

A REPORT **Duds, Mugs and the A-List**



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AUGUST 2015

Thank you

Financial Counselling Australia thanks the financial counsellors across Australia who contributed the cases studies and information that formed the basis of this report. Many financial counsellors also telephoned, emailed or met with us to provide their perspective.

A very sincere thanks also to the courageous clients who shared their stories and to whom this report is dedicated. The former employee of a sports betting company introduced us to the machinations within the world of sports betting and this was invaluable background. Staff at the Consumer Action Law Centre and Financial Rights Legal Centre provided guidance on reform of the credit legislation. Finally, thank you to Senator Nick Xenophon for his ongoing support.

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About This Report

This report describes the serious issues financial counsellors are seeing in their casework with clients who have sports betting debts. It is not a comprehensive analysis of what is going on in the gambling industry as a whole. The aim of the report is to explain what reforms are needed in the sports betting industry and why.

The title of this report

The title of this report ‘*Duds, Mugs and the A-List*’ is a quote from a former employee of a sports betting company. The quote describes how the company segments its customers. ‘A-List’ customers are wined and dined and offered credit ranging from \$100,000-\$500,000. ‘B list’ customers are ‘serious credit punters’ and are offered up to \$20,000 in credit. The ‘duds’ or ‘mugs’ are everyone else: this group is offered \$200-\$500 of unsolicited credit.

Financial Counselling

Financial counsellors assist consumers in financial difficulty. They provide information, support and advocacy to help consumers deal with their immediate financial situation and minimise the risk of future financial problems. The majority of financial counsellors work in community organisations, although some are employed by government. Their services are free, confidential and independent.

Financial counsellors have extensive knowledge in a range of areas: consumer credit law, debt enforcement practices, the bankruptcy regime, industry hardship policies, and government concession frameworks. Around Australia there are a number of financial counsellors who specialise in gambling financial counselling.

Financial Counselling Australia

Financial Counselling Australia (FCA) is the peak body for financial counsellors in Australia. FCA’s members are the financial counselling associations in each State and Territory. Each association elects one person to the FCA Board.

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Executive Summary

About this Report

This report outlines a number of concerning practices in the sports betting industry, particularly in relation to the provision of unregulated credit. The impetus for the report was a phone call from a distressed parent whose son had lost his entire life savings in four sports betting sessions. She asked ‘how can this happen?’ We didn’t know the answer – and promised to find out.

Methodology

The report is based on discussions with gambling financial counsellors from around Australia. This group also provided de-identified case studies about client experiences. We also spoke to regulators, government staff involved in gambling regulation and former employees in the betting industry. We also conducted desktop research.

Case Studies

Financial counsellors are assisting an increasing number of clients who have experienced staggering sports betting losses. People are losing their own money, as well as money provided as credit by the sports betting companies. As a result, clients are losing their savings, their homes and redundancy and superannuation payments. There is anecdotal evidence that some ‘accidental deaths’ – such as single vehicle accidents – may be people who are escaping gambling debts.

Insights into the Industry

Sports betting companies actively encourage customers to bet using credit provided by them. Amounts range from \$200 to many tens of thousands of dollars. In some cases, the lure is initial ‘free bets’ which familiarise consumers with the game, before inducing them to take further credit. These ‘free bets’ can be provided unethically and in a misleading fashion.¹

Whether a particular person is given credit or not (or has an existing credit limit increased), is based on an assessment of whether the company is likely to be repaid, rather than whether the customer would experience ‘undue hardship’ in making repayments. For example, some clients, to continue gambling will take the money from household living expenses. The sports betting company knows that they will always ‘come good’ with the money.

¹ The ACCC commenced legal proceeding in the Federal Court against Bet365 for requiring customers to deposit \$200 of their own money before receiving a ‘free bet’ or ‘deposit bonus’ and to have gambled three times the value of their ‘deposit’ and ‘bonus’ within 90 days before being able to withdraw any winnings. This means that a consumer making a deposit of \$200 to receive \$200 in free bets was required to gamble \$1,200 to withdraw any money, and was required to bet. See ‘ACCC sues Bet365 for ‘free bets’ offer, Australian Financial Review, 15 August 2014, p 1.

Debt collection in the sports betting industry is swift and brutal. Customers can lose assets, such as the family home, in short spaces of time. Debt collection charges and the fees for a bankruptcy trustee can significantly increase the amount owed.

We were also told by a former employee that sports betting companies swap customer account data, contrary to privacy legislation. When a gambler ‘goes cold’ and stops betting with one company, the company swaps lists with another company, which then entices the person to resume gambling. The recipient can receive a fully functioning account populated with their private financial data, plus some ‘free money’ or credit to welcome them.

Reforms

The most appropriate, and the strongest reform, would be to prohibit credit for gambling purposes.

In the absence of this change, the next best option would be to amend Australia’s credit laws to include credit provided by sports betting companies. At the moment, these companies are not grasped by the credit laws as they do not levy a charge for the provision of credit. This could be addressed by re-drafting the appropriate sections of these laws. Such a change would require sports betting companies, like other credit providers, to comply with responsible lending obligations, including assessing capacity to repay credit.

Reform to the credit laws, however, would not assist people betting with their own money—such as the son described above, whose story was the impetus for this report and who lost his entire life savings in four betting sessions. Reform options include:

- when setting up a sports betting account, requiring customers to nominate a ‘maximum’ bet amount (and not allowing this amount to be changed quickly)
- banning advertising links between payday lending sites and sports betting sites
- requiring sports betting companies to issue regular paper statements. These statements would be sent to a customer’s home, showing wins, losses and totals. The person gambling would have a clear notice of the impact of their gambling. Family members potentially impacted by problem gambling may also see the envelopes and statements and become aware of the problem
- setting up a national register for people who want to self-exclude.

