financial counselling australia

SUBMISSION

October 2018

ROYAL COMMISSION INTO MISCONDUCT IN THE

Banking, Superannuation and Financial Services industry

This submission focuses solely on issues related to gambling.

Financial Counselling Australia (FCA) is the peak body for financial counsellors in Australia.

About Financial Counselling Australia (FCA)

FCA is the peak body for financial counsellors in Australia. We are the voice for the financial counselling profession and provide information and support to financial counsellors to help them in their jobs. We also advocate on behalf of the clients of financial counsellors for a fairer marketplace.

What financial counsellors do

Financial counsellors assist people experiencing financial difficulty. Working in community organisations, they provide advice to help people deal with their immediate financial situation and minimise the risk of future financial problems. Their services are free, confidential and independent.

Financial counsellors are required to hold, or to obtain, a Diploma in Financial Counselling. They need knowledge of a wide range of areas of law and industry practice, including consumer credit law, debt enforcement practices, the bankruptcy regime, industry hardship policies and government concession and social security frameworks.

Financial counsellors also document their experiences and highlight issues that have a negative impact on their clients. Either individually, or through FCA, they consult with industry, government and other stakeholders to encourage practices that prevent or ameliorate financial and consumer problems.

The main causes of financial difficulty are unemployment, illness and relationship breakdown. Financial counsellors also assist many people trying to make ends meet on very low incomes.

FCA's Involvement in gambling-related policy development

In 2015, FCA released a report titled "Duds, Mugs and the A-List: The Impact of Uncontrolled Sports Betting". The report described the issues financial counsellors were seeing as a result of predatory practices in the online sports betting industry.

Later that year, the Federal Government commissioned a review into online gambling. One of the recommendations of this review was to ban gambling companies from providing credit to people to gamble. The prohibition took effect on 17th February 2018.

FCA has been actively involved in developing the legislative consumer protection framework applying to online gambling. Our work is informed by financial counsellors including specialist gambling financial counsellors, as well as by direct interactions with people who gamble, or their families.

There are over 50 specialist gambling financial counsellors funded by the Federal Government. There are also a number of specialist gambling financial counsellors funded by State Governments.

About the Language in this Submission

The language we use in this submission refers to "people affected by gambling", "people experiencing gambling-related harm" and "gambling issues". We do not refer to people as "problem gamblers". We have chosen this language as we know that clients affected by gambling often feel embarrassed and ashamed. They are people first and foremost, and labeling them as "gamblers" is one-dimensional and de-personalising. The descriptions we have chosen imply less judgment.

About the Case Studies in this Submission

The case studies in this submission have been de-identified and all names changed.

> *As the evidence given by Ms Cox shows, the conduct identified by entities as misconduct or conduct falling short of community standards and expectations affects individuals. As the evidence adduced in the first round of hearings showed, the effects can be profound. The consumers who gave evidence in those hearings all explained the effects that the conduct in issue had on them …(Mr David Harris) spoke of the consequences he had suffered when, despite admitting to his bank that he had a gambling problem and reaching out to his bank for help, he was offered more credit.*

Interim Report, Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, Volume 1, p53.

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1.1 Summary of this Submission

Introduction (Section 2)

Gambling is an unusual form of expenditure. For many people, gambling is innocuous entertainment, but for others it results in extreme harm, including suicide. Gambling disorders are now recognized internationally as a mental health disorder, and are included in the psychiatric manual DSM-5.

Banks can play an important role in minimising gambling-related harm. Unfortunately, some current bank practices are actually contributing to, and exacerbating, gambling-related harm.

Responsible Lending and Gambling (Section 3)

Despite ASIC's Regulatory Guide 209 explicitly stating that lenders need to take discretionary expenditure into account, including expenditure on gambling, there is very little evidence this actually occurs. Not taking gambling expenditure into account is also a breach of a lender's obligations under the credit laws to lend responsibly.

Lenders must be required to review transaction account statements to verify expenditure. Where gambling is highlighted as a significant factor, this needs to be taken into account in assessing whether lending will be responsible.

Community Expectations and Gambling with Credit (Section 4)

Most banks allow credit cards to be used to transfer funds to gambling companies. We submit that the use of credit cards for gambling purposes, is contrary to community expectations, and should be prohibited.

Allowing customers to overdraw their accounts through unsolicited overdrafts also contributes to gambling-related harm.

Credit card debts are sometimes consolidated into personal loans. If the other card is not closed at the same time, a person who has gambling issues, will often end up with more debt. There needs to be a mechanism in place to cancel credit cards as part of the approval process for a debt consolidation loan (where affordability is based on the card limit not being used again).

Community Expectations and Gambling with One's Own Money (Section 5)

There is no limit on the amount of money that can be transferred to a gambling company using a debit card. A person with $100,000 in a bank account for example, could transfer the whole amount instantaneously without triggering any other processes. In contrast, if you try to transfer large amounts of money using the 'pay anyone' function from a bank account, bank systems prevents this, restricting a person to a daily limit.

This form of access is often more harmful than gambling with credit, such as a credit card which typically has a lower limit.

As the bank is often the only rational player able to see this harmful spending, they have a role in alerting their customers to excessive gambling expenditure. This could be facilitated through technology.

Family Violence and Gambling with Credit (Section 6)

Financial or economic abuse is common when one person in a relationship is involved in gambling. Poor lending practices, such as allowing one person to increase a loan facility, can facilitate gambling-related economic abuse of a gambler's partner.

Banks can help minimise gambling-related harm by providing better information to joint account holders, providing alerts about gambling expenditure, allowing gamblers to set limits on expenditure and providing information about services that can help.

1.2 Response to Relevant Questions in the Interim Report

This section responds to some of the questions posed by the Commission in Chapter 2, Volume 1 of the interim report in relation to consumer lending and its intersection with gambling-related harm.

- **What steps, consistent with responsible lending obligations, should a lender take to verify a borrower's expenses?**

Lenders must be required to review transaction account statements to verify expenditure. Where gambling is highlighted as a significant factor, this needs to be taken into account in assessing whether lending will be responsible.

- **Do the processes used by lenders, at the time of the hearings, to verify borrowers' expenses meet the requirements of the NCCP Act? Do the processes now used meet those requirements?**

At the time of the hearings, the processes used by banks to verify borrowers' expenses do not meet the requirements of the NCCP Act. Responsible lending obligations under the NCCP Act would require that lenders consider the transaction records of potential borrowers. Because banks have not done this, they have lent money to people with gambling issues.

In relation to whether processes now used meet those requirements, most of the banks have not made any meaningful changes. A few have started work on this, but are only introducing processes where there is risk to the bank of default, rather than harm to the customer - and these can be different things. Many banks have not done anything.

The banks making some changes are now using algorithms to highlight excessive gambling transactions. Where this analysis indicates that the gambling could create a high risk of default, the bank will not lend. But where for example, a person who is gambling is still making minimum repayments on their credit card, the bank will provide credit. This of course ignores the risk to the customer (and their family) of lending for harmful gambling. The self-interest of the bank should not trump the interest of the customer and their family unit.

The case study of David Harris illustrates this clearly. These new bank systems would have flagged his gambling issues, but because he was making minimum payments on his credit card, a loan may still have been granted. At one point Mr Harris also repaid all of his debt, but this was money provided by his boss. Mr Harris would not have been at risk of default, as assessed by these new bank processes, but from his point of view, the provision of credit would be harmful.

We understand the Commonwealth Bank however is allowing customers to self-identify as having issues with gambling and allow their accounts to be locked for cash advances and transfers to betting companies. This is a positive development.

There is no transparency over how the algorithms are constructed, and any benchmarks of the percent of gambling relative to income needed to invoke a 'trip line' where lending will not be made. There is a similar rule of thumb for mortgage hardship, i.e. spending more than 30% of your income on a mortgage is undesirable. We submit that 10% of income is appropriate.

- **Is the offer of a credit limit increase based only on information held by the bank about a customer a breach of the NCCP Act obligation to take reasonable steps to verify the consumer's financial situation?**

Yes. Gambling is an addiction and people affected by problem gambling will go to any lengths to feed their addiction. If lenders do not verify a customer's financial situation, it becomes easier for a person who has issues with gambling to hide their true financial position.

Banks appear to have operated on the basis that they would sometimes make poor lending decisions, such as lending to gamblers, and some of these loans would become bad debts. But this could be justified as a cost of doing business, as it would be more costly to put in systems that required proper verification.

As set out in this submission, providing credit to people who have issues with gambling has serious consequences for them and for their families.

- **How can entities' systems be improved to detect and prevent breaches of responsible lending obligations by intermediaries?**

With the advent of open banking coming, there will be no excuse for any lending entity or intermediary to say 'we didn't know' and get away with not factoring in discretionary expenditure, like gambling, into lending decisions.

