



## **Standing Committee on Social Policy and Legal Affairs**

Inquiry into online gambling and its impacts on those experiencing gambling harm

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## About this submission

FCA is the national peak body for financial counsellors in Australia. Financial counsellors work in not-for-profit community organisations and provide advice and support to people experiencing financial hardship, including from gambling.

### **We refer you to the following documents that form part of our submission:**

1. 2022 National Financial Counselling Gambling Survey Report: [The explosion of gambling harm and the need for urgent training for financial counsellors](#). This has recent data on the harm financial counsellors are seeing in their gambling client work with both the person gambling and family members impacted by gambling.
2. 2022 “Roadmap report”: [Gambling and Suicide Prevention – A Roadmap for Change](#). This work came out of a roundtable that Financial Counselling Australia held together with Suicide Prevention Australia.

### **About the case studies**

Names of people in the case studies have been changed. Sometimes their work descriptions and ages are modified a little to protect their privacy, while maintaining the essence of the case-study story.

## What do financial counsellors do?

Financial counsellors assist people in financial difficulty, providing information, support, advice and advocacy to help their clients deal with their immediate financial situation and minimise the risk of future financial problems. Most financial counsellors work in community organisations, predominantly funded by State and Federal Governments.

Financial counselling services are free, confidential, and independent.

There are approximately 100 specialist gambling financial counselling positions in Australia. These specialists typically work in a team with other gambling, addictions, and mental health specialists.

Generalist financial counsellors are increasingly also seeing clients with gambling issues. The sector recognizes the need to upskill generalist financial counsellors, given the increasing incidence of gambling harm.

Financial counsellors regularly see suicidal clients, both family members and the person gambling.

## Executive Summary

Australia has created a huge gambling harm problem. We have licensed online gambling in a haphazard way. We have done this by not opening our market slowly and cautiously. Instead, our federated model has allowed a huge number of operators to find a state or territory licence provider. We have too many operators for regulators to keep on top of, especially as most are licensed in the NT. Competition between jurisdictions has not been good for consumers.

The more advertising a society allows for a product like gambling, the bigger the problem the regulatory system must deal with. Our regulatory system are not coping. It was not designed to regulate high tech, AI driven businesses.

Reading the NT Racing and Betting Act is eye-opening. Our main regulator was set up to further the development of the racing and betting industry in the NT. The NT has created a system that sees the Territory receive all the benefits, such as licensing revenue, but socialises the losses to the rest of the country.

The online gambling operators face inadequate regulatory assessments about their policies, processes and practices.

In the meantime, financial counsellors and others in the community help sector are feeling the stress. We are working with people impacted by gambling, who are experiencing unbelievable harm. State Governments raise enormous revenue from online gambling taxes. Each State now has a point of consumption (POC) tax and NSW and Queensland have recently increased their tax rates to 20 per cent. The sums are growing fast following the increase in online gambling during the pandemic.

However, none of this money flows to fund the help services who are dealing with the huge negative externalities caused by gambling. These services are seeing more impacted people with greater complexity, typically on fixed grant funding. It is unfair that the money from people harmed by gambling is being redistributed, with very little of these funds being returned to those gamblers through services to address the harm they have incurred.

This submission sets our practical recommendations to improve outcomes for those impacted by gambling.

## Report recommendations to help financial counselling clients.

The recommendations in this submission are from a financial counselling case work perspective.

We refer you to Lauren Levin's 2023 Churchill Report 'The sky did not fall in' which takes a fresh look at reforming the regulatory system to prevent gambling harm. Lauren is FCA's Director of Policy and Campaigns. Her report is a big picture, deep dive with a focus on learning from the experiences of Sweden, Norway, Spain, Netherlands, Belgium, the UK, France, and Ireland.

Area	The problem is ...	The recommendation is ...
<b>General comment</b>	<p>Governments raise enormous revenue from online gambling taxes. Each state now has a point of consumption (POC) tax and NSW/Queensland have recently increased their taxes to 20%. The sums are growing fast following the increase in online gambling during the pandemic.</p> <p>None of this money flows to fund the help services who are dealing with the huge negative externalities caused by gambling. These services are seeing more impacted people with greater complexity, typically on fixed grant funding.</p> <p>It is unfair that the money from people harmed by gambling is being redistributed to the benefit of the general community, without any funds being returned to those gamblers through services to address the harm they have incurred.</p> <p>Helping people harmed by gambling is an extraordinarily complex task and takes more time than non-gambling clients. They present with a lot more issues, including mental health. Many have accounts with multiple gambling operators, and a myriad of debts. While some might be said to have a clinical addiction, far more gamblers exhibit gambling patterns that, for all intents and purposes, border on addictive behaviour.</p>	<p><b>For a very significant investment in help services, and funding for those parties advocating for gambling harm prevention.</b></p> <p><b>Ten percent of the P.O.C taxes should fund the help services, through a national agreement.</b></p> <p>Alternatively, a new legislated Social Impact Levy is required with gambling industry funding (like Ireland).</p> <p>There must be an independent body to disseminate funding to also support advocacy bodies, transparently, accountably and efficiently. Grant applications and funding arrangements should be streamlined so that the maximum benefit is channeled into supporting clients (and not overly bureaucratic processes).</p> <p>Comment: The almost uncontrolled growth in online gambling service providers, their seemingly unlimited capacity to fund advertising, and their increasingly sophisticated methods for targeting and maximizing extractions from clients, means government and support services are starting from a long way behind. A very significant investment and concerted effort is urgently needed to rein in the almost unlimited might of this industry. As we have seen from the various casino inquiries, these problems do not go away by themselves. And, in fact, will grow if left unbridled.</p>

<b>National Regulator</b>	<p>State and territory gambling regulators struggle with harm prevention and complaint handling in online gambling area.</p> <p>The state gambling regulation is not fit for purpose for online gambling. It is inconsistent in its application and consumer outcomes. The regulation in each state and territory needs a total re-write. Tinkering will not prevent consumer harm.</p> <p>Online gambling is different from venue based gambling. Online gambling is data/tech driven.</p>	<p><b>We need a well-funded national online gambling regulator with the right powers and capacity to regulate a powerful, cashed up industry.</b></p> <p><b>The legislation needs to be re-written with a harm prevention and prevention of crime funded gambling remit.</b></p> <p><b>This is urgent.</b></p>
<b>Ban Advertising</b>	<p>Gambling advertising is hugely harmful to minors, young people, and to other segments of the gambling population. That is well documented.</p> <p>Belgium and Italy have taken the steps of banning all gambling advertising. The Netherlands is banning all non-targeted gambling advertising. Sweden only allows 'moderate advertising.' Spain only allows advertising between 1 am and 5 am.</p> <p>Many European countries are taking strong action to deal with a big societal problem.</p>	<p><b>We need a comprehensive gambling ban on all forms of gambling advertising and marketing. It must be a comprehensive ban. If the government just targets broadcast services, then the advertising will just move to online and social media. Marketing will move to the gaps.</b></p> <p>Belgium's approach is the most comprehensive. It has just been introduced after observing other models and the workarounds.</p> <p>Cryptocurrency and investment trading need to be covered in the ban, or they will just fill the gap with their gambling like marketing (as per Spain's experience).</p>
<b>Service delivery Training</b>	<p>Financial counsellors are witnessing more gambling harm presenting in more clients, more often. The resources are not available to provide generalist financial counsellors with the training they need to help clients harmed by gambling. Specialized gambling financial counsellors also need more training in order to keep up with the ceaselessly innovative tactics used by online gambling providers, as well as ongoing training to continue to assist this vulnerable client group.</p>	<p><b>The Government funds the up-skilling of all financial counsellors</b> (about 1,100), including the continuous development of up-to-date training content largely to support specialized gambling financial counsellors (who also take referrals from generalist financial counsellors and helplines).</p>
<b>Legal Advice in the service delivery model</b>	<p>Financial counsellors struggle to get legal advice for clients harmed by gambling. As our experience shows over and over again (see</p>	<p><b>For the Government to fund establishment of a National Consumer Gambling Help and Legal Service.</b> This would operate within an integrated legal</p>

	case studies), the repercussions for clients of acting without legal advice are very serious and one-sided. The only gambling community legal service in Australia was defunded in 2021 <sup>1</sup> .	and support framework, involving social workers, financial counsellors, mental health experts and other relevant practitioners and provide a 'wrap around service' to support clients harmed by gambling.
<b>Integrated gambling service delivery funding model</b>	Clients' needs are complex and they need an integrated model of service delivery. For example, a financial counsellor's effort to help a client by recovering money from an unscrupulous gambling operator will be jeopardized if the client remains at risk of re-gambling those funds – for example, if the person's addiction has not been addressed or the underlying drivers of gambling (often trauma) remain in place.	For funds to be made available on an ongoing basis for a <b>Gambling Health Justice Partnership</b> to work in concert with the <b>National Consumer Gambling Help Legal Service</b> .
<b>Improved productivity</b>	Some operators are denying financial counsellors (and clients) access to their gambling data records. The Office of the Australian Information Commissioner has provided verbal advice that people are entitled to a wide range of their gambling data, such as file notes, call recordings, etc. Some operators are refusing to provide this information.  This information is very important for the therapeutic gambling counsellors and financial counsellors to understand the person's gambling behaviour. This information is also invaluable in giving clients insight into their gambling habits. This is a vitally important input for their successful treatment and recovery	<b>For the Office of the Australian Information Commissioner (OAIC) to publish guidance, or binding rulings, about what data should be made available from gambling operators to their customers.</b>  <b>For the OAIC to establish a confidential complaint-handling process for gambling clients or their representatives.</b> A confidential process is required because OAIC complaint determinations are otherwise made public. Publication would be inappropriate in a gambling harm context and, in fact, could result in more harm.
<b>Self-exclusion improvements and account closure</b>	People with unmanaged gambling often gamble across multiple product lines – online and land-based e.g. casinos, pokies or shopfront wagering.  Casinos, pokies venues and other operators provide the opportunity for players to self-exclude. The	<b>To expand BetStop to be the one-stop shop for all forms of gambling self-exclusion</b> (with account-based play expanding, the time to set this up is now. This is so the account-based infrastructure can be set up for easy compatibility with BetStop infrastructure.)

<sup>1</sup> Wesley Community Legal Service (gambling) was funded by the NSW Government until 2021, but then the funding model was changed.

	<p>national self-exclusion register ('Betstop') will soon allow players to self-exclude from all online providers.</p> <p>However, there is no single, national opportunity for people to self-exclude from all forms of gambling e.g. online, casinos and pokies venues.</p>	
<b>Account closure vs self-exclusion</b>	<p>Gamblers confuse account closure with self-exclusion and people meaning to 'stop gambling permanently' often end up just closing their accounts, thinking that they are self-excluding.</p> <p>All 'account closure' does is archive the account. It has no harm prevention function as it can be re-opened on request. Many gamblers re-open their accounts and re-lapse.</p>	<p><b>There needs to be just one clear self-exclusion/account closure process with no room for confusion.</b></p> <p><b>Every time, someone asks to either close their account, restrict their betting, or any other disclosure of harm, the operators should have to do an assessment of customer welfare, and the appropriateness of the steps taken.</b></p> <p><b>There should be warm referrals to support services.</b></p> <p><b>There must be a requirement to document protective measures taken.</b></p>
<b>Post Self-Exclusion</b>	<p>If someone has removed a BetStop self-exclusion or the term has ended, the gambling operators can't see that this is a vulnerable customer. They are very much at risk of harm, for years. A relapse is psychologically very dangerous.</p>	<p><b>If an account has been closed, and is re-opened, a 'vulnerability flag' should remain on that account. The opening process must involve the person setting a modest limit commensurate with income, and proof of source of funds, and their vulnerable</b></p>
<b>Awareness of BetStop</b>	<p>BetStop doesn't have a proper marketing budget. Every person in Australia needs to know about this new register, both those who gamble, the families and friends, and the professional gambling support and legal community.</p> <p>Many at risk gamblers will be reluctant to use the register, because to them 'the next win, and gambling is a solution to their problems.' That is why a campaign to normalise help</p>	<p><b>BetStop should be funded to run a campaign to normalize getting help and promote the Register.</b></p> <p><b>BetStop needs a proper marketing budget to implement a marketing and promotional plan.</b></p>



	seeking is important. It will take ongoing effort.	
<b>Third party exclusion</b>	Family members often know of harm, even imminent harm to their loved one, but have no way of flagging this with operators.	<p><b>To have a national process for third parties to flag with gambling providers the need for the provider to work with a player to encourage self-exclusion.</b> (Note: NSW is developing a third-party self-exclusion for venues, Victoria has one available at the casino, and South Australia and Tasmania have a program in place – but the success of these programs is questionable.)</p> <p>Existing third party exclusion opportunities are not well publicized and there is poor community knowledge about them.</p>
<b>Self-exclusion (via blocking software)</b>	There is proprietary blocking software to which people can subscribe and then install on their devices. This software blocks access to gambling sites and can be customised to include a wide range of triggers, such as share/investment sites, sports scores, casino like games and more.	<p><b>For the government to fund a trial of software that blocks access to gambling sites for three years, for those engaging with help services.</b></p> <p>(The UK has a new project called TALK BAN STOP, where help seekers who engage in counselling help get free access to self-exclusion software.)</p>
<b>Credit cards and gambling</b>	Many gambling clients present with multiple credit card debts	<b>Legislate to ban credit cards being accepted for online gambling</b>
<b>Credit funded gambling</b>	Many clients present with payday loans and other credit that has been used for gambling. It is possible that some of the credit provided may have been provided in breach of responsible lending obligations.	<p><b>ASIC to provide more detailed guidance about how credit providers, including payday lenders, should consider gambling in terms of their responsible lending obligations.</b></p> <p><b>ASIC to investigate current levels of compliance by payday lenders and other lenders.</b></p>
<b>Dispute resolution (harm prevention not bet fairness issues)</b>	The gambling regulators are not set up for efficient complaint handling. Financial counsellors see lots of clients where the operators have not acted in any way to prevent foreseeable harm, and in fact have done the opposite. These complaints are potentially a breach of the Consumer Protection Framework.	<b>For the Government to set up an online gambling ombudsman scheme, along the lines of existing industry ombudsmen schemes like the Australian Financial Complaints Authority to handle complaints about gambling operators and their customers.</b>

