:

- Total recorded expenditure (losses) in Australia reached just over \$19 billion in 2008-09 or an average of \$1500 per adult who gambled.
- Various state surveys suggested the number of Australians categorised as problem gamblers was around 115 000.
- The risks of problem gambling were low for people who only play lotteries and scratchies but rose steeply with the frequency of gambling on table games, wagering and, especially, gaming machines.
- The social cost of problem gambling—estimated to be at least \$4.7 billion a year—meant even policy measures with modest efficacy in reducing harm would often be worthwhile.
- Moderate risk and problem gamblers were much more likely to use credit cards and access credit accounts than other gamblers. These gamblers were at risk of accumulating losses and being placed in a position where they cannot manage their financial affairs appropriately.<sup>33</sup>

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<sup>29</sup> The Australian Communications and Media Authority, answers to questions on notice 14 September 2021 (received 28 September 2021).

<sup>30</sup> Productivity Commission, *Gambling*, 26 February 2010, pp. 17–18.

<sup>31</sup> Productivity Commission, *Gambling*, 26 February 2010, p. 18.

<sup>32</sup> Productivity Commission, *Gambling*, 26 February 2010, p. 18.

<sup>33</sup> Productivity Commission, *Gambling*, 26 February 2010, pp. 2–3, 13.40.

### *Harms from online gambling*

2.35 With the growth in the availability of online gambling, more recent studies have considered the harms arising from online gambling. The 2018 National Framework baseline study found:

- compared to non-interactive gamblers, people who gamble online are more likely to experience higher rates of gambling-related harm; and
- around half of the study's 5076 participants were classified as at risk of, or already experiencing, gambling-related harm. Over 7 per cent of participants (393) reported they had suffered increased credit card debt because of online gambling.<sup>34</sup>

2.36 The ACT Council of Social Service argued that certain factors in the online gambling environment can magnify the potential for harm:

Online gambling creates an environment in which people can gamble at any time, in any place, and in a 'cashless' way which can distance the person gambling from the money which is being spent. For those who experience problem gambling this can be a particularly dangerous set of circumstances.<sup>35</sup>

2.37 The Australian Government has recognised the higher rates of harm from online gambling. In 2018, the Australian Government expressed concern that the rate of online problem gambling in Australia is three times higher than all other gambling platforms.<sup>36</sup> On 30 November 2018, the Hon Paul Fletcher MP, Minister for Families and Social Services, stated that more than 240 000 Australians already experience significant harm from online wagering.<sup>37</sup>

### *Harms from the use of credit for online gambling*

2.38 The Gambling Treatment and Research Clinic argued that the use of credit cards to pay for gambling is a risk factor because it extends the pool of money able to be gambled beyond a person's savings:

Borrowing money for gambling, including through use of credit cards, constitutes a significant risk factor for the development and/or exacerbation of gambling problems.<sup>38</sup>

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<sup>34</sup> Australian Gambling Research Centre & Australian Institute of Family Studies, *The National Consumer Protection Framework for Online Wagering: Baseline study*, Final Report, June 2019, pp. 6, 8, 68.

<sup>35</sup> ACT Council of Social Service, *Submission 7*, p. 2.

<sup>36</sup> Australian Government, National Consumer Protection Framework for Online Wagering in Australia, *National Policy Statement*, 26 November 2018, p. 1.

<sup>37</sup> The Hon Paul Fletcher MP, Minister for Families and Social Services, First National Framework to help reduce harm from online wagering, *media release*, 30 November 2018.

<sup>38</sup> Gambling Treatment and Research Clinic, *Submission 1*, p. 2.

2.39 Dr Charles Livingstone of the Public Health Association of Australia observed that the use of credit for gambling poses a serious risk of increased harm:

...someone who's in the moderate-risk category has a very high risk of transitioning rapidly into the serious gambling harm category, particularly if they, for example, start gambling on credit cards.<sup>39</sup>

2.40 Dr Livingstone pointed out the available data 'suggests that well over 40 per cent or 50 per cent of those who use credit cards regularly for their gambling are experiencing severe harm'.<sup>40</sup>

2.41 Importantly, the combination of online gambling and credit exacerbates problem gambling and its associated financial and social harms.<sup>41</sup> This can lead to extreme financial hardship, loss of employment, bankruptcy, and broader harms including relationship breakdown, mental illness and homelessness.<sup>42</sup>

2.42 Financial hardship appears to be the most common harm experienced by those who gamble online. A survey in 2012 of 3199 Australians who gamble online found reduced savings and low-level debt are the most common harms experienced by individuals.<sup>43</sup>

2.43 There appear to be two key reasons for the speed and severity of the harm from combining online gambling and credit. First, it is quicker and easier to lose large sums of money when gambling online in comparison to other forms of gambling:

The speed of losses with online gambling is different to the pokies. The online cohort are losing so much more in a very short period. Some clients tell us that it doesn't seem like real money until it has all gone.<sup>44</sup>

2.44 Second, the scale of financial hardship can be magnified when credit cards are used. This occurs because of the detrimental compounding effects when

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<sup>39</sup> Dr Charles Livingstone, Public Health Association of Australia, *Committee Hansard*, 13 August 2021, p. 26.

<sup>40</sup> Dr Charles Livingstone, Public Health Association of Australia, *Committee Hansard*, 13 August 2021, p. 21.

<sup>41</sup> Dr Charles Livingstone, Public Health Association of Australia, *Committee Hansard*, 13 August 2021, p. 26; Dr Kathryn da Costa, Head of Campaign, Alliance for Gambling Reform, *Committee Hansard*, 13 August 2021, p. 26.

<sup>42</sup> ACT Council of Social Service, *Submission 7*, p. 3; Suicide Prevention Australia, *Submission 10*, pp. 1–2; Financial Counselling Australia, Consumer Action Law Centre and Financial Rights Legal Centre, *Submission 19*, pp. 2–6.

<sup>43</sup> Gambling Treatment and Research Clinic, *Submission 1*, p. 2.

<sup>44</sup> Financial Counselling Australia, Consumer Action Law Centre and Financial Rights legal Centre, *Submission 19*, p. 1.



problem gamblers quickly spend their own savings and begin using credit to continue funding their gambling.<sup>45</sup>

- 2.45 Financial Counselling Australia, the Consumer Action Law Centre and the Financial Rights Legal Centre noted that when a gambler has used their own wages or savings:

...they turn to credit and this is where the harm is compounded. Clients commonly present having multiple credit cards, with some having as many as 10 or even 15. Others have been able to easily increase their credit limits, despite it being evident they are borrowing for debt financed gambling.<sup>46</sup>

- 2.46 The Alliance for Gambling Reform noted this makes it easier to quickly fall into financial hardship than in other forms of gambling. This financial hardship is compounded by the high interest rates charged on credit card debt. This increases the risk that people gambling with credit lose all their assets.<sup>47</sup>
- 2.47 Ms Levin of Financial Counselling Australia told the committee of Carl's struggle with debt from gambling online with credit (see Box 2.1).<sup>48</sup>

### **Box 2.1 Carl**

Carl was in a car accident, where he suffered traumatic brain injury. Following this, he was unable to work and his only asset was his home. Soon after his accident he started gambling uncontrollably, using his savings and then his two bank credit cards from one of the big four banks. On one of the credit cards, he spent over \$90 000 in gambling transactions over a period of two months. Carl could not afford to keep up with the payments, and pretty soon after the bank sold those credit card debts to two different debt collectors. Four years later the debt collectors obtained two court judgements against him for a total of \$106 000...These were his only debts. One of the debt collectors then obtained a writ of levy against his home. Carl reached out to the Financial Rights Legal Centre for help and told us he was suicidal. He was afraid the debt collectors were going to take his home. Financial Rights very quickly took action. We made contact with the debt collectors and the original bank, whose credit cards he gambled on. We were able to negotiate a good outcome for Carl, but had he not reached out for assistance from us he would have lost his home and possibly his life. The only debts he had were the credit card debts that had come from his uncontrollable gambling surge.

<sup>45</sup> Dr Charles Livingstone, Public Health Association of Australia, *Committee Hansard*, 13 August 2021, p. 21.

<sup>46</sup> Financial Counselling Australia, Consumer Action Law Centre and Financial Rights Legal Centre, *Submission 19*, p. 1; see also Alliance for Gambling Reform, *Submission 11*, p. 2.

<sup>47</sup> Alliance for Gambling Reform, *Submission 11*, p. 2; see also Financial Counselling Australia, Consumer Action Law Centre and Financial Rights Legal Centre, *Submission 19*, p. 1; Ms Lauren Levin, Financial Counselling Australia, *Committee Hansard*, 13 August 2021, p. 12.

<sup>48</sup> Ms Lauren Levin, Financial Counselling Australia, *Committee Hansard*, 13 August 2021, pp. 10–11.

## Harmful mental health impacts from gambling with credit

2.48 The financial and social harm from problem gambling can be detrimental to an individual's mental health, with potentially severe effects including suicide.

2.49 Dr Livingstone highlighted a link between gambling debt and suicide:

...if you're gambling with money you don't have, you are already in serious trouble. The problem with credit card gambling is it's very easy for those people who are already starting to get into difficulties to extend those difficulties through the phenomenon known as chasing losses. I'm sure that you're familiar with that concept, but the sense is that, once people get into a bit of trouble, they think, 'I'll just borrow a bit of money, put it on whatever and I'll be right and can pay off my debts.' Unfortunately, that's not usually how it works. This begins a spiral that can become in some cases terminal for people, certainly in terms of their relationships, lifestyle and everything else. Sadly, we do know that there's a great association between gambling indebtedness and suicide. This has been demonstrated now by multiple studies in overseas countries, particularly in Sweden and the United Kingdom.<sup>49</sup>

2.50 Suicide Prevention Australia submitted that 1 in 5 individuals presenting with suicidality, that is those who are having suicidal thoughts, are experiencing issues with gambling.<sup>50</sup> While Suicide Prevention Australia noted that the evidence on the relationship between gambling and suicide is not comprehensive, they pointed out that:

...gambling leads to financial distress, unemployment, and relationship breakdown: all established risk factors for distress and, sadly, suicide.<sup>51</sup>

2.51 Suicide Prevention Australia submitted the example in Box 2.2.<sup>52</sup>

### Box 2.2 Paul

Paul\* was a 32-year-old tradie, who prior to losing his job he was a responsible gambler. Once he lost his job, he spent his entire Newstart payments on gambling. He asked for financial counselling services. The bank repossessed his home without notifying his financial counsellor, and he suicided. People in trouble can't always get out of deep depression.

Reported by frontline worker at Suicide Prevention Australia's Policy Roundtable on Problem Gambling & Suicide held 20 October 2020.

\*Name changed to protect privacy

<sup>49</sup> Dr Charles Livingstone, Public Health Association of Australia, *Committee Hansard*, 13 August 2021, p. 21.

<sup>50</sup> Suicide Prevention Australia, *Submission 10*, p. 2.

<sup>51</sup> Suicide Prevention Australia, *Submission 10*, p. 1.

<sup>52</sup> Suicide Prevention Australia, *Submission 10*, p. 2.

2.52 Problem gamblers are also at risk of homelessness. Suicide Prevention Australia also submitted that between 15 and 20 per cent of those experiencing homelessness are homeless due to a gambling addiction.<sup>53</sup>

### **Harmful impacts on family and friends**

2.53 Gambling online with a credit card may not only be detrimental to the individual gambler, but also to their family, friends, colleagues, and employers. Dr Kathryn da Costa likened it to second-hand smoke:

...the harm caused by various types of gambling is experienced by a whole lot of people, including...people who don't actually gamble themselves but are like passive smokers, in a relationship with someone who smokes.<sup>54</sup>

2.54 Ms Levin of Financial Counselling Australia recounted a case of gambling with credit involved family deceit (Box 2.3).<sup>55</sup>

#### **Box 2.3 Gambling with credit involving family deceit**

I got a call from a financial counsellor to say she just had a client, who was a woman in her late 70s, who had discovered that her husband had gambled and that they were going to lose the house. So gambling goes with a lot of deceit. People talk about a web of deceit. I think that no woman should wake up one day and find her life has been totally destroyed without having known about it.