- **Is the offer of a credit limit increase, where the customer has consented to receive such marketing, consistent with the NCCP Act obligation not to provide credit that is not unsuitable for the customer, having regard to their requirements and objectives?**

Unsolicited credit limit increases for credit cards, particularly when they are personalised, lead people to take up offers of credit and distort rational behaviour. This occurs with all forms of credit however, including personal loans and overdrafts as well as credit cards. We know that consenting to receive marketing material is a low barrier, and can easily be constructed to appeal to people's desire to 'not miss out'.

With open banking, it is easy to foresee the rise of pre-approved offers, based on people's actual loan affordability. Just because someone can technically afford credit, does not mean that they need or want the credit and should have it pushed at them.

As a society, we know that a savings buffer is hugely important as part of financial resilience for life's shock. Pushing credit out to people who haven't specifically asked for it is unethical.

1.3 Good practice tools to assist customers with gambling issues

Good practice tools will assist banks in both preventing people from having financial problems because of gambling, as well as supporting them if they find themselves in trouble. Prevention however, is always the best outcome.

There are many people who are trying to control the harm their gambling causes them and their families. Most banks however have not considered how they can assist customers with emerging or entrenched gambling issues. There is also the issue of fraud with people using someone else's card to gamble. These cases are often tragic, as in the case of a minor using a parent's card to gamble, running up a debt, then suiciding. All banks require a suite of both prevention and support tools. A suite of good practice tools is described below.

1. Gambling tools to help people set limits and block gambling transfers/self-exclude.

Some banks have introduced budgeting tools but few have a suite of tools designed for customers with gambling addictions. Addressing addiction behaviour requires a higher standard of protection. The tool should be able to activate total self-exclusion from gambling, permanently or temporarily during high risk periods like spring racing or sports finals. It should also provide spend limits (e.g. daily/weekly etc) and give the customer the ability to set gambling free time periods (e.g. transferring funds in the middle of the night is a high risk period).

The customer should be able to easily block all gambling transactions from all of their accounts, by all methods including direct transfer, Bpay, credit or debit cards, Poli or third party e-wallet payment sites such as PayPal. It needs to be quickly and easily set up by the customer, without going into a bank and without having to talk to someone, i.e. in a frictionless manner.

Currently Westpac allows customers to block their credit card from being used for gambling, but the person needs to call the bank to set this up. It should be as frictionless as possible, and not require a person to have to disclose their gambling issues to gain protection.

When someone activates a block on their accounts, this must also cover e-wallets and gateway payment services such as PayPal. These services also use the same merchant codes, so they also have the same ability to assist people control their spending. This is conceptually straightforward to do because each payment entity has its own code.[1]

Banks also have the capacity to block transfers with black lists. There is a precedent in the ASIC scam list, where banks are required by ASIC to block transactions to these accounts. Alternatively, banks could set up a white list with licensed providers, and only process transactions that are approved. This would also counter transfers to illegal offshore gambling companies.

Incidentally, spend-management tools would also benefit the broader population.

2. Economic abuse protections when setting up a new account or card

When people first set up their accounts as well as debit and credit cards, they opt into all sorts of things, for example, for statements to be delivered

1 Gambling has unique merchant codes. MCC 7995 is the generic gambling code and over 25 countries have a blanket block on 7995 coded transactions. There were further codes introduced in 2015 in the US in response to differentiation between legal gambling and illegal sports betting. MCC 7800 is for government-run online lotteries, MCC 7801 for regulated online casinos, MCC 7802, for regulated events for online horse and dog racing. Additionally, there are codes for skilled gaming where there are money prizes or the user can win in-game products (7999, 7994 or 7995).

electronically or for automated repayment amounts on a credit card. From a public health perspective, the ability to use a debit or credit card or account for gambling transactions should be a deliberate opt-in process. This would protect minors, those trying to control their gambling, and cardholders who have their card used without their knowledge for gambling, typically by a family member or friend.

Financial counsellors sometimes see partners of a gambler, who suddenly discover that family savings have been dissipated on gambling. As part of household financial capability, we encourage people to have visibility of their accounts, so fewer people have to have the shocking conversation where they're told 'I'm really sorry, but it's all gone. I gambled it all'.

When a joint account is set up, the opt in process would include a message along the lines below that would assist in keeping everyone safe:

- We both want to be notified if this card/account is used for gambling transactions. Yes/No

This proactive protection would assist in preventing some economic abuse.

3. Protections for young people

Research shows that a proportion of minors engage in regular gaming with micro-purchases and emerging forms of gambling including purchasing loot boxes.[2]

Young people can use prepaid cards to set up gambling accounts or use their own debit cards.[3] They also use prepaid cards purchased from retailers, including Australia Post.

Prepaid cards allow people to load money on the card, and then use them to make purchases via the Visa/Mastercard functionality. They are sometimes bought for young people by their parents to restrict their spending to the card's loaded amount. Minors can now obtain their own debit cards from 14 years with some banks.[4]

Cards used by minors should not be able to be used for gambling purchases.

2 See Online gaming and gambling in children and adolescents – Normalising gambling in cyber places, https://responsiblegambling.vic.gov.au/resources/publications/online-gaming-and-gambling-in-children-and-adolescents-normalising-gambling-in-cyber-places-479/

3 Minors are not allowed to gamble, but currently legislation allows a 90 day verification period. Minors can't withdraw any winnings without verifying their identification, but they can use the accounts to gamble in the interim.

4 For example, the Westpac Choice account gives 16-17 year olds a debit Mastercard. An ANZ visa debit card can be obtained > 14 years through its Access Advantage account.

The default setting should be 'gambling is blocked'.

4. Protections when re-drawing on joint mortgages

Joint mortgage holders should always be notified when one partner re-draws on the mortgage. This is imperative particularly when there is gambling, as the consequences are often dire for the partner who is unaware.

5. Change of mind protections

Gambling is notoriously difficult to quit, and many people relapse, but banks can help people stick to their original intentions to stop or limit their gambling by various methods:

a) Obtaining consent for blocks or limits to be permanent by setting up a two-staged consent: 'what do you want to block/limit?', and then 'what do you want us to do if you try to undo your protections?'

b) Introducing friction by having the person's nominated support person sent the 'unlock code' or a notification when the person requests to reduce their protection (as used in some gambling blocking apps and Gamblers Anonymous models)

6. Mechanisms for banks to pick up gambling harm

Anti-money laundering obligations already require banks to pick up patterns in spending. Austrac expects banks to share this information internally e.g. for anti-scam/anti-fraud work. Given this precedent and capacity, there is the potential for the bank to undertake similar monitoring where there are large, frequent or increasing gambling transactions. The motivation would be to attempt to protect at risk customers.

We know that some banks already have algorithms to pick up risky gambling, in the context of lending decisions.

Once identified, banks could link people to their suite of protective tools, as well as gamblers support services, including gambling financial counselling. Banks are not required to be counsellors, but they have a role to help people link to support services and practical tools.

7. Option to have a 'no credit' flag activated when people disclose gambling

Witness Mr David Harris was unusual in that he disclosed his gambling issues. The bank had no method of flagging that he had done this, and he was given more credit. People should have the option to flag 'I do not want to be offered or given more credit' with both their bank and with credit reporting bureaux.

This voluntary mechanism would assist those trying to limit their use of borrowed funds, which fuels their addiction.

8. Staff training and support

Bank staff require training and support as they will inevitably be having conversations about gambling. They already see gambling transactions when they help customers in a range of contexts. Bendigo Bank has a specialised elder abuse team to help staff, and banks could give their staff gambling support in a similar way.

The Commonwealth Bank has recently set up a dedicated sensitive matters team with expertise to help customers and staff with gambling issues, family violence and other sensitive matters.

All banks need to have similar expert support for staff and customers.

A final word

Finally, all of these tools will be of limited benefit if people do not know about them. The industry should be required therefore to also promote them, using plain English and not bury changes in legal notifications of changes to terms and conditions.

2 Introduction

2.1 Purpose of this Submission

Financial Counselling Australia (FCA) is providing a number of separate submissions to the Royal Commission. In July 2018, after being given leave by the Commission, we made a written submission in response to round four of the hearings and the interactions of Aboriginal and Torres Strait Islander Australians in regional and remote communities with financial entities.

This submission focuses solely on banking-related gambling issues. A separate submission on this topic was warranted because this area has received relatively little scrutiny and there are a number of specific issues related to it.

The community expects financial institutions to protect their customers from financial harm. In this respect, the banking industry is not meeting community expectations in relation to people who gamble. The purpose of this submission is to outline the ways in which this is not occurring and explain what needs to change.

2.2 Background

Gambling is an unusual form of expenditure. For many people, gambling is innocuous entertainment, but for others it results in extreme harm, including suicide. With the advent of online gambling, financial counsellors are seeing more clients who have lost large sums of money, over a very short space of time. Often partners and family members are unaware of gambling harm until it is far too late.