<b>VIP marketing</b>	Many harmed clients are in VIP marketing programs and are being case managed and groomed. This is where disproportionate consumer harm occurs.	<b>The solution is to prohibit gambling companies from giving people bonuses and inducements to gamble.</b> They are extremely harmful (and have been effectively stopped in a few European jurisdictions).
<b>What is gambling in 2023 and beyond</b>	Financial counsellors see social casino games as problematic, investment/trading gambling like services, crypto gambling etc. but these are not regulated well, or not regulated at all.	<b>The definition of gambling to be broadened to include social casinos, as well as emerging forms of gambling, so regulators have an adequate remit.</b>
<b>Crypto, NFTs, web3 contracts for difference and gambling</b>	Financial counsellors are seeing harm from people gambling with a range of products that are not currently defined as gambling. This will increase as gambling with Non-Fungible Tokens (NFTs) and Metaverse/Web3 gambling becomes mainstream.  People are also being harmed by aggressive marketing in the 'investment/trading' community on very risky products including CFDs. The marketing and consumer behaviours have gambling similarities.	<b>That the Government broadens Treasury's consultation (or this HoR inquiry) to look at:</b>  <b>1. gambling within a crypto, NFT and web3 context and</b> <b>2. When trading CFDs and other risky products become gambling.</b>  <b>The overarching question to be addressed is how the gambling aspects of these new areas are to be regulated.</b>
<b>Proceed of crime</b>	Gambling operators receiving deposits of stolen funds is causing harm to both the gambler, the people who have their money misappropriated, and the families. The gambling operators are turning a blind-eye to crime funded gambling despite their AML obligations. It is too profitable.  People with gambling addictions are being sentenced to prison.  The gambling operators are not being required to divest the funds. They are keeping the proceeds of crime.  There is existing legislation. It is not being used.	<b>1. There needs to be a clear objective in the gambling acts to keep gambling crime free.</b>  <b>2. That a legal taskforce examine this issue, and provide guidelines to gambling regulators.</b>

<b>ID verification before gambling (AML)</b>	<p>People can gamble for 72 hours before their identification has to be verified for AML purposes. This can cause harm to minors, those who are self-excluded and relapsing, and others.</p> <p>Some operators and the NTRC have expressed concern that Betstop will not function as well without this being fixed.</p> <p>The Consumer Protection Framework reforms have gradually decreased the verification period from 90 days, to 14 days, to 72 hours; so the logical next step is that people need to have their identities verified before gambling.</p>	<b>Amend the AML legislation to mandate identification verification before gambling deposits can be accepted</b>
<b>National Online Gambling Framework Review</b>	<p>The review has not commenced despite the Framework signing taking place over 4 years ago. The problem was that the Commonwealth had not completed all its commitments.</p> <p>From this long duration, we can already see through financial counselling casework that many of the measures were way too timid or too limited in scope to have any impact.</p>	<p><b>To start the Framework review immediately.</b></p> <p><b>BetStop should have its own review in 12 months.</b></p>
<b>Suicide</b>	<p>Financial counsellors are seeing an increasing number of suicidal clients impacted by gambling. Both the person gambling, and family members are at risk, and lives are being lost.</p>	<b>The way to do this would be a specific Federal Government inquiry into the issue of gambling and suicide.</b>

## Gambling suicides are the most pressing issue.

We are starting this submission with the topic of suicide because financial counsellors and others in the help sector are seeing gambling suicides present in casework (see Figure 1 below). Both the people gambling, and family members impacted are taking their lives or presenting talking about wanting to take their life.

In our 2022 national survey of the financial counselling sector, 80 percent of specialist gambling financial counsellors reported that they had clients presenting talking about suicide, and 48 percent had clients who had

attempted to take their lives.<sup>2</sup> We were particularly surprised to see that family members impacted by someone else's gambling were taking their lives. That fact has not reached the national consciousness.

We are concerned about the lack of a national discussion, and lack of a national plan to tackle what might very well be a national gambling suicide epidemic.

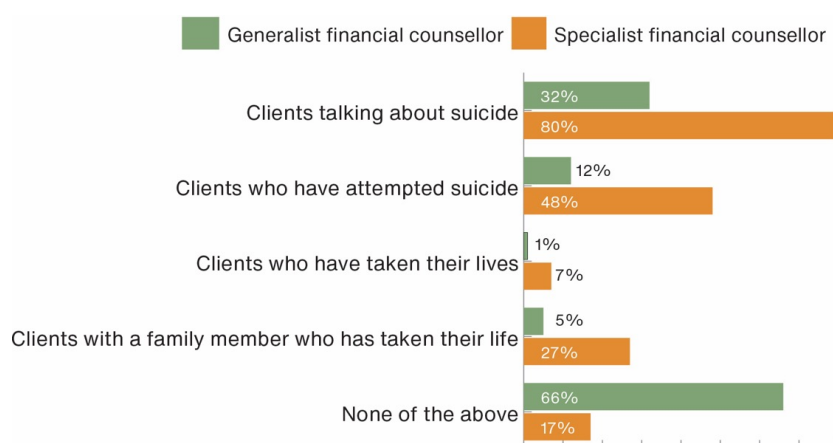
Mostly these lives are not flagged as gambling deaths, because police preparing the coronial reports look for health data, but not financial-gambling data. The bank statements, gambling transaction statements and other data held by the gambling operators tell a story, but it appears that the investigating police and coroners have no process to seek out this data. This means that coroners are not recording the deaths as deaths related to gambling. As well, the ABS gambling suicide data set remains largely unpopulated.

Reform is urgently needed. However, it is not sufficient to just record a death as a suicide related to gambling. We need strategies to prevent these deaths—they are preventable.

Together with Suicide Prevention Australia, in October 2020 we held a roundtable bringing together the mental health and debt helplines, coroners, regulators, banks, some online gambling companies, legal professionals, RSL, an emergency department, gambling therapeutic counsellors, and gambling financial counsellors and others. And people with lived experience who have experience of either having lost a loved one, or had attempted to take their lives.

We request that you read the March 2022 report, [Preventing Gambling Suicides, a roadmap for reform](#).

Figure 1: Financial counsellor survey (2022: Suicide in gambling client work)



<sup>2</sup> 2022 National Financial Counselling Gambling Survey Report: [The explosion of gambling harm and the need for urgent training for financial counsellors](#).

## What happened with Australian gambling during the pandemic?

Online gambling has changed the way people in Australia gamble, with the pandemic accelerating these changes. Unlike in the UK, Spain, Sweden, Norway, Belgium and other European countries, during the 2020-21 lockdowns Australia's governments and gambling regulators took no special actions to curb gambling expenditure. A number of overseas jurisdictions put in place a range of interventions including spend caps, advertising bans, a duty of care and increased obligations on gambling operators to prevent harm.

In Australia, many people withdrew their superannuation and gambled much of it. financial counsellors saw that in their casework.

People were locked down, often worried about earning money and confinement boredom set in. The industry bombarded Australians with marketing. It was the perfect storm for gambling harm. The market exploded in Australia, in a way not replicated in many other jurisdictions.

In fact, perplexingly Australia was one of the few countries where racing was classified as an essential service and exempt from lockdowns<sup>3</sup>. From our quiet discussions with some people in the online gambling industry, they were amazed that the industry got away with that argument - that somehow animals needed for their own welfare to be raced, and that there would be no animal or veterinary care if racing did not continue.

### Australia's gambling data is inadequate, but still tells a story of a Covid gambling explosion.

Australia struggles to get up-to-date data on gambling expenditure, and instead we need to pull bits of data from different sources. However all the sources point to the same theme — a massive explosion in online gambling in Australia. And this means massive harm at a time when families are under pressure. Some of the sources of data include:

- **Point of Consumption taxes (POCT):** around the time the Online Gambling Consumer Protection Framework was agreed to in 2018-2019, each state and territory introduced point of consumption taxes (POCT) on the online gambling industry to get a share of this burgeoning revenue. It is cumbersome to find this data and extrapolate the gambling turnover, but the Committee can request this from each state and territory government. Appendix 1 sets out the POCT rates and revenues for each state/territory.
- **The NT Government collects data on the gambling turnover for bets placed in the NT.** All the NT licensed operators, i.e. all the major international operators have their turnover included in this data set.

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<sup>3</sup> See for example, 'Doctors question why horse and greyhound racing goes on amid coronavirus outbreak', 31 March 2020: <https://www.abc.net.au/news/2020-03-31/horse-and-greyhound-racing-continues-amid-coronavirus/12105944>, [Tasmanian racing industry wins crucial coronavirus exemption](#), Mercury, 1 April 2020. Victoria allowed horse, harness and greyhound racing to continue during the stage 4 business closures, 3 August 2020, <https://7news.com.au/sport/horse-racing/horse-racing-allowed-to-continue-in-victoria-stage-4-lockdown-c-1212982>.

In contrast, Tasmania showed how to care for animals during a lockdown without racing. Premier Peter Gutwein cancelled racing for a period, but allowed the animals to be cared for. He said in a press conference: 'those industry participants who are responsible for the welfare of racing animals will be able to continue their important work. This will include obviously veterinarians, farriers, those who feed the racing animals, those who keep them in work in order to keep them fit and healthy. Training facilities will remain open' but 'effective immediately, racing in Tasmania will stop.' ([Press conference](#), 2 April 2020).

- NAB's May 2020 data showed gambling spend was up 62.7% from the same four-week May period the previous year, pre-pandemic. See NAB's chart below.<sup>4</sup>

## NAB CONSUMPTION-BASED SPENDING\* BY INDUSTRY SECTOR & SELECTED INDUSTRIES (4 weeks ending 6 June 2020)

NAB Economic Data Insights June 2020

	% change since same time last year**	% change since the start of year**	% change since previous week**
Accommodation & Food Services	-35.9%	-41.5%	5.6%
Administrative & Support Services (incl. Travel Agents)	-82.7%	-82.3%	14.9%
Arts & Recreation Services	-10.7%	-17.5%	-1.2%
Construction	12.5%	33.3%	1.2%
Education & Training	-10.1%	10.5%	-2.0%
Electricity, Gas & Water & Waste Services	-0.5%	14.5%	-1.3%
Healthcare & Social Assistance	-25.6%	-5.8%	9.4%
Information, Media & Telecommunications	1.7%	-1.3%	-1.6%
Professional, Scientific & Technical Services	12.9%	46.7%	2.2%
Rental, Hiring & Real Estate Services	-14.2%	-13.9%	2.4%
Retail Trade	12.7%	12.0%	-1.1%
Transport, Postal & Warehousing	-44.6%	-42.9%	0.7%
<b>TOTAL</b>	<b>-4.1%</b>	<b>-2.8%</b>	<b>0.2%</b>
<b>Best Performers (Sub-Division)</b>			
- Gambling Activities	62.7%	50.7%	-4.0%
- Internet Publishing & Broadcasting	41.6%	43.2%	-3.3%
- Building Cleaning, Pest Control & Other Support Serv.	28.8%	30.4%	3.2%
- Motor Vehicle & Motor Vehicle Parts Retailing	25.6%	34.5%	2.6%
- Construction Services	24.4%	47.4%	0.8%
- Waste Collection, Treatment & Disposal Services	22.6%	-13.1%	-7.3%
- Other Store-Based Retailing	17.7%	16.9%	-1.3%
<b>Worst Performers (Sub-Division)</b>			
- Motion Picture & Sound Recording Activities	-96.6%	-97.7%	11.0%
- Administrative Services	-85.3%	-85.2%	18.6%
- Rail Transport	-82.7%	-82.2%	8.5%
- Air & Space Transport	-81.9%	-82.7%	-9.1%
- Heritage Activities	-78.6%	-86.3%	35.4%
- Creative & Performing Arts Activities	-73.1%	-72.2%	6.2%
- Accommodation	-66.4%	-73.1%	19.7%
- Sports & Recreation Activities	-66.4%	-67.9%	13.7%

\*This data excludes government services, taxes, direct to consumer manufacturers, mortgage and other credit facility repayments. Spending includes both online and offline transactions. Transaction data may include EFTPOS, Credit Card, BPAY, Bank Transfers, Direct Debits and PayPal services where available.

<sup>4</sup> NAB Economics Data Insights - Gambling increase of 62.7% compared with the same time last year (pre-pandemic). June 2020 (<https://business.nab.com.au/wp-content/uploads/2020/06/nab-economics-data-insights-6-june-2020.pdf>)

- Gambling industry data is the most telling.** According to Flutter (owner of Sportsbet), gross gambling revenue in Australia was \$A5.4 billion in 2019, \$6.9 billion in 2020 and \$7.9 billion in 2022. This is shown in the market growth charts from Flutter’s 2022 annual report in Figure 2. Note the comparison with the UK & Irish market, where their gambling spend declined over the same period—mainly due to its regulator’s proactive expectations on the operators to intervene early to prevent harm.
- Data for PointsBet customer numbers is in Figure 3. This shows growth of 117% in the number of “clients who have placed a cash bet” between June 2020 and June 2021.

Figure 2: Flutter Annual Report 2021 page 16, [https://www.annualreports.com/HostedData/AnnualReports/PDF/flutter-entertainment-plc\\_2021.pdf](https://www.annualreports.com/HostedData/AnnualReports/PDF/flutter-entertainment-plc_2021.pdf)

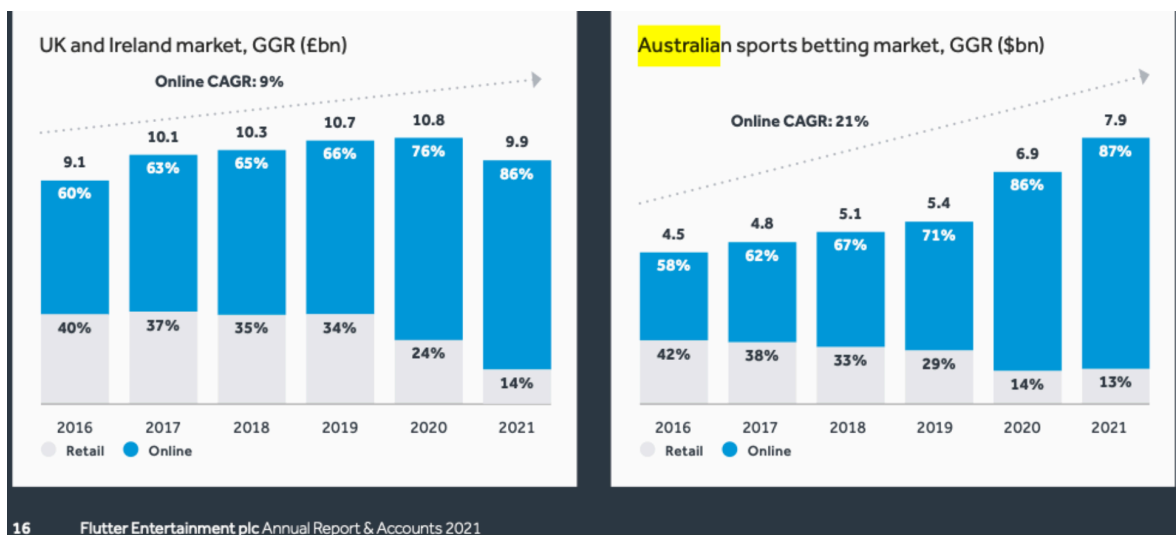
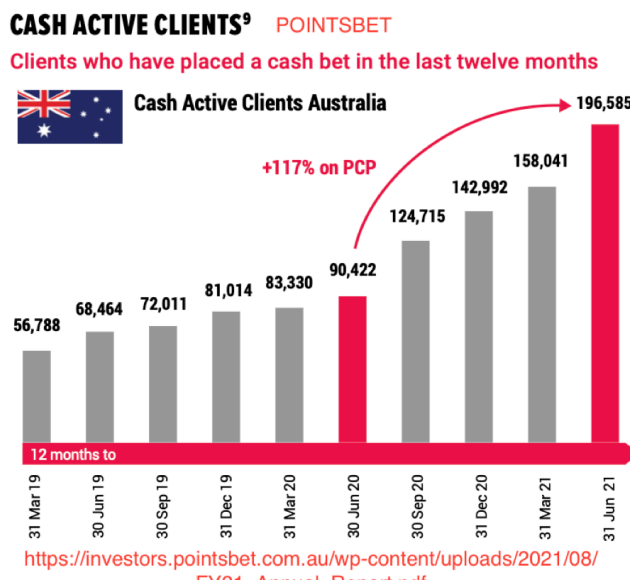


Figure 3: Pointsbet upward trend in active customers in Australia 2019-2021



## The pathway to good data

It is frustrating for those working on gambling policy that we have such inadequate data. Most quote Queensland Treasury's outdated collated figures from a few years ago, as that is all we have. However, we don't even know how much each *active* online gambler loses. An average figure is meaningless as it includes non-gamblers.