Urgent Action is Needed

Sports betting in Australia is widely advertised, easily accessible, growing exponentially and is highly profitable. The use of technology will only expand the reach and ease of access to sports betting. Betting on the pokies is relatively small fry in comparison – you can’t put \$250,000 into slot machines in one sitting, but you can do that with sports betting with the click of a mouse. If this is the future of gambling, it is indeed frightening. Urgent action is needed.

1. Background

1.1. Purpose of the Report

The purpose of this report is to:

- outline a number of concerning practices in the sports betting industry
- document the quantum and types of harm that financial counsellors are seeing in their casework with sports betting clients
- outline the legislative reform required to capture this industry under existing consumer credit legislation. This would put the sports betting industry on a level playing field with other lenders vis-à-vis responsible lending obligations
- suggest practical solutions for people wishing to control potential losses through sports betting.

1.2. Methodology

This report is based on discussions with gambling financial counsellors from around Australia, regulators, government staff involved in gambling regulation and internet research. We also spoke to former employees in the sports betting industry. The names of people we spoke to have not been included as all conversations were confidential. Similarly, client names in the case studies have been changed.

The report is not an exhaustive analysis, but clearly indicates there are numerous problems in the unregulated sports betting industry and that these are causing serious harm to Australian families.

1.3. The impetus for this report

We began investigating the issue of sports betting after a phone call from a distressed mother whose son had just lost his entire life savings in four sports betting sessions. She asked ‘how could this happen?’ and ‘why isn’t there any protection to stop or limit the harm?’ We did not know the answers to her questions, but promised we would investigate.

We found subsequently that there was little regulation of sports betting, that the harm was even more severe than we had thought, that some industry practices appear to be unethical, illegal and predatory, and that there appear to be suicides linked to online sports gambling losses but these are often undetected. Sports betting is becoming more popular, both in Australia and overseas, and the incidence of harm can only increase.

The title of this report ‘Duds, Mugs and the A-List’ is quote from a former employee of a sports betting company. The quote describes how the company segments its customers. ‘A-List’ customers are wined and dined and are offered credit ranging from \$100,000 – \$500,000. ‘B list’ customers are ‘serious credit punters’ and are offered up to \$20,000 in credit. The ‘duds’ or ‘mugs’ are everyone else: this group is offered \$200 – \$500 of unsolicited credit.

2.

Case Studies – real people

We have chosen to use case studies as they speak for themselves. Each case is tragic in its own way and devastating for the person involved and their families. The case studies show the very large amounts of money that can be lost in a matter of days or weeks. People who have received a lump sum retrenchment package, superannuation lump sum or other pool of money are particularly at risk of losing these funds in a relatively short period.

All of the case studies provided to us involved males, but it is not possible to draw any firm conclusions from this without further data. Names of clients in the case studies below have been changed. Betting companies are also not specifically identified.

2.1. People losing huge amounts that they cannot afford

- Peter, a forty-something male, received a redundancy payment of approximately \$60,000. Sitting at home with no work he became depressed. There was also a death in the family. At that time, Peter started gambling online with two different online sports betting companies and lost his entire redundancy payout within two months. He also took out payday loans and pawned most of the household goods in this time. When he came to see a financial counsellor, his family had no money for food or bills. He was not eligible for Newstart Allowance as the retrenchment payout is counted as income. Peter appeared depressed and deeply affected. His family had no income, and their savings were long gone. He has a wife and child.
- Another financial counsellor saw Alex who lost \$90,000 in one week on sports betting. Alex had amassed a staggering \$300,000 in debt due to sports betting, primarily over the past three years.
- Richard opened an online betting account with a sports betting company at the start of the AFL season. As part of his new account, he received inducements of \$100 – \$500 in free bets. Similar inducements were offered at other points in the AFL season. Richard had some mental health difficulties and his parents helped him to sell his home and move back in with them so they could assist him. He finally sold his house, and the proceeds of the sale were sitting in his bank account. In the process of setting up the betting account, he linked the sports betting account to his bank account.

He initially played with the ‘free money’ and learnt how to play. A month later, he bet \$20,000 on a drawn game and lost close to \$10,000. Two weeks on, he transferred \$50,000 from his linked bank account to his sports betting account and wagered the whole amount on three games of that round. He won \$35,000. Richard then placed the whole \$85,000 in his sports betting account on the following week’s games and lost it. The following week he transferred the remaining \$90,000—this was lost quickly.

It took just one click each time to transfer funds from his bank account to his sports betting account – just one click. Richard ended up losing the entire proceeds of his house sale in a few weeks and his future changed course. In his mid 30s he had lost everything. His parents told how they cried for their son.

- Max was a senior employee in a large finance company. He was spending \$2,000 per bet on weekend sporting games through online sports betting. He was sent incentives to entice him to gamble more and his bets went up to \$5,000 per bet. This pattern continued for a long time. One weekend, Max's gambling became erratic and he bet \$250,000 on a single game and lost. He placed a second \$250,000 bet that same weekend, losing the entire \$500,000. In total, he had lost \$670,000 to the sports betting company. The sports betting company then froze his account. On Monday morning, Max told company management about his losses and that he had embezzled the money from them. He no longer has assets, has filed for bankruptcy and is now in prison. The financial counsellor discovered that he had a further \$200,000 of unsecured debt on credit cards which were also spent on funding his sports betting. Max reflects on how easily it was to gamble this large amount. There were no safeguards when his behaviour became erratic. He was amazed at the ease at which he could increase his bet without any questioning or intervention.

Note: we understand that betting companies use complex algorithms to detect gambling patterns in real-time, and would have picked up Max's atypical bets. They chose to accept them.