In generalist financial counselling, the worker's role is often to find or free up money to improve a client's financial position. For example, a financial counsellor might help their client to increase their income by accessing government concessions or to reduce expenditure or by facilitating lower repayments for a time on a loan or utility account.

Specialist gambling financial counsellors however may need to do the exact opposite, for example, by working with their client to deny or reduce access to money so it will not be gambled. This might apply to both the client's own money as well as access to credit or funds from third parties.

For someone with a gambling addiction, or on the pathway to developing serious issues, having easy access to money is dangerous. It does not matter whether it is an individual's own money or borrowed money. Few people can afford to lose $10,000, $50,000 or $100,000 without consequences.

Gambling is an insidious addiction that can be harder to overcome than drug and alcohol addictions. Many gamblers have sad stories of why they started gambling. There are often a series of '"and then" events: my marriage broke up, and then my sister was murdered, and then I lost my job, and then ....

Gambling has also become normalised, particularly amongst young men who have taken to online gambling, with the encouragement of prolific gambling advertising. Gambling and mental health conditions also go hand in hand, with three quarters of people seeking mental health treatment for a gambling problem also experiencing a mental illness.[1] Yet only one in five people seek help for gambling issues.[2] Gambling disorders are now recognized internationally as a mental health disorder, and are included in the psychiatric manual DSM-5.[3] Gambling was recently re-classified from an impulse control disorder to an addictive disorder.[4]

As outlined in this submission, banks can play an important role in minimising gambling-related harm. Unfortunately, some current bank practices are actually contributing to, and exacerbating, harm.

1 Lubman, D, Manning, V, Dowling, N, Rodda, S, Lee, S, Garde, E, Merkouris, S & Volberg, R 2017, Problem gambling in people seeking treatment for mental illness, Victorian Responsible Gambling Foundation, Melbourne. See abstract at http://www.responsiblegambling.vic.gov.au/information-and-resources/research/recent-research/problem-gambling-in-people-seeking-treatment-for-mental-illness

2 Lubman et al.

3 Lubman et al

4 Nautiyal, K. M., Okuda, M., Hen, R. and Blanco, C. (2017), Gambling disorder: an integrative review of animal and human studies. Ann. N.Y. Acad. Sci., 1394: 106–127. doi:10.1111/nyas.13356. See http://onlinelibrary.wiley.com/doi/10.1111/nyas.13356/abstract

3 Responsible lending and gambling

KEY POINTS

- ASIC's Regulatory Guide 209 (RG 209) sets out the regulator's expectations of what a financial services provider needs to do to lend responsibly.
- RG 209 explicitly states that lenders need to take discretionary expenditure into account, including expenditure on gambling.
- There is very little evidence that lenders comply with this requirement. Case studies included in this submission illustrate this problem.
- Not taking gambling expenditure into account is a breach of RG 209 as well as a financial services provider's obligations under the credit laws to lend responsibly. Lenders must be required to review transaction account statements to verify expenditure.

3.1 ASIC RG 209 Responsible Lending Guidelines

ASIC's Regulatory Guide 209 (RG 209) sets out the regulator's expectations in relation to the implementation of the responsible lending requirements of the National Consumer Credit Protection Act.[5] Regulatory guidance of this nature is not the law, but it usefully provides more detail for market participants about appropriate practices. The community would expect that financial services providers would comply with this guidance. Consumer advocates asked that RG 209 be included in the revised Banking Code of Practice, but this recommendation was not taken up by the reviewer.[6]

RG 209.32 requires lenders to make "reasonable inquiries" about a customer's financial situation when assessing the affordability of a loan.

"Reasonable inquiries about a consumer's financial situation will generally include:

a) the consumer's current amount and source of income or benefits

5 Chapter 3.

6 See recommendation 24b on page 71 of the joint consumer group submission, http://financialrights.org.au/wp-content/uploads/2016/09/160916_ABACodeReview_Submission_FINAL.pdf

(this would include the nature and length of their employment—for example, full-time, part-time, casual or self-employed—and whether all or part of the consumer's income is sourced from payments under the Social Security Act 1991);

b) the extent of the consumer's fixed expenses (such as rent, repayment of existing debts, child support and recurring expenses such as insurance); and

c) the consumer's variable living expenses (such as food and utilities) and drivers of variable expenses, such as dependants and any particular or unusual circumstances."

RG 209.33 specifically mentions gambling as a form of discretionary expenditure:

> "Depending on the circumstances of the particular consumer, and the kind of credit contract or consumer lease they may acquire, reasonable inquiries could also include:
>
> a) the consumer's other expenditure that may be discretionary (such as entertainment, take-away food, alcohol, tobacco and **gambling**);
>
> a) the extent to which any existing debts are to be repaid from the credit advanced." (our highlighting)

In practice, we do not see any evidence that gambling expenditure is considered.

A determination by the Financial Ombudsman Service quoting RG 209.33 found that:

> *"a credit provider must take the borrower as they find them' and ... ' it is not for either Lender A or FOS to determine whether the Applicant should change his lifestyle and markedly reduce his expenditure on cigarettes."*[7]

Gambling expenditure, like cigarette expenditure, should be considered in assessing whether a person can afford credit, such as a personal loan or credit card.

7 Financial Ombudsman Service, Case number: 438112, 23 January 2016. The case involved a borrower who smoked heavily and spent a lot on cigarettes. This was not considered in the assessment of his expenses. FOS' deterimination stated relied on RG209.33 and stated that 'a proper analysis of the Applicant's financial circumstances would have revealed that the Applicant had significant expenditure on cigarettes and could not afford the loan unless that expenditure was significantly reduced.'

Given this, it concluded that the loan was not affordable. 'It is not for either Lender A or FOS to determine whether the Applicant should change his lifestyle and markedly reduce his expenditure on cigarettes. In that sense, a credit provider must take the borrower as they find them.' (page 5)

Conceptually gambling with one's own money, although harmful, is in a different category to lending money that will be used for, and in all probability lost, through gambling.

We submit that RG 209 needs to be given force of law, with further specific guidance on suitability when there is evidence of regular gambling expenditure.

3.2 Examples of irresponsible lending to people with gambling issues

It appears easy to obtain credit, even when most of a person's income is being spent on gambling. A bank can often clearly see this because the person's transaction account is typically with the same bank providing the credit. The problem is that this sets the customer up to fail. People with gambling issues, who are given a loan and then use it to gamble, are almost certain to lose the money.

As gambling is an addiction, people who are experiencing gambling issues, will actively seek further credit. They very rarely disclose they will use the money to gamble. They may say for example that they need to repair their car, or do household repairs, or something generic. If there are indicators of problem gambling, banks should be making further inquiries about the purpose of the loan.

In assessing affordability, banks should also be considering an applicant's expenses, including discretionary expenditure such as gambling. Any algorithms could be set to pick up disproportionate gambling expenses.

The three case studies below—case study 1 (Mitchell), case study 2 (Will) and case study 3 (Joe)—are examples of irresponsible lending by banks where gambling was clearly a factor in each person's life. This lending is contrary to both RG 209 and the responsible lending provisions of the credit laws.

CASE STUDY 1: MITCHELL

A big four bank sent a letter to Mitchell, in his early 20s, offering him a personal loan. Mitchell had previously had a personal loan that he had repaid. This time however, MItchell had been lured by online sports betting companies and was gambling quite a lot. The offer of easy money was tempting and Mitchell applied for the loan. As shown in Mitchells' bank statement prior to getting the loan (below), it was clear that he was spending most of his money on gambling.

On 16 April, the loan amount of $25,000 was deposited into Mitchell's transaction account. His bank statements show that his gambling intensified after he was given this cash. Two months later on the 18th June the entire $25,000 was gone. With his bank account bare, Mitchell then took out a payday loan to get some more money. With the payday loan and the $25,000 loan repayments, and a gambling habit, Mitchell's financial life imploded.

Mitchell quit his job in Melbourne and moved back interstate to get help from his parents to manage financially. The bank sold the debt to a debt collection agency. Mitchell's father became a guarantor on a new loan for Mitchell to pay out the debt collection agency.

Mitchell is in gambling counselling and is no longer gambling. His financial counsellor has tried to get redress from the bank, however this was declined, as the bank believes that its assessment of loan affordability was accurate. The debt collection agency has also declined any redress. Two years and nine months later, Mitchell is still paying off the loan and will be doing so for many years.

Mitchell regrets the day his bank ever lent him the money as it damaged his financial wellbeing and his credit rating.