In contrast, countries like Spain, Denmark, and France mandate that every bet must be logged through the regulator's data vault portal in real-time. This means that those countries know exactly what each demographic group spends and on what product. Spain's policy interventions are focused on young men who are gambling, because their data shows that 18–25-year-old males are experiencing much greater harm. They can then identify exactly which gambling products cause the harm, and what time periods in the day and week are the danger zones.

Of course, these regulators also have to comply with the stringent European GDPR data privacy rules, which are more stringent than Australia's rules.

We encourage the committee to experiment with the interactive reports on the Spanish gambling regulator's website. (The data is brilliant, and it is sliced and diced, and presented in different ways and is translated into English. See the prevalence <https://www.ordenacionjuego.es/en/estudio-prevalencia>



ordenacionjuego.es

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Servicio Phishing Alert  
que nadie juegue con tus datos

Participants

Citizen services

Gambling operators

Other game agents

Raffles, occasional gambling and random combinations

Activity statistics historical DGOJ

Studies, reports and presentations

Data of the Spanish game market  
National online gambling market  
Quarterly reports  
Analysis of the profile of online gamblers  
Annual Report  
Prevalence study  
Other reports and studies  
Download game Market data  
Panels and presentations

Mercado juego online estatal

Website: Directorate General for the Regulation of Gambling (Spain):  
<https://www.ordenacionjuego.es/en/estudios-informes>

Annual report  
State online gambling market  
2022

Developed by  
Dirección General de Ordenación del Juego

**jugarBIEN**  
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Microsoft Power BI

48%

Se publica el informe anual de mercado de juego online estatal de 2021. Este informe.

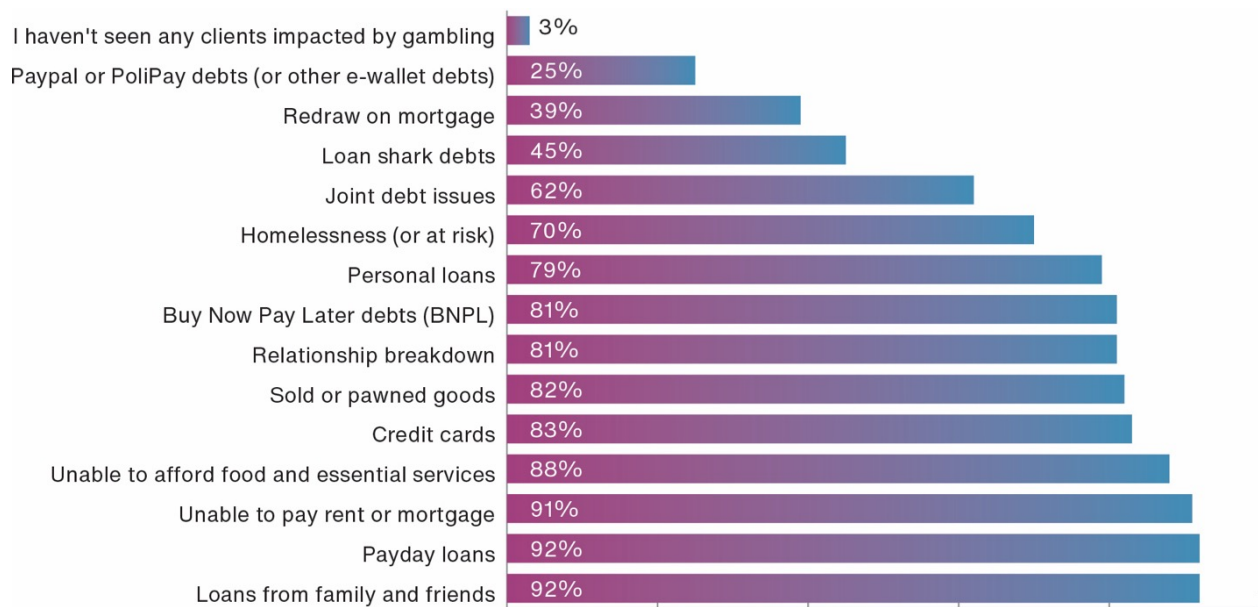
## Impact: financial counselling casework tells a devastating story

With online gambling, financial counsellors are seeing people, predominantly men, losing huge sums of money. The speed of losses is different to the pokies. The online gamblers 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. What is so dangerous in Australia – and which cannot happen in other better regulated jurisdictions – is that there is no limit to how much can be deposited. This is not the case in many overseas jurisdictions where there are deposit limits.

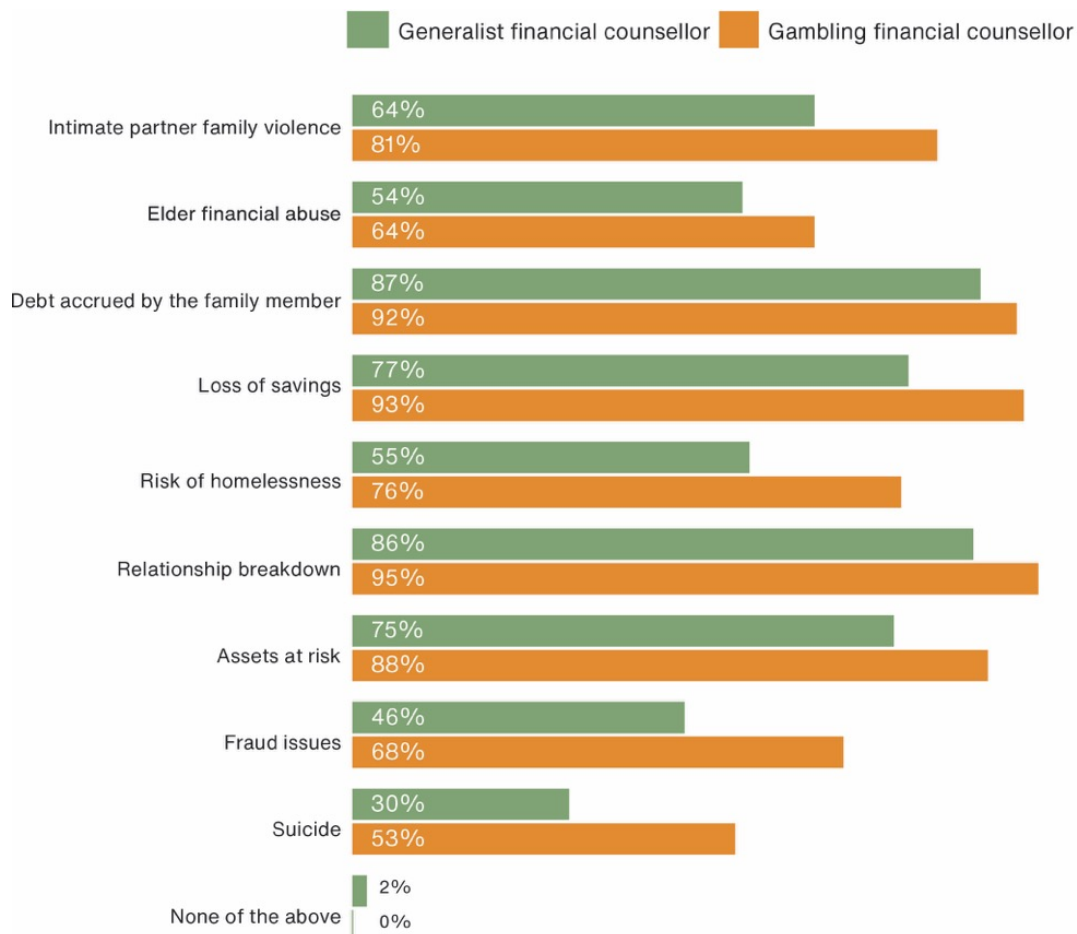
The two graphs below document the presenting problems for financial counselling clients. For people with gambling issues, these are loans from family and friends, payday loans and an inability to pay rent/mortgage and to afford food and essential services. When the client is a person who is impacted by another's person's gambling, e.g. their partner, the main presenting problems are debts, loss of savings and relationship breakdown. Family violence and having assets at risk are also common.

Financial counselling gambling survey shows devastating harm.

*Financial counsellor survey (2022): The presenting problems for gambling clients*



*Financial counsellor survey (2022): Presenting issues for client impacted by another's gambling*



## Observations on harm

### It's not the absolute amount of money that causes harm.

A person doesn't have to lose a huge amount of money to experience harm. Losing the money set aside for the family's special dinner once a week has repercussions. For young people, harm occurs at an earlier spend point, as they are starting out in life with less money. They are setting the foundations for life, and losing the opportunity to buy a car, save for a house deposit, or have a stable credit history could have severe impacts in the future.

#### Case study: 19-year-old person who was suicidal over a small loss

A financial counsellor worked with a 19-year-old having panic attacks over a \$180 online gambling loss. He helped his single mother with expenses and there was a big utility bill to pay. He suffered from anxiety. The gambling company asked the police to do a welfare check as he confessed to suicidal thoughts. The financial counsellor helped get the money refunded. The young man tried to get a counselling appointment, but there was a wait for many months.

#### Max's gambling debt collection hung over his head for five years

Max was in his mid-20s when his bank wrote to him inviting him to take out a \$25,000 personal loan. It accelerated a gambling addiction. The \$25,000 was lost gambling online in four months. He couldn't repay the loan and it was sold to debt collectors. He had moved interstate to live with his girlfriend and start a new job, but after collection action intensified, he could not manage the stress or the repayments, and moved back home with his parents. It took him over five years to clear the debt and it impacted his credit rating.

### It's not just about the money.

It is not always about the money. Damage can be caused by lost time, absent parenting, marital neglect, or loss of focus on work.

#### Absent parenting, then his partner left with the children

Anthony said "I lost part of the children's childhood. I wasn't present. I'd tell the children that I couldn't play with them, that I was working, but I was on my computer gambling. And my partner left with the children. I lied to my children. I lied to my partner. That causes immense harm."

### Gambling with your own money, is just as dangerous as gambling with credit

We often hear, 'well they're gambling with their own money; that's ok then. It's not as bad as gambling with credit.' The truth is that both are both equally as harmful.

#### Case study: 40 years, working full-time and living in his mother's garage.

Silva, a self-employed tradesman gambled his entire income each week. If a customer paid him on a Thursday, it was gone by Friday. Then the online gambling operator would refund him a percentage as a loyalty payment, plus some bonus credits so he could keep gambling over the weekend until more money came in. Silva worked seven days a week to pay off gambling debts. He was about 40 years old and lived in his mother's garage because he couldn't afford to move out. He had no assets after two decades of working and couldn't see a way out of his private hell because he couldn't control his gambling, despite cycling in and out of help programs. On Derby Day, one of the large gambling operators sent him a hamper by courier with four different kinds of alcohol so he could 'enjoy the day betting at home'. He got

to choose whether to have the goodies branded with the operator's logo, or unbranded, the latter being useful for those who need to hide their gambling. He disclosed that he considers taking his life.

#### Lost entire proceeds of house sale post-divorce, and was at risk of being homeless

Alex, an Uber driver was in his late 20s when a divorce resulted in him being separated from his wife and young children. He was devastated. The house was quickly sold and his share, about \$250,000 landed in his account. He told us that he had never seen that much money in one place. A friend invited him to the races to cheer him up; they drank and placed bets larger than he had ever bet through an operator's app. He ended up in hospital, thinking he was having a heart attack relating to the huge bets. It was a panic attack.

After that binge, the gambling company contacted him offering him the service of a young female account manager. She introduced herself saying that she could assist him 24-hours a day. If he wanted transport to the races, she'd organize a limousine or whatever he needed. She was a VIP account manager.

The company was taken over by a larger operator, and the VIP manager told him they were migrating all clients to the larger operator.

Alex told her that he was permanently self-excluded from that larger operator for problem gambling and couldn't have an account. She said she'd look into it. A few days later, Alex received an email with a new account and \$5,000 of free credits as a welcome.

He lost the entire \$260,000 from the proceeds of the sale of his former home and any hope of providing a new home for his young children to stay over. His mother was worried sick that he'd take his life. She had never seen him so low.

#### Max gambled a redundancy payment, while bankrupt. Eight years later, he is still struggling

Max calls from time to time, each time more despondent that he still gambles. He lost his first house because of gambling. He now earns good money as a FIFO worker. But the life is isolating, the internet is fast, and lots of the workers gamble online. He first contacted FCA about eight years ago when he was made redundant and spent his entire redundancy with one online company in a few days. He was bankrupt at the time due to gambling, and the trustee heard about the gambled redundancy payment, and extended the bankruptcy period by a further five years. He lost his house and his partner. He then moved interstate to start over. He said he just can't get ahead. He keeps paying the bankruptcy trustee the required monthly payment, but periodically relapses into more catastrophic gambling. His next girlfriend also left him.

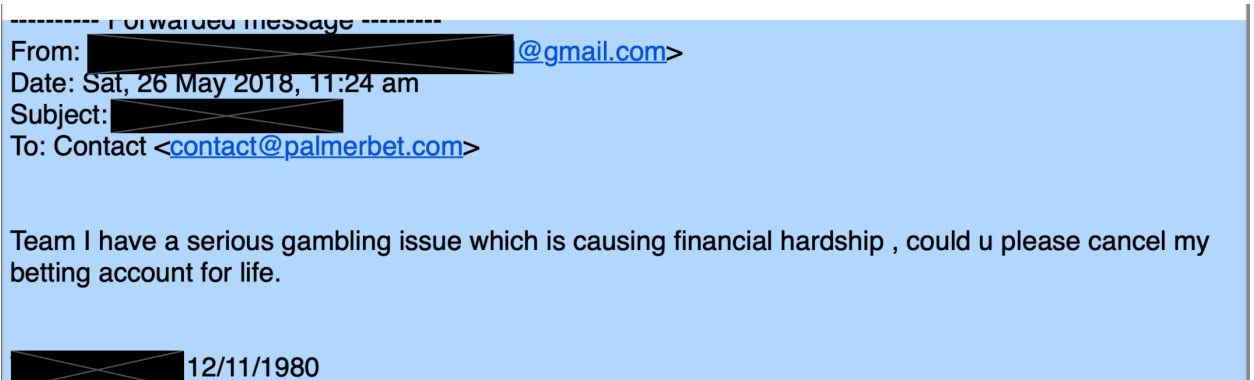
A couple of years ago, he sought counselling and then tried to self-exclude from companies he had accounts with.