2.2. Some people are borrowing from payday lenders to fund their sports betting debts

- Marco came to the financial counsellor with significant online payday lending debts due to funding his online gambling. He had lost the money on online sports betting and indicated his surprise at the ease at which he was both able to gamble and fund his gambling through online payday lenders. He did not need to leave the house to set up any of this. The financial counsellor negotiated settlements with the payday lenders based on legislated consumer protections.

2.3. Monetary inducements and unsolicited credit

- Jack is on a Disability Support Pension. Jack and his mother had joint title on their home. Jack received a phone call from a sports betting company representative who offered three \$1,000 free bets so he could 'get a feel for the service'. He then got an email saying 'I have set up your account. I have put the free bets in.' Another phone call informed him 'are you aware that (our company) offers credit and could put some dollars into your account?' He initially declined the offer of credit, but about two weeks later he discovered \$10,000 in credit in his account. He used it. One month later, two unsolicited credit limit increases were applied upping his limit first to \$30,000, then \$40,000. Eight days after these the limit on his account was increased to \$60,000 and later to \$80,000. Jack used the money and lost it. The betting company and their legal representatives then lodged a creditor's petition to bankrupt Jack. They also issued a warrant of possession for the house and demanded that he vacate the property within 14 days. The financial counsellor said that 'this was a frightening time for Jack and his mother'. They called me often saying 'what do we do now?' The trustee fees in bankruptcy came to \$50,000 and the case was resolved out of court. The financial counsellor helped them stay in their house but their losses were still substantial.

2.4. Suicide and sports betting debts

- Tim had huge debts from sports betting. He had embezzled funds from his employer to fund his addiction. At one point, he attempted suicide. After Tim came out of hospital he found emails in his inbox inviting him to come to a big boxing match. He went to a financial counsellor seeking assistance to deal with his debts.
- An employee of a sports betting company described his conversations with the court bailiff as to the success of serving court orders on the indebted gambler.

The former employee said:

'This was how I found out that people had died. The bailiff knocked on the door – said 'I spoke to his wife and the guy had checked out.' The longer I worked ... the more credit was generated and it became more obvious. Or I got notified by the executor of the estate. I got to know people well – people bond with their bookies. I was speaking to delinquent gamblers every week ... then they drop off the radar.'

He said that it happened often enough to know that these 'accidental deaths' were related to the sports betting debts that the company was vigorously pursuing through their debt collectors and the courts. He also recalled customers saying to him that 'I'm in the shit, I'm wiped out, can't pay'. They were fearful of their spouses finding out. Some threatened that they were going to kill themselves and begged 'can you do anything for me?' He said 'if they were worth looking after we might do it'. He challenged us to get a list of sports betting clients and cross-reference them to accidental deaths, including car and train accidents. We should also look at creditor petitioned bankruptcy records which list sports betting creditors.

- Pete, a young adult living at home, used his parents' credit card one weekend and lost a few thousand dollars through online sports betting. He knew his parents would find out when they checked their account. He committed suicide, leaving an explanatory note apologising and explaining his shame. The parents met with the financial counsellor to work out how they could re-pay the credit card debt.
- A gambling financial counsellor interviewed said her agency asked every new gambling client two questions as part of the intake process, 'Have you ever thought of suicide?—most say 'yes'. 'Have you ever actually attempted—10% say 'yes'.

Gambling financial counsellor said:

'The gamblers see no way out ... One client told me ... 'I just wanted to drive straight up that bridge so I wouldn't have to face up to what I've done'. 'Most don't do it because things do get better with help. Families often don't know because of the shame.'

2.5. Even winnings are fair game

- Some companies tactically delay paying out winnings so the person will be tempted to re-bet in the interim. A financial counsellor told of people winning on a weekend game, having to wait until Monday to phone the company and ask to withdraw their winnings, only to be told that the company process is to pay by cheque. However, the practice is that cheques are only processed on a Friday after 3 pm. In the interim, the money sits in the person's gambling account and they're bombarded with 'hot tip' texts and other inducements to gamble that money ... and they often do.

2.6. Getting those already in debt to bet more

- People already struggling to repay their debt are being encouraged to bet more, and increase their debt. This recent email shows a case manager 'helping' the young man who has been unable to pay and on the brink of having his account referred to an external debt collection agency (and then court). However, the help is in the form of free credit to keep him betting. Note the deliberate use of the 'matey' language to encourage bonding.

From: (name removed)
Sent: Thursday, 30 April 2015
To:

Hi mate,

I thought I would send you a quick email as I just got a ph call from our Credit department in regards to your (company name) account. They have said that they are close to sending your account to debt collectors, I said to them that I will contact you to hold them off for a bit. With your account I allocated \$250 worth of Bonus bets in your account when (company name) launched which I can see you didn't use. If possible can you email/call me and I will re allocate these Bonus Bets so that can give you an opportunity to nudge into your owning credit.

Let me know if there is any way I can help.

Regards,



3.

Insights into the Online Sports Betting Industry

3.1. Funding Options

Essentially, consumers fund their sports betting either through:

- A person's own funds
- Provision of credit by:
 - the sports betting company
 - a payday lender loan – very high interest rates (often online)²
 - use of a credit card cash advance (where interest is charged immediately)
- A combination of own funds and credit

When a person has exhausted their own funds, they may be offered credit. This means many people have both their current savings depleted and end up in debt.

3.2. Accessing sports betting credit

Sports betting companies do not have the same borrowing costs as banks—paying depositors for use of their money or raising funds on bond markets. However, sports betting companies still issue credit as a core part of the business model. Importantly, the 'credit' can only be spent on the sports betting company's own betting services. Contractual terms and conditions provide that the credit cannot be withdrawn, but can only be 'turned over' or bet (see 3.4 below also).