We submit that the bank should have properly considered Mitchell's financial position as shown in the bank statements. He had also received a payday loan the week before the loan.

n Details (continued)

Particulars	Debits	Credits	Balance
Brought forward			820.12 Cr
NABATM Cash 07th18:23 660 Bourke	100.00		
EFTPOS 03/04 21:30 Aniello	134.50		585.62 Cr
010028000000000000 Scope (vic) Ltd 301500		69.62	
EFTPOS 08/04 08:48 Woolworths 3205	16.24		
V5331 06/04 Tom Waterhouse NT Sydn Ref: 01145236811	20.00		
V5331 05/04 Tom Waterhouse NT Sydn Ref: 07194266680	40.00		
V5331 05/04 Tom Waterhouse NT Pt Fann Ref: 74940525096	40.00		
V5331 04/04 Tom Waterhouse NT Sydn Ref: 07021736186	70.00		
V5331 05/04 Tom Waterhouse NT Pt Fann Ref: 74940525095	70.00		
V5331 04/04 Tom Waterhouse NT Sydn Ref: 07000685219	99.20		
V5331 05/04 Tom Waterhouse NT Pt Fann Ref: 74940525093	100.00		199.80 Cr
Internet Banking Transaction History			
Internet Banking Transaction History			
CUSCAL ATM 09th12:35 Redialm Centre Dandr	200.00		0.20 Dr
Please Note From 09 Apr 2015 Your Debit Int Rate Is 16.01%			0.20 Dr
Internet Banking Transaction History			
Internet Banking Transaction History			
Internet Banking Transaction History			
Internet Banking Transaction History			0.20 Dr
Internet Banking Transaction History			0.20 Dr
PAYR[redacted] Centre 394591		[redacted]	
V5331 15/04 Tom Waterhouse NT Sydn Ref: 03161857190	100.00		
V5331 15/04 Tom Waterhouse NT Sydn Ref: 03164626361	100.00		
V5331 15/04 Tom Waterhouse NT Sydn Ref: 03164625898	100.00		
V5331 15/04 Tom Waterhouse NT Sydn Ref: 03164626547	100.00		
V5331 15/04 Tom Waterhouse NT Sydn Ref: 03171369657	100.00		
V5331 15/04 Tom Waterhouse NT Sydn Ref: 03171428680	100.00		[redacted]
Internet Banking Transaction History			
Internet Banking Transaction History			
Loan Proceeds		25,000.00	Perso Loa
EFTPOS 16/04 09:25 Safeway 3283 Cash Out 800.00	800.00		
V5331 15/04 Ezypay *303462049 Chat Ref: 74742725105	39.00		
V5331 15/04 Tom Waterhouse NT Sydn Ref: 03193111377	100.00		
V5331 15/04 Tom Waterhouse NT Sydn Ref: 03210738717	100.00		
Carried forward			25,233.31 C

This statement shows Mitchell's gambling expenditure immediately before he received a loan of $25,000. The bank appears to have ignored this in granting the loan.

CASE STUDY 2: WILL

Two decades ago, Will lost his sister to family violence, when she was murdered. He developed post-traumatic stress disorder and anxiety and gambling became his escape. Sometimes he would stay overnight at the gambling venue and then go to work. A year and a half ago, Will had a bad accident, and could no longer work as a sub-contractor. He had income protection payments for six months only. In March 2017, he approached his big four bank for personal loans to pay off his credit card and for home improvements and was given $42,000.

With the loan money, he paid off the credit card balance, but the bank did not close the card even though it was with the same bank. His transaction account showed constant gambling. As gamblers do on a bad day, he then spent up to the limit of that credit card on gambling.

He went back to his big four bank for another personal loan and got it—$48,000. In total, he was given $90,000 in unsecured debt in a short period.

Prior to receiving the personal loans, it was not unusual for Will to spend $2,000 or more each day he was at the pokies venues. An assessment of Will's bank statements shows that most of his spending is on gambling. The bank appears to have ignored this evidence and did not ask for his medical records or explore the duration of his income from his insurance.

In addition, Will had loans for his home and for an investment property. A big mine had closed in his regional area and house values had plummeted, leaving him with less than $1,000 equity in his house, and a small amount of equity in his investment property (about $30,000). With his injury, lack of job opportunities in a depressed economic region and debts, his financial future is uncertain.

Will is now on NewStart Allowance and worried about the debts.

Will's situation was difficult, but inappropriate lending made it even worse. His financial counsellor says that he will probably lose both his home and the investment property. The bank agreed that the personal loans were 'maladministration', but only agreed to waive the interest, fees and charges, not the principle.

Postcript

After many months of advocacy, the involvement of the bank's Customer Advocate, and the prospect of this case study being given to the Royal Commission, the bank finally agreed to waive all debts. Will had to agree sell his house, but in the end he was able to keep his land, and friends were helping him build a home with a shipping container so he has somewhere to live. This was a good outcome but without the perseverance of the financial counsellor and FCA raising this case at senior levels within the bank, he would not have got this outcome. He has now been diagnosed with cancer.

CASE STUDY 3: JOE

Joe had a personal loan for $24,000 and two credit cards from second tier lenders with limits of $8,000 each. His total debt was $40,000. Joe generally paid the minimum payment each month on the credit cards. He was made redundant and his mental health and gambling worsened. In December 2016, Joe gambled all of his $170,000 redundancy payment in just five weeks.

In January 2017, Joe phoned the lender to increase his credit card limit. He had no job, no savings, no assets, yet was given a $2,000 increase. The previous month, he had not even made the minimum payment on one of the cards and was penalised with a late fee.

Joe's statement for one of the credit cards obtained at the time of his gambling crisis is below. Virtually all of the credit was used for gambling.

Date	Card	Description	Debits	Credits
11/12/2016	2110	TAB Limited Ultimo Au	$100.00	
14/12/2016	4880	Cash Advance Fee	$3.00	
15/12/2016	4880	BPAY Payment Received--Thank You		$250.00
15/12/2016	4880	Payment Handling Fee (Online)	$0.95	
30/12/2016	4880	BPAY Payment Received--Thank You		$800.00
30/12/2016	4880	Payment Handling Fee (Online)	$0.95	
03/01/2017	4880	BPAY Payment Received--Thank You		$650.00
03/01/2017	2110	TAB Limited Ultimo Au	$100.00	
03/01/2017	4880	Payment Handling Fee (Online)	$0.95	
04/01/2017	4880	BPAY Payment Received--Thank You		$1,000.00
04/01/2017	4880	Payment Handling Fee (Online)	$0.95	
06/01/2017	4880	Cash Advance Fee	$3.00	
07/01/2017	2110	TAB Limited Ultimo Au	$200.00	
07/01/2017	2110	TAB Limited Ultimo Au	$200.00	
09/01/2017	4880	BPAY Payment Received--Thank You		$1,000.00
09/01/2017	4880	Payment Handling Fee (Online)	$0.95	
10/01/2017	4880	Cash Advance Fee	$6.00	
10/01/2017	4880	Cash Advance Fee	$6.00	
13/01/2017	4880	Interest Charged At 24.99%	$95.06	

4 Community expectations and gambling with credit

KEY POINTS

- We submit that the community would expect that credit cards should not be available to transfer money to gambling companies.
- Recent Federal legislation* banning gambling companies giving people credit to bet did not extend to banks. Credit cards can still be used to transfer funds to gambling companies.
- Charges for credit card cash advances, which apply to transfers to online gambling companies, are excessive.
- Allowing customers to overdraw their accounts through unsolicited overdrafts also contributes to gambling-related harm.
- Credit card debts are sometimes consolidated into personal loans. If the other card is not closed at the same time, a person who has gambling issues, will often end up with more debt. There needs to be a mechanism in place to cancel credit cards as part of the approval process for a debt consolidation loan (where affordability is based on the card limit not being used again).

* *Interactive Gambling Amendment Act 2017*.

4.1 The problem with credit cards and gambling

The Federal Government has recently introduced legislation[8] prohibiting gambling companies from providing people with credit to gamble.[9] These laws came into effect on 17 February 2018.

A few financial institutions voluntarily do not allow credit cards to be used for gambling. These companies include Citibank, Suncorp, Bank of Queensland, Virgin Money and American Express. We commend these banks

8 Interactive Gambling Amendment Act 2017, Schedule 2.

9 See section 15C(3) A person who provides a regulated interactive gambling service that is a wagering service must not:

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

(b) facilitate or promote the provision of credit (other than by way of an independentlyissued 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.

for not facilitating the provision of credit for gambling. Most of the remaining banks however, including all of the big four banks allow credit to be used for gambling transactions.[10] They also allow secured credit, which can be used for gambling such as re-drawing from a mortgage because there are no inquiries about purpose.