He emailed his gambling operator on 26 May 2018, disclosing his problem gambling with "I have a serious gambling issue which is causing financial hardship, please could you cancel my betting for life." He thought he was self-excluding, and bluntly disclosing a serious problem.

The company didn't cancel his account for life as he requested but just told him that the account was deactivated. It sent him a form to self-exclude. He missed the moment, because that is the nature of an addiction.

On 15 January 2020 he was relapsing and asked for his account to be re-opened. They made him wait seven days, then re-opened the account. His account presumably hadn't been flagged as a problem gambling customer. He lost \$20,000.

A complaint was made to Liquor and Gaming NSW, who declined to act explaining that it had no power to investigate as the relevant legislation only contained a section about account closure, not self-exclusion. It explained that as there was nothing in the NSW legislation (or the consumer protection framework) that obligated the operator to have a self-exclusion process, it couldn't find a breach).



## When wages or savings are gone, people turn to credit; harm is compounded

When wages or savings are gone, people turn to credit, and harm is compounded. Clients commonly present having multiple credit cards, with some having as many as ten. Others have been able to easily increase their credit limits, despite it being evident they are borrowing for debt financed gambling. They are paying interest rates up to about 27% on these cards. It appears easy to shop around for credit.

### *Bank lending for gambling*

When the 2017 Interactive Gambling Act prohibition on gambling operators providing credit to their customers came in, we expected to see a decrease in harm. Speaking to a credible online gambling industry source, we heard that there was a slight decrease in customer spending for a few weeks, and then bank credit cards filled that market gap. It appears that the banks are issuing credit which is funding gambling. There does not appear to be an adequate assessment of whether the customer has a gambling vulnerability – this should be an element in a bank assessing if they are lending responsibly.

After the Financial Service Royal Commission, David Harris in an emotional response said:

"They can clearly see I've got a gambling problem because of the transactions I've been making, I don't understand why they keep offering me more money."

"Two of the hardest things you can do with any addiction is, one, admit you've got a problem, and two, reach out for help — and in that phone call with Commonwealth I tried to do both," Mr Harris said.

"I tried to reach out for help and I couldn't get any, I got the opposite, I got credit limit increases sent through and I tried to tell them I had a problem."

Under questioning, the bank responded "CBA has since implemented changes that flag customers who are spending large amounts on gambling, in either their credit or debit accounts, and will not offer credit limit increases to them."<sup>5</sup>

While we saw improvements for a year or two, standards appear to have slipped. Now, we are seeing banks effectively lending for gambling in financial counselling case work.

<sup>5</sup> *Banking royal commission: Commonwealth Bank offered gambler credit card limit increases*, ABC, 22 Mar 2018, <https://www.abc.net.au/news/2018-03-22/commonwealth-bank-offered-gambler-credit-card-limit-increases/9577654>

Post the Financial Services Royal Commission, we saw ASIC having an interest in gambling lending standards for a while, and then that stalled. We need regulatory focus on this harm, to set the expectation that debt funded gambling is not acceptable. It harms people. We also need ASIC to set out better guidance for lenders so that they take appropriate steps to assess the risk of gambling harm. This could then be used by the ombudsman, the Australian Financial Complaints Authority in any disputes about the lending.

## More than lost money: a criminal record, prison time and victims of crime

Many people who gamble end up in the criminal justice system. Simply put, people with gambling addictions will do anything to get money to 'pay for that matched bet free money', to chase their losses, and to keep gambling. It seldom involves enjoyment. It is a compulsion, often ending up in addiction. Everyone loses, except the gambling operators.

Victims of crime know where their money ends up. The gambling operators quietly keep these funds. This money should be returned to the victims. Gambling operators should be divested of stolen funds. Under Anti-Money Laundering laws there are very clear obligations on operators to 'know the customer,' know the source of funds, and undertake due diligence. Further, we have specific laws that make it an offence to deal in proceeds of crime. The NT Criminal Code<sup>6</sup> makes it an offence to deal with money which the recipient 'ought reasonably to have suspected to be proceeds of crime'. The Federal Criminal Code<sup>7</sup> has a range of offences dealing with money that is proceeds of crime. The Federal Criminal Code links with the Proceeds of Crime Act and there is a process for forfeiture.

What this all means is that laws exist to prevent the very wrongdoing that we're seeing in our work. Laws exist to divest wrong-doers, including gambling operators who receive stolen funds, of ill-gained funds.

There is a legal process to assist victims of crimes, (but the focus is on physical crimes). Inexplicably it is never used to assist people who are victims of gambling-related crime.

The system should work but everyone is looking the other way. We need a taskforce to make this work.

## The gambling companies refer customers to the police to be charged

*'It was the best thing that I went to jail otherwise I wouldn't have stopped gambling.'*

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<sup>6</sup> [S 231A of NT Criminal Code 1983](#), Under 231A Definitions 'proceeds of crime means money or other property that is derived or realised, directly or indirectly, by any person from the commission of an offence'.

And 'deals with', in relation to money or other property, means: (a) receives or has possession or control of the money or other property.

At 231D, a person dealing with suspicious property, is guilty of an offence and is liable to imprisonment for 2 years.

"Any person who deals with money or other property that *he or she ought reasonably to have suspected to be*:

(a) proceeds of crime; or

(b) being used or intended to be used in the commission of, or to facilitate the commission of, an offence

<sup>77</sup> See [Proceeds of Crime Act 2002 \(Cth\)](#).

Part 10.2 of the Criminal Code Act 1995 has two categories of money laundering offences:

Those tied to the state of mind of the Operator when dealing with the money. There are three levels of this fault element, each with different penalties:

1. belief/intention
2. recklessness or
3. negligence

Offences not tied to the operator's state of mind, and just requiring an objective 'reasonably suspected' standard (s. 400.9)

Sections [400.3 to 400.8 of Criminal Code Act 1995](#): Dealing with money or property that is the proceeds of crime or intended to become an instrument of crime. The offences in section 400.3 apply where the money or property dealt with was worth \$1 million dollars or more.

Hearing that it was good for someone to go to prison is one of those unforgettable moments. How could gambling get so bad, that the only escape is to be incarcerated, missing out on his baby daughter's first few years of life.

#### Case study: Warwick's uncleared cheques being accepted

Warwick spoke to FCA after he had come out of prison for gambling related fraud. He had deposited cheques at a smart ATM punching in the account number his first gambling operator (company 1) had given him. Usually, no business provides services until a cheque has been cleared. But a short while later Company 1 called him to say 'we've got the money, and we've credited it to your gambling account. You can use the funds.' The first cheque was \$19,500, then \$18,400 the next day. It was spent in a matter of hours. The cheques of course didn't clear, as he had no money.

Company 1 referred the matter to the police on fraud grounds.

Warwick did the same with Company 2. He had only joined Company 2 at 3.30pm on a Thursday afternoon. Within minutes there was a bonus bet put in. Using the smart ATM, he deposited four cheques totaling \$10,000, \$13,000, \$18,000 and \$22,000 respectively. The value of the first three cheques were credited to his bank account straight away; again the gambling operator didn't wait for the cheque to clear. He bet and lost all of it that same afternoon. Company 2 also referred the matter to the police.

He did the same with two other operators.

Warwick said:

*I've seen that many people in jail affected by this. Something has got to change.*

*I was a non-drinker, non-smoker, non-drug user. We'd go out and my mates used to feed me money to keep me gambling. I was in debt and tried to gamble to get out of debt. That was my thinking. If you want to put a bet on badly enough, you find a way. You start things with good intentions, but two days later you need the money and you un-do it.*

*In my mid-20s I was stealing money from work. Mum and Dad bailed me out. It was the worst thing they could have been done. The amount that it cost them is ridiculous.*

*It was the best thing that I went to jail otherwise I wouldn't have stopped gambling. It was a reset for me, being able to start my life again. I enjoyed being able to get away from gambling.*

Four operators with the same practice of depositing uncleared funds suggests a pattern of poor behaviour in the industry. The Interactive Gambling Act reforms had just prohibited operators giving people credit. This crediting funds from uncleared cheques appeared to be a workaround of allowing people to gamble with money they did not have, in the hope that they would come good and find it.

When fraud is committed against the online gambling operators, they do not hesitate to send people into the criminal justice system.

Regulator action: ACMA regulates the prohibition on credit being used for gambling. ACMA however declined to act on this complaint, due to a technicality in the wording of the prohibition. It later recommended a change in the wording in the IGA, but the legislation does not appear to have been amended.

## When there is suspected fraud, financial counsellors struggle to get gambling informed legal advice.

Many clients present with potential fraud matters. Some people with gambling issues will be so desperate for money that they will commit acts of fraud or deception, or other wrongdoing. The trouble is that financial counsellors should refer the person for legal advice before they embark on further work with the client, but Australia no longer has a gambling community legal centre and so this avenue is not available. Wesley Community Legal Centre (NSW), which provided this service, was defunded in December 2021.

This means that there is nowhere to refer people; no service where the legal team are trained in gambling law and trained to work with gambling clients (including dealing with suicide risks). "Gambling law" also involves bankruptcy law as people can go to jail for dissipating assets as a result of gambling, family/property law and asset protection, and now the relatively new gambling consumer protection framework.

A specialist gambling legal service can provide advice on legal rights and enforcement. It helps the client and the workers understand what the operator's wrongdoing was (if any) and what the client's wrongdoing was (if any), and the options in navigating the territory when both have been involved in wrongdoing. Currently, the operators seem quick to refer customers to the police, and any operator wrongdoing is not examined. This tactic is akin to 'weaponising crime.'

South Australia has the only Gambling Diversionary Court in Australia, to divert suitable people for help and treatment. Each state and territory would benefit from studying the SA gambling court model, and starting one. This would be a good use of state gambling taxes.

Some examples of wrongdoing:

- Peter found a weakness in a bank's system, where for a few moments in the middle of the night, the online system went offline. He withdrew money that he didn't have in his account.
- Kim was about 30-years old and lived with his parents after an accident. He used Paypal to transfer \$600,000 to his gambling operator over 48 hours one weekend. Paypal appears to operate in real time but in fact does not, and PayPal only contacted his bank on the Monday. His bank rejected the transaction as he had no money in his account. He was on a disability pension after a serious workplace accident, leaving him in chronic pain with no prospect of working again. The gambling operator should never have accepted \$600,000 of gambling deposits with no checks whatsoever, and there was obviously an argument that complaints should be lodged with both the operator and regulator, with a request for the money to be returned. The financial counsellor needed legal advice however to deal with the potential fraud issues before she could go further. There was also the risk that the gambling operator would refer the client to the police.
- Alex is a young person in his 20s. He borrowed money from his friends and family. He told them a story about what he needed the money for and they 'helped out'. He gambled \$500,000 and couldn't repay the money. Some of the 'friends' have gone to the police. It is not clear whether some of the friends are in fact illegal lenders, i.e., loan sharks. He spent all the money, around \$400,00 with a single operator, despite having told that operator previously that he wanted to stop gambling and not to be contacted further. The financial counsellor cannot access gambling informed legal advice, which is what they need to adequately assist Alex.
- Michael was a young university student who helped his father and grandfather with online purchases and wrote down their credit card numbers. At the same time however he was developing a gambling



addiction. He spent \$25,000 in total on their credit cards, and the gambling operator ignored the fact that the name on the cards did not match the account name. The father discovered the gambling transaction on his bank statement and asked his bank to do a chargeback and sought help from a financial counsellor. The gambling operator sent an angry email, threatening that if the chargeback wasn't reversed, that he would send the son to jail, by reporting the matter to the police. The financial counsellor couldn't access legal advice to advise his client on the risks. This may have been extortion (a criminal offence). No parent wants to risk sending their child into the criminal justice system, so the father took on the debt, as did the grandfather.

## The 'illegal offshore' operators are not very problematic in case work.

There is a narrative raised by the industry worldwide that the main regulatory game should be focused on the 'illegal offshore operators' who are not regulated. The industry runs this argument in every single regulated market. In fact, some of the operators running this argument in one jurisdiction are the 'illegal operators' in another. For example, in Norway, where only two state monopolies are permitted to operate, the regulator has fined Kindred (Unibet in Australia) for operating illegally. It has ordered the group to 'cease and desist' or face a fine of \$112,000 per day for its Maltese licensed affiliate which is targeting Norwegians. Kindred is defiant<sup>8</sup>.

From a harm minimisation perspective in Australia, the offshore 'illegal' operators are not big players because they cannot advertise on mainstream media. It should not be the focus of Australia's harm prevention policy. We have more pressing concerns.

Financial counsellors mostly see harm coming from the Australian licensed operators. Australia has essentially licensed whoever has applied for a license, without much of a process. The large operators advertise heavily, as we have few restraints on advertising volume. In financial counselling casework, the Australian licensed operators cause the most problems, although there is the occasional issue with someone losing money to an offshore operator.

Sweden tests the incidence of unlicensed operators annually. The regulator conducts an annual gambling survey of the Swedish public. It observed that only 6% intentionally gamble with illegal operators<sup>9</sup>. Regulators in Spain and Norway offered the same observations. We could do the same testing in Australia so that we have evidence, not anecdote on which to base policy decisions.

It benefits the existing industry to keep regulatory attention focused externally, and to keep competition out.

But it benefits Australian consumers to have regulators focus on Australian licensed operators - the ones who advertise heavily, who service the greatest number of gambling customers and who earn the most revenue.

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<sup>8</sup> Norway re-regulated its gambling market and has a state monopoly and does not license overseas operators. The company is facing a fine of NOK 1.2m (\$111,902) per day from 5 October 2022 for allegedly conducting unlicensed operations in Norway. But Kindred has remained defiant. Earlier this year, Lotteritilsynet ordered the group to "cease and desist" or else face a fine. Kindred's Maltese subsidiary Trannel stands accused of allowing Norwegian customers to gamble, which according to Lotteritilsynet, violates Norway's strict monopoly. See for example: <https://europeangaming.eu/portal/compliance-updates/2022/09/27/121762/kindred-group-intends-to-appeal-fine-from-norwegian-regulator/>

<sup>9</sup> The author met with regulators in eight European jurisdictions recently as part of a Churchill Fellowship.