2.55 Ms Levin recounted another case of gambling with credit that involved family fraud (Box 2.4).<sup>56</sup>

#### **Box 2.4 Gambling with credit involving family fraud**

There was one case with a young guy using his grandfather's and father's card. This particular operator—it's not one of the larger operators—accepted it. They didn't ask for any proof that it was his card. When the father challenged it, he went to his bank and put in place a bank charge back. The gambling company CEO wrote and said 'If you don't remove this, I'm going to essentially dob your son in to the police.' We know that gambling and fraud go together; this is called family fraud, and I think the industry call it friendly fraud.... When you have that contact, what do you do? Who do you go to? Parents don't want their son to end up in court. There's no-one to go to.

2.56 Gambling with credit can have severe consequences not only for the individual, but also family and employees in a workplace. Dr Livingstone

<sup>53</sup> Suicide Prevention Australia, *Submission 10*, p. 2.

<sup>54</sup> Dr Kathryn da Costa, Alliance for Gambling Reform, *Committee Hansard*, 13 August 2021, p. 26.

<sup>55</sup> Ms Lauren Levin, Financial Counselling Australia, *Committee Hansard*, 13 August 2021, p. 12.

<sup>56</sup> Ms Lauren Levin, Financial Counselling Australia, *Committee Hansard*, 13 August 2021, pp. 16–17.

shared the following case which resulted in insolvency and job losses (see Box 2.5).<sup>57</sup>

### **Box 2.5 Gambling with credit leading to company insolvency and job losses**

A recent case was Jaicome Spinella who went to prison for four years just recently. He was convicted on 8 June. He jointly ran Barwon concrete with his brother. Between December 2016 and July 2017, he was able to use his company credit card and lose over \$3 million to Ladbrokes through the process of 571 transactions. He lost \$3 million which came out of the company. As a result of that, the company went into receivership and the 55 employees lost jobs. Creditors were owed \$6.7 million as a result... During the court case the media reported that Ladbrokes staff internally talked about Mr Spinella being a high-value customer who they didn't want to let go and the judge was quoted as having accused the company of engaging in grooming-like behaviour.

### **Lower harm from lotteries and scratchies**

- 2.57 As noted by the Productivity Commission in 2010, not all forms of gambling create harm and the risks of problem gambling are low for people who only play lotteries and scratchies<sup>58</sup>.
- 2.58 Lotteries in this report refer to those exempt online lotteries under the Interactive Gambling Act, such as lotteries that are not highly repetitive or frequently drawn forms of keno-type lotteries.<sup>59</sup>
- 2.59 Not-for-profit and charitable organisations, and Mr David Attenborough from Tabcorp, pointed out that due to the lower transaction values and delayed outcomes, lottery gambling services cause lower levels of harm than wagering, games, and other gambling services.<sup>60</sup>
- 2.60 The Australian Lottery and Newsagents Association (ALNA) noted that the exempt lotteries (as defined in the Interactive Gambling Act):
- ...typically have the lowest per-customer spend when compared to other gambling forms and they are very well regulated and responsibly managed by our retailers who deal face to face with their customers, who are often very familiar to them.<sup>61</sup>

<sup>57</sup> Dr Charles Livingstone, Public Health Association of Australia, *Committee Hansard*, 13 August 2021, p. 20.

<sup>58</sup> Productivity Commission, *Gambling*, 26 February 2010, p. 2.

<sup>59</sup> *Interactive Gambling Act 2001*, Subsection 8D(1B).

<sup>60</sup> Not-for-profit and charitable organisations, *Submission 22*, p. 1; see also Mr David Attenborough, Managing Director and Chief Executive Officer, Tabcorp, *Committee Hansard*, 3 September 2021, p. 2.

<sup>61</sup> Mr Ben Kearney, Chief Executive Officer, Australian Lottery and Newsagents Association, *Committee Hansard*, 13 August 2021, p. 57.

2.61 The ALNA also pointed to research conducted since the Productivity Commission inquiry in 2010 that provides ongoing evidence for low levels of harm from lotteries and scratchies:

Research by the Australian Gambling Research Centre in 2017 found that the prevalence of past-year gambling problems was lowest amongst people who participated in lotteries... Additionally, a New South Wales gambling survey in 2019 concluded that lottery tickets and instant scratchies are associated with a lower rate of problem gambling and harm.<sup>62</sup>

### **Committee view**

- 2.62 Online gambling is currently the fastest growing section of the gambling market. Evidence to the inquiry identified substantial harm resulting from the ability to gamble online with credit. To be clear, this harm results primarily from online wagering with credit, not using credit to purchase lottery tickets and scratchies.
- 2.63 Indeed, the use of credit cards to pay for gambling can extend the pool of money that a person can gamble beyond their savings. This can lead to extreme financial hardship, loss of employment or business failure, bankruptcy, relationship breakdown, mental illness and homelessness.
- 2.64 As the Australian Government has already recognised, close to a quarter of a million Australians already experience significant harm from online wagering. This harm is not restricted to the individual gambler. The impacts spill out and affect family, friends, and the broader community.
- 2.65 The committee acknowledges the heartbreaking personal stories contained in several organisational submissions and witness testimony. While the data is limited on the links between the use of credit cards and digital wallets and gambling behaviour and gambling harm, it is clear that for a certain cohort of citizens (and their families), the harmful consequences can be significant and life changing.
- 2.66 The committee also recognises the work done by the Productivity Commission in two previous inquiries into gambling, and more recent work by the Australian Gambling Research Centre and the Australian Institute of Family Studies. Nevertheless, the committee sees this as an area in which research and data is deficient. Therefore, the committee recommends the gathering of further data on the size and growth of the online gambling market in Australia, online gambling with credit, and the extent and nature of the associated harms.

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<sup>62</sup> Mr Benjamin Kearney, Chief Executive Officer, Australian Lottery and Newsagents Association, *Committee Hansard*, 13 August 2021, p. 57.

**Recommendation 1**

**2.67 The committee recommends the Australian Government prioritise the collection of data on online gambling in Australia, including the size and growth of the online gambling market, online gambling with credit, and the extent and nature of the associated harms.**

# Chapter 3

## Online payment systems

### Introduction

- 3.1 This chapter unpacks the online payments system and the current regulations and prohibitions to provide context for the policy options considered in chapter 4.
- 3.2 It begins by summarising the various methods of paying for online gambling using either debit or credit. It then provides an overview of how the online payment system works, including briefly describing Bank Identification Numbers and Merchant Category Codes. Next, it covers the definition and regulation of the various types of credit for online gambling before giving an overview of current bans on using credit for gambling in Australia. The chapter finishes by considering the limitations and issues with how the regulatory system currently operates.

### Debit and credit payment methods for online gambling

- 3.3 To gamble online, a person must open an account with an online gambling service provider. Online gambling can be done using either debit or credit. Debit payment methods include debit cards, and transfers from savings or cheque accounts using BPAY.
- 3.4 To use credit, a gambler can deposit funds into their online gambling account through one of the following methods:
- credit integrated with payment methods:
    - credit card on a website or via an interactive voice response system;<sup>1</sup>
    - Buy Now Pay Later (BNPL);<sup>2</sup>
  - payment methods that link to credit accounts and which may pass through or store value from credit:
    - digital wallets, such as Apple Pay, GooglePay or PayPal;<sup>3</sup>
    - travel and entertainments cards;
  - credit that is not integrated with payment methods, such as home loans, personal loans, car loans, and business loans.<sup>4</sup>

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<sup>1</sup> Exempt under section 15C of the *Interactive Gambling Act*.

<sup>2</sup> Legal status uncertain under section 15C of the *Interactive Gambling Act*, but not permitted under the Buy Now Pay Later Code of Practice.

<sup>3</sup> Digital wallets can also link to and draw on savings and cheque accounts.

### How credit payments are processed for online gambling

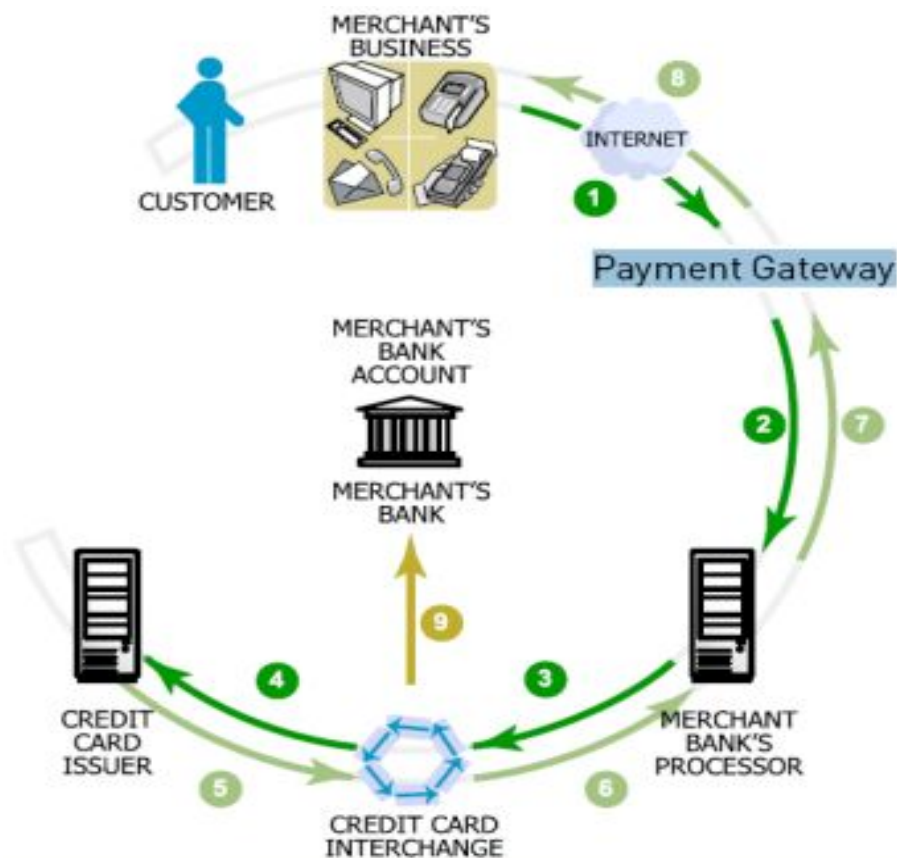
3.5 In most online payment processes, merchants receive payments via the internet. This section summarises:

- a typical online payment system that online gambling service providers may use;
- the Bank Identification Numbers that are used to identify the credit and debit cards issued by card issuers; and
- the Merchant Category Codes used by card networks to classify businesses and their transactions.

### The online payments system

3.6 Figure 3.1 illustrates the flow of payment information and funds when a customer pays using a credit card.

**Figure 3.1 The online payment process**



Source: Microsoft, Online payment flow, [http://mqs.gtpl.net/mqssubscribe/Help/Online\\_Payment\\_Flow.htm](http://mqs.gtpl.net/mqssubscribe/Help/Online_Payment_Flow.htm) (accessed 17 September 2021)

<sup>4</sup> Tabcorp, Making a deposit, <https://help.tab.com.au/s/article/Making-a-Deposit#TABVenues> (accessed on 8 October 2021). Home loans, personal loans, car loans, and business loans are not in scope for this inquiry. A line of credit provided by a gambling service provider or from third-parties facilitated by a gambling service provider was banned in 2018.