Sports betting companies encourage customers to apply online for gambling credit—there are some screen shots of relevant websites in Appendix 1. These are designed to make it easy to apply for credit.

For new customers, we were told there can be an informal testing of credit worthiness—an initial advance of say \$200 or other small amount is monitored to see whether the customer repays the money. If the customer 'comes good with the money', the sports betting company incrementally offers higher amounts. The other option is a formal credit check via a credit reporting agency, but this means that the sports betting company may have to decline the customer if the person has a bad credit record, when in fact that person would find the money and 'come good'. Risks are also managed by close customer engagement and the psychology of creating a loyal customer. 'I'll put you up \$3K for the game Saturday if you look after me after the game', 'I can't give you \$5K but I'll give you \$2K but you'll need to look after me or my boss will have me'. 'Try it for a few weeks and see how you go.'

2 The cap on loans above \$5000 is 48% per annum. For loans under \$2000, the maximum annualised interest rate is commonly the equivalent of 240% per annum.

The test for providing credit is ‘will the company get paid?’ rather than whether the customer will experience ‘undue hardship’ in making the repayments. No one looks at the customer’s income or expenses. There is no consideration of the person’s circumstances, their capacity to repay or wellbeing.

For existing customers, the credit departments in sports betting companies assess an individual’s propensity to repay given their historical repayment patterns. Statistically this is probably a better predictive method than the affordability approach—people find ways to pay, by borrowing elsewhere, theft/embezzlement, or possibly using money that they can ill afford to use given their family’s living needs.

Unlike in the financial services industry, sports betting companies providing credit are not subject to Australia’s credit or financial services laws, so they are not required to hold an Australian Credit Licence or Australian Financial Services Licence (see Section 4 for more discussion).

3.3. Paying back the credit – the ‘hard word’, debt collectors and the courts

The processes for repayment of sports betting company-issued credit are unusually brutal and swift when compared to the repayments for housing loans or credit extended by other industries, for example, personal unsecured credit card debt, telco or utility provider debts. One sports betting company for example asks for the credit extended (i.e. money lost) on the weekend games to be repaid on the following Monday or Tuesday.

The companies use words like ‘settle the account’ and avoid the word ‘debt’ or ‘overdue’. We were told that they ‘put the hard word on them to settle’. As their customers typically want to continue to place bets, they try to find the money from other sources to maintain their relationship with their preferred company. Some customers are case managed and the online betting company knows which customers find the money to repay. If the customer ‘was good for the credit the last time’ they may be given more credit or if the customer is ‘running hot’, they are allowed to continue gambling.

One company’s process illustrates how quickly the debt can land in the courts, either as a warrant of possession for the sale of a home or a creditor’s petition for bankruptcy. This company’s practice was to send a statement out on a Sunday night. The customer then had seven days to settle. A reminder letter was then sent if the debt had not been repaid in this time. If there had been no contact from the customer, the account was suspended at the 14 day mark. At 21 days, there is notification that the person has 48 hours to pay or the debt will be passed to an external debt collection agency. At the 28-day mark the debt collector receives the file and legal action can commence in the Magistrates Court within two weeks. The summons is then served. Debt collection costs are then added to the amount outstanding.

In summary, debt collection processes can be brutal, with people losing assets in short spaces of time. Debt collection charges and the fees for a bankruptcy trustee can significantly increase the amount owed. In the case study of ‘Jack’ the bankruptcy trustee’s fees alone were in excess of \$50,000 (see section 2.3).

3.4. Inability to withdraw your own funds

This excerpt from an online forum about sports betting explains the issue:³ If a person deposits their own funds into an account, they are unable to withdraw them until all of the money is ‘turned over’, the euphemism for gambled. This condition is clearly designed to maximise the possibility of further gambling and from the sports betting company’s view, the chance that their customer will lose.

Hi All,

A few weeks ago, I’ve opened a (COMPANY NAME) account. I’ve deposited \$50 and placed a \$5 bet. A couple of hours later, I won the bet and got \$8.65 back. So my account balance now is \$58.65.

Fast forward 8 weeks. I still have \$58.65 in my account, but now I want to close the account and withdraw all the money.

I spoke to the customer service chat operator and he said that they cannot withdraw the entire amount as I have to bet the entire sum through their system, only then, they can allow me to take my funds. Here is a snip of our online chat regarding that.

11:17:05 AM : Customer Service Rep: you need to bet the funds that are deposited into your account before you can withdraw them, needs to be turned over/bet through

He said that I agreed to the Terms and Conditions when I applied for the account and I should speak directly to the customer service via phone. This I did, and spoke to Ryan the on duty Manager. He gave me the same spin about their Terms and Conditions. The only thing he could do is close the account and freeze the money.

So my question for you all forum participants is what else can I do to get my money back?

Szymona

3.5. Potential breaches of privacy legislation

We were informed by a former employee of a sports betting company that some of the betting companies swap lists of ‘cold’ customers, that is, those who have stopped gambling with them. The ‘new’ company then sets up an account and contacts the person by email, letter or phone to offer them free bets or other inducements. This is consistent with reports by clients of receiving emails and phone calls from new betting companies. Jack’s story, outlined in Section 2.3 is one example.

‘bookmakers share their lists of clients who have stopped betting – we’d get A-List of say 2,000 people and our key man knew how much they’d be playing at a time. They’d be given new accounts and say \$5K credit and be sent a welcome letter telling them about the credit facility that had been opened for their convenience – they didn’t even realise that an account had been opened. Most took up the credit.’

³ <http://forums.whirlpool.net.au/archive/2120905>, posted on 28th June 2013.