## Social casinos are legal online slots (online casinos were banned in 2017)

Social casinos are online games that have the look and feel of gambling. They appear to be designed for addiction and monetisation. They are free to download and are monetised via in-app purchases, after a free trial period. The common theme is that users can purchase tokens (think bags of virtual coins), and they can then win items including bags of virtual coins that can be used for additional play time or to get rewards.

However, no money can ever be withdrawn.

Australia has been dithering on social casinos for over a decade. A google search showed that former Senator Nick Xenophon raised this in 2012 but nothing has happened. It has been raised periodically to no avail. Neither the ACCC nor ACMA regulate these games. So, their provision continues to be unregulated, and many are available to minors.

**Is this gambling?** It has the look and feel of gambling, and it is certainly harmful.

**How is it harmful?** There are no limits to how much can be spent. A Tasmanian woman, Rachel Perri spent \$940,000 on Aristocrat's Hearts of Vegas slot game. It did not matter that she couldn't withdraw money. She could win virtual bags of coins, that allowed her to play longer. Each bag of virtual coins cost US\$99 or US\$150 depending on the size and she purchased 4,520 bags in separate transactions. She said that each time she tried to stop, a VIP manager (a bot) warned her that she would lose her diamond status or other benefits unless she deposited, immediately. She had a lot happening in her life, became addicted, misappropriated money from her small business employer and is currently serving a lengthy jail term.

The Aristocrat owned company had no apparent Anti-Money Laundering compliance, no self-exclusion, no deposit limits and no individual customer contact (other than a bot).

This recent Guardian article ["Social casino' apps: the games exempt from Australia's gambling laws – because no one can win"](https://www.theguardian.com/australia-news/2022/nov/17/social-casino-apps-the-games-exempt-from-australias-gambling-laws-because-no-one-can-win) discusses social casino games<sup>10</sup>.

**Why are these games problematic?**

This investigative video from the US is insightful: [Facebook and social casinos target people showing signs of gambling addiction](#)<sup>11</sup>. The video references a social casino company owned by Australian gaming giant Aristocrat and its links with Facebook.

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<sup>10</sup> Ben Butler, 'Social casino' apps: the games exempt from Australia's gambling laws – because no one can win, 17 November 2022, <https://www.theguardian.com/australia-news/2022/nov/17/social-casino-apps-the-games-exempt-from-australias-gambling-laws-because-no-one-can-win>. We believe that the industry's trade group, the International Social Games Association incorrectly claimed that no US court has ruled that casino games are gambling. The Appeal judge Judge in the 9th District Court, Washington DC ruled in the Big Fish case (owned by Aristocrat) that a virtual game platform constituted illegal gambling under Washington law finding that the casino's virtual chips are a "thing of value."

<sup>11</sup> Summary: 13 Aug 2019: Facebook recently received a \$5 billion fine from the Federal Trade Commission for mishandling users' personal information. But how does Facebook's handling of personal information affect its users? In this partnership with PBS NewsHour, Reveal examines how Facebook is partnering with social casino games to monitor and analyze the behavior of vulnerable players. The companies are using big data and advanced software to predict which people will spend massive amounts of money on the games and then targeting these people with aggressive marketing. For some people, these games result in financial ruin. Suzie Kelly, a grandmother from suburban Dallas, ultimately spent \$400,000 playing a virtual slot machine game on the Big Fish Casino app on her iPhone. She took out two home equity loans, spent her family inheritance and borrowed money from her husband's 401(k), all to pay off credit card debt from the game. And the kicker? She can't win any money in the game. It's not traditional gambling. Players can never cash out their virtual chips for real money. They're paying only to buy more chips, which allows them to spend extra time in the game. "So this is, in some ways, pure addiction," says Keith Whyte, executive director of the National Council on Problem Gambling. Social casino games, such as slot machines and poker games on Facebook and mobile devices, have become a \$5 billion-a-year business, with revenues nearly as large as all the Las Vegas Strip casinos combined. But because the games are classified as entertainment, they are not subject to any gambling regulations. So there is nothing stopping tech companies from monitoring, analyzing – and targeting – those with addictive personalities.

According to US investigative report<sup>12</sup> the key facts about how social casinos operate are:

- About 3% of users generate about 80-90% of social casino profits. The companies use behavioural analytics to detect which early spenders are likely to become 'whales'. (A 'whale' is a person who consistently bets large amounts of money.) These players are tracked with their Facebook ID.
- There is cross marketing from social media companies, such as Facebook. These companies receive a percentage-based commission for in-app spend, that we believe to be in the order of 30 per cent of spend. This means there is the incentive to keep nudging users to these products. See the transcript of the report, *How social casinos leverage Facebook user data to target vulnerable gamblers*<sup>13</sup>. It provides an insight into how Facebook helps social casinos find potential whales - it charges a premium to nudge players to play more.
- The games are designed for retention and addiction, and people become addicted. An article from Udonis, a mobile game marketing agency explains why leading social casino game, Slottomania is a 'fun, addictive and profitable'<sup>14</sup> app. We suggest Committee members read the article (at footnote 10), then download the free Slottomania game from Facebook and use it for 15 minutes.
- There are no limits or restraints on how much can be deposited and spent, and no ban on the use of credit cards for funding this gambling.
- The companies have no harm prevention programs or user tools.
- Users cannot self-exclude through the platform, or through BetStop (when operational).
- There is no governing harm prevention code or regulation.

#### Better ways of regulating social casinos

- France considers social casinos to be gambling. Its regulator considers that if a user can buy tokens or virtual tokens with real money, then it is gambling. The definition hinges on **money in**, not money out.
- Belgium does not permit social casinos or loot boxes. The definition of gambling covers 'games of chance' so it has broad coverage.

#### Recommendation

**Change the definition of gambling so that social casinos and loot boxes are captured as 'games of chance'. Then treat online social casinos consistently with other online casinos in Australia, i.e. they cannot be licensed.**

<sup>12</sup> It is well worth reading the story transcript of 'How social casinos leverage Facebook user data to target vulnerable gamblers', 13 August 2023, from PBS.org at <https://www.pbs.org/newshour/show/how-social-casinos-leverage-facebook-user-data-to-target-vulnerable-gamblers>.

<sup>13</sup> <https://www.pbs.org/newshour/show/how-social-casinos-leverage-facebook-user-data-to-target-vulnerable-gamblers>

<sup>14</sup> [Slotomania Monetization: Turning Virtual Coins into \\$1.64 Billion](https://medium.com/udonis/before-writing-this-article-i-believed-fictional-money-casinos-could-never-compete-with-their-real-11700cb5c707), 13 April 20. <https://medium.com/udonis/before-writing-this-article-i-believed-fictional-money-casinos-could-never-compete-with-their-real-11700cb5c707>. The article is authored by Udonis, a mobile game marketing agency.

Crypto, contracts for difference and pseudo investment-gambling products are also causing a lot of harm.

Financial counsellors are seeing people who have lost hundreds of thousands of dollars on crypto trading and scams, trading involving contracts for difference (CFD), and other trading products. The marketing is very much like the marketing in the gambling industry, with VIP programs and customer management. Influencers are also used. Some are sporting celebrities.

Financial Counselling Australia wrote about this in an unpublished submission to ACMA; the submission can be provided to the Committee on request. Case study examples were given.

ASIC regulates financial products. However, given the gambling overlaps, there needs to be a new discussion about how to regulate these gambling-like products. They are clearly dangerous.

We realize that Treasury is considering how to approach regulating crypto and new blockchain products. Our request is to not only consider the regulation from a financial product perspective, but also from a gambling regulatory perspective. There are similarities but also key differences.

#### **Recommendation**

**That the Government broadens its consultation to look at:**

- Gambling within a crypto, NFT and web3 context and
- When trading CFDs and other risky products becomes gambling.

VIP programs are incubators of consumer harm.

Figure 4: Finnish gambling operator PAF has committed to sharing its data and journey towards zero harm and zero profits from high risk customers (red shading)

Finnish gambling operator aiming to have no revenue from high risk customer segment

## Player segments

Customer segment (EUR)	Total gaming profits					Number of customers per segment					Average gross gaming profits per customer (EUR)				
	2021	2020	2019	2018	2017	2021	2020	2019	2018	2017	2021	2020	2019	2018	2017
> 30,000	0	219,812 *	6,072,132	9,648,523	13,653,368	0.00%	0.00%	0.05%	0.13%	0.20%	0	54,953	39,175	39,870	44,765
15,001 - 30,000	14,026,102	18,284,221	26,214,835	18,087,884	18,436,519	0.25%	0.28%	0.43%	0.48%	0.60%	17,959	19,597	20,561	20,255	20,349
8,001 - 15,000	29,342,290	24,750,155	28,863,944	22,007,735	21,600,129	0.89%	0.69%	0.91%	1.09%	1.32%	10,627	10,654	10,655	10,751	10,805
0 - 8,000	134,369,798	120,684,221	104,547,874	71,410,935	67,150,397	70.52%	72.91%	70.83%	66.74%	73.65%	617	494	498	570	604
Winning players	-43,161,469	-43,367,676	-31,772,901	-23,056,491	-23,003,994	28.32%	26.12%	27.78%	31.57%	24.22%	-494	-495	-386	-389	-629
Total	134,576,721	120,570,733	133,925,884	98,098,586	97,836,418	100%	100%	100%	100%	100%	436	359	452	522	648



Source: Jenna Ekstrom, Responsible Gaming Manager PAF (Finland), Conference Presentation EASG 9.9.2022

Many financial counselling gambling clients present after having lost large sums of money. Financial counsellors find that many were admitted into what the industry call 'VIP programs'. This involves individual case management and high levels of bonuses and other inducements. The men (online gambling is gendered) sometimes describe their account managers as people they have fun with or as good friends. They hang out together on weekends at the races and at sporting events. The account managers procure free tickets and more, and make the person feel special. The account managers however know the real backgrounds to their "friend" - that their high spending client is a fragile, ride share driver whose marriage has just broken down.

The plan for each person is documented in file notes. We have seen some of these file notes. 'Client wants to increase credit card limit to \$80,000. Other card has \$50,000 limit. Go ahead. Client wants to change credit card. Giving client 500,000 loyalty points for big spend.'

Those in VIP programs are individually managed. They are made to feel very important being at the receiving end for inducements in the form of free credits, matched bonuses, free tickets to events with hospitality, alcohol filled hampers, accommodation and flights, limousine transport to events, and so on.

When the money stops, the attention stops.

These VIP members are rarely people that can genuinely afford to lose thousands each week. They are typically people with serious gambling issues and other challenges in their lives.

Gambling company Kindred has openly stated that it is transforming its business to so that it receives 'zero revenue from harmful gambling by the end of 2023'<sup>15</sup>. Paf, a Finnish company has done the same. See table above.

<sup>15</sup> See the Kindred approach <https://www.kindredgroup.com/sustainability/our-journey-towards-zero/>

These operators are sharing their research and sales data to demonstrate that it is possible to move to a sustainable business model, based on having more customers gambling at lower levels.

The money is typically from three sources:

1. **Wages:** some people spend most of their work income on gambling. This is typically a source of great harm, immediately or at a future point.
  - A formerly well-remunerated retired (injured) sportsman said 'look at me now, I'm in my 30s and I've got nothing to show for all my hard work. No house, no partner, no proper job, no savings and no prospects. I'm essentially down and out doing manual work, despite being a former poster boy for my sport'. All his money was gambled. He was a VIP.
  - A tradesman in his 40s was living in his mother's garage, despite working 7-days a week. Almost his entire income was gambled each week. In twenty years of work he had not a cent in savings and borrowed from his mother to buy basics. He disclosed that he wanted to take his life, but didn't think he had the courage.
2. **Lump sums:** we see people using lump sums meant for another purpose. This includes accident compensation payments meant for a lifetime of care, redundancy payments, inheritance money, ADF veteran injury payments, redress payments from institutional abuse compensation that may have been hard fought for, Total and Permanent Disability insurance payments, disaster insurance payments and superannuation. We've seen houses sold and the proceeds sitting in an account to buy the next home, and the money being gambled, often without the partner's knowledge or consent.
3. **'Other people':** this includes money taken from family members (potentially elder abuse or partner economic abuse), theft from workplace fraud, or borrowed from friends and family with deception (who don't know the money is being lent for gambling). Some people end up in prison.

#### **Recommendation**

**VIP programs need to stop. We need legislation to prevent companies from being able to give inducements and bonuses, (which are the enablers of the VIP programs)**

## Why the online gambling consumer protection framework is inadequate?

Financial Counselling Australia's 2015 report, [Duds, Mugs and the A-List](#) was a catalyst for the O'Farrell Review, and the Online Gambling Consumer Protection Framework. As part of the review, FCA invited people with lived experience who had featured in the report case studies to meet with Barry O'Farrell and his review team, and then with the relevant Minister of the day, Alan Tudge and the departmental gambling policy team. Hearing from people with lived experience was a profound experience.

The Framework was signed four years ago on 26 November 2018. It was a compromise framework designed to get 'something' in place and reflected that this was the first time that the States, Territories, and the Commonwealth Governments had worked together on gambling policy. Something was better than nothing. A review period of three years was built into the process. However, it was apparently triggered by all the Commonwealth tasks being completed, and a number of items were incomplete. So despite being four and half years on, the review of the Framework has not yet taken place.

Some voices wanted more research before policy change and warned of 'unintended consequences' without research projects. The trouble is that when we stop for a lengthy research project then nothing happens in that period. What is certain is that people impacted by gambling will have been harmed. Our observation is that at the end of the research period, there is a published report, that confirms what would have been the original policy position, but still nothing happens. The departmental and parliamentary officers who had been immersed in gambling policy reform move on. Stopping for research kills any momentum, and the years pass without proper reforms. In the interim, the industry is nimble. New companies are created in months, and new products are released without years of research. The slow, plodding of the 'we need solid evidence' team is no match for the nimble, online gambling industry.

If you listen you'll often hear industry representatives respond to harm prevention initiatives with, 'but that isn't evidenced based'. What they are really saying is 'tie yourself up with research for a lengthy period and let us have free reign'.

Others argued for 'individual responsibility' - what we call the right to destroy your own life and the lives of others. It is a line run by the whole gambling ecosystem when they want to prioritise their business interests over the welfare of their customers and society.

Industry inevitably argues that 'we're already highly regulated. We're already best practice'. Neither statement has much truth (as the Crown Royal Commissions also discovered in the casino world). The online industry also argues 'we're licensed in Australia. We have consumer protections here, and it is those overseas illegal operators that you must focus on' and attempt to deflect Government attention to the offshore providers. The industry lobbying was successful, and the Government review was slanted to the 'illegal Offshore industry'. There was however a fourth term of reference inserted which allowed consumer issues to be looked at.

Much of the ACMA's regulatory attention is still focused on keeping out the offshore companies, due to industry's success at positioning the main threat as a foreign one.