- 3.7 The steps in Box 3.1 explain how funds are transferred when a customer pays using a credit card:

**Box 3.1 How funds are transferred when a customer pays with a credit card**

- (a) A Customer submits the credit card transaction to the Payment Gateway via a secure connection from the Merchant's Website.
- (b) The Payment Gateway receives the secure transaction information and passes it via a secure connection to the Merchant Bank's Processor (a financial partner that provides credit card processing on behalf of the credit card networks).
- (c) The Merchant Bank's Processor submits the transaction to the Credit Card Interchange network (a network of financial entities that communicate to manage the processing, clearing, and settlement of credit card transactions).
- (d) The Credit Card Interchange network routes the transaction to the Customer's Credit Card Issuer (the customer's bank).
- (e) The Credit Card Issuer approves or declines the transaction based on the customer's available funds within their credit limit and passes the transaction results, and if approved, the appropriate funds back through the Credit Card Interchange network.
- (f) The Credit Card Interchange network relays the transaction results to the Merchant Bank's Processor.
- (g) The Merchant Bank's Processor relays the transaction results to the Payment Gateway.
- (h) The Payment Gateway stores the transaction results and sends them to the Merchant and the Customer.
- (i) The Credit Card Interchange network passes the appropriate funds for the transaction to the Merchant's Bank, which then deposits funds into the Merchant's Bank Account.

Source: Microsoft, Online payment flow, [http://mqs.gtpl.net/mqsubscribe/Help/Online\\_Payment\\_Flow.html](http://mqs.gtpl.net/mqsubscribe/Help/Online_Payment_Flow.html) (accessed 17 September 2021)

### Bank Identification Numbers

- 3.8 A Bank Identification Number (BIN) is the number (up to 19 digits) found on the front of a credit, debit or other type of payment card. The first four to six digits represent the BIN, which uniquely identifies the bank that issued the card and the card network used for processing transactions.<sup>5</sup>
- 3.9 The remaining digits on the card are the Primary Account Number which is used to identify the cardholder and link the card to a particular account with a financial institution. Every time a card is used in a transaction, a card processor uses the BIN and Primary Account Number to go through a series of

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<sup>5</sup> Kagan, Julia, *Bank Identification Number (BIN)*, Investopedia, 21 September 2020, <https://www.investopedia.com/terms/b/bank-identification-number.asp> (accessed 16 November 2021).

verification steps to ensure the cardholder is authorized to make the transaction and that the account has sufficient funds.<sup>6</sup>

- 3.10 A total of 44 card-issuing banks in Australia issue credit and debit cards under 78 different BINs.<sup>7</sup> The BIN enables participants in the payments process to identify whether the card is a credit card or a debit card, because credit and debit cards have different BINs.<sup>8</sup>

### **Merchant Category Codes**

- 3.11 A Merchant Category Code (MCC) is a four-digit number that indicates the line of business and the types of goods or services a merchant provides to its customers. The International Organization for Standardization (ISO) sets out the global requirements for MCCs including the codes and meanings.<sup>9</sup>

#### *How MCCs are assigned*

- 3.12 The MCC is chosen by the acquirer or payment processor when the merchant applies for service. The MCC is assigned based on the type of business activity of the merchant. Where a merchant has multiple lines of business, the MCC should align with the activity that accounts for most of the merchant's business.<sup>10</sup> Merchants can request a specific MCC, but they only get that MCC if they qualify for it.<sup>11</sup>
- 3.13 When providing the merchant with an MCC, a financial institution must follow card network rules and ISO standards. Each card network has its own list of MCCs.<sup>12</sup>

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<sup>6</sup> Kagan, Julia, *Issuer Identification Number (IIN)*, Investopedia, 17 April 2020, <https://www.investopedia.com/terms/i/issuer-identification-number-iin.asp> (accessed 21 September 2021).

<sup>7</sup> See Credit Card Validator, *Australia Credit Card IIN List*, <https://www.creditcardvalidator.org/country/au-australia> (accessed 21 September 2021).

<sup>8</sup> Kagan, Julia, *Bank Identification Number (BIN)*, Investopedia, 21 September 2020, <https://www.investopedia.com/terms/b/bank-identification-number.asp> (accessed 16 November 2021).

<sup>9</sup> Chris Motola, *Merchant Category Codes (MCC): All You Need To Know*, Merchant Maverick, 26 May 2021.

<sup>10</sup> Mastercard, answers to questions on notice, 20 September 2021, (received 28 September 2021); Australian Banking Association, answers to questions of notice, 13 August 2021, 3 September 2021; Visa, answers to questions on notice, 20 September 2021 (received 28 September 2021).

<sup>11</sup> Chris Motola, *Merchant Category Codes (MCC): All You Need To Know*, Merchant Maverick, 26 May 2021.

<sup>12</sup> Chris Motola, *Merchant Category Codes (MCC): All You Need To Know*, Merchant Maverick, 26 May 2021.

3.14 MCCs are used by acquiring banks and payment service providers to set fees and assess risk. Payment services companies use MCCs to identify prohibited industries that they will not take on as customers.<sup>13</sup>

3.15 Card networks use MCCs to determine interchange rates fees, charge convenience fees, identify high-risk industries, calculate credit card rewards, and approve payment service providers.<sup>14</sup>

#### *MCCs in the gambling industry*

3.16 MCC 7995 is assigned to betting, including lottery tickets, casino gaming chips, off-track betting, and wagers at racetracks. Visa noted that for merchants with businesses using the MCC 7995, the requirements differ for card-present and card-absent (including telephone and internet) transactions.

- In a card-present environment, a merchant that conducts gambling transactions must use MCC 7995 for those transactions. If the merchant also sells other goods or services, it must use the appropriate MCC for the other services.
- For the card-absent environment, if the merchant conducts online gambling transactions, it must use MCC 7995 for all transactions, even if gambling is not the merchant's primary business.<sup>15</sup>

#### *Introducing a new MCC*

3.17 Visa noted that while MCCs are set globally, the justification in the application for a new MCC can be based on a national requirement in laws or regulations.<sup>16</sup>

3.18 To introduce a new MCC, a merchant, issuer, acquirer, or card network applies to the ISO. The ISO is presently reviewing applications within 90 days. If an application is approved, changes are then implemented to the card network standards and network systems, a process that would take a further nine months. A merchant's acquirer will assign a new MCC to the merchant.<sup>17</sup>

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<sup>13</sup> Chris Motola, *Merchant Category Codes (MCC): All You Need To Know*, Merchant Maverick, 26 May 2021.

<sup>14</sup> Chris Motola, *Merchant Category Codes (MCC): All You Need To Know*, Merchant Maverick, 26 May 2021.

<sup>15</sup> Visa, answers to questions on notice, 20 September 2021 (received 28 September 2021).

<sup>16</sup> Visa, answers to questions on notice 20 September 2021 (received 28 September 2021).

<sup>17</sup> Mastercard, answers to questions on notice, 20 September 2021 (received 28 September 2021); Visa, answers to questions on notice 20 September 2021 (received 28 September 2021).

3.19 The Australian Banking Association suggested that switching to a pre-existing MCC is easier and faster, provided it still fits the purpose of the merchant's business.<sup>18</sup>

### **Definition and regulation of types of credit for online gambling**

3.20 Section 11A of the *Interactive Gambling Act 2001* (Interactive Gambling Act) defines credit for online gambling:

For the purposes of this Act (other than Part 7B), credit is provided by a person (the creditor) to another person (the debtor) if, under a contract, arrangement or understanding:

- (a) payment of a debt owed by the debtor to the creditor is deferred; or
- (b) the debtor incurs a deferred debt to the creditor.

3.21 Section 15C of the Interactive Gambling Act provides that credit is not to be provided to customers of certain interactive wagering services:

(1) A person commits an offence if:

(a) the person intentionally provides a regulated interactive gambling service that is a wagering service; and

(b) either:

(i) the person provides, or offers to provide, credit in connection with the service to a customer, or prospective customer, of the service who is physically present in Australia; or

(ii) the person facilitates or promotes the provision of credit (other than by way of an independently issued credit card), by a third person, in connection with the service to a customer, or prospective customer, of the service who is physically present in Australia.

### *Credit cards*

3.22 Section 15C(b)(ii) of the Interactive Gambling Act states that the provision of credit does not apply to independently issued credit cards. Subsection 15C(7) of the Interactive Gambling Act ensures the exemption for credit cards does not apply in relation to credit cards issued by gambling service providers or by related companies.<sup>19</sup>

### *Digital wallets*

3.23 According to the Australian Banking Association, digital wallets as a payment method are not classified as credit.<sup>20</sup> However, digital wallets can have

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<sup>18</sup> Australian Banking Association, answers to questions on notice 20 September 2021 (received 30 September 2021).

<sup>19</sup> Interactive Gambling Amendment Bill 2016, *Supplementary Explanatory Memorandum*, p. 6.

<sup>20</sup> Australian Banking Association, answers to questions on notice, 14 September 2021 (received on 23 September 2021).

multiple functions. Firstly, a digital wallet can hold a representation of a credit card and make payments using the credit card online or at a physical point of sale. Secondly, some digital wallets can store value, allowing users to load currency into the digital wallets and then use it to make payments. The user could potentially use a credit card (cash advance) or other forms of credit as the source of funds.<sup>21</sup>

### *Buy Now Pay Later*

3.24 It is uncertain whether gambling using credit via Buy Now Pay Later (BNPL) would be contrary to subsection 15C(1) of the Interactive Gambling Act. The broader definition of credit in section 11A of the Interactive Gambling Act may apply to using credit via digital wallets, BNPL, or travel and entertainment cards. However, the Australian Communications and Media Authority (the ACMA) indicated that it would depend on the individual case.<sup>22</sup>

3.25 The Australian Finance Industry Association (AFIA) launched its BNPL Code of Practice in March 2021. Signatories to the BNPL Code of Practice will not provide BNPL products or services for online gambling, retail gambling or gambling at domestic or offshore casinos by taking reasonable and appropriate actions with their merchants or retail partners. AFIA noted that the BNPL providers could make this commitment because their products, services, and technologies have not been offered or used in the gambling industry.<sup>23</sup>

### *Travel and entertainment cards and vouchers*

3.26 Travel and entertainment cards (T&E cards) are charge cards used to pay for a hotel, airline, and other business-related expenses. T&E cards use 30-day charge accounts, with payment due in full before the next billing cycle.<sup>24</sup> The Australian Banking Association suggested that as T&E cards are payment methods and are not classified as credit, they are not banned by the Interactive Gambling Act.<sup>25</sup> Tabcorp argued that betting vouchers and bonus bets should not be classified as a form of credit for online gambling because Australians

<sup>21</sup> Julia Kagan, Digital Wallet, Investopedia, 29 March 2021, <https://www.investopedia.com/terms/d/digital-wallet.asp> (accessed 16 November 2021); Ms Lauren Levin, Director, Policy and Campaigns, Financial Counselling Australia, *Committee Hansard*, 13 August 2021, p. 13; Dr Charles Livingstone, Public Health Association of Australia, *Committee Hansard*, 13 August 2021, p. 20.

<sup>22</sup> The Australia Communications and Media Authority, answers to question on notice 14 September 2021 (received 28 September 2021); Australian Banking Association, answers to questions on notice, 14 September 2021 (received on 23 September 2021).

<sup>23</sup> Australian Finance Industry Association, *Submission 16*, pp. 2–3.

<sup>24</sup> [https://www.allbusiness.com/barrons\\_dictionary/dictionary-travel-entertainment-te-card-4942709-1.html](https://www.allbusiness.com/barrons_dictionary/dictionary-travel-entertainment-te-card-4942709-1.html) (accessed 17 September 2021).

<sup>25</sup> Australian Banking Association, answers to questions on notice, 14 September 2021 (received on 23 September 2021).

are not able to buy vouchers with credit and then use them to deposit into a gambling account.<sup>26</sup>

*Credit betting (the provision of a line of credit by a gambling service provider)*

3.27 Credit betting refers to the provision of a line of credit by a gambling operator to allow a customer to place bets without using deposited funds.<sup>27</sup> Section 15C of the Interactive Gambling Act prohibits online wagering operators from providing credit to Australian customers or facilitating credit via third parties (including the provision of a line of credit by a gambling operator).<sup>28</sup>

3.28 The ACMA noted that while the term ‘line of credit’ is not a term used in the Interactive Gambling Act, accepting bets when there are insufficient funds may be considered the provision of a line of credit.<sup>29</sup>

### **Overview of current bans on using credit for gambling in Australia**

3.29 In the early 2000s, Australian state and territory governments began introducing bans on the use of credit cards for gambling and cash advances on credit cards in casinos, racetracks and in gambling areas of licensed venues.<sup>30</sup>

3.30 Online gaming gambling services as defined in clause (e) of section 4 of the Interactive Gambling Act, such as online casinos and online pokies, are prohibited in the Australian market by section 5 of the Interactive Gambling Act.<sup>31</sup> Such services are offered by illegal offshore gambling websites.