In August 2011, the Chief Executive of Sportsbet told a Parliamentary Inquiry that his agency paid between \$3 – \$4 million in commissions to businesses and individuals who referred new clients. ‘Third parties can be on a finder’s fee or they can gain a share of revenue from the customer, so an affiliate share’. He reported that it was standard business practice for referrals to occur.⁴

It appears that little has changed with paid referrals, trailing commissions and other incentives to encourage people to continue gambling. In June 2012, a Melbourne magistrate found that Sportsbet was offering inducements to open betting accounts.⁵



4 'Xenophon slams Sportsbet Commissions – Agency pays millions for referrals', The Age, 12 August 2011.

5 'Betting agency fined for offering free inducements', The Age, 2 June 2012.

4.

Reform: what needs to change?

4.1. Current Regulatory Environment

Banks and credit providers are required to comply with the *National Consumer Credit Protection Act 2009* (NCCPA). Many of the explicit obligations in relation to credit are contained in Schedule 1 to the NCCPA in the National Credit Code (NCC). This legislation introduces licensing and responsible lending requirements. Section 5(1)(c) of the NCC captures credit where ‘a charge is or may be made for providing the credit’. Betting companies avoid being captured under this legislation by not including interest or charges.

4.2. How does the legislation need to change?

Prohibit Credit for Gambling

The most appropriate, and the strongest reform, would be to make credit for gambling purposes illegal. This was the position the Liberal Party took to the August 2013 election:

‘Responsible gambling is all about people gambling within their means. Extending lines of credit to gamblers runs contrary to this principle and the Coalition will legislate to prohibit the practice’ (Liberal party website, at 6 August 2015)⁶

Prohibiting credit for gambling would mitigate a lot of harm. Currently, the manner in which online betting companies offer credit is not technically captured under the definition of ‘credit’ as no interest or fees are charged. This is discussed below.

Amend Section 5 of the NCC⁷

In the absence of a total prohibition on gambling credit, the next best change would be to capture gambling companies under the existing consumer protections for lending.

The relevant definitions of ‘credit’ and ‘credit contract’ are contained in sections 3 and 5 of the NCC respectively. These sections are reproduced in Attachment 2.

The drafting of legislation is a highly skilled task. What follows is a broad outline of the thrust of possible amendments, as well as issues that will need to be considered in that drafting.

Section 5 currently provides that the NCC applies to credit where the debtor is a natural person and the credit is for ‘personal, domestic or household purposes’.

Section 5(1) could be amended to specifically include credit for the purpose of gambling.

As noted above, sports betting companies currently fall outside of the NCC as s 5(1)(c)

⁶ <http://www.liberal.org.au/helping-problem-gamblers>, at 6 August 2015

⁷ Section 3 of the NCC may also need to be amended to capture the situation where credit is provided and sitting in a customer’s account. It needs to be ‘credit’ whether or not the person has gambled with it. Companies provide facilities for the ‘convenience’ of their customers – i.e. unsolicited credit. Banning this practice is obviously stronger. Any money provided also needs to be considered a ‘debt’ under s 3.

provides that the provision of credit involves making a charge. To remove this loophole, the amendment could be along the lines of: ‘credit provided for the purpose of gambling whether or not there is a charge for the credit’.

Adding a prohibition on lending more money where the previous loan has not been repaid in full would prevent users from ‘chasing their losses’ and getting further and further into debt. It would also mean that companies could not keep offering unsolicited credit.

Since 2012, there has been a ban on offering unsolicited credit to credit card holders without express consent⁸—similarly banning unsolicited credit by betting companies would also be highly effective.

Issues to Consider

Care needs to be taken in drafting any amendments to ensure they do not unintentionally capture ‘no interest loans’ (NILS). NILs are provided to low-income borrowers by community organisations to purchase items such as refrigerators.

Care also needs to be taken to ensure that gambling credit contracts are not excluded under s 6(1) which exempts credit contracts for less than 62 days. Credit licensees are required to be members of an ASIC-approved External Dispute Resolution Scheme such as the Financial Ombudsman Service (FOS) or Credit and Investments Ombudsman (CIO). Whether this is appropriate will need to be considered.

Credit for 15 days or less is illegal under the short-term credit provisions in the NCCPA 2009.⁹ However, if the credit is defined as a ‘continuing credit contract’ (s5) then it is not illegal. The most common continuing credit contract is a credit card. Legislation needs to be carefully drafted to ensure that gambling credit is captured in whatever form it presents.

As discussed, the sports betting companies fly under the legislative radar by not charging ‘interest or fees’. They do they have the same capital raising costs of providing credit as financial institutions as they do not raise money externally nor pay interest to account holders with positive balances. We need to ensure that in the event of legislative change, that these companies do not make their gambling clients suffer more detriment by charging interest and fees.

Implications

The implications of capturing sports betting being under the credit laws is that the companies will need to apply to ASIC to obtain a credit licence.¹⁰ Credit providers are required under the credit laws to comply with responsible lending obligations.¹¹ These require a licensee to make inquiries about a consumer’s requirements, objectives and financial situation (such as capacity to repay) before providing credit.

ASIC would also be able to consider complaints about sports betting companies and whether the provision of credit meets responsible lending requirements. For example, in 2014 ASIC took action against a payday lending company for allegedly avoiding

8 Section 12DL(1) of the Australian Securities and Investments Commission Act 2001 (ASIC Act) provides that a person must not send another person (called the ‘targeted person’ in the section) a credit card or debit card, except in accordance with s12DL(2).

9 See National Consumer Credit Protection Act 2009, 133CA Prohibition on entering, or increasing the credit limit of, short-term credit contracts. See s5 Dictionary for the definition of short-term credit contract.