People experiencing gambling-related harm will actively seek to continue gambling—gambling is a pernicious addiction. The design and marketing of credit cards in particular exacerbates gambling-related harm:

- credit cards have been relatively easy to obtain because the assessment of affordability has been based on a person being able to afford to repay only the minimum monthly balance. This can be as low as 2%-3% of the outstanding balance.[11] Most people who present to financial counsellors with gambling issues will have multiple credit cards; and
- gamblers will look to find ways to make the minimum monthly payments, even if it means not paying other household bills, so that they have access to at least some credit for gambling. This means that financial hardship can be pushed onto other areas of a household budget, with other industries, such as utilities or telecommunications, picking up some of the "hardship assistance".

We submit that the community would expect that all banks be prohibited from allowing credit cards to be used to transfer funds to gambling companies.

4.2 Charges for credit card cash advances are excessive

Regular use of cash advances on a credit card is a red flag for gambling harm. Credit card cash advances are an expensive way of paying for anything. Most people making a rational decision would not use a cash advance, but people with gambling addictions often ignore their high cost.

To gamble at physical venues with cash, some people access a nearby ATM. In the online space, they provide their credit card details to an online gambling company when setting up their gambling account. The banks have now coded these credit card transactions as cash advances instead of purchases, with a commensurate increase in the interest rate, above the already high credit card interest rate. This means that even if the person is buying a gambling service, it is charged as a cash advance.

By way of comparison, if a person uses their credit card to buy $500 worth of groceries there is typically an interest free period. If a credit card is used however to bet the same amount online, this is coded as a cash advance and interest is charged immediately, as well as a fee for the cash advance itself.

10 See table 'Using a credit card for gambling', finder.com, (27 Oct. 2017)

11 FCA's first submission to the Royal Commission raises issues in relation to responsible lending and credit cards.

Typically, the interest rate on a cash advance is higher than the regular credit card interest rate. As an example, the costs incurred by Joe for his online gambling transactions (see case study 3 above) are shown in the box and statement excerpt following.

Your transactions

Transaction date	Card No.	Transaction description	Debits	Credits
Total opening balance				$8,734.58
19/12/2017		OVERDUE FEE	$20.00	
21/12/2017	4324	BPAY PAYMENT THANK YOU		$10.00
22/12/2017		PAYMENT HANDLING FEE (ONLINE)	$0.95	
14/01/2018	4324	ACCOUNT SERVICE FEE	$4.85	
14/01/2018		INTEREST CHARGE AT 29.49000%	$171.52	
14/01/2018		INTEREST CHARGE AT 22.74000%	$33.77	
Total closing balance				$8,955.77

The fees and interest rate for cash advances for Joe's credit card with an $8,000 limit are:

- 3% of the cash advance or $3, whichever is greater, capped at $30. For example, a $100 TAB transaction cost $3, plus interest and a $700 withdrawal cost $21;
- interest accrues from day one at rates of more than 20%;
- payment handling fee of $0.95 (a charge when Joe gave the bank money).

Some months there is a late fee of $20, when the minimum repayment is not made. There is no charge for exceeding a credit limit. This means that despite being approved for a limit, this can be exceeded.*

Case study 4 (Marco) below is a further example of the high costs of cash advances. Marco's statement for his low rate visa credit card is also shown.

CASE STUDY 4: MARCO

Marco had a long-standing pokies addiction. He had lost his wife, his job, and his will to live and was contemplating suicide during a particular casino binge. Just prior to this, his bank gave him large amounts of credit which he was using in his final gambling episode.

He survived his suicide attempt, more by luck than anything else. Largely, due to the efforts of his financial counsellor, the bank has waived much of the approximately $80,000 credit he was given. Marco has now moved interstate and is trying to rebuild his life.

Note the cash advance fees that this big four bank charges. On 2nd June 2017, Marco was charged a $150 fee for a $10,000 cash advance online, then $120 fee for a second $6,000 cash advance. Then on top of this, there were the interest charges.

Date	Description	Debit	Credit
22 Sep 2017	CREDIT CARD REPAYMENT PROTECTION	-$111.90	
22 Sep 2017	INTEREST CHARGES - CAS H	-$154.45	
23 Aug 2017	CREDIT CARD REPAYMENT PROTECTION	-$110.52	
23 Aug 2017	INTEREST CHARGES - CAS H	-$361.70	
25 Jul 2017	AUTOPAY REVERSAL	-$865.13	
21 Jul 2017	CREDIT CARD REPAYMENT PROTECTION	-$103.60	
21 Jul 2017	INTEREST CHARGES - CAS H	-$333.43	
20 Jul 2017	AUTOMATIC PAYMENT		$865.13
23 Jun 2017	CREDIT CARD REPAYMENT PROTECTION	-$105.82	
23 Jun 2017	INTEREST CHARGES - CAS H	-$274.70	
06 Jun 2017	CASH ADVANCE FEE - ONL INE BANKING	-$74.62	
06 Jun 2017	CASH ADVANCE 067177 CASH ADVANCE ON LINE	-$3731.00	
02 Jun 2017	CASH ADVANCE FEE - ONL INE BANKING	-$120.00	
02 Jun 2017	CASH ADVANCE FEE - ONL INE BANKING	-$150.00	
02 Jun 2017	CASH ADVANCE 041398 CASH ADVANCE ON LINE	-$6000.00	
02 Jun 2017	CASH ADVANCE 037462 CASH ADVANCE ON LINE	-$10000.00	

Incidentally, Marco had been paying a hefty $111.90 each month for credit card payment protection, in case he lost his job. When he actually lost his job, due to a technicality, he was not eligible to claim.[12]

12 He had resigned from his job, as he was about to be dismissed. The insurance did not cover volunatry exits.

After losing all the loaned money, and after a failed suicide attempt and subsequent hospitalisation, Marco had no money for interest or repayments. He was being assisted in the bank's "hardship program" for a few months. However, he was still debited the insurance fees of $111.90 each month even though he wasn't eligible to claim retrospectively or prospectively.

There does not seem to be a good reason for charging such high cash advance fees. One explanation is that the banks are signaling that a 25 – 30% interest rate on cash advances reflects risk-based pricing. If that is the case, then it is also the case that the lending is risky for the customer too. Another explanation is that these high interest rates simply reflect that the banks can price-gouge, because customers are already locked in.

We submit that these high rates are a dangerous product feature that can cause further financial hardship for people with gambling issues. If the banks' intent was to dissuade people from using cash advances by making them very costly, this does not appear to have worked as the drive to gamble is so strong for many people that they are unable to make rational decisions.

In 2016 and 2017, FCA met with all the big four banks requesting that they prevent credit cards from being used for gambling. We explained the harm financial counsellors were reporting from gambling associated with the provision of credit cards and cash advances.

We were encouraged when one of these banks went away to "investigate the issues". We were distressed however to later learn the result: the bank decided they would do nothing about credit cards being used for gambling. Instead they thanked us for alerting them to the fact that their competitors treated gambling transactions as cash advances, while they were treating them as purchases. Their response was to change their processes so that they too charged them as cash advances.

We submit that banks should be prohibited from allowing credit cards to be used to transfer funds to gambling companies.

4.3 Unsolicited overdrafts and fees

People with gambling issues often run out of money. They simply use whatever money is available to gamble, so they can easily get caught with insufficient funds in their transaction account. Where it is not a huge amount, the bank typically honors the transaction, but then charges the person two levels of fees: an overdraw fee and daily charges.

We note that formal overdraft facilities *can* be set up if someone requests them and if the account has that facility. This requires formal approval and assessment, as it is a form of credit. But we also see people who have <u>not</u> requested an overdraft fee being given effectively unsolicited credit. The justification for this is to avoid embarrassment for customers if a transaction is declined, such as at the supermarket checkout.

The end impact however is that bank charges for a 14-day unsolicited overdraft of $100 will be much higher than the rates a payday lender is permitted to charge. Charges of $6 or $7 day for an involuntary overdraft will quickly mount. Some banks also charge a fixed "breach" type charge the first time, then daily fees. This all occurs without asking the customer who may in fact prefer to have the transaction declined.

We submit that unsolicited overdrafts, because of the harm they cause, should be prohibited.

Daniel, case study 5 below, is an example of how unsolicited overdrafts contribute to gambling-related harm. It is also possible that the loans themselves constituted irresponsible lending.

CASE STUDY 5: DANIEL

Daniel worked in the mining industry driving trucks and had a good salary. He then lost his job and went through some tough times on the home, health and job fronts, and with time on his hands, started gambling online and with the TAB, first with his credit card. When he had used up the available credit, he started asking for credit limit increases, which he got easily from the major banks. "My Westpac credit card was maxed to about $16,000. Then I went to ANZ, NAB and the Commonwealth Bank looking for credit to gamble. They all allowed me to have between $4,000 and $6,000. I had about $40,000 altogether. I wanted to commit suicide because I found no escape".

"I felt so much pressure, with the only way out being to gamble. I was behind on all my household bills. I sold my unit and paid $30,000 to Fox Symes for a debt arrangement. I ended up with about $15,000 left." Those funds were also gambled.