3.31 Under the Interactive Gambling Act, it is also illegal for gambling providers to promote or offer credit for online sports betting, in-play sports betting, sports betting services that do not hold an Australian licence, advertise banned services, and betting on the outcome of a lottery.<sup>32</sup>

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<sup>26</sup> Mr David Attenborough, Managing Director and Chief Executive Officer, Tabcorp, *Committee Hansard*, 3 September 2021, pp. 2, 4.

<sup>27</sup> The Hon Barry O’Farrell, *Review of Illegal Offshore Wagering*, 18 December 2015, p. 4.

<sup>28</sup> The Australian Communications and Media Authority, *Review of Part 2B of the Interactive Gambling Act 2001—Credit betting prohibitions*, *Consultation Paper*, February 2021, p. 1; Responsible Wagering Australia, answers to questions on notice, 14 September 2021 (received 21 September 2021); Australian Banking Association, answers to questions on notice, 14 September 2021 (received 23 September 2021).

<sup>29</sup> The Australian Communications and Media Authority, answers to questions on notice 14 September 2021 (received 28 September 2021).

<sup>30</sup> A summary of current bans is in Appendix 4.

<sup>31</sup> The Australian Communications and Media Authority, answers to questions on notice, 14 September 2021 (received 28 September 2021).

<sup>32</sup> The Australian Communications and Media Authority, *About the Interactive Gambling Act*, <https://www.acma.gov.au/about-interactive-gambling-act> (accessed 7 July 2021).

3.32 Table 3.1 provides a high-level summary of the existing bans on using credit for gambling in Australia.

**Table 3.1 Existing regulatory bans on gambling with credit**

<b>Credit betting (role of gambling service provider)</b>	<b>Online wagering</b>	<b>Online gaming (all fund types) *</b>	<b>Online Lotteries (including tickets from newsagents)</b>	<b>In-venue gambling services<sup>†</sup></b>
<u>Providing</u> a line of credit for gambling	<b>Banned</b> under IGA S15C(b)(i)	<b>Banned</b> under IGA S5	<b>Exempt</b> under IGA S4 & S5	<b>Banned</b> by states & territories, except for Casino high roller rooms <sup>‡</sup>
<u>Facilitating</u> gambling with credit from third parties	<b>Banned</b> under IGA S15C(b)(ii)	<b>Banned</b> under IGA S5	<b>Exempt</b> under IGA S4 & S5	<b>Banned</b> by states and territories
<u>Facilitating</u> gambling with <u>credit integrated with payment methods</u> such as BNPL <sup>§</sup> , digital wallets and travel & entertainment cards <sup>  </sup>	<b>Uncertain</b> under IGA S15C(b)(ii) <sup>#</sup>	<b>Banned</b> under IGA S5	<b>Exempt</b> under IGA S4 & S5	<b>Uncertain</b> under state and territory laws
<u>Facilitating</u> gambling with <u>credit integrated with payment methods</u> via most independently issued credit cards) <sup>**</sup>	<b>Exempt</b> under IGA S15C(b)(ii)	<b>Banned</b> under IGA S5	<b>Exempt</b> under IGA S4 & S5	<b>Banned</b> by states and territories, except for lotteries
<u>Facilitating</u> gambling with deposits derived from <u>credit not integrated with payment methods</u>	<b>Not in scope</b>	<b>Banned</b> under IGA S5	<b>Exempt</b> under IGA S4 & S5	<b>Not in scope</b>

Source: *Interactive Gambling Act 2001*.<sup>33</sup>

Key: IGA = *Interactive Gambling Act 2001*. Grey sections are the focus of the inquiry.

<sup>33</sup> \* Section 5 of the *Interactive Gambling Act 2001* bans online gaming gambling services regardless of how they are funded, there are some exemptions under Section 8B.

3.33 The ACMA indicated it was not aware of the existence of any interactive gambling services that fall under clause (f) of section 4 of the Interactive Gambling Act.<sup>34</sup>

3.34 In summary:

- Using credit for in-venue gambling services is banned by states and territories, with some exemptions for high roller gaming gambling and lotteries (casinos extend lines of credit from their own credit facilities to their customers in VIP rooms, but they do not provide credit cards in those areas)<sup>35</sup>.
- Most online gaming gambling services are banned under section 5 of the Interactive Gambling Act, regardless of how they are funded.
- The current credit betting provisions of the Interactive Gambling Act as shown in Table 3.1:
  - exempt online wagering with independently issued credit cards;
  - exempt online lotteries, including tickets from newsagents and lotteries that are not highly repetitive or frequently drawn keno-type lotteries;
  - ban online wagering with certain types of credit;
  - may be uncertain about bans on online wagering with credit that is integrated with payment methods (digital wallets, BNPL, travel and entertainment cards).

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† Australian Banking Association, *Every Customer Counts*, Appendices 3 and 5, pp. 24 and 27.

‡ Casinos extend lines of credit from their own credit facilities to their customers in VIP rooms, but they do not provide credit cards in those areas. Australian Banking Association, *Every Customer Counts*, Appendix 5.

§ Paying for gambling with BNPL is banned under the BNPL Industry Code of Conduct.

|| Digital wallets and travel & entertainment cards are payment methods that can pass through credit or stored value.

# The Australia Communications and Media Authority, answers to question on notice 14 September 2021 (received 28 September 2021). The ACMA's answer states: Under the IGA, there are a number of elements that must be satisfied to determine whether an offence has been committed under section 15C. This includes that, in determining if a wagering operator has provided credit for the purposes of the IGA, the ACMA must be satisfied there is a mutual intention between the parties under a contract, arrangement or understanding for credit to be provided (see definition of credit at section 11A). *Whether the use of the types of payment for online gambling set out in the question would be relevant to establishing the required elements would depend on the facts in individual cases* [emphasis added].

\*\* Some financial institutions have banned the use of credit cards for all gambling – see chapter text for details.

<sup>34</sup> The Australian Communications and Media Authority, answers to questions on notice, 14 September 2021 (received 28 September 2021).

<sup>35</sup> Australian Banking Association, *Every Customer Counts*, Appendix 5.



### *Bans imposed by financial institutions*

- 3.35 In addition to the above regulatory bans, several financial institutions in Australia do not permit gambling using credit cards. These include Macquarie Bank, Citibank, Suncorp, Bank of Queensland, Virgin Money, American Express, CUA, IMB, HSBC and Latitude Financial.<sup>36</sup>
- 3.36 In the US, it is illegal for banks to enable gambling on their credit cards. In addition, Citibank imposes a ban on its subsidiaries in all jurisdictions.<sup>37</sup> Citibank provides white-label<sup>38</sup> credit cards for Suncorp, Bank of Queensland, and Virgin Money and therefore, gambling is not permitted on those credit cards.<sup>39</sup> At the time of writing, it was not known whether the ban on the Citibank and its white-label credit card use for gambling would continue under the agreement announced by the National Australia Bank (NAB) to acquire the Citibank consumer banking business.<sup>40</sup>
- 3.37 The four major banks (Westpac, Commonwealth, National Australia Bank, and ANZ) give customers the option to restrict or completely block spending on gambling with their credit or debit cards. ANZ prohibits gambling transactions where the purchases take the customer over 85 per cent of their credit limit.<sup>41</sup>

### **Limitations and issues with how the system currently operates**

- 3.38 The key limitation with how the regulation of online gambling currently operates is the explicit exemption in the Interactive Gambling Act that allows a person to use an independently issued credit card for online wagering.
- 3.39 This limitation was not addressed in November 2018 when the Commonwealth, state and territory governments launched the National Consumer Protection Framework (National Framework). The National

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<sup>36</sup> Australian Banking Association, *Every Customer Counts*, p. 3; Tabcorp, *Making a deposit*, <https://help.tab.com.au/s/article/Making-a-Deposit#TABVenues> (accessed on 8 October 2021).

<sup>37</sup> Ms Anna Bligh, Chief Executive Officer, Australian Banking Association, *Committee Hansard*, 13 August 2021, p. 42.

<sup>38</sup> White label products are typically created and operated by one entity (a white labeller) and branded and retailed to consumers by another entity (a brand owner). In banking, white labelling is particularly common in credit cards and home loans. Australian Competition and Consumer Commission, *Consumer Data Right (CDR): Approach to disclosure of product data: white label products*, 22 July 2020, p. 1.

<sup>39</sup> Australian Banking Association, *Every Customer Counts*, p. 3.

<sup>40</sup> National Australia Bank, *NAB announces agreements to acquire Citigroup's Australia consumer business*, 9 August 2021, [https://news.nab.com.au/news\\_room\\_posts/nab-announces-agreement-to-acquire-citigroups-australian-consumer-business/](https://news.nab.com.au/news_room_posts/nab-announces-agreement-to-acquire-citigroups-australian-consumer-business/) (accessed on 8 October 2021).

<sup>41</sup> Department of Social Services, *Submission 8 to Senate Standing Legislation Committee on Environment and Communications inquiry into the Interactive Gambling Amendment (Prohibition on Credit Card Use) Bill 2020*, p. 5.

Framework applies to around 131 wagering service providers and around 2.5 million active online wagering accounts in Australia.<sup>42</sup> The 10 measures in the National Framework consolidate certain prohibitions (lines of credit, inducements) with measures that provide information, staff training, and voluntary tools (see Appendix 4).<sup>43</sup>

3.40 For example, the tenth measure in the National Framework is the National Self-Exclusion Register, a voluntary tool expected to begin trials in late 2021. It allows people to exclude themselves from licensed interactive wagering services in a single step for a minimum of 3 months and up to a lifetime period.<sup>44</sup>

3.41 If a person self-excludes, a wagering provider will not be able to let the person place a bet, open a new account, or send the person marketing messages.<sup>45</sup>

3.42 Nevertheless, voluntary tools appear inadequate for addressing the ease with which a person engaging in problem gambling can ‘shop around’ for a credit card when they require more credit to gamble. Financial Counselling Australia, the Consumer Action Law Centre and the Financial Rights Legal Centre submitted:

...we see people with gambling addictions shopping around for banks that will give them more credit cards. That is the nature of addiction. A few people receiving help for their addiction might seek out a bank with suitable products with embedded blocks, but when relapsing will move funds to one of the other banks.

Our current patchwork of protection is still allowing too many people to fall through the cracks.<sup>46</sup>

3.43 Financial Counselling Australia, the Consumer Action Law Centre and the Financial Rights Legal Centre submitted that it is not difficult for problem

<sup>42</sup> Department of Social Services, *Submission 8 to Senate Standing Legislation Committee on Environment and Communications inquiry into the Interactive Gambling Amendment (Prohibition on Credit Card Use) Bill 2020*, p. 1.

<sup>43</sup> Department of Social Services, *National Consumer Protection Framework for Online Wagering*, <https://www.dss.gov.au/communities-and-vulnerable-people-programs-services-gambling/national-consumer-protection-framework-for-online-wagering> (accessed on 7 July 2021).

<sup>44</sup> Australian Communications and Media Authority, *National Self-Exclusion Register*, <https://www.acma.gov.au/national-self-exclusion-register> (accessed on 7 July 2021).

<sup>45</sup> Australian Communications and Media Authority, *National Self-Exclusion Register*, <https://www.acma.gov.au/national-self-exclusion-register> (accessed on 7 July 2021).

<sup>46</sup> Financial Counselling Australia, the Consumer Action Law Centre and the Financial Rights Legal Centre, *Submission 19*, pp. 5–6.

gamblers to apply for and receive extensive lines of credit by using multiple credit cards.<sup>47</sup>

3.44 Further, a recent review of the current system was limited by only focussing on existing bans, not the gaps in the regulatory system. The ACMA credit betting review, tabled in Parliament on 25 October 2021,<sup>48</sup> found that the credit betting prohibitions in the Interactive Gambling Act are generally operating effectively.<sup>49</sup>

3.45 However, the scope of the review was restricted to the operation of the current legislation for credit betting. Therefore, it did not address the use of independently issued credit cards.<sup>50</sup>

### *Views on banning credit for online wagering in Australia*

3.46 There was broad support among submitters and witnesses for banning credit for online wagering in Australia.

3.47 As noted in the previous chapter, various public health, research, and community financial counselling and consumer and financial rights organisations, urged prompt action to ban the use of credit for online wagering.