10 Or be a credit representative of another licensee – although technically the credit would be provided by the licensee.

11 See Chapter 3 of the NCCPA.

responsible lending obligations.¹² It recently issued a report putting the payday industry on notice to improve its compliance with consumer protections or face further enforcement action.¹³

If a consumer can only repay the credit they have been given by selling their home it is highly unlikely that the lending would meet the responsible lending obligations of the NCCPA.¹⁴ This levels the playing field substantially in providing credit, and will force sports betting companies to consider not just the likelihood of getting their money back but the impact of the repayments on their customers.¹⁵

The implications of prohibiting more credit where the previous loan has not been repaid in full would mean an end to people getting further and further into debt. Any credit provided in breach of this should be unenforceable.

4.3. Commonwealth powers to make the changes

The NCCPA is supported by a referral of power by the States. The Commonwealth has the constitutional power to change the laws to cover sports betting companies under the ‘corporations’ power or ‘trade and commerce’ power. Ironically, it was the High Court *Belfair* case¹⁶ on the application of the s 92 trade and commerce constitutional power that led to the rapid national explosion of the sports betting industry.¹⁷

4.4. Other regulatory options

Another option is to ban sports betting companies or related companies providing loans for the purpose of gambling. This is obviously a stronger outcome.

4.5. People betting with their own money – what would work to lessen harm?

The credit legislation reform proposed above would not help ‘Richard’ who lost the entire proceeds of the sale of his house in four gambling sessions. Richard bet using his own money. The loss devastated his life but it did not involve credit. (See case study in Section 2.1 above.)

What would help people like Richard who have a propensity to succumb to the marketing psychology of sports betting businesses?

12 See for example – ASIC Media Release 14-150MR ASIC takes action against payday lending businesses, 3rd July 2014, <http://asic.gov.au/about-asic/media-centre/find-a-media-release/2014-releases/14-150mr-asic-takes-action-against-payday-lending-businesses/>

13 ASIC Media Release - 15-056MR ‘ASIC puts payday lending industry on notice to lift standards’ 17 March 2015.

14 Section 131(3).

15 In assessing affordability, a lender has to assess ‘needs and objectives’ of the applicant. In current credit assessments they need to say what the purpose of the money is for. Whether credit for gambling can ever be within the applicants ‘needs and objective’ raises interesting legal questions.

16 *Belfair* (2008) 234 CLR 418.

17 The High Court’s decision in *Belfair* ruled it unconstitutional for States to deny interstate companies permission to operate within their jurisdiction. This paved the way for the establishment of a national betting market. The companies increased their advertising spend, hired extra staff and it was the start of breakfast TV/radio show announcers throwing odds into discussions and phrases such as ‘we’re just going to a sports report by Sportsbet’.

It would help people like Richard and the other clients in this report if:

- **There was a restrictive device to stop such large bets or minimise the maximum allowable bet** – if when setting up the account, Richard had to
 - **nominate a maximum bet amount, and not be able to change it without going through a rigorous process.** There is precedent for sports betting companies limiting bets—a betting spokesman was reported as saying ‘it is standard global bookmaking practice as part of managing your book to place restrictions on some products for a very small segment of customers’.¹⁸
 - **nominate a daily and weekly betting limit.** This allows people to be proactive in limiting their losses to what they can rationally afford to lose. Companies should be prohibited from encouraging users to set this limit too high or from offering free spins or other inducements when the limit has been reached.
- **If there was a mandatory warning ‘pop-up’ when people tried to exceed their selected or usual bet amount** with reference to ‘gamblers help’ or other appropriate services.
- **Payday lenders were not allowed to be associated with online gambling sites**—this would mean prohibiting advertising, or links from online betting websites or other company initiated communication. This is necessary for people gambling with their own money, as they often try to win it back by borrowing to continue betting.
- **If sports betting companies had to issue regular paper statements, with the company logo prominently printed on the envelope.** The statements would have to clearly show the person’s active account transactions, with a total of wins and losses since the date the account was set up. Having the statement arrive in the mail would mean that family members potentially impacted by problem gambling might see the envelopes and be alerted to what was occurring. If the statement was only for ‘active accounts’ this would assist family members to be aware of current gambling. Having a clear tabulation of losses over a period of time would mean that people could not delude themselves about the financial cost of their losses. It is the same data that the companies look at when deciding to provide credit.
- **An outright ban on providing inducements to bet** – ‘free credit’, ‘free bets’, ‘bonus bets’ etc.
- **Restricting advertising of gambling, particularly during sports events.**
- **A compulsory national register for self-exclusion** – see below.

4.6. Supporting problem gamblers to self-exclude - National Self-Exclusion Register

‘My client is Trevor, a fly-in fly-out mine worker with a responsible position. He discussed his addiction to online sports betting and his huge losses. He has tried self-exclusion. What seems to happen is that the original company may comply with the self-exclusion notice, but then the person receives a whole lot of other inducements from other companies ... this has happened, and he has then gambled and lost money’. (Financial Counsellor)

‘I saw a financial counsellor, then we self-excluded from every company I had an account with. I wrote to all of them. I went into Tabcorp and asked for life-time bans. I had a whole lot of accounts with a heap of betting companies. It didn’t help.

¹⁸ ‘Lose or be locked out: you bet!’, The Age, 7 October 2013.