## A case study showing the failure of our Framework: Gavin Fineff's case

Sweden, Spain, Belgium, Netherlands, Finland, Norway and other European countries have introduced capped gambling limits. In these European countries, they couldn't envisage former financial advisor Gavin Fineff's<sup>16</sup> situation, where someone could deposit over \$7.5 million dollars of 'other people's money' into online gambling accounts with three national operators ... without adequate anti-money laundering compliance, and without operators having to assess the risk and intervene.

If our harm prevention regulatory system is not kicking in with the obvious harm cases, like the one below, then what hope will it have for the more subtle garden variety cases of harm?

### Case study of harm: Gavin Fineff (real name)

Mr. Fineff went into prison recently and is awaiting sentencing. His wife and young children are without their husband and father, and main income earner. His former clients, the innocent victims of crime have lost their life savings. Taxpayers will be paying about \$130,000 a year for the duration of his sentence. It appears that the three gambling operators, Tabcorp, Ladbrokes and Sportbet are not being asked to return the money, despite receiving the proceeds of crime. The NT Racing Commission recently released its determination on Mr. Fineff's complaint about Ladbrokes, and found Ladbrokes to be in breach of three license conditions. The fine is almost \$80,000 but Ladbrokes was allowed to keep the \$758,000 that Mr. Fineff lost. The regulator did not instruct Ladbrokes to divest the funds<sup>17</sup>.

The Fineff case demonstrates major points of failure:

- The obligation on operators to prevent excessive gambling harm by intervening (our consumer protection framework is inadequate). The fact that Mr. Fineff was allowed to spend over \$7.5 million with three of the largest operators without any intervention is *prima facie* a demonstration that our Framework provides manifestly inadequate protection.
- The obligation on the operators to comply with AML obligations which include knowing the source of funds and doing enhanced due diligence.
- The gambling regulators and police not taking action under existing Commonwealth Proceeds of Crime legislation (national and state). There are offences against businesses accepting stolen money i.e. *dealing* in proceeds of crime. There is also a process for confiscation of those funds and victim redress.<sup>18</sup>
- The gambling regulator did not consider the criminally funded deposits (it states that is in not looking at this source of funds in its determination).

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<sup>16</sup> See the Submission to the Senate Committee by Gavin Fineff. This ABC story details Gavin's story: [https://www.abc.net.au/news/2020-07-09/gambler-who-lost-millions-says-he-was-targeted-by-betting-groups/12409910?utm\\_campaign=abc\\_news\\_web&utm\\_content=link&utm\\_medium=content\\_shared&utm\\_source=abc\\_news\\_web](https://www.abc.net.au/news/2020-07-09/gambler-who-lost-millions-says-he-was-targeted-by-betting-groups/12409910?utm_campaign=abc_news_web&utm_content=link&utm_medium=content_shared&utm_source=abc_news_web)

<sup>17</sup> See ABC article by Jack Snape, 'Ladbrokes fined \$78,000 but allowed to keep \$758,000 in bets made by disgraced financial planner', 6 March 2023, at <https://www.abc.net.au/news/2023-03-06/ladbrokes-fined-gavin-fineff-entain-nt-racing-commission/102059616> and article by Henry Benot, 'And 'Ladbrokes fined nearly \$80,000 for failing to stem damage from man who stole millions for gambling'', 6 March, The Guardian, <https://www.theguardian.com/australia-news/2023/mar/06/ladbrokes-fined-nearly-80000-for-failing-to-stem-damage-from-man-who-stole-millions-for-gambling>

<sup>18</sup> Australia has a federal Proceeds of Crime 2002 Act (Cth), and it is an offence to deal with money that is proceeds of Crime. Dealing relates to when money is accepted and it is the proceeds of an indictable crime, or the recipient is reckless to whether it is. Sections 400.3 to 400.8 of the Criminal Code create offences for amounts ranging from \$1,000 to over \$1,000,000. The NT Criminal Code Act 1983 also makes it an offence to deal with money that they ought reasonably to have suspected to be proceeds of crime (231D).



- The relatively small fine allowed Ladbrokes to effectively profit from its wrongdoing, and there is no regulatory principle of making the operators found to have breached their regulatory obligations to be divested from the ill-gained revenue.
- The NTRC declared in its determination that it has no requirement to consider the source of funds in its decision making (i.e., it ignored the fact that the funds were proceeds of crime)

#### **Recommendation:**

**There needs to be a clear, high-level objective in the gambling acts ‘to keep gambling crime free’. We need a legal taskforce to examine the proceeds of crime legislation and other relevant existing acts, and provide guidance to gambling regulators, public prosecutors, and other stakeholders.**

**That the Government consider a dedicated gambling proceeds of crime unit within the Commonwealth DPP, with a remit to examine past cases where people received criminal sentences for gambling with stolen funds.**

## The Framework Foreword and what we have in practice.

### **What the Framework Foreword says**

*Foreword: The National Framework provides – for the first time – strong, nationally consistent minimum protections for consumers of interactive wagering services licensed in Australia, in line with international best-practice*

### **What we have in Australia**

What we have is certainly *not* in line with international best-practice. We are way behind. Every other country in the world has less per capita gambling harm than Australia. Many European countries have re-written their gambling acts with consumer harm prevention at the core, a legislated duty of care, control of advertising, the control of inducements and more.

Some of the countries ahead of Australia in online gambling consumer protection are:

- Sweden: legislated duty of care in its Gambling Act, no VIP programs essentially due to a ban on inducements and bonuses (only one per customer, forever), a requirement for gambling advertising to be ‘moderate’ so the Swedes don’t see saturation advertising. Sweden has a legislated weekly capped loss limit of 5,000 Kr (A\$700), per operator. There is an obligation for operators to have a higher level of vigilance for people gambling over 10,000 Kr (\$1,400) a month. People are unlikely to lose their house gambling.
- Norway: has re-regulated its online gambling market and now only allows two state owned monopolies. The overseas operators are now all ‘illegal’ operators. Its monopoly online gambling operator runs a ‘reverse VIP program’, where it contacts those showing signs of harm and assists them to set limits, reduce gambling, get professional help and more. It is a successful program. Norway has a capped loss limit. People can’t lose their house gambling. It is an excellent case study in how a country sets the goal of controlling gambling and reducing gambling harm.
- Belgium: is determined to reduce gambling harm. It has banned all forms of gambling advertising including direct marketing of SMS and emails to customers, sponsorship and online influencers,

bonuses and inducements. It has a wide definition of gambling that includes social casinos and loot boxes, both of which are not permitted. It introduced a customer loss limit during Covid of €500 and more recently reduced this to €200 Euros per week. The regulator operates a national self-exclusion scheme, including for third party exclusion. A range of people are automatically included on the exclusion register, including those on bankruptcy registers.

- Spain: has just introduced a new set of responsible gambling regulations that mandate that operators assess their customers as falling into one of three categories of risk. Those in the highest category of 'risky' gambling must be shut down, until the person engages and sets realistic limits. 'Intensive' customers can't receive inducements, be part of VIP marketing or other gambling marketing. Only 'normal' customers can gamble without intervention, as long as they don't show concerning patterns. The Government has set maximum gambling spend limits per operator, and young people can only gamble at half the spend limits of the >26 years customers. All physical advertising, such as in stadiums or billboards, or team sponsorship is not allowed, and TV, radio and digital marketing (e.g. social media) are only permitted from 1 am to 5 am, times when minors are unlikely to come across the marketing.
- France: Gambling is not considered to be a 'normal product' and regulation is 'upstream'. The regulator only licenses a small number of operators, and they have to submit plans prior to getting a licence on how they will comply and prevent harm. There is an annual re-assessment and demonstration of compliance process in order to retain the privilege of a licence. The Government operates an ombudsman scheme for customer disputes.
- Netherlands: in a newly regulated market for online gambling. It has recently prohibited all 'un-targeted advertising' which covers all advertising that is not individually directed to a customer, whether online or broadcast, or in an open physical space like a stadium. The regulator investigates and prosecutes companies for breaching AML laws, and looks at consumer harm at the same time, as they often overlap. It has recently prohibited advertising to vulnerable people, including those on the self-exclusion register and minors and young people. This captures affiliate advertising, as gambling affiliates can't access the self-exclusion register to meet this obligation not to market to vulnerable people. It had a voluntary deposit limit, but saw that some operators were allowing people to set meaningless limits of €1,000 a day, or time limits of 24 hours a day, so the government is implementing compulsory limits. It is introducing a duty of care.
- United Kingdom: is similar to Australia in that it has effectively unregulated advertising, so also has a significant problem controlling gambling harm. The regulator has introduced personal licences for those working in the gambling industry, and in key positions. In each licensee there is a single person responsible for regulatory compliance on key areas of responsibility, so a single point of failure. It has worked with the competition regulator to have standardised fairer terms and conditions. Credit card betting was successfully prohibited in 2021, without unintended consequences. There is a principle that operators cannot profit from their wrong-doing, and those caught accepting stolen funds are divested of those funds, in addition to penalties. Parliament has given the regulator unlimited penalties to 'do whatever it needs to do' and it regularly imposes very large fines. There is an expectation that operators assess 'affordability' of a customer's spend—currently being refined. There are deposit limits for under 25s. The Gambling Commission is a busy, activist regulator.
- Ireland: has a new Gambling Bill 2022, that is in the process of being passed. It has totally re-written its gambling act to meet expectations of harm prevention in an online, digitally connected age, with particular emphasis on prevention of harm to minors and young people. All gambling advertising

must be identified with a gambling tag and is only allowed if there is an easy blocking mechanism, including online. In late 2022 it set up a new regulatory organisation with new leadership. Its legislation has strong penalties including criminal sanctions for breaches.

## 2. What the framework says

*The measures are designed to: provide consumers with strong, nationally consistent minimum protections, which both prevent and provide support for those experiencing gambling harm*

*Objective: ... afford consumers of licensed interactive wagering services effective safeguards, regardless of the Australian jurisdiction in which they consume these services.*

### What happens in practice

- There is nothing strong about the protections. They are weak. They are too limited to apply to most of the cases that we see in client work.
- They are not nationally consistent. The jurisdiction influences a complainant's outcome. Those with a case against an operator licensed in the NT, have better protection because the NT has a Code of Practice which stipulates that operators must pick up red flags of customer harm. The NT Racing Commission also voids bets when operators allow customers to bet, when they have asked to self-exclude. In our experience, the other regulators don't have a regulatory basis for assessing the deplorable cases we see.
- Victoria: A complaint to the Victorian Gambling and Casino Control commission resulted in a finding that the operator's conduct had breached the relevant Act. However, as the VGCCC doesn't license the online gambling operators in Victoria – the Racing Commission does – its process was to close the case without even communicating the matter to the Racing Commission. Findings of a breach of the Act appear to have no consequences.
- NSW: A man self-excluded with a NSW licensed operator, using the operator's self-exclusion form and emailed it to the appropriate email address (and provided proof that he had done everything he had to do). This operator never processed the request. The man relapsed and was allowed to gamble. The Office of Liquor and Gaming took no action on the complaint. It said that the operator's terms and conditions stipulated customers had to receive a reply for the self-exclusion to be valid. We don't believe this approach would be valid in the NT.
- WA: FCA phoned the Gaming and Wagering Commission to discuss a potential complaint involving a WA client and were told that the regulator didn't regulate online gambling. [ACMA](#) lists [TabTouch](#) as licensed in WA<sup>19</sup>. TabTouch appears to self-regulate through its own internal code of conduct, a light touch and out of date document.
- SA: South Australia's legislation allows the SA regulator to have jurisdiction based on the customer's postcode. This means that a SA resident customer betting with a NT licensed operator, gets the protection offered by the SA legislation in addition to the NT's Code.

Overall, we see little evidence of the measures '**preventing and providing support**' for those experiencing gambling harm.

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<sup>19</sup> TabTouch's website states that it is governed by its own internal [Code of Practice](#), dated October 2018. It does not reference any WA regulation. Note this 2018 Code is prior to the Online Gambling Consumer Protection Framework so would not incorporate the new expectations. The TabTouch Code committed to a biennial review ... by one of its own staff; the Code doesn't appear to have been updated since 2018.) None of this is remotely 'best practice'. The Code also has a focus on provision of information, not any positive obligation to do anything of substance, which is underwhelming.

We are seeing largely the same operator conduct as prior to the Framework. Perhaps financial counsellors are just seeing the ‘bad apples’ in terms of poor operator conduct, but if so, the crate of bad apples is overflowing.

However, we do acknowledge that some operators are having robust discussions with customers about some large bets. Some are discussing ‘affordability’ on occasions. But many others are not.

But then financial counsellors also see other cases where those same operators have allowed another person to spend huge, implausible sums without intervention (and some of that money is the proceeds of crime). The inconsistency is an issue.

The VIP programs have their own cultures. When querying a large state licensed operator complaint, we were informed that this operator’s VIP account managers didn’t go through its regular, separate Responsible Gambling team, because they didn’t need to. We were informed that those VIP account managers were trained in Responsible Gambling (RG) so could both wear an RG hat as well as an account management hat. VIP account managers are typically remunerated on commission. The more their client bets the more they earn. Conflicts abound.

#### *Measure 1: Prohibitions on lines of credit: good measure (but credit card gambling has filled the breach)*

This measure was a good measure. We no longer see people with debts to gambling companies.

We no longer see people with court judgements or bankruptcies relating to gambling company issued debt.

We do, however, see issues with banks providing credit, especially credit card debt. However, we also see people seeking credit to be used for gambling from every available source, such as personal loans, mortgage redraws etc.

We don’t see Buy Now Pay Later (BNPL) being used directly for gambling, as from inception to the credit of the sector’s leadership, this was prohibited in the BNPL code of conduct. However, once again many of the gambling clients use BNPL loans to pay for living expenses when their wages have been consumed by gambling.

#### **Recommendation:**

**That the recommendations of the 2021 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) be adopted with urgency. This recommendation was legislate to ban credit cards from being accepted by gambling operators directly or indirectly via third party payment platforms. (This was uncontroversial and had bipartisan support. The previous government, we believe, had the legislation prepared ready to be introduced without debate the week the election was called. The UK review of its ban found no unintended consequences, and that it achieved its aim).**

## Measure 2: Discouraging industry collaboration with payday lenders – this has worked, but clients still have high-cost payday loans

This measure was introduced to compliment the prohibition on lines of credit from gambling operators and prevent the industry from collaborating with payday lenders to fill the gap. We believe it worked in that we haven't seen joint advertising.

However, many if not most, of the financial counselling gambling clients have payday loans. So, a problem remains.

Payday loans remain an issue from a responsible lending perspective. ASIC regulates this sector but to our knowledge hasn't ever focused on gambling and payday lending.

### **Recommendation:**

**That ASIC investigate and report on whether the payday lending sector is compliant with its responsible lending obligations, vis-à-vis gambling customers.**

## Measure 3: AML Customer verification – was reduced to 14 days, then 72 hours, UK has best practice with no betting before verification.

This measure was successfully implemented. Online gambling operators can no longer wait 45 days. The Framework reduced it to 14 days, and then the review reduced it further to 3 days.