3.48 In December 2020, the Australian Banking Association released its consultation report on the use of credit cards for gambling transactions. Among other things, the report found most respondents considered the use of credit cards for online gambling should be prohibited.<sup>51</sup>

3.49 The submission from not-for-profit and charitable organisations supported controls on online gambling with credit.<sup>52</sup> In addition, Responsible Wagering

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<sup>47</sup> Financial Counselling Australia, the Consumer Action Law Centre and the Financial Rights Legal Centre, *Submission 19*, pp. 4, 6.

<sup>48</sup> House of Representatives, *Votes and Proceedings*, No. 149, 25 October 2021, pp. 2268.

<sup>49</sup> The Australian Communications and Media Authority, *Report on the review of Part 2B of the Interactive Gambling Act 2001 – Credit betting prohibitions*, August 2021, p. 2.

<sup>50</sup> The Australian Communications and Media Authority, *Submission 1 to Senate Standing Legislation Committee on Environment and Communications inquiry into the Interactive Gambling Amendment (Prohibition on Credit Card Use) Bill 2020*, p. 2.

<sup>51</sup> ABA YouGov independent market research survey: The majority (81%) of Australians believe there should be restrictions on using credit cards for gambling, with over half (54%) stating their use should be banned altogether. Australian Banking Association, *Every Customer Counts*, Consultation Report, December 2020, p. 2.

<sup>52</sup> Not-for-profit and charitable organisations, *Submission 22.1*, pp. 1–2; *Submission 22*, pp. 1–2; see also *Submissions 4, 9, 15, 18* and evidence from yourtown, Mater Foundation, Endeavour Foundation and RSL Queensland, *Committee Hansard*, 13 August 2021.

Australia indicated its support for preventing online wagering with credit,<sup>53</sup> and Mr David Attenborough, Managing Director and Chief Executive Officer of Tabcorp indicated Tabcorp did not oppose a ban on the use of credit cards for online wagering.<sup>54</sup>

### **Committee view**

- 3.50 The committee welcomes the existing implementation of the Buy Now Pay Later Code of Practice that prevents the use of Buy Now Pay Later for gambling.
- 3.51 The committee also welcomes the positive views expressed by industry for preventing online gambling with credit, particularly from the industry peak body for online wagering, Responsible Wagering Australia, and from Tabcorp. The committee considers the endorsement from Responsible Wagering Australia to be timely as evidence to the inquiry overwhelmingly supported action to ban online gambling with credit.
- 3.52 However, the committee is concerned that the limited protections currently available—such as the Self-Exclusion Register, opt-in credit card blocks offered by the Big 4 Australian banks, and the Buy Now Pay Later Code of Practice—do not sufficiently protect gamblers or their families and friends. It is still too easy to gamble online with credit, with the all-too-common harmful consequences for individuals, their families, and the community.
- 3.53 The committee is of the view that the exemption that permits independently issued credit cards to be used for online wagering is the glaring omission in the current regulatory system. The next chapter considers policy options for closing this loophole, with the aim of significantly reducing the harm suffered by a substantial cohort of vulnerable citizens.

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<sup>53</sup> Dr Brent Jackson, Chief Executive Officer, Responsible Wagering Australia, *Committee Hansard*, 13 August 2021, p. 2.

<sup>54</sup> Mr David Attenborough, Managing Director and Chief Executive Officer, Tabcorp, *Committee Hansard*, 3 September 2021, p. 2.

# Chapter 4

## Policy options for banning online gambling with credit cards

### Introduction

- 4.1 As noted in previous chapters, there is both widespread recognition of the substantial harm caused by online gambling with credit, and broad support, including from the industry peak body for online wagering, for effective measures to ban the use of credit for online wagering to alleviate the associated harm.
- 4.2 Accordingly, this chapter considers policy options for banning online gambling with credit while still allowing the use of credit for lotteries. The chapter considers three options to achieve this goal:
- using BINs to block credit for online gambling;
  - using MCCs to block credit for online gambling;
  - industry self-regulation.

### Using Bank Identification Numbers to block credit for online gambling

- 4.3 As noted in the previous chapter, a BIN enables participants in the payments process to identify whether the card is a credit card or a debit card, thereby allowing a merchant (or their payment processor) a choice about whether to accept or block a credit transaction.
- 4.4 Blocking online gambling with credit using BINs could occur close to or at the point of sale, in the merchant's software or the merchant payment processor. Therefore, regulation to implement a ban using BINs may place the onus on the gambling service provider.
- 4.5 Mastercard advised it would expect gambling operators to work with their acquiring banks to ensure they are not accepting credit cards.<sup>1</sup>
- 4.6 Responsible Wagering Australia advised that its discussion with the Australian Banking Association indicated that blocking BINs may be feasible:
- RWA is currently consulting with the Australian Banking Association (ABA) as part of work to develop a technical solution to prohibit credit card wagering. Blocking of Bank Identification Numbers (BIN) is being examined as one option that could facilitate this. Our discussions to date with ABA member representatives suggest that this could be one feasible

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<sup>1</sup> Mastercard, answers to questions on notice, 20 September 2021 (received 28 September 2021).

method of achieving a block on credit cards and work is currently underway to examine this potential solution in further detail.<sup>2</sup>

- 4.7 Tabcorp advised that its wagering business and its lotteries payment provider could identify credit card payments using the BINs.<sup>3</sup>

### **Using Merchant Category Codes to block credit for online gambling**

- 4.8 MCCs enable particular transaction types to be blocked by blocking the relevant MCC code for categories of merchants. In this case, the onus for implementing the regulation (blocking transactions using MCCs associated with online gambling services) would fall on one or more participants in the payment system to identify the relevant transactions. This could be either the card issuing banks, or the card networks.

- 4.9 Mastercard advised that in most cases, cardholder relationships belong to, and are managed by, the bank or financial institution.<sup>4</sup> Mastercard advised it would have a limited role in blocking online gambling transactions using MCCs and could not easily implement a ban because it does not see all transactions on cards carrying its brand:

Only the card issuer—who authorises transactions and has the direct relationship with the cardholder—sees all transactions on their cards.

For this reason, if any form of payment blocking was to be mandated in Australia, then responsibility for imposing the block should reside with the issuing bank rather than with the card scheme.<sup>5</sup>

- 4.10 In contrast, Visa indicated that it could block transactions but, to date, that has occurred as a backup to the card-issuing banks which provide the primary MCC blocking role:

Visa is a business-to-business entity and, although we do not have a direct relationship or engagement with consumers, Visa actively supports our issuing bank clients (hereafter referred to as issuers) to implement controls on gambling transactions. In certain cases, our issuers in Australia apply blanket blocks for gambling transactions—whether on credit or debit products—and we assist them where they wish to introduce such measures following a review of their existing processes and rationale for the support. Furthermore, Visa carries out instructions to decline gambling transactions in cases where we stand in to authorise on a client’s behalf in the event that they experience an outage.<sup>6</sup>

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<sup>2</sup> Responsible Wagering Australia, answers to questions on notice, 14 September 2021 (received on 21 September 2021).

<sup>3</sup> Tabcorp, answers to questions on notice, 14 September 2021, received 23 September 2021.

<sup>4</sup> Mastercard, answers to questions on notice, 20 September 2021, (received 28 September 2021).

<sup>5</sup> Mastercard, *Submission 20*, p. 2.

<sup>6</sup> Visa, *Submission 21*, p. 2.

### *Application of Merchant Category Codes to Digital Wallets*

- 4.11 The Australian Banking Association suggested it may be difficult for MCC based blocking to address all digital wallets, particularly those that provide stored value features.<sup>7</sup>
- 4.12 Apple indicated the ability to distinguish between a debit or credit card already exists in digital wallets such as Apple Pay. Therefore, online gambling service providers can switch off the option to pay with credit cards. Gambling service providers have implemented this approach in the United Kingdom. If a customer is on an app or website that does not accept credit cards, those cards show up greyed out in the Apple Pay payment sheet and unavailable for transactions with that gambling service provider. As a result, Apple Pay is compliant with the United Kingdom Gambling Commission ban on credit cards that came into force in April 2020.<sup>8</sup>
- 4.13 Visa indicated that for tokenised mobile wallets, such as Apple Pay and Google Pay, the card issuing bank will be able to manage the block as they do today in offline venues. Where a card is used for loading a digital wallet, this is under a different merchant category that provides the issuer visibility when credit is used for the load. Only the digital wallet operator knows how the funds in the wallet are used and if they allow them to be used for online gambling. As those transactions do not pass through the credit card networks, they are not subject to the same level of controls provided by credit card network rules and monitoring for illegal or prohibited activity.<sup>9</sup>
- 4.14 Visa indicated that for travel and entertainment cards, the issuer will be able to manage the block as they do today in venues.<sup>10</sup>

### *Impact of Merchant Category Codes blocks on lotteries*

- 4.15 This section considers:
- the impact on lotteries from using MCC 7995 to ban online gambling services with credit; and
  - whether different or new MCCs could be used to separate for-profit and not-for-profit online lotteries from other forms of gambling.

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<sup>7</sup> Australian Banking Association, *Submission 13*, p. 3.

<sup>8</sup> Apple, answers to questions on notice, 14 September 2021 (received on 29 September 2021).

<sup>9</sup> Visa, answers to questions on notice, 14 September 2021 (received on 23 September 2021).

<sup>10</sup> Visa, answers to questions on notice, 14 September 2021 (received on 23 September 2021).

**Impact of Merchant Category Codes blocks on for-profit lotteries**

- 4.16 The Australian Lottery and Newsagents Association (ALNA) was concerned that a block on MCC 7995 for lottery sales in retail outlets would negatively impact add-on sales.<sup>11</sup>
- 4.17 Tabcorp expressed similar concerns about the impact on lotteries of a block on MCC 7995:
- When it comes to lotteries and lottery products, our position is that these need to be expressly excluded in any consideration of a credit card ban...It would significantly impact the income of lottery agents and newsagents—by over \$44 million per annum, we estimate—if a credit card ban were implemented. Customers, typically the older ones, use their credit cards to purchase lottery tickets at their local store for convenience, and they often do it as a bundle purchase with newspapers and magazines.<sup>12</sup>
- 4.18 ALNA and Tabcorp suggested that MCC 9406 (Government-Owned Lottery Non-US region) could be used by government-owned lotteries instead of MCC 7995.<sup>13</sup>
- 4.19 Visa noted that MCC 9406 has been available for Visa transactions since October 2019.<sup>14</sup> ALNA advised that from 15 October 2021, Mastercard is expanding MCC 9406 to include government-owned lotteries and licensed lottery sales agents. When merchants refresh their terminals, they can adopt that code on their terminals.<sup>15</sup>
- 4.20 That said, the Australian Banking Association indicated that only a government-owned and operated lottery would be able to use MCC 9406.<sup>16</sup> Only in Western Australia is the lottery (Lotterywest) owned by the state

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<sup>11</sup> Mr Benjamin Kearney, Chief Executive Officer, Australian Lottery and Newsagents Association, *Committee Hansard*, 13 August 2021, p. 57.

<sup>12</sup> Mr David Attenborough, Managing Director and Chief Executive Officer, Tabcorp Holdings Limited, *Committee Hansard*, 3 September 2021, p. 2.

<sup>13</sup> Mr Benjamin Kearney, Chief Executive Officer, Australian Lottery and Newsagents Association, *Committee Hansard*, 13 August 2021, p. 57; Mr David Attenborough, Managing Director and Chief Executive Officer, Tabcorp Holdings Limited, *Committee Hansard*, 3 September 2021, p. 5.