Daniel's bank then allowed him to overdraw his transaction account. Payments went straight to various gambling companies. From Feb 2014 to June 2015 his overdraft balance on one account was $19,136.45. The bank issued a partial debt waiver with a weekly payment arrangement. From Jan 2017 to May 2017, Daniel went into overdraft for $9,054.36. In June with help from a financial counsellor, the bank waived the balance and closed the account. A third account was overdrawn by $1,038 over a week in May 2017. This has only recently been discovered, and is now also waived and closed.

Daniel is very conscious of his addiction, and trying to keep money 'out of his reach' while he accumulates some savings. He wishes that his bank could give him some tools to help protect himself and his savings from his strong addictive urges that surface periodically. His bank has little to offer in this respect. It seems that an addicted customer's request to 'give me my money now' in a non-rational phase trumps any request to 'keep my money safe/away from me' in a rational, considered 'signed and in writing' moment of self-preservation.

Note: With the help of a financial counsellor, Daniel self-excluded from the online gambling company. Another company in the corporate group, ignored the self-exclusion. Daniel has a job again, and a new housemate who helps him quarantine money and pay the bills. He is still struggling with his addiction.

4.4 Consolidating multiple credit cards into personal loans

There are two issues when credit card debts are consolidated into a personal loan:

1. if a person is consolidating multiple forms of credit because they cannot make the repayments, then it is possible that the original credit products were not affordable; and
2. there is a process flaw in bank systems where the superseded credit cards are not necessarily shut down, effectively doubling the credit available to gamble.

Many people who gamble end up with multiple credit cards that are "maxed out". They are enticed into consolidating this debt into a personal loan (or another unsecured credit product). The bank, at least in theory, assesses their capacity to repay the consolidated debt consistent with their responsible lending obligations. The new consolidated loan is approved and the loan facility opened.

Many of the banks however do not appear to have an effective process to trigger a closure of the original credit accounts which the new consolidated accounts are supposed to replace. For some customers, it is possible that the original lenders do not know about the consolidation. In one of our case studies however (case study 6 – Pam below), the bank did not even shut down its own superseded credit card.

This means the person receives effectively double the amount of credit. A person with gambling issues, will take that extra money and gamble it.

This is a problem that needs a more effective solution, such as a process to instruct the other bank(s) to close the original credit cards. It should not rely on the consumer to undertake this last step. Pam's experiences are an example of what can happen when other credit cards are not closed.

CASE STUDY 6: PAM

Pam is a woman in her 50s and her primary form of entertainment was gambling on the pokies. She had a job earning about $67,000 per annum. She had a personal loan and three credit cards, one from her big four bank, and the others from HSBC and Latitude Financial Services. In total, Pam was servicing $60,000 of credit with these products. This is disproportionate amount compared to her salary. Pam also had a car loan.

Pam's big four bank refinanced all of the credit into a personal loan, giving her an additional loan amount as well. With the consolidated loan money, she paid off all of the credit cards. However, they were never closed off. The bank did not close down its own credit card that Pam had paid off. She used all of the money to gamble.

She was also overdrawn on her transaction account and was charged overdrawn fees of $459.48.

Pam has since been made redundant.

Pam's specialist gambling financial counsellor says that clients regularly tell her that bank staff in branches upsell credit, and wonders if banks pay commissions to tellers, based on credit limit upselling. Clients tell her that bank staff initiate the conversation with openers such as: ''I see that you haven't had an increase on your credit limit for six months, how about we put an application in and see if it can go up?' or "it looks like you're are about due for a credit limit increase." We are concerned that this conduct is in breach of s. 133BE of the National Consumer Credit Protection Act.

5 Community expectations and gambling with one's own money

KEY POINTS

- There is no limit imposed on transfers to gambling companies when using a debit card. If you have $100,000 in an account, the whole amount can be transferred without triggering any other processes.
- This form of access is often more harmful than gambling with credit, such as a credit card which typically has a lower limit.
- This means that people experiencing gambling-related issues can gamble every last cent in their bank account, even their entire super, TPD (temporary and permanent disability) payouts, inheritance or compensation payouts.
- In contrast, if you try to transfer large amounts of money using the 'pay anyone' function from a bank account, bank systems prevents this, restricting a person to a daily limit. However, if you provide your debit card number to a gambling company, the transfer will go through straight away. This difference in approach is not appropriate.
- The bank is often the only rational player able to see this harmful spending. They have a role in altering their customers to excessive gambling expenditure.
- When requesting hardship assistance from banks, as anyone is entitled to, people affected by gambling are often judged and sometimes assistance is not provided for this reason.

5.1 Paradoxically, gambling with one's own money is often the most harmful

At first glance, it would seem that gambling with your own money is innocuous—surely a person has a right to spend their money as they wish. However, through our work we have observed that spending all of your savings, or most of a regular wage on gambling, can be extremely harmful. In fact, using your own money can sometimes be more harmful than gambling that is facilitated using a credit card, where there is at least a maximum limit on the loss, for example, $5,000 or $20,000.

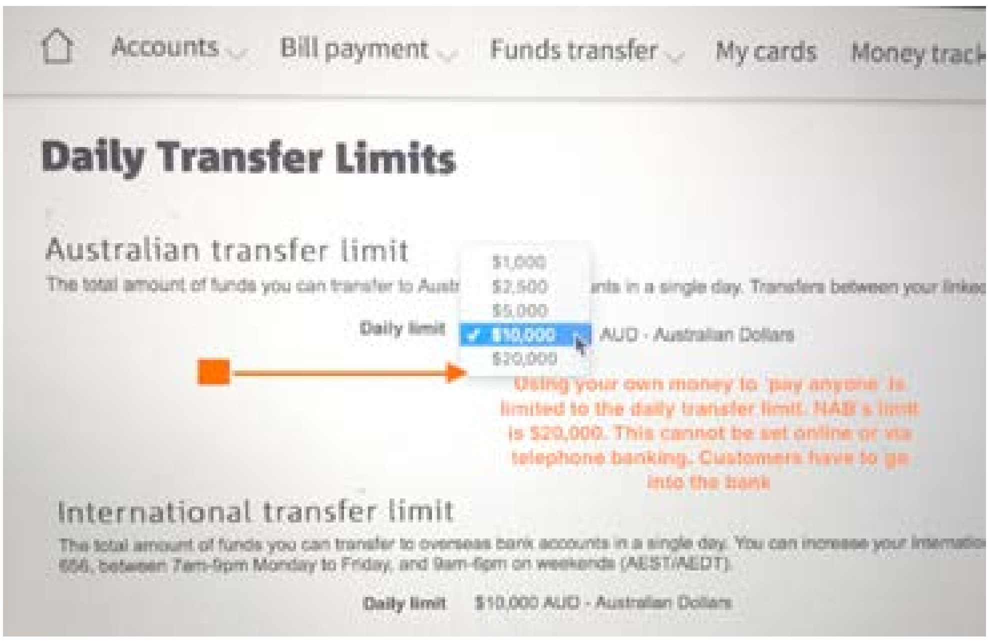
The risk of gambling-related harm is magnified if a person with gambling issues receives a lump sum payment of some kind, such as from a superannuation, redundancy, or insurance payout, a compensation scheme payment or an inheritance. A person with gambling issues can immediately use these funds to gamble.

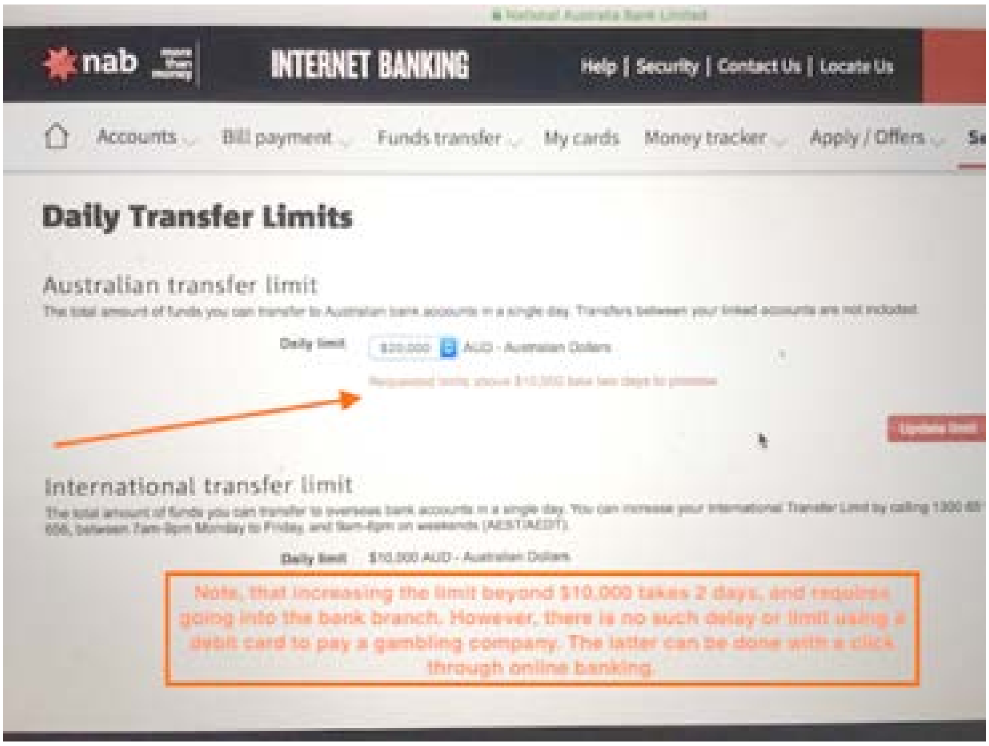
The problem is exacerbated by the inconsistent operation of bank money transfer systems. There are few restrictions on how much money a person can transfer to an online gambling company. This means that a person can transfer all or some of a lump sum payment to a sports betting company either immediately, or over subsequent days.

In contrast, banks have restrictions on how much money a person can spend or transfer in other circumstances. For example, if you try to transfer say $100,000 using the 'pay anyone' function from a bank account, the system prevents this, restricting a person to their daily limit—see screen shots below. For example, with NAB, a $100,000 transfer would require a visit to a bank branch. You simply cannot transfer this amount using online banking in one day. The limit for a purchase with a debit card in a shop is also capped, for example, at $1,000.

Transferring funds to online sports betting companies appears to be the only form of money transfer that has no safeguards or restrictions. Anyone with gambling issues and a lump sum of some type and "something else happening" in their lives is at risk of gambling harm. Often the bank is the only rational party that will have an insight into these circumstances.

The majority of people bank with just one main financial institution for their daily transactions. Banks have a huge amount of data and can track money coming in and money going out. Banks are therefore in a very good position to assess a person's income and the frequency and quantum of gambling activities as these are highlighted by specific merchant codes.





Case study 7 below shows an excerpt from Les' bank statement and the data available to one of the big four banks for a customer. Les was retrenched from his job driving trucks in the mining industry. He lost the bulk of his redundancy payment in seven days. Les' bank did not once call to question the huge amounts being transferred to Ladbrokes, an online sports betting company, on his debit card.

It is useful to contrast this situation to the way banks respond to other transactions highlighted through their internal control systems. For example, a bank will proactively contact a customer if they suspect there is fraudulent activity on a credit card and may in some cases suspend an account. This protects both the bank and the customer.

CASE STUDY 7 – LES

Les lost the bulk of his redundancy payment in seven days.

As an example, it is telling to add up the Ladbroke debit card transfers on 7th and 8th July. These follow some sort of pattern for a time: $2,200 + $3,000 + $10,000 + $12,000 + $2,500 + $3,000 + $5,000 + $5,000 + $5,000 + $5,000 + $5,000 + $5,000 + $5,000 + $5,000 + $5,000 + $5,000 + $5,000 + $5,000 + $5,000 + $10,000 +$10,000.

After this, Les increases the amounts he is transferring and presumably betting: $19,000 + $20,000 + $30,000 + $40,000. He appears to have deposited $165,000 into his betting account with Ladbrokes over this relatively short time frame.

06 Jul	Deposit Ladbrokes Com Au Withdrawal		8,000.00
06 Jul	Deposit Ladbrokes Com Au Withdrawal		80,000.00
06 Jul	Debit Card Purchase Bp Gladstne Airpt 5573 Gladstone Aus	12.25	
06 Jul	Debit Card Purchase Puma Energy Gladstone Gladstone Aus	23.15	
06 Jul	Debit Card Purchase Ladbrokes Lutwyche Aus	564.00	
06 Jul	Debit Card Purchase Ladbrokes Lutwyche Aus	1,000.00	
06 Jul	Debit Card Purchase Ladbrokes Lutwyche Aus	1,000.00	
06 Jul	Debit Card Purchase Ladbrokes Lutwyche Aus	1,000.00	
06 Jul	Debit Card Purchase Ladbrokes Lutwyche Aus	1,500.00	
06 Jul	Debit Card Purchase Ladbrokes Lutwyche Aus	1,900.00	
06 Jul	Debit Card Purchase Ladbrokes Lutwyche Aus	5,000.00	
06 Jul	Withdrawal Mobile 1510244 Tfr Westpac Cho	[redacted]	
06 Jul	Withdrawal Mobile 1537537 Tfr Westpac esa	30,000.00	
07 Jul	Deposit Online 2088007 Tfr Westpac Choice		3,100.00
07 Jul	Deposit Online 2440136 Tfr Westpac esaver		50,000.00
07 Jul	Deposit Online 2451448 Tfr Westpac esaver		40,000.00
07 Jul	Deposit Online 2574104 Tfr Westpac esaver		50,000.00
07 Jul	Deposit Online 2646870 Tfr Westpac Choice		5,638.00
07 Jul	Deposit Ladbrokes Com Au Withdrawal		20,000.00
07 Jul	Deposit Ladbrokes Com Au Withdrawal		50,000.00
07 Jul	Debit Card Purchase Ladbrokes Lutwyche Aus	800.00	
07 Jul	Debit Card Purchase Ladbrokes Lutwyche Aus	800.00	

07 Jul	Debit Card Purchase Reef City Motors Pty Dalone Ql Aus	1,000.00	
07 Jul	Debit Card Purchase Ladbrokes Lutwyche Aus	2,200.00	
07 Jul	Debit Card Purchase Ladbrokes Lutwyche Aus	3,000.00	
07 Jul	Debit Card Purchase Ladbrokes Lutwyche Aus	10,000.00	
07 Jul	Debit Card Purchase Ladbrokes Lutwyche Aus	12,000.00	
07 Jul	Withdrawal Mobile 1202742 Pymt Nita match	900.00	
07 Jul	Withdrawal Mobile 1874050 Pymt Tamie pra	250.00	
08 Jul	Deposit Abbey Osborn car payment		220.00
08 Jul	Debit Card Purchase Ladbrokes Lutwyche Aus	2,500.00	
08 Jul	Debit Card Purchase Ladbrokes Lutwyche Aus	3,000.00	
08 Jul	Debit Card Purchase Ladbrokes Lutwyche Aus	5,000.00	
08 Jul	Debit Card Purchase Ladbrokes Lutwyche Aus	5,000.00	
08 Jul	Debit Card Purchase Ladbrokes Lutwyche Aus	5,000.00	
08 Jul	Debit Card Purchase Ladbrokes Lutwyche Aus	5,000.00	
08 Jul	Debit Card Purchase Ladbrokes Lutwyche Aus	5,000.00	
08 Jul	Debit Card Purchase Ladbrokes Lutwyche Aus	5,000.00	
08 Jul	Debit Card Purchase Ladbrokes Lutwyche Aus	5,000.00	
08 Jul	Debit Card Purchase Ladbrokes Lutwyche Aus	5,500.00	
08 Jul	Debit Card Purchase Ladbrokes Lutwyche Aus	10,000.00	
08 Jul	Debit Card Purchase Ladbrokes Lutwyche Aus	10,000.00	
08 Jul	Debit Card Purchase Ladbrokes Lutwyche Aus	19,000.00	
08 Jul	Debit Card Purchase Ladbrokes Lutwyche Aus	20,000.00	
08 Jul	Debit Card Purchase Ladbrokes Lutwyche Aus	30,000.00	
08 Jul	Debit Card Purchase Ladbrokes Lutwyche Aus	40,000.00	

Case studies 8 (Joseph), 9 (Brad) and 10 (Jacob) below are also examples of people who have lost large lump sums of money. We submit that banks have an important role in alerting people to the amount of money they are spending on gambling.

CASE STUDY 8 – JOSEPH

Joseph is a middle-aged professional who was made redundant. He had been with the same large company for two decades. In December 2017, in the middle of the night in a gambling binge, he transferred about $50,000 from his bank account to his online gambling account. He lost all of this money late that night, and chasing his losses over the subsequent five weeks lost the remainder of his $170,000 redundancy package (with help from predatory VIP client management from his online gambling company who rang and emailed him). His bank did not call to query the transactions.

As a result of the gambling, Joseph's wife left him. He was devastated. One of his children no longer talks to him. The wedding money set aside for their child's wedding is gone. His wife had no access to the bank accounts, and had been totally in the dark about the state of their finances.

Joseph was also provided with credit and those debts are subject to debt collection activity.

CASE STUDY 9 – BRAD

Brad was in his late 20s living in the city. He was struggling with a serious mental health issue and his caring parents begged him to come back to live with them in the country, so he could get better with their help. He sold his home, and the net sale proceeds were in his bank account. Four weeks later, he disclosed that he had lost the entire house proceeds of over $150,000 in four sessions with an online sports betting company. It took just one click to transfer over $45,000 as his gambling company had joined his bank account to his gambling account.

CASE STUDY 10 – JACOB

Jacob was a middle-aged professional who had an executive position in a large company. He had a surgical procedure that went terribly wrong, leaving him unable to work and in chronic pain. He had a series of sad events happening in his life including the tragic death of a close family member and a relationship breakdown.

After years of effort, Jacob finally received a Total and Permanent Disability (TPD) insurance payout of over $350,000 as a buffer for his future care. His mental health was poor.

He started gambling heavily with three Australian online wagering companies. Two of them to their credit, after a while refused to accept further bets from him, as his betting was clearly both frenetic and erratic. The third company 'let him run'.

He lost most of the TPD money in a matter of months.

5.2 When requesting 'hardship assistance' people who gamble are judged

The theme of banks not factoring in regular gambling expenditure as part of lending decisions across products runs through this submission. The opposite happens when someone requests hardship assistance, as they are entitled to do so under the credit laws and the Banking Code of Practice. In these cases, the bank undertakes a thorough assessment of a person's transaction history and then discovers the existence of gambling. The fact that a person has been gambling is then used in some cases reported to us by financial counsellors, as a reason to refuse hardship assistance. Jan's case study (11) below is an example.

As noted earlier, gambling is a recognised mental health disorder. Illness is included as a specific example for the provision of hardship assistance under s 72 of the National Credit Code.

CASE STUDY 11: JAN

Jan had the misfortune to suffer a serious stroke which led to brain damage. Prior to the stroke Jan had a personal loan which she had easily managed. Her acquired brain injury resulted in a personality change and she started gambling at the pokies.

She had over $13,000 credit card debt with two cards. The bank hardship officer, informed the financial counsellor that he had gone through her accounts and noticed regular small amounts of gambling and he could not therefore offer hardship assistance. The bank had made a judgmental decision that someone who gambled did not deserve assistance.

The financial counsellor persisted, pointing out the missed medical history of the brain injury, and the bank reconsidered and eventually waived the debt. Without the financial counsellor's intervention, the outcome would have in all likelihood have been quite different, with ongoing debt collection activity.

6 Family violence and gambling

KEY POINTS

- Financial or economic abuse is common when one person in a relationship is involved in gambling.
- Poor lending practices can facilitate gambling-related economic abuse of a gambler's partner.
- Banks can help minimise gambling-related harm by providing better information to joint account holders, providing alerts about gambling expenditure, allowing gamblers to set limits on expenditure and providing information about services that can help.

6.1 Overview of the issue

For many reasons, the partners of people with gambling issues find themselves the innocent victims of those behaviours, including financial abuse. Financial abuse includes controlling behaviors, debt for which one partner receives no benefit and/or is incurred without the other person's knowledge, dissipation of marital assets in secret and insufficient funds to run a household.

Financial or economic abuse is common when one person in a relationship is involved in gambling. One partner gambles, often going to great lengths to hide the extent of their gambling. The other partner is initially oblivious to the gambling, only to eventually find out that their own financial position has significantly deteriorated. Sadly, there is also a strong correlation between economic abuse and physcial violence.[13]

In some cases, misconduct by the bank or finance/mortgage brokers directly contribute to gambling-related harm. This is discussed in section 5.2 below.

In other cases, banks could play an important role in minimising gambling-related harm by putting in place more effective processes that would reduce the liklihood of harm. This is discussed in section 6.3.

13 Kutin, J. J., Russell, R., & Reid, M. (2017). Economic abuse between intimate partners in Australia: Prevalence, health status, disability and financial stress. Australian and New Zealand Journal of Public Health.

6.2 Misconduct

Bert and Mary's case study below is an example of irresponsible lending involving a mortgage broker.

CASE STUDY 12: BERT AND MARY

Bert and Mary are both professionals in their 60s. A few years ago Bert was diagnosed with a serious disease and gave up working full time and Mary became the main income earner. They applied for a $50,000 loan secured against their house via a broker, ostensibly to purchase some equipment for Bert to use professionally, to do a little work. Without Mary's knowledge, Bert used the money to gamble at a casino.

Bert then contacted the broker, told her that he had gambled the money and that it was all gone. The broker said not to worry, as the broker had initially applied for an additional $100,000 (without either party's knowledge or consent) and this was approved. Bert then used all of the funds from this second loan of $100,000 in an attempt to win back his losses from the first loan. Mary was not informed. The money was lost.

Bert then asked the broker for another loan of $75,000. The bank only agreed to an amount of $50,000 assessed against Mary's income. The documentation was sent by mail. Mary did not see or sign the loan agreement. The broker did not review the application with Mary.

Bert and Mary came to see a financial counsellor who contacted the creditors.

The marriage has since broken down. Mary accepted responsibility for the first loan, which she knew about and is making repayments.

To date, without admitting poor lending conduct, the bank has agreed to stop interest continuing to accrue on the second and third loans and to accept a hardship payment arrangement based on Bert's Centrelink income of $20 fortnight.

6.3 Gambling-related harm, money management and community expectations

Sadly, there are many examples where one person in a relationship trusts their partner to manage their joint financial affairs, only to find that they have in fact gambled the funds. The list below are examples of this.

- An elderly woman discovered that her husband has redrawn heavily on an almost paid off home mortgage. They are both retired with no ability to repay more than a small amount. In her old age, she looks likely to lose both her house and her marriage.

- A partner discloses his gambling and debts and promises to stop gambling. She takes out a loan to pay off his debts and get rid of the debt collection stress. Down the track, he relapses (which is common in gambling disorders), the relationship is irrevocably damaged and they part. She is left paying off his gambling debts as the loan is in her name.
- A man throughout his 20 years of marriage is the main breadwinner. He works steadily, taking care of the bills. They live modestly. The bank accounts are opened in his name only, or as the primary account holder. He manages the online banking and she never sees a statement. She is ignorant of the fact that they have absolutely no money saved because of his gambling, despite over 20 years of working in a well-paying job. She does not know that he has gambling-related debts. For six months, he hides that he has lost his entire redundancy payment from gambling, and that they are at risk of eviction from their rental property.
- A young couple sell their first home and the money is put into a bank account. They buy a new house a short while later. A few days before settlement, the man tells his partner that he gambled the entire amount, over $700,000. She leaves him. Her parents took out a loan to complete the purchase of the new house, or she faced losing the deposit (in addition to the loss of the relationship and the capital).
- A man has huge gambling debts. When asked what his wife said when he was spending so much of their income on gambling he replied "she can't see the bank accounts, as in our culture and religion, I have the marital obligation to provide for her. I can't let her have access".

We submit that the community would expect the bank to play a stronger role in minimising the economic abuse that is associated with gambling. The actions a bank could take include:

- when a couple sets up their banking, build in protections from the beginning including discussing the importance of both partners having visibility of the account balances. It is important not to assume that the higher income earner is the one who is entitled to critical information. Discuss that everyone needs to actively understand his or her financial affairs as part of basic financial literacy;
- for joint facilities, it needs to be easier for one person to put in place safeguards to prevent financial abuse. Financial abuse can be facilitated when the default position is one person to sign. One option would be a technological solution requiring both parties to authorise transactions;
- making sure that all parties to joint loans provide meaningful and informed consent at any point where additional funds are advanced (that is, an increase in the debt that was not envisaged when the original loan was first provided);

- give people clear information about what they are spending on gambling. Gambling companies hide this information and it is currently very difficult for a person to find out how much he or she has spent gambling. Banks have this information and can also link people up to gamblers help services and gambling financial counselling services;
- when someone has a gambling issue, give that person some insight into what the bank can see. A person suffering gambling related harm, is often the last to know they have a problem. They are being encouraged by the gambling companies, and their gambling peers who use the language of wins, not losses. It is easy to lose touch with what is normal. Banks can use their data and reflect things such as what is a "normal spend" compared to what the customer has spent. An example would be an alert that said "last month you spent $5,000 gambling. Did you know that this is X times greater than what our average customer spends?"
- encourage customers to set limits or to self-exclude from gambling using bank tools. They could nominate a 'sponsor' as in the alcoholics anonymous model, to help them stay on track when they are struggling and pushing up against their limits. One bank has started doing something along these lines;[14]
- if a gambling spend occurs on a credit card that typically has no gambling, notify the credit card holder with a text: "we detected payment to [x merchant]. Contact us if it was unauthorised". This would help the innocent party, where their partner has used their credit card without permission.

14 See Australian Financial Review, http://www.afr.com/business/banking-and-finance/financial-services/cba-to-redflag-destructive-spending-in-savings-push-20180127-h0pc2w