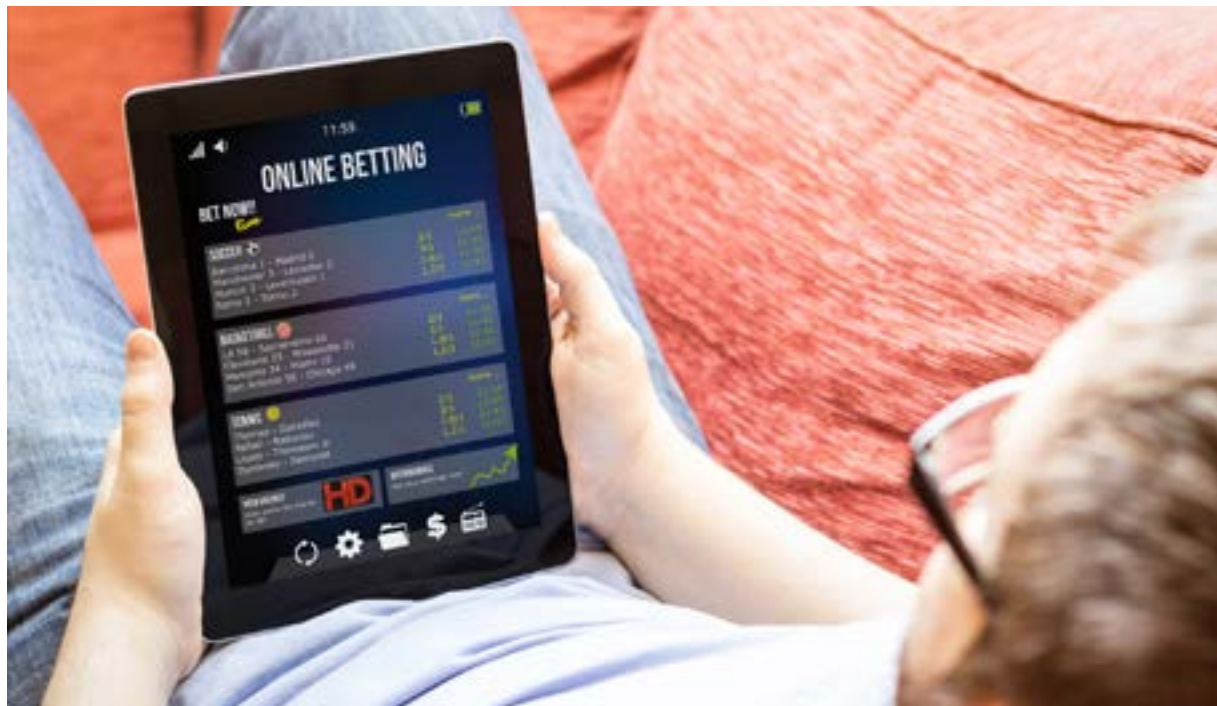
I'd be watching the footy on TV and I'd see ads for brand new companies, and my interest opens up again. With new ones, if you'd put \$500 they'll match it with free bets for that amount. I'd always put the maximum in to maximise the benefit, sometimes \$1000. When I google or use facebook more gambling ads come up. There are always new companies, so the current self-exclusion doesn't work. Yeah, there are always new companies. A compulsory national register could work. It would be better.

My life is a living nightmare. I lost my wife, my little kids, our new house, everything.
(Trevor)

A national, compulsory self-exclusion register would assist in supporting people who are trying to not gamble. An individual could self-exclude through a National Self-Exclusion Register process (online, paper etc). Before a sports betting company could approve a new account application, the company would be required to check the National Self-Exclusion Register.¹⁹ There would of course be sanctions for non-compliance.

The period of the self-exclusion could be the same as that in place in Melbourne's Crown Casino—indefinite. Revocation is only possible after an application to revoke, supported by an expert assessment by a suitable professional. Logically, it would make sense that self-excluding from one sports betting company would result in self-exclusion from all sports betting companies.

Taking it further, perhaps courts could consider ordering self-exclusion registration for those bankrupted or bankrupting on gambling debts. An analogy for this is the compulsory installation of breath-testers in cars after drink-driving convictions.



¹⁹ There is already a successful model of a national self-exclusion register in the Do Not Call Register, which limits telemarketing. The Do Not Call Register is managed by the Australian Communications and Media Authority on behalf of the Australian Government. See <https://www.donotcall.gov.au>

5.

Summary and conclusions – why we need to act with urgency

The sports betting industry is expanding rapidly. Globally, online sports betting accounts for 41.5% of the industry's total value.²⁰ In Australia, in 2013 the figure was 13.8%.²¹ Following global trends, the sports betting industry in Australia has grown rapidly over the past five years and is forecast to grow at a faster rate than other forms of gambling – replacing horseracing which is declining.²² IBIS reports that the gambling industry has the potential to enter into a new growth phase, largely due to internet gaming and sports betting. This growth will be built on new digital technology and promotion through the media.

The international gambling corporations understand the Australian market, and have invested heavily. International Irish betting giant, Paddy Power acquired the remainder of market leader, Sportsbet in 2010 for \$132m, having bought a 51% stake in 2009. William Hill (UK) acquired Sportingbet in 2013—which had taken over Centrebet two years earlier for \$183m. William Hill then expanded further in 2013 with its acquisition of Tom Waterhouse NT Pty Ltd. The Australian Financial Review reported that Sportsbet profits for the June 2013 half year increased by 30% with revenue up 33%.²³ These figures reflect massive growth and a sign of an industry taking off. The data verifies what consumers are increasingly noticing—more and more betting advertisements on television. Paddy Power has become the official partner for Channel 9's rugby league coverage and other companies proudly share their official partner sporting status on their websites. The online gambling industry knows their industry is on a roll—and we know that their gains are directly in proportion to consumer losses.