<sup>14</sup> Visa, answers to questions on notice 20 September 2021 (received 28 September 2021); See also Australian Banking Association, answers to questions on notice, 20 September 2021 (received 30 September 2021).

<sup>15</sup> Mr Benjamin Kearney, Chief Executive Officer, Australian Lottery and Newsagents Association, *Committee Hansard*, 13 August 2021, pp. 57–58.

<sup>16</sup> Australian Banking Association, answers to questions on notice, 13 August 2021 (received 3 September 2021).



government and operated as a government business enterprise. In all other states and territories, lotteries are operated by Tabcorp under licence.<sup>17</sup>

### **Impact of Merchant Category Codes blocks on not-for-profit and charitable organisations**

- 4.21 Not-for-profit and charitable organisations were concerned that a block on MCC 7995 would adversely impact their fundraising activities. Therefore, charities and not-for-profit organisations requested that they be exempt from any ban on online gambling with credit.<sup>18</sup>
- 4.22 Not-for-profit and charitable lotteries requested that MCC 8398 (charitable or social service organisations) be expanded to cover ‘charitable or social services organisations and their respective fundraising activities including fundraising lotteries’. Not-for-profit and charitable lotteries argued that such a designation would allow them to use MCC 8398 and avoid the current issues when banks and card schemes seek to apply MCC 7955 to payment processing based on the lotteries they operate.<sup>19</sup>
- 4.23 The Australian Banking Association agreed that MCC 8398 is used by charities for their core business and donations. However, the Australian Banking Association argued that MCC 8398 specifically excludes fundraising activities involving gambling such as lotteries. The prize raffles are classified as gaming or gambling activities by state and territory regulators. The Australian Banking Association, Visa and Mastercard indicated that, at present, transactions used to purchase raffle tickets or prizes must be classified with the MCC 7995. The websites used for these entries are generally separate from the primary website accepting payments for the charity's work or any other donations.<sup>20</sup>
- 4.24 Given the different purposes, risk profiles and transaction costs that apply under MCC 7995 and MCC 8398, an alternative approach may be to seek a new MCC for charitable and not-for-profit lotteries.

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<sup>17</sup> Mr Benjamin Kearney, Chief Executive Officer, Australian Lottery and Newsagents Association, *Committee Hansard*, 13 August 2021, p. 58.

<sup>18</sup> Not-for-profit and charitable organisations, *Submission 22*, pp. 1–3; Charities and not-for-profit organisations also proposed an express exemption similar to South Australia. The submission by the Not-for-profit and charitable organisations notes that the Interactive Gambling Act already exempts them as the existing ban in Section 15C only applies to wagering services. A legislative ban on online gambling with credit in the Interactive Gambling Act, could similarly define that lotteries including not-for-profit and charitable lotteries are excluded. Hence, the case for the detailed express exemption relies on the desire to align with the South Australian legislation set out in the submission and is not necessary for the banning online gambling with credit.

<sup>19</sup> Not-for-profit and charitable organisations, *Submission 22*, pp. 5–6.

<sup>20</sup> Australian Banking Association, answers to questions on notice, 13 August 2021 (received 3 September 2021); 20 September 2021 (received 30 September 2021); Mastercard, answers to questions on notice, 20 September 2021 (received 28 September 2021); Visa, answers to questions on notice, 20 September 2021 (received 28 September 2021);

4.25 While there may be obstacles in trying to use MCCs to block online wagering while exempting not-for-profit and charitable organisations that fundraise with lotteries from being caught in the ban, there are some options. These options are summarised below:

- it may be possible to use MCCs to block the use of credit for online wagering and online gaming gambling services and other online gambling services;<sup>21</sup>
- Government-owned, operated or licensed lotteries could be exempt and use MCC 9406;
- Not-for-profit and charitable organisations can use MCC 8398 for their operations that do not involve lotteries;
- Lotteries run by not-for-profit and charitable organisations could be exempt, but would need to seek a new MCC.

### **Responsible Wagering Australia's self-regulatory proposal**

4.26 During the inquiry, Responsible Wagering Australia announced it would begin to implement a self-regulatory approach to harmonise the online environment with in-venue gambling where credit card use is prohibited:

Australia's major online wagering operators will support development of measures to prohibit credit card wagering. RWA members have agreed to develop technical solutions to deliver this reform in a timely fashion and will seek the assistance of banks and payment processing providers to ensure the change can be delivered without any adverse or unintended consequences.<sup>22</sup>

4.27 Responsible Wagering Australia noted that while it had an agreed policy position, the technical solutions were yet to be determined in consultation with banks and payment systems providers.<sup>23</sup>

4.28 It is important to note that the Responsible Wagering Australia proposal would only cover wagering and its members which include Australia's major wagering service providers: bet365, Betfair, Entain (Ladbrokes and Neds), Sportsbet and Unibet.<sup>24</sup>

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<sup>21</sup> See paragraphs 2.7 to 2.9 for a description of these types of online gambling.

<sup>22</sup> Dr Brent Jackson, Chief Executive Officer, Responsible Wagering Australia, *Committee Hansard*, 13 August 2021, p. 2.

<sup>23</sup> Dr Brent Jackson, Chief Executive Officer, Responsible Wagering Australia, *Committee Hansard*, 13 August 2021, pp. 2–3, 5.

<sup>24</sup> Responsible Wagering Australia, answers to questions on notice 14 September 2021 (received 21 September 2021).

4.29 Tabcorp estimates that around 67 per cent of the online wagering market (calculated by revenue volume) is represented by Responsible Wagering Australia members. Around 33 per cent (including Tabcorp) of the online wagering market service providers are not members of Responsible Wagering Australia.<sup>25</sup>

### **Committee view**

4.30 The committee acknowledges gambling is a legitimate form of entertainment for many Australians. The committee considers that both for-profit and not-for-profit lotteries (as defined under the Interactive Gambling Act) lead to relatively lower harm than other forms of online gambling, and therefore should be exempt from any ban.

4.31 This committee notes the recent inquiry into the Interactive Gambling Amendment (Prohibition on Credit Card use) Bill 2020 by the Senate Environment and Communications Legislation Committee found:

- A lack of research on the extent of the harm from online gambling;
- Uncertainty in the definition of credit;
- Unintended consequences of the Bill, including:
  - the potential impact on the broader gambling community and lotteries;
  - the possibility consumers would seek out other payment mechanisms;
  - the possibility some consumers may shift towards greater use of unregulated offshore wagering; and
  - increased use of third-party payment mechanisms.

4.32 However, as this inquiry has highlighted, while the number of people suffering substantial harm from the use of credit to gamble online may be comparatively small, the consequences are significant and life changing. And those harmful impacts can spill out onto family members and the broader community.

4.33 This committee also notes that the industry peak body for online wagering, Responsible Wagering Australia, now supports a ban and Tabcorp did not oppose a ban on the use of credit for online gambling. Further, this committee has identified a policy option for blocking credit cards for online gambling services that:

- does not affect lotteries;
- does not affect debit payment mechanisms;
- would minimise credit card credit passing through digital wallets or other payment methods; and

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<sup>25</sup> Tabcorp, answers to questions on notice, 14 September 2021 (received 21 September 2021).

- creates regulatory consistency between the online and in-venue environments.

4.34 In addition, measures are already in place under the National Framework to address illegal offshore wagering. Finally, as discussed below, the cost benefit trade-off for policy action is now favourable.

#### *Costs and benefits of a ban on the use of credit for online gambling*

4.35 There are significant benefits from a ban on the most harmful forms of online gambling with credit. In the decade since the 2010 Productivity Commission inquiry, the committee considers the harm from online gambling credit has increased substantially, and therefore, the benefits of a ban have increased. In addition, the impacts of a ban on online gambling with credit identified by the Productivity Commission have decreased substantially in the last decade because:

- credit card use in online wagering is not the dominant payment method;<sup>26</sup>
- alternative ways to pay exist as customers can use debit cards or make online cash transfers into their accounts with gambling service providers using BPAY; and
- some digital wallets are now able to distinguish between debit and credit cards.

4.36 The committee considers that online wagering is the primary type of harmful online gambling with credit. The legislative ban on online gambling with credit is consistent with the government driven regulatory approach to in-venue gambling with credit. Online gaming gambling services<sup>27</sup> are currently banned in Australia, and other online gambling services defined under the Interactive Gambling Act are not presently offered in Australia. The Interactive Gambling Act also prohibits gambling providers from promoting or offering credit for online lottery betting services (also referred to as 'synthetic lotteries') which allow customers to bet on the outcome of a lottery draw.

#### *Policy options for banning the use of credit for online gambling*

4.37 The committee considered the following aspects to construct the policy options as shown in Table 4.1:

- which types of gambling services to regulate;
- whether a ban is based on legislation or gambling industry self-regulation;

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<sup>26</sup> Only 14 per cent of Tabcorp account holders use credit cards for payment, and this percentage is declining. Mr David Attenborough, Managing Director and Chief Executive Officer, Tabcorp, *Committee Hansard*, 3 September 2021, p. 4.

<sup>27</sup> See paragraphs 2.7 to 2.9 for a description of these types of online gambling.

- whether the legislation places the regulatory onus on online gambling service providers or the banking and finance industry and payment system participants; and
- which payment system mechanisms could be used to implement a ban.

**Table 4.1 Options for banning online gambling with credit**

Online Gambling Services in the <i>Interactive Gambling Act 2001</i>			Wagering including sports & racing		Gaming and other services	Lotteries for profit	Lotteries not-for- profit
			RWA Members	Non- RWA Members			
Section 4 – definition of gambling services			(a) & (b)	(a) & (b)	(e) & (f)	(c) & (d)	(c) & (d)
Policy options	Gambling Industry	Legislation	<b>Option 1:</b> Gambling Service Providers (or their Payment Processors) Blocking credit card BINs and Digital Wallets			No Block	No Block
		Self-Regulation	<b>Option 3:</b> RWA Proposal	No Block			
	Banking & Finance Industry	Legislation	<b>Option 2:</b> Card Issuers or Networks Blocking of Proposed Revised Credit Card MCC 7995			<b>Option 2:</b> Use MCC 9406 and no block	<b>Option 2:</b> Use new MCC and no block

*Shading indicates which gambling services are in-scope for each policy option.*

4.38 The following policy options are drawn from the summary in Table 4.1.

4.39 **Option 1:** Legislate to require gambling service providers to block credit card BINs.

- Provides flexibility to block credit for harmful online gambling services (wagering, gaming and other gambling services).
- Puts the responsibility on the gambling services provider (aligns with the regulatory responsibility in in-venue gambling in Australia)
- Exempts lotteries as defined in the Interactive Gambling Act.
- Not limited by the memberships of industry peak bodies.
- Digital wallet providers can be required to block credit for harmful online gambling services.