However, it needs to be tightened more.

### What's the problem with 72 hours?

#### 1. Minors gambling for 72 hours is unacceptable.

- People with gambling issues can do a lot of damage over a long weekend. Relapses are common. They create a new account with different login details to get around self-exclusions.
- Operators set low barriers to entry at the gambling entry point, but higher barriers when the person wants to withdraw money.
- It is unnecessary as the technology for ID checks has evolved and it is simple to use proprietary systems to confirm ID (which operators are using anyway for internal fraud detection purposes, i.e. against fraud that costs them money).

If we open a bank account, we have to prove our identity to meet the Anti-Money Laundering (AML) rules, before the account can be opened. Gambling needs the same standards for both AML and safety considerations.

The UK Gambling Commission requires verification before customers can gamble and deposit<sup>20</sup>.

1. Licensees must obtain and verify information to establish the identity of a customer before that customer is permitted to gamble ...
2. A request made by a customer to withdraw funds from their account must not result in a requirement for additional information to be supplied as a condition of withdrawal if the licensee could have reasonably requested that information earlier ...

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<sup>20</sup> See LCCP, UK Gambling Commission License Condition Code of Practice, at [17.1.1 Customer Verification](#)

3. Before permitting a customer to deposit funds, licensees should inform customers what types of identity documents or other information the licensee may need the customer to provide, the circumstances in which such information might be required, and the form and manner in which such information should be provided.
4. Licensees must take reasonable steps to ensure that the information they hold on a customer's identity remains accurate.

**Recommendation:**

**Reduce the AML verification period from 72 hours to verification prior to depositing/gambling or being allowed on a site (see the previous verification review as it was one of the questions).**

#### Measure 4: Restrictions on inducements –applied to ‘open an account’ – doesn’t go far enough.

This measure was implemented. But now we see from talking to people with lived experience, that the measures were insufficient to ward off harm. Marketing naturally flows to the unregulated gaps. The restrictions just covered four areas, all worthwhile, but not sufficient. There were also implementation issues.

- The offer of any credit, voucher, reward, or other benefit:
  - as an incentive to open an account is prohibited. What happens in practice now is that incentives are typically provided just after the person's account is opened. The timing of the inducement has been shifted with a wink and a nod. And some companies just ignore the requirements.
  - To refer another person to open an account is prohibited. Gambling affiliates are fulfilling this role, funnelling new customers through their tipping sites, sport streaming services, their websites and other means. They receive a trailing commission on the referred person's future net losses. There are also affiliate staff employed by gambling operators on a commission basis, who use personal outreach to gamblers who are customers or former customers of other operators, and they offer inducements to ‘bring them over’. Affiliate marketing is a really serious problem.
- Any credit, voucher, reward, or other benefit (that is directed at encouraging customers to gamble) that is not part of an approved loyalty program must not be offered in a jurisdiction that only permits such inducements as part of an approved loyalty program. *This strangely worded section must have been for a specific state that allows marketing within loyalty programs. All loyalty programs work on rewarding customers for betting, regardless of safety. This section is not really harm prevention.*
- Winnings from a complementary betting credit or token (i.e. bonus bets) must be able to be withdrawn without being subject to any turnover requirements. *This section was good policy, and removed a mechanism which encouraged excessive betting and was unfair.*
- All direct marketing to customers may only be sent to customers who provide their express consent to receive this material. *In practice, many operators pre-tick boxes. Some don't request consent (not at sign up anyway).* People who don't complete the customer sign-up process and do not verify their ID and age still receive direct marketing with inducements to bet.

The UK Behavioural Insights team has reviewed 10 UK gambling operator websites and found a very poor user journey from a consumer safety perspective. It found that websites employ similar design choices as physical

casinos and contain numerous features that may harm users by leveraging behavioural biases. The report has good advice for Australian policy makers and regulators<sup>21</sup>.

WELCOME TO **PALMERBET**

[Sign up](#)
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FIRST NAME: Micky      LAST NAME: Mouse      GENDER: Male ▼

MOBILE NO.: AU ▼ +61      DATE OF BIRTH: 3 ▼ March Text 2000 ▼

ADDRESS: 2 SMITH ST, BELLINGHAM TAS 7254      [CAN'T FIND IT? ENTER YOUR ADDRESS MANUALLY](#)

EMAIL ADDRESS (THIS WILL BE YOUR USERNAME): micky@internode.on.net      PASSWORD: \*\*\*\*\*

CONFIRM PASSWORD: \*\*\*\*\*

☒ I would like to receive marketing or promotional material from Palmerbet.

Pre-checked boxes do not lead to consumer's actively considering their choice

*Inducements remain a huge problem and trigger for harmful gambling. They drive the so-called VIP (high value customer) programs, which in turn are disproportionately harmful.*

#### Recommendation:

Australia needs strong measures against bonuses and inducement like many European jurisdictions. The aim should be to ban inducements or follow Sweden's lead and practically limit them to a single, one-off bonus in a customer's lifetime. Removing inducements to gambling has the effect of effectively depleting the momentum of VIP programs, as there is little to offer in the way of inducements. VIP gambling marketing has been documented as particularly harmful as a small cohort of people account for a disproportionate share of customer losses.<sup>22</sup>

Many overseas jurisdictions have taken strong measures. The term 'bonus' generally covers all forms of inducements.

**Sweden:** bonuses are not prohibited, but they are only permissible *once* in the customer's lifetime, but there is no restriction on whether it is before opening an account, or later. Sweden had a number of court cases defining what constitutes a bonus. Basically, the interpretation is broad, and everything given to a customer is a bonus, including cashback, bottles of champagne, free spins, free credits etc. The most significant impact is that the VIP programs don't really exist anymore because there is little to offer those customers. This prevents a lot of the most serious harm.

**Belgium:** bonuses, including gifts and inducements are not permitted. They also can't be advertised. Customers can't be given a gift or any advantages. The court tested the meaning of 'bonus' and followed the Gambling

<sup>21</sup> See Using a Behavioural Risk Audit to identify harmful design features on gambling websites, 6 July 2022 <https://www.bi.team/publications/using-a-behavioural-risk-audit-to-identify-harmful-design-features-on-gambling-websites/>

<sup>22</sup> The UK House of Lords examined VIP programs. The industry admits that these programs come with risk. Listen to the hearing of the House of Lords committee where CEOs of the major UK operators were questioned. At Gambling Industry Committee, 4 Feb 2020 <https://www.parliamentlive.tv/Event/Index/ecb79c87-d947-4005-a214-1f0f8d034457>



Commission's broad approach of considering a bonus to be 'any advantage.' Loyalty programs are where enforcement issues are playing out, and the legislation needs to be clearer to not permit bonuses and inducements within loyalty programs.

**Netherlands:** the Netherlands is prohibiting bonuses and inducements for 24 years and under. It will also be banning TV and radio stations for advertising these bonuses. And bonuses for 25 years+ will be capped at €250 per bonus.

**Spain:** No sign-up bonuses are allowed. This includes bonuses prior to signing up, or within the first 30 days of signing up; operators are not allowed to discuss the prospect of future bonuses or promise future bonuses. The prohibition on welcome bonuses was brought in because the regulator detected in its data, that many young players started gambling because of the welcome bonuses.

### Measure 5: Account closure. This measure has caused confusion – self-exclusion is a stronger option.

This account closure measure was implemented. However, it has led to confusion and poor outcomes.

#### What's the problem?

- People don't know the difference between 'self-exclusion' and 'account closure'. Some ask for their account to be closed permanently, thinking that they will never be allowed to open it. However, in practice account closure just means that the data is archived. The person then finds that they can re-open the account. On a 'bad day' the account is re-opened in a few minutes or sometimes there is a 7-day lag. Regardless, the account gets re-opened. There might be new inducements or rewards and a vulnerable person is back to betting. Many a relapse plays out like this.
- Account closure is a weak form of protection.
- Some people have disclosed gambling addictions, have asked to self-exclude, but are then made to jump through bureaucratic hoops. They often fail to complete all the elements of the self-exclusion process in the eyes of the gambling operator. When a complaint is made to a non-NT regulator, those state regulators don't have any legislation covering self-exclusion (as the Commonwealth was responsible for the National Self-Exclusion Register and legislation). Other states have only a few lines of regulation covering 'account closure', which isn't useful in this situation. So, the system fails those vulnerable people who put their hand up asking for help but are not good at completing paperwork.

#### **Recommendation**

**There needs to be just one clear self-exclusion process with no room for confusion.**

**All regulators need to be willing and able to look at failed customer exit strategies. The legislation should cover this. It should be enough for a customer to flag verbally or in writing that they want to stop gambling without having to use any magic words with a specific operator meaning. The penalties need to be commensurate with IGA self-exclusion breach penalties, recognising the likely harm to this extremely vulnerable cohort.**

**If an account has been closed, and is re-opened, a 'vulnerability flag' should remain on that account. The opening process must involve the person setting a modest limit commensurate with income, and proof of source of funds. Note, we're not seeing people being offered the opportunity to set limits when they re-open accounts as this is usually over the phone or by email. This process must be designed with the presumption that the**

person re-commencing gambling is likely to be on a relapse pathway.

Betstop needs a generous marketing budget and a marketing plan. The public at large needs to be aware of this new tool not just those in the gambling help sector. People will need encouragement to use it as those experiencing gambling issues and addiction are likely to be ambivalent about stopping gambling.

## Measure 6: Voluntary opt-out pre-commitment scheme – this is not working.

This measure was implemented. However, it hasn't worked, with only a small number of people setting limits.

### What's the problem?

- **People can set nonsense limits** such as \$1 million a day. Operators' systems allow this.
- **Voluntary limits don't work well in Australia.** Most people don't use them. Some operators contribute to this low uptake with their behavioural nudges
- **Voluntary tools have a low take-up rate** according to industry data too. This European Gaming and Betting Association table below shows only 16% of its member's customers used voluntary deposit limits in 2021<sup>23</sup>. The EGBA is an industry peak body.



(by % share of customers)		2020	2021
Customers using voluntary tools		33%	25%
Of which 2 tools or more		5%	4%
Deposit limits	Helps customers to stay in control of their spending	22%	16%
Time limits / reality checks	Helps customers to stay in control of their time spent playing	5%	3%
Product blocks	Helps customers to take a break from specific gambling products	1%	1%
Self-exclusion < 6 months	Helps customers to stay in control by blocking access to their account for a set period of less than six months	2%	2%
Self-exclusion ≥ 6 months	Helps customers to stay in control by blocking access to their account for a set period of six months or more	3%	3%
Total Self-Exclusions in 2021		5%	5%

EGBA | European Gaming & Betting Association

Figure 4: European Gaming and Betting Association 2020-21 Voluntary tools have low take up

- Despite the brief Responsible Wagering Australia campaign urging people to set deposit limits, take-up is low. Voluntary limit setting will always be a weak option.

<sup>23</sup> <https://www.linkedin.com/company/european-gaming-and-betting-association/posts/?feedView=all>

- Some European countries have compulsory limit setting, with maximum daily limits, and weekly or monthly spend limits, with interventions for those regularly running up against their limits.
  - Sydney University researcher, Sally Gainsbury's study on the impact of Australia's pre-commitment measure found that deposit limits were the most commonly used responsible gambling tool, but the uptake of the tool was only 16 per cent. Many customers (25 per cent) using limits actually ended up increasing their limits, making the limit less restrictive than before, whilst a small percentage (3 per cent) removed their limits altogether<sup>24</sup>.
  - **The government and regulators have not set any targets that operators have to meet.** If there is no target to aim for, report against, and evaluate against a harm prevention metric, what is the point?
- **Industry has low aspirations in Australia:** for example market leader Sportsbet has a target of a 15% uptake in users setting their pre-commitment limits in its 2021 [annual report](#) demonstrating low expectations<sup>25</sup>. Interestingly, it references different targets for different markets based on different levels of 'safer gambling maturity' in the various markets. Where overseas regulators and governments expect more, the company aims higher. Flutter have now introduced mandatory deposit limits for under 25's in the UK, but not in Australia.
  - Some of the international industry operators do less in Australia but more in more vigorously regulated markets. The comparison below is for Flutter (Sportsbet in Australia). The target percentage of net revenue from customers with a deposit limit in Australia is 15%, but internationally the target for customers with deposit limits, cooling off periods or stake limits is 36.5%.

<b>Sportsbet</b> Measure: % of net revenue from customers with a deposit limit. Rationale: This is considered a more proactive measure than the one used in 2021; it measures affirmative action on safer gambling taken by the team rather than being reactive.			
2021 Flutter Annual Report, p. 146 Targets:			
Threshold	Target	Maximum	
13.5%	15%	16.5%	

<b>International</b> Measure: % of customers applying a deposit limit, cooling-off period or stake limit. Rationale: Like the Sportsbet measure, this is considered to be proactive rather than reactive, measuring preventative actions taken on safer gambling.			
Targets:			
Threshold	Target	Maximum	
33.5%	36.5%	39.5%	

<https://www.annualreports.com/HostedData/AnnualReports/PDF/flutter-entertainment-2021.pdf>

Figure 5: Flutter 2021 Annual Report - Safer Gambling. It shows low aspirations for proactive measures in Australia, and higher aspirations overseas

## Measure 7: Activity statements are a world first.

This measure was implemented in July 2022. It appears to be a world first. Online gambling operators now have to tell their customers how much they have lost each month. There were some implementation issues and despite

<sup>24</sup> See article By Australian academic [Sally Gainsbury and Robert Heirene](#), 'Do online responsible gambling tools work?' in Asia Gaming Brief, August 2021, <https://agbrief.com/news/australia/05/08/2021/do-online-responsible-gambling-tools-work/>

<sup>25</sup> On page 146 of Flutter Annual Report, there is discussion of 'The goals all support safer gambling tool usage ... Each division takes a slightly different approach to measurement, and they all have differing starting points in terms of the level of safer gambling maturity in the markets in which they operate.' See [https://www.annualreports.com/HostedData/AnnualReports/PDF/flutter-entertainment-plc\\_2021.pdf](https://www.annualreports.com/HostedData/AnnualReports/PDF/flutter-entertainment-plc_2021.pdf)

having a very long lead time, some operators were not organised and demanded more time (or perhaps their strategy was to delay rollout until after spring racing season had ended).