As smartphones, tablets and other devices become permanently and readily connected to the internet, it becomes easier to gamble from anywhere—sitting on the train, at home, no one need know—until the debt collector or bailiff appears to serve papers for unpaid debts. Combine connectivity with GPS data and companies know when someone is near a race-track or sporting venue and can offer tailored inducements to divert and place a bet. This is already happening and will only increase. Layer on the advertising at football games, which is normalising sports betting for the next generation, and there is the perfect storm—and it is all perfectly foreseeable.

Betting on the pokies seems relatively small fry compared to the accessibility and huge losses that financial counsellors are seeing with sports betting. You can't put \$250,000 into a slot machine in one sitting, but you can put that into an online sports betting event with the press of a finger. If this is the future of gambling, it is indeed frightening.

20 MarketLine Industry Profile, Global Online Gambling, August 2013, p 10.

21 MarketLine Industry Profile, Global Online Gambling, June 2013, p 9.

22 See IBIS World Industry Report R9209 Horse and Sportsbetting in Australia, October 2013, p28.

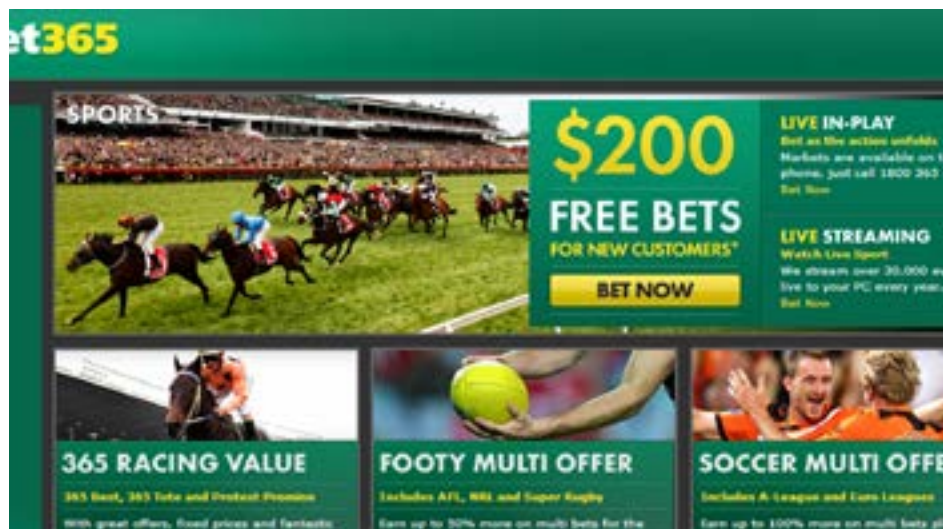
23 John Stensholt, 'Sportsbet profit race away from rivals', Australian Financial Review, 2 September 2013.

Attachment 1 | Screen Shots: Applying for Credit Online

‘Sportsbet Members are eligible to apply for one of five credit limits: \$200, \$500, \$1,000, \$3,000 and \$5,000.



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Attachment 2 | Relevant Sections of the National Credit Code

The most relevant parts of the legislation are highlighted.

3 Meaning of *credit* and *amount of credit*

- (1) For the purposes of this Code, *credit* is provided if under a contract:
 - (a) payment of a debt owed by one person (the *debtor*) to another (the *credit provider*) is deferred; or
 - (b) one person (the debtor) incurs a deferred debt to another (the *credit provider*).
- (2) For the purposes of this Code, the *amount of credit* is the amount of the debt actually deferred. The *amount of credit* does not include:
 - (a) any interest charge under the contract; or
 - (b) any fee or charge:
 - (i) that is to be or may be debited after credit is first provided under the contract; and
 - (ii) that is not payable in connection with the making of the contract or the making of a mortgage or guarantee related to the contract.

4 Meaning of *credit contract*

- (1) For the purposes of this Code, a *credit contract* is a contract under which credit is or may be provided, being the provision of credit to which this Code applies.

5 Provision of credit to which this Code applies

- (1) This Code applies to the provision of credit (and to the credit contract and related matters) if when the credit contract is entered into or (in the case of precontractual obligations) is proposed to be entered into:
 - (a) the debtor is a natural person or a strata corporation; and
 - (b) the credit is provided or intended to be provided wholly or predominantly:
 - (i) for personal, domestic or household purposes; or
 - (ii) to purchase, renovate or improve residential property for investment purposes; or
 - (iii) to refinance credit that has been provided wholly or predominantly to purchase, renovate or improve residential property for investment purposes; and
 - (c) a charge is or may be made for providing the credit; and
 - (d) the credit provider provides the credit in the course of a business of providing credit carried on in this jurisdiction or as part of or incidentally to any other business of the credit provider carried on in this jurisdiction.
- (2) If this Code applies to the provision of credit (and to the credit contract and related matters)

- (a) this Code applies in relation to all transactions or acts under the contract whether or not they take place in this jurisdiction; and
 - (b) this Code continues to apply even though the credit provider ceases to carry on a business in this jurisdiction.
- (3) For the purposes of this section, investment by the debtor is not a personal, domestic or household purpose.
- (4) For the purposes of this section, the predominant purpose for which credit is provided is:
- (a) the purpose for which more than half of the credit is intended to be used; or
 - (b) if the credit is intended to be used to obtain goods or services for use for different purposes, the purpose for which the goods or services are intended to be most used.

6 Provision of credit to which this Code does not apply

Short term credit

- (1) This Code does not apply to the provision of credit if, under the contract:
- (a) the provision of credit is limited to a total period that does not exceed 62 days; and
 - (b) the maximum amount of credit fees and charges that may be imposed or provided for does not exceed 5% of the amount of credit; and
 - (c) the maximum amount of interest charges that may be imposed or provided for does not exceed an amount (calculated as if the Code applied to the contract) equal to the amount payable if the annual percentage rate were 24% per annum.

(Remainder of section not included)

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