- 4.40 The committee recognises that the optimal application of this regime requires card issuers to provide an up-to-date list of BINs to gambling service providers on a regular basis.
- 4.41 **Option 2:** Legislate to require card issuers to block credit cards using MCC 7995, move for-profit lotteries onto MCC 9406, and create a new MCC for not-for-profit lotteries.
- Could exempt lotteries as defined in the Interactive Gambling Act.
  - The path to separating for-profit lotteries from MCC 7995 appears to be viable using MCC 9406.
  - The path to separating not-for-profit lotteries is less certain. MCC 8398 can only be used for charitable activities that do not involve gambling activities. A new MCC would need to be sought from and approved by the International Standards Organisation and the credit card networks. While that appears possible, significant time and negotiations may be required.
  - Could assist in reducing the use of credit cards for offshore online gambling.
- 4.42 **Option 3:** Responsible Wagering Australia self-regulatory proposal
- Only applies to Responsible Wagering Australia members (not Tabcorp).
  - Only applies to wagering services.
  - Would not affect lotteries.
  - Public commitment by Responsible Wagering Australia to implement.
  - No guarantee it will be successful or rolled out in a reasonable timeframe.
- 4.43 When considering a regulatory approach, the committee believes that it is important that the recommended option:
- maximise the benefits of harm reduction by covering online wagering, gaming and other gambling services;
  - must exclude lotteries;
  - be relatively straightforward and cost-effective to implement;
  - avoid perverse incentives; and
  - aim to create regulatory consistency between the treatment of online and in-venue gambling with credit.
- 4.44 While the committee welcomes the self-regulatory proposal by Responsible Wagering Australia, the committee notes it would only cover Responsible Wagering Australia members, and there are no guarantees it will be successful.
- 4.45 There are also obstacles in trying to use MCCs to block online wagering while exempting not-for-profit organisations and charities that fundraise with lotteries.
- 4.46 Therefore, the committee considers that option 1, legislation to require gambling service providers to block credit card BINs for online gambling, is the most attractive option because:

- It is relatively simple to implement and limits the regulatory burden on the banking, finance and payments sectors.
  - It is consistent with other bans on gambling with credit in physical venues.
  - It provides a straightforward way to exempt lotteries while banning other more harmful forms of online gambling with credit.
- 4.47 The committee recommends the government legislate to ban online gambling service providers of wagering, gaming and other gambling services (but not lotteries) as defined in Section 4 of the *Interactive Gambling Act 2001*:
- from accepting payment by credit, including by credit cards, credit via digital wallets, Buy Now Pay Later and travel and entertainment cards;
  - by requiring online gambling service providers or their payment processors to block transactions based on Bank Identification Numbers linked to credit card accounts; and
- 4.48 In the interim, the committee considers Responsible Wagering Australia, its members and other providers should continue to work with the Australian Banking Association and other relevant financial services organisations to fast track the mechanisms for implementing a block on credit for online gambling by the use of BINs.

### **Recommendation 2**

- 4.49 The committee recommends that the Australian Government develop and implement legislation to ban online gambling service providers of wagering, gaming and other gambling services (but not lotteries) from accepting payment by credit cards, including via digital wallets.**

### **Recommendation 3**

- 4.50 The committee recommends that the Australian Government ensure that, in designing and implementing recommendation 2, these measures have no adverse consequences for lotteries, including the activities of not-for-profits, charities and newsagents.**

**Mr Andrew Wallace MP**  
**Chair**





# Dissenting Comments by Senator Bragg

- 1.1 On 25 March 2021, the Parliamentary Joint Committee on Corporations and Financial Services opened an inquiry into the regulation of the use of financial services such as credit cards for online gambling in Australia. The terms of reference extended to the impact on consumers, existing consumer protections, existing voluntary bans, a potential mandatory industry code and approaches in other jurisdictions. Further, the inquiry would also evaluate the viability of the Interactive Gambling Amendment (Prohibition on Credit Card Use) Bill 2020.
- 1.2 The Final Report makes two recommendations. First, that the Government prioritise increased data collection with respect to online gambling, the use of credit, and associated harms. Second, that the Government legislates to ban certain online gambling providers from accepting payment by credit cards and digital wallet. In effect, the Committee provides in-principle endorsement for the Interactive Gambling Amendment (Prohibition on Credit Card Use) Bill 2020. I respectfully dissent from the second recommendation.

## Recommendation 1

- 1.3 I do not dispute that gambling can be a serious problem, and that targeted policy interventions are justified where the circumstances require it. Nor do I dispute the fact that some of this activity takes place online and utilises credit cards. However, the evidence submitted to the Committee and extracted in the final report is not conveyed to a standard which would require legislative intervention.
- 1.4 This is acknowledged in the report itself. At 2.16 the Committee states that they ‘received little direct evidence on the overall size of the online gambling industry’.<sup>1</sup> Nor did the report provide evidence of a link between online gambling (as opposed to gambling generally) and problematic gambling.
- 1.5 On the contrary, the report notes at 2.11 that total gambling turnover in 2018-19 was \$255 billion. Of this, gaming, which is illegal online, accounted for \$187 billion (73 per cent).<sup>2</sup>

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<sup>1</sup> Parliamentary Joint Committee on Corporations and Financial Services, *Regulation of the use of financial services such as credit cards and digital wallets for online gambling in Australia*, 19 November 2021, p. 8.

<sup>2</sup> Parliamentary Joint Committee on Corporations and Financial Services, *Regulation of the use of financial services such as credit cards and digital wallets for online gambling in Australia*, 19 November 2021, p. 7.

- 1.6 In asserting that online gambling is a problem of sufficient gravity, the report relies on a mixture of anecdotal testimony, consumer surveys, and tangential data about the growth in revenue for online services.<sup>3</sup> It is not clear that the problems which are identified warrant legislative attention, nor is it clear that these problems are linked, in any meaningful way, to the availability of credit cards for online gambling.
- 1.7 In principle I support the Committee's recommendation that the Government needs more data. This recommendation implies that the data which is currently available is not sufficient to reach any certain conclusions. At 2.65, the Committee makes an admission to this effect, stating that the data is limited on links between the use of credit cards and digital wallets and gambling behaviour and gambling harm.<sup>4</sup>
- 1.8 This view was echoed in by the Senate Committee on Environment and Communications, which found at 2.19:
- There has been limited research conducted directly on the topic of credit cards in the gambling field.... Existing research '.... doesn't directly talk to credit cards.'<sup>5</sup>
- 1.9 Therefore, having not established an imperative for additional legislative action, the Committee's report fails at the first hurdle. Without an imperative for policy change, it is unclear what purpose the legislation is serving, why government resources should be directed towards that goal, or even what problem future legislation might be attempting to solve. Without precluding the possibility that evidence might, in future, establish this imperative, the evidence does not rise to a threshold which warrants policy attention.

## **Recommendation 2**

- 1.10 Notwithstanding the shortcomings cited with respect to recommendation 1, the Committee does not establish that a legislated ban would be effective in resolving issues associated with online gambling. Nor does the Committee give sufficient consideration to alternative regulatory approaches which are at varying stages of implementation.

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<sup>3</sup> See - Parliamentary Joint Committee on Corporations and Financial Services, *Regulation of the use of financial services such as credit cards and digital wallets for online gambling in Australia*, 19 November 2021, pp. 5–20.

<sup>4</sup> Parliamentary Joint Committee on Corporations and Financial Services, *Regulation of the use of financial services such as credit cards and digital wallets for online gambling in Australia*, 19 November 2021, p. 19.

<sup>5</sup> Senate Standing Legislation Committee on Environment and Communications, *Interactive Gambling Amendment (Prohibition on Credit Card Use) Bill 2020*, 8 October 2021, p. 11.

- 1.11 Further, a legislative ban on credit card payments for online gambling has already been rejected by the Senate Standing Committee on Environment and Communications.<sup>6</sup> The report of this committee does not engage with that report, or the reasons therein.
- 1.12 To that end, recommendation 2, if enacted, would impose a needless overreach of government regulation upon individual consumers.
- 1.13 The Environment and Communications Committee recognised the imperative of affording individuals choice and autonomy. The Committee also noted the myriad of existing controls in respect of the use of credit cards for online gambling. Individuals applying for credit cards are subject to credit and background checks. Online gambling providers must comply with AML/CTF requirements and verify the identities of consumers prior to paying out. Financial institutions must comply with consumer credit protections such as those established by the National Consumer Credit Protection Act 2009.<sup>7</sup>
- 1.14 In addition to existing protections, industry has demonstrated a willingness to work towards more effective controls for public gambling. The Buy Now Pay Later (BNPL) sector has prohibited use of BNPL for online gambling in their Code of Practice.<sup>8</sup> Several major financial institutions also prohibit gambling using credit cards. Westpac, Commonwealth, NAB and ANZ also give customers the ability to restrict or block spending on gambling with credit and debit cards.<sup>9</sup>
- 1.15 A number of new controls are also in the process of implementation. The National Consumer Protection Framework allows individuals to effectively lock themselves out of online gambling.<sup>10</sup> This Framework is currently in the early stages of implementation, is comprehensive, nationally consistent, and enjoys broad support.<sup>11</sup> It would be highly imprudent to override this process without having appropriately assessed its impacts.

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<sup>6</sup> Senate Standing Legislation Committee on Environment and Communications, *Interactive Gambling Amendment (Prohibition on Credit Card Use) Bill 2020*, 8 October 2021, p. vii.

<sup>7</sup> Senate Standing Legislation Committee on Environment and Communications, *Interactive Gambling Amendment (Prohibition on Credit Card Use) Bill 2020*, 8 October 2021, p. 13.

<sup>8</sup> Australian Finance Industry Association, *Submission 16*, p. 2.

<sup>9</sup> Parliamentary Joint Committee on Corporations and Financial Services, *Regulation of the use of financial services such as credit cards and digital wallets for online gambling in Australia*, 19 November 2021, p. 31.

<sup>10</sup> Senate Standing Legislation Committee on Environment and Communications, *Interactive Gambling Amendment (Prohibition on Credit Card Use) Bill 2020*, 8 October 2021, p. 8.

<sup>11</sup> Senate Standing Legislation Committee on Environment and Communications, *Interactive Gambling Amendment (Prohibition on Credit Card Use) Bill 2020*, 8 October 2021, p. 8.

- 1.16 The Committee has not assessed whether a legislated ban would be effective. It would not be appropriate to embark on a legislative ban when we are not in a position to assess the viability of these policies.
- 1.17 Finally, the Committee has not considered the unintended consequences of a legislated ban. This is regrettable. Any further restrictions on gambling will carry the risk of driving these activities underground. Failing to account for, or even contemplate, this risk, severely undermines the credibility of this recommendation.
- 1.18 \$1.016 billion is spent by Australians each year on illegal overseas gambling. Overseas gambling sites have none of the aforementioned consumer protections in place. They redirect money offshore and cause significant revenue loss for governments. Further, illegal overseas gambling is often associated with other illicit organised criminal activity. The Committee report does not address this issue to any extent.<sup>12</sup>
- 1.19 Furthermore, the proposal could also drive problem gamblers to seek alternative sources of funds that are also outside the regulatory framework.

## **Conclusion**

- 1.20 In seeking a legislated ban on the use of credit cards for online gambling, the Committee is seeking to interfere with valid consumer choices, made by individuals who are, in the main, responsible and well-informed.
- 1.21 The onus lies on the Committee to identify a problem which is sufficiently serious to warrant legislative intervention. The majority report itself admits that evidence of this has not been submitted, acknowledging that the current data is insufficient, and that no causal link has been established between problem gambling and the ability to use online credit cards. Accordingly, the majority report fails to answer the threshold question of why such a ban might be justified.
- 1.22 The Committee does not establish why a ban would be effective at addressing this problem. Nor does it justify why a ban would be more effective than existing or proposed arrangements such as schemes aimed at addressing problem gambling.
- 1.23 Further, the Committee fails to contemplate, in any significant way, the unintended consequences of such a ban in driving this activity to an illicit and underground sphere, further outside the reach of consumer protection and law enforcement.
- 1.24 In short, public policy should be based on evidence, not good intentions. The nanny state is already large enough. Banning things is not the answer.

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<sup>12</sup> Senate Standing Legislation Committee on Environment and Communications, *Interactive Gambling Amendment (Prohibition on Credit Card Use) Bill 2020*, 8 October 2021, p. 16.

1.25 Given the enormous disruption occurring in the payments and digital asset landscape, it is futile and short sighted to propose 'bans'.