### **What's the problem?**

- The states and DSS are not clear about who is responsible for monitoring compliance. Each one referred us to the other.
- **Some operators changed the colour scheme and added additional text fields**, subverting the painstaking work of the behavioural insights team, who had provided a 'best practice' guide. The added text fields added complexity for users, and worked against the research team's aim of having a simple guide where everyone could understand their loss position.
- **Operators do not have to report evidence of customers opening the transaction statements, nor do they have to achieve targets.** If they had to report against this metric, there would be an incentive for operators to make sure that their emails did not end in junk mail, and were indeed viewed. Operators could SMS their customers to say 'your activity statement is in your mailbox. It is important to read it and talk to us if you are concerned about your gambling.'
- **Maintaining the logic and theoretical underpinning of the work:** there is no process for operators to seek guidance and approval from the regulators (and the behavioural insights team) if the format is to be changed, in a way that preserves the integrity of the Behavioural Insights logic.
- Customers who objectively have gambling issues, still have no way of knowing how their gambling compares to other customers who are in a safe mode of gambling. For example, Sweden and Spain require each operator to have risk assessment plans and processes for different customer risk profiles (age is factored in). Our system now needs to provide risk-based feedback to customers, with the opportunity to reflect and act, such as reducing their deposit limit, taking a break, or self-excluding. State owned Norwegian gambling operators have done excellent work on how to effectively nudge in this way<sup>26</sup>. Consumers must be able to put prevention measures in place with one click, and no need to talk to an operator.

### **Measure 8: Consistent gambling messaging.**

These are only coming in from March 30, 2023, so we have yet to see whether they will have an impact. The research project and lead time was excessively long.

It will however, be excellent to hopefully never again to hear the words, 'remember gamble responsibly'.

### **Measure 9: Staff training in responsible provision of gambling.**

This too has been a long, drawn-out journey. The contracts to first design the training framework and then produce the video training and resources were given to organizations that had no experience in gambling harm. It is difficult for those not experienced in gambling harm and its idiosyncrasies and sensitivities to nail this sort of training, in the way it was conceived—as a measure to actually prevent harm.

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<sup>26</sup> We can supply the Norsk Tipping report on request. It is well worth looking at.

The training does not appear to have the message that in some circumstances, service must be withdrawn. It does not detail, when an operator should stop ‘serving the opportunity to gamble.’

## Measure 10: National Self-Exclusion Register still not operational.

As we know, BetStop is still not operational.

There are crossover issues with the ‘account closure’ measure, above.

### What are the problems?

- **The register will allow people to come off it without a sufficient minimum period.** Many overseas regulators have told us that there will be a stream of people who will do their utmost to come off the register prematurely, but they hold firm knowing that these people are most at risk of harm. BetStop only requires the person to fill out a statutory declaration effectively saying that they don’t have a problem with gambling. This is not adequate protection. It does not reflect the seriousness of a gambling addiction and is not a risk-based approach.
- **There is no third-party exclusion.** Family members often know their loved one is in trouble and need a way to have the safety of the gambler assessed. Sonia van Duinen’s experience trying to warn the Dee Why RSL that her husband Gary van Duinen was at risk of suicide is a sobering reminder of what needs to happen when others can see that a family member or close friend is in a precarious position<sup>27</sup>. (Gary ended up taking his own life.) Star Casino and Crown Casinos now have third party exclusion processes.
- When people come off the register, there is no flag to tell future operators that the person is vulnerable. Business as usual is a high-risk approach for this high-risk group of people.
- **There is an implementation issue with migrating people from existing company self-exclusion registers to the national register.** The most vulnerable people are those who have already self-excluded in some form with individual operators, or the Northern Territory Racing Commission’s self-exclusion program. They will not know about the new register, as we’re told they are not permitted to contact those self-excluded customers, and privacy considerations are being cited as a reason to not allow the new BetStop register to access their contact details. Surely the Office of the Australian Information Commissioner (OAIC) can be involved to sort this out! These are the most vulnerable people in Australia and a solution needs to be found.
- **There was no proper marketing or communications budget for BetStop to promote the new register and raise awareness.** This should have been built into the funding arrangement. We believe that a little money has been found for some social media marketing, but what is needed is an adequate budget, for ongoing, wide promotion of BetStop and other supports. The aim should be to normalise seeking help, and putting help mechanisms in place. It is not easy for people to take the mental step of putting their name on the register, so the budget needs to reflect the challenge of changing addiction driven behaviours.
- **Betstop still isn’t operational and has well and truly missed all deadlines.** Engine, the company appointed to construct the register started the first part of the UK GamStop self-exclusion process, but did not see the register through to completion. To an outsider, it appears to be an odd decision to have appointed a company that was not retained to complete the job in the UK.

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<sup>27</sup> <https://www.smh.com.au/national/nsw/sonia-always-comes-to-the-same-conclusion-her-husband-s-death-was-avoidable-20230221-p5cmat.html>

## Our regulatory set up is not protecting consumers – we need a better way.

The NTRC and State gambling regulators are not the best forum for handling consumer complaints. The process is cumbersome, and the regulators don't appear adequately resourced to handle complaints efficiently. Some regulators appear to have a conflict, having been set up with the aim of developing the racing and betting industry in that jurisdiction. Indeed, the NT Racing and Betting Act has an objective of being light touch regulation.

A better way would be to follow the external dispute resolution (EDR) model in banking, super, insurance, energy and telecommunications, where industry funded EDR-ombudsmen schemes are successful and generally well regarded. This model is based on cost-recovery from the companies according to the number of complaints, and the time taken to resolve them. This model incentivizes the corporate players to prevent problems and solve complaints efficiently.

Over recent years, we have observed consumer complaints sent to regulators, and make the following observations:

### General

- **Black letter law is hard to get to work in practice in gambling regulation.** The operators find a way around the law. It is better to have a mix of principle-based regulation supported by regulators having the capacity to adapt and issue rules, regulations, and further guidance, supported by an EDR scheme for complaints.
- **Neither the State gambling regulators nor the NTRC seem to have own motion inquiries into systemic issues in the online gambling arena.** When a complaint is made, that seems to be the end of it: we don't see the regulators using it as a chance to look for systemic issues and then respond. We realise however that we do not see all the work that regulators do. It appears our system is reactive in a low key way, and definitely not preventative in its approach.
- **Fines are embarrassingly low and clearly have no deterrent value for the gambling giants.** The States that had casino Royal Commissions and investigations have changed their legislation to allow fines of up to \$100 million (Victoria, NSW and WA). In contrast, the most the NTRC could fine Ladbrokes for a very serious responsible gambling breach in the recent Ladbrokes-Gavin Fineff determination, was approximately \$27,000.<sup>28</sup> (Although it could potentially have considered each large deposit as a separate breach but did not do this.)
- **Many companies buy the complainant's silence by a settlement, with a non-disclosure agreement.** This means that regulators don't hear of many of the wrongdoings.

### The Northern Territory Racing Commission

- The NTRC receives most complaints as it licenses the major operators. The process is slow. We observe cases not having a determination at the 18-month mark. In looking at the determinations, most cases are resolved in favour of operators. In 2022, our analysis showed that only four out of 13 decisions made in 2022 were in favour of the consumer.

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<sup>28</sup> <https://www.theguardian.com/australia-news/2023/mar/06/ladbrokes-fined-nearly-80000-for-failing-to-stem-damage-from-man-who-stole-millions-for-gambling>

- The NTRC applies its Code of Practice for Responsible Gambling. From a consumer protection viewpoint, this code is more comprehensive than the ministerial orders and legislation in other States.

### **The other states**

- The states for the most part have only codified specific items from the Online Gambling Consumer Protection Framework. This means that consumer protection in their jurisdictions is limited. Operators licensed in the states, have no general duty to pick up 'red flags' as there is nothing akin to the NT's Code of Practice. We see a lot of harm, and it seldom fits into any of the state's regulatory boxes.
- Complaints put into other state regulators are looked at more quickly, but typically the response is 'we can't consider this complaint under the legislation'.
- A complaint sent to the Queensland regulator almost a year ago, has still not received a substantive response, causing much stress to the complainant.
- A complaint sent to the Victorian regulator, resulted in a serious breach found against the operator. The VGCCC said that the matter was closed, so there was no consumer redress considered or consequence for the operator. The VGCCC did not as a matter of course notify Racing Victoria, the licensing body for that operator.

### **Comparing our system to European/UK regulators**

- Many European gambling regulators and the UK Gambling Commission can investigate operator AML breaches at the same time they look for responsible gambling breaches. Responsibility for AML compliance is part of a gambling regulator's remit. If for example, an operator is not doing 'enhanced due diligence' about a customer depositing a very large sum of money from an unknown source, then that operator is probably not fulfilling its obligations to prevent customer harm. Having AML investigative powers is a critical for regulators.
- Sweden has a statutory duty of care. It is very simple and broad. It allows the regulator to consider the appropriateness of any operator behaviour on its merits. The duty is not the same as the common law negligence duty of care, but is an operator duty to pay attention to the customer's situation and pick up risk, to have processes to prevent harm, and to document its actions so the regulator can make an assessment. The Netherlands has foreshadowed the introduction of a duty of care. Spain already has a duty of care.

Something needs to change. The system does not work for consumers who are harmed. Nor does it work to prevent harm.

#### **Recommendation:**

**We need a well-funded national online gambling regulator with the right powers and capacity to regulate a powerful, cashed up industry. The legislation needs to be re-written with a harm prevention and prevention of crime funded gambling remit.**

**Complaints need to be handled by an external dispute resolution service, i.e., the creation of an industry funded ombudsmen service.**

## Unfinished business: almost there but that's not good enough.

### Overdue Review of the Framework

The Online Gambling Consumer Protection Framework was supposed to be reviewed after three years. Four and a half years have passed. We need that review to commence right now. We've had enough time to see the inadequacies of this 'first generation framework' and make improvements. It does not matter that some measures have only been introduced in the past 12 months.

#### **Recommendation**

**Start a review of the Online Gambling Consumer Protection Framework ASAP (BetStop will need its own review later)**

### Prohibit credit card use in gambling: everyone agreed (hard work was done)

The Joint Parliamentary Committee did a huge amount of work. The report was completed. It recommended that Government introduce legislation to ban credit card being accepted at gambling operator level, payment wallet and payment gateway levels. This recommendation was supported by Financial Counselling Australia, Consumer Action Law Centre and Financial Rights, and the Australian Banking Association. (Responsible Wagering Australia, also agreed that companies should not accept credit cards but preferred a voluntary code).

We believe that the non-controversial legislation was ready to be introduced and passed in Parliament last March, in the very week, that the Prime Minister announced that an election would be called. So, it was not introduced.

The UK has evaluated its 2021 legislated gambling credit card ban; it found that it worked very well without unintended consequences<sup>29</sup>.

This is low hanging fruit. The hard work has been done. The lead time does not need to be long. Industry managed with just a few months in the UK. The limited set of payment gateways do most of the work, tweaking bits and pieces.

#### **Recommendation**

**Introduce the credit card gambling prohibition Bill (as previously drafted) ASAP**

## Concluding remarks

Reforming online gambling to provide consumer protection is a big task, but it is not impossible. Online gambling is different from pokies and gambling in a clubs environment. Both have challenges, but they are different challenges. As every online bet has a record, and every customer has a moment-by-moment digital trail, it is easy

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<sup>29</sup> <https://www.gamblingcommission.gov.uk/news/article/gambling-commission-publishes-interim-evaluation-on-the-successful>



to hold the online gambling industry to account if we have conviction. The industry can't say they didn't know about the harm happening for their customers. They know everything.



## Appendices

### Appendix 1: Point of Consumption Tax for each Australian Jurisdiction (2020)

- NSW increased its POCT from 10-15% in June 2022<sup>30</sup>
- Qld increased its POCT from 15%-20% in June 2022

**Source:** Review of the Point of Consumption Tax on wagering and betting, State of Victoria, page 18, 26 Nov. 2020. (<https://apo.org.au/sites/default/files/resource-files/2020-11/apo-nid309913.pdf>)

In June 2022, Queensland increased its tax rate to 20%. ([https://budget.qld.gov.au/files/Budget\\_2022-23\\_BP4\\_Revenue\\_measures.pdf](https://budget.qld.gov.au/files/Budget_2022-23_BP4_Revenue_measures.pdf))

#### Budget Measures 2022-23

	2021-22 \$'000	2022-23 \$'000	2023-24 \$'000	2024-25 \$'000	2025-26 \$'000
<b>Betting</b> Tax Reform	..	40,000	80,000	80,000	80,000

The government has announced a new funding model to ensure ongoing sustainable funding for Queensland's racing industry. The reforms include applying a 5 per cent racing levy to the **betting** tax and making bonus bets (or free bets) taxable. Racing Queensland will then be hypothecated 80 per cent of total **betting** tax revenue. Subject to the passage of legislative amendments, it is proposed that the changes will take effect from 1 December 2022.

Figure 6: Queensland Budget Measures 2022-23 additional tax

<sup>30</sup> NSW racing industry lands funding boost in gambling tax shakeup, Sydney Morning Herald, June 21, 2022. <https://www.smh.com.au/national/nsw/nsw-racing-industry-lands-funding-boost-in-gambling-tax-shakeup-20220621-p5avh9.html>. The report stated "The government will not substantially increase the \$5 million a year it channels from gambling tax to addiction support services despite conceding online gambling is particularly harmful, but it will begin to increase with inflation from 2023."

## NSW

Source: 2022-23 Budget Paper No. 1 Chapter 4 Revenue

[https://www.budget.nsw.gov.au/sites/default/files/2022-06/2022-23\\_Budget-Paper-No-1-Budget-Statement-Revenue.pdf](https://www.budget.nsw.gov.au/sites/default/files/2022-06/2022-23_Budget-Paper-No-1-Budget-Statement-Revenue.pdf)

### Increase to the point of consumption (PoC) tax and changes to other betting taxes

From 1 July 2022, the PoC tax rate will increase to 15 per cent and the effective betting tax rates (including totalizator and fixed odds bets) charged under the *Betting Tax Act 2001* will be adjusted to 15 per cent. These measures will generate an additional \$740.0 million of revenue over the four years to 2025-26.

The basis of PoC industry funding under the *Betting Tax Act 2001* will change from 2 per cent of net wagering revenue to 33 per cent of PoC tax revenue collected by the Government. Additionally, \$5 million will be allocated per year (increasing with inflation from 2023-24) to the Responsible Gambling Fund. Combined, these measures will increase expenses by

\$285.8 million over the four years to 2025-26.

**Table 2 – POCT settings in each Australian jurisdiction, as of 1 January 2020**

Jurisdiction	Commencement Date	Tax rate	Tax-free threshold	Racing industry funding arrangements introduced
Victoria	1 January 2019	8 per cent	\$1 million	• 18.75 per cent of POCT revenue
New South Wales	1 January 2019	10 per cent	\$1 million	• 20 per cent of POCT revenue
Queensland	1 October 2018	15 per cent	\$300,000	<ul style="list-style-type: none"> <li>• QLD Govt. relieved Racing Queensland of \$17.8 million debt</li> <li>• \$20 million infrastructure funding for greyhound/harness racing</li> <li>• \$26 million prizemoney funding</li> </ul>
South Australia	1 July 2017	15 per cent	\$150,000	None announced
Western Australia	1 January 2019	15 per cent	\$150,000	• 30 per cent of POCT revenue
Tasmania	1 January 2020	15 per cent	\$150,000	• 80 per cent of POCT revenue
Australian Capital Territory	1 January 2019	15 per cent	\$150,000	None announced
Northern Territory	No POCT	N/A	N/A	N/A