

Submission to the Department of
Communications, Information
Technology and the Arts

Review of the Interactive Gambling Act
2001

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Executive summary

The Interactive Gambling Act 2001 (the Act) prohibits the provision of certain interactive gambling services to customers physically located in Australia.

Section 69A of the Act aims to reduce the incentive to provide illegal interactive gambling services to customers in Australia through the development of regulations essentially making all agreements involving illegal interactive gambling services unenforceable.

In ANZ's view any regulations that are drafted to address section 69A should be limited in their effects on financial institutions.

To ensure the Act is effective with Australian-based interactive gambling service providers, ANZ has processes in place to:

- ascertain that as an acquiring bank it does not provide merchant services to illegal operations such as illegal interactive gambling service providers; and
- address any concerns raised by customers about merchant activities.

However, financial institutions face significant risks under section 69A in their role as credit card-issuers. If a customer uses their credit card to purchase an illegal gambling service over the Internet, payment of that credit card debt is unenforceable under section 69A.

Intuitively it would appear that the best way to overcome this situation would be through monitoring customers' transactions and automatically rejecting any transactions relating to illegal interactive gambling. However, ANZ is not in a position to put measures in place which will block credit card transactions related to illegal interactive gambling as defined under the Act.

Therefore, in the short-term the only way to ensure compliance with the current requirements of section 69A is to block all interactive gambling transactions, both legal and illegal, through the transaction Authorisation process.

This can only be alleviated by international credit card schemes introducing new scheme codes, which distinguish between legal and illegal forms of gambling. However, this may have