**Senator Andrew Bragg**



# Appendix 1

## Submissions and additional information

### *Submissions*

- 1 Gambling Treatment & Research Clinic
- 2 Institute of Public Affairs
- 3 Responsible Wagering Australia
  - 3.1 Supplementary to submission 3
- 4 yourtown
- 5 Deaf Services and the Deaf Society
- 6 Customer Owned Banking Association (COBA)
- 7 ACT Council of Social Service
- 8 Canberra Gambling Reform Alliance
- 9 Mater Foundation
- 10 Suicide Prevention Australia
- 11 Alliance for Gambling Reform
- 12 Racing Victoria
- 13 Australian Banking Association
- 14 AUSTRAC
- 15 Endeavour Foundation
- 16 AFIA
- 17 Tabcorp
- 18 RSL Queensland
- 19 FCA, CALC & FRLC
- 20 Mastercard
- 21 VISA
- 22 Not-for-profit and charitable organisations
  - 22.1 Supplementary to submission 22

### *Additional Information*

- 1 Letter from Responsible Wagering Australia, General Manager - External Affairs, James Duncan responding to evidence by Tabcorp on 3 September, 2021

### *Answer to Question on Notice*

- 1 ABA: International merchant codes - Answer to QoN 001 taken on notice on 13 August 2021 (received 3 September 2021)
- 2 ABA: Illegal offshore gambling operators - Answer to QoN 002 taken on notice on 13 August 2021 (received 3 September 2021)
- 3 ABA: Customer-initiated control measures - Answer to QoN 003 taken on notice on 13 August 2021 (received 3 September 2021)

- 4 ABA: International policies on gambling on credit - Answer to QoN 004 taken on notice on 13 August 2021 (received 3 September 2021)
- 5 ABA: Use of stored value accounts - Answer to QoN 005 taken on notice on 13 August 2021 (received 3 September 2021)
- 6 Department of Social Services: Government legislation technical feasibility - Answer to QoN 001 taken on notice on 13 August 2021 from Mr Hill (received 9 September 2021)
- 7 Department of Social Services: 2010 Productivity Commission inquiry into gambling - Answer to QoN 002 taken on notice on 13 August 2021 from Mr Wallace (received 9 September 2021)
- 8 Department of Social Services: Pros and cons of industry code, full regulatory approach, coregulation - Answer to QoN 003 taken on notice on 13 August 2021 from Mr Hill (received 9 September 2021)
- 9 Department of Infrastructure, Transport, Regional Development and Communications: Constitutional limitations on legislating - Answer to QoN 001 taken on notice on 13 August 2021 from Mr Hill (received 9 September 2021)
- 10 Department of Infrastructure, Transport, Regional Development and Communications: Pros and cons of industry code, full regulatory approach, coregulation - Answer to QoN 002 taken on notice on 13 August 2021 from Mr Hill (received 9 September 2021)
- 11 RWA: Feasibility of using Bank Identification Numbers for banning online gambling with credit - Answer to written questions on notice 003-01-04 from Mr Wallace 14 September 2021 (received 21 September 2021)
- 12 Tabcorp: Proportion of revenue that comes through debit or credit - Answer to QoN 001 taken on notice from Senator Pratt on 3 September 2021 (received 21 September 2021)
- 13 Tabcorp: Feasibility of using IINs (or BINs) for implementing a ban on online gambling with credit - Answer to written questions on notice 004-01 - Mr Wallace 14 September 2021 (received 21 September 2021)
- 14 Tabcorp: Forms of credit banned by Subsection 15C(1) of the Interactive Gambling Act 2001 - Answers to written questions on notice 004-02 - Mr Wallace 14 September 2021 (received 21 September 2021)
- 15 Tabcorp: How are the bans on credit cards for gambling in physical venues implemented - Answers to written questions on notice 004-03 - Mr Wallace 14 September 2021 (received 21 September 2021)
- 16 Tabcorp: Proportions of online gambling with credit for different types of gambling - Answers to written questions on notice 004-04 - Mr Wallace 14 September 2021 (received 21 September 2021)
- 17 ABA: Feasibility of using IINs (or BINs) for implementing a ban on online gambling with credit - Answers to written questions on notice 001-01 - Mr Wallace 14 September 2021 (received 23 September 2021)



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- 18 ABA: Forms of credit banned by Subsection 15C(1) of the Interactive Gambling Act 2001 - Answers to written questions on notice 001-02 - Mr Wallace 14 September 2021 (received 23 September 2021)
  - 19 ABA: How are the bans on credit cards for gambling in physical venues implemented - Answers to written questions on notice 001-03 - Mr Wallace 14 September 2021 (received 23 September 2021)
  - 20 The ACMA: Feasibility of using IINs (or BINs) for implementing a ban on online gambling with credit - Answers to written questions on notice 002-01 - Mr Wallace 14 September 2021 (received 28 September 2021)
  - 21 The ACMA: Forms of credit banned by Subsection 15C(1) of the Interactive Gambling Act 2001 - Answers to written questions on notice 002-02 - Mr Wallace 14 September 2021 (received 28 September 2021)
  - 22 The ACMA: How are the bans on credit cards for gambling in physical venues implemented - Answers to written questions on notice 002-03 - Mr Wallace 14 September 2021 (received 28 September 2021)
  - 23 The ACMA: Proportions of online gambling with credit for different types of gambling services - Answers to written questions on notice 002-04 - Mr Wallace 14 September 2021 (received 28 September 2021)
  - 24 Mastercard: Merchant Category Codes for lotteries - Answers to written questions on notice 007-01 - Mr Wallace 20 September 2021 (received 28 September 2021)
  - 25 Mastercard: Options for blocking online gambling with credit - Answers to written questions on notice 007-02 - Mr Wallace 20 September 2021 (received 28 September 2021)
  - 26 Mastercard: Card network approval of internet gambling merchants - Answers to written questions on notice 007-03 - Mr Wallace 20 September 2021 (received 28 September 2021)
  - 27 Visa: Merchant Category Codes for lotteries - Answers to written questions on notice 008-01 - Mr Wallace 20 September 2021 (received 28 September 2021)
  - 28 Visa: Options for blocking online gambling with credit - Answers to written questions on notice 008-02 - Mr Wallace 20 September 2021 (received 28 September 2021)
  - 29 Visa: Card network approval of internet gambling merchants - Answers to written questions on notice 008-03 - Mr Wallace 20 September 2021 (received 28 September 2021)
  - 30 Apple: Feasibility of banning credit via IINs or BINs in digital wallets - Answers to written questions on notice 005-01 - Mr Wallace 14 September 2021 (received 29 September 2021)
  - 31 ABA: Merchant Category Codes - Answers to written questions on notice 006-01 - Mr Wallace 20 September 2021 (received 30 September 2021)

*Media Releases*

- 1 Parliamentary Committee explores regulation of credit cards and digital wallets for online gambling

*Tabled Documents*

- 1 RSL Queensland - Ms Melanie Wilson - Opening Statement - tabled in public hearing on 13 August, 2021 [submission 18A]
- 2 Endeavour Foundation - Mr Steven Waters - Opening Statement - tabled in public hearing on 13 August, 2021 [submission 15A]

## Appendix 2

### Public hearings

*Friday, 13 August 2021*

2S3

Parliament House

Canberra

*Responsible Wagering Australia*

- Dr Brent Jackson, CEO

*Financial Counselling Australia*

- Ms Lauren Levin, Director Policy & Campaigns

*Financial Rights Legal Centre*

- Ms Julia Davis, Senior Policy & Communications Officer

*Alliance for Gambling Reform*

- Dr Mark Zirnsak, Board Director
- Dr Kathryn da Costa, Head of Campaigns

*Public Health Association of Australia*

- Dr Charles Livingstone, Member

*yourtown*

- Ms Tracy Adams, CEO

*Mater Foundation*

- Mr Andrew Thomas, Executive Director

*Returned & Services League of Australia (Queensland)*

- Ms Melanie Wilson, CEO

*Endeavour Foundation*

- Mr Steven Waters, Executive General Manager, Sales and Marketing

*Australian Finance Industry Association*

- Ms Diane Tate, CEO

*Australian Banking Association*

- Ms Anna Bligh, CEO

*Department of Social Services*

- Ms Liz Hefren-Webb, Deputy Secretary, Families and Communities

- Ms Mary McLarty, Group Manager Communities
- Mr Chris D'Souza, Branch Manager, Financial Wellbeing

*The Australian Communications and Media Authority*

- Ms Rochelle Zurnamer, Executive Manager, Content Safeguards
- Ms Cathy Rainsford, General Manager, Content & Consumer Division

*Department of Infrastructure, Transport, Regional Development and Communications*

- Mr Richard Windeyer, Deputy Secretary, Communications and Media
- Mr Mike Makin, Assistant Secretary
- Ms Pauline Sullivan, First Assistant Secretary

*Australian Lottery and Newsagents Association*

- Mr Benjamin Kearney, CEO

*Friday, 3 September 2021*

Main Committee Room

Parliament House

Canberra

*Tabcorp*

- Mr David Attenborough, Managing Director and CEO

## Appendix 3

### Bans in Australian states and territories

This appendix summarises current bans on in-venue gambling with credit under state and territory regulations in Australia.

State	Policy
Victoria	A venue operator must not allow a person to obtain [cash] from a cash facility in the approved venue or a cash advance from a credit account.
Queensland	All automatic teller machines installed in the licensee's licensed premises are available only for the use of debit cards.
New South Wales	A hotelier or club must not permit a cash dispensing facility to be used or to be installed or located in any part of the hotel or club premises if the facility is capable of providing cash from a credit card account.
Northern Territory	ATM and EFTPOS Facilities will have access only to debit accounts; access to credit accounts will not be permitted.
Tasmania	A casino operator must not allow a person to obtain, from a cash facility, a cash advance from a credit account.
South Australia	The holder of a gaming machine licence must not provide, or allow another person to provide, a cash facility within a gaming area on the licensed premises.
Australia Capital Territory	A hotelier or club must not permit a cash dispensing facility to be used or to be installed or located in any part of the hotel or club premises if the facility is capable of providing cash from a credit card account.
Western Australia	In the gaming areas of the Casino EFTPOS is only to be used to access savings or cheque (not credit) accounts in accordance with relevant legislative and regulatory requirements, and subject to transaction limits.

*Source: Australian Banking Association, Every Customer Counts, Consultation Report, December 2020, pp. 3, 24.*

Tabcorp indicated that TAB outlets, including TAB facilities at stand-alone TAB agencies, racetracks and licenced venues, currently only take cash payments for wagering. No cashless payments or other forms of credit are presently used for TAB wagering in these venues.<sup>1</sup>

<sup>1</sup> Tabcorp, answers to questions on notice, 14 September 2021 (received 21 September 2021).

Visa indicated that card issuers implement blocks at their host systems to manage the block for the face-to-face environment.<sup>2</sup>

In-venue gambling transactions payment terminals used by merchants at the point-of-sale will not accept credit transactions. The terminals are configured to enable debit transactions, but not credit.<sup>3</sup>

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<sup>2</sup> Visa, answers to questions on notice, 20 September 2021, (received 28 September 2021).

<sup>3</sup> Australian Banking Association, answers to questions on notice, 14 September 2021 (received on 23 September 2021).

## Appendix 4

### The 10 measures of the National Framework

<b>National Framework Measure</b>	<b>Responsibility</b>	<b>Date of effect</b>
<i>This measure prohibits the offering or provision of credit by licensed operators for wagering purposes, except for certain on course bookmakers.</i>	The ACMA	<b>17 Feb 2018</b>
<i>This measure discourages the use of small amount credit contracts (payday lending) for online wagering.</i>	The ACMA	<b>17 Feb 2018</b>
<i>This measure reduces the customer verification period to 14 days (or less) for online wagering across all jurisdictions.</i>	AUSTRAC	<b>26 Feb 2019</b>
<i>This measure prohibits all specified inducements in all jurisdictions.</i>	State and territory governments	<b>26 May 2019</b>
<i>This measure ensures that closing/cancelling an online wagering account is readily available, and accessible by all consumers.</i>	State and territory governments	<b>26 May 2019</b>
<i>This measure provides consumers with a tool to help them monitor and manage their gambling by pre-committing to limits.</i>	State and territory governments	<b>26 May 2019</b>
<i>This measure ensures consumers receive meaningful statements on their wagering activity with each licensed operator.</i>	State and territory governments	<b>31 Dec 2021</b>
<i>This measure provides for evidence-based, consistent gambling messaging.</i>	State and territory governments	<b>31 Dec 2021</b>
<i>This measure provides for the training of certain staff in the responsible service of gambling.</i>	State and territory governments	<b>31 Dec 2021</b>
<i>This measure provides for a national self-exclusion register (NSER) for online wagering.</i>	The ACMA	<b>31 Dec 2021</b>

*Source: Department of Social Services, Submission 8 to Senate Standing Legislation Committee on Environment and Communications inquiry into the Interactive Gambling Amendment (Prohibition on Credit Card Use) Bill 2020, pp. 2–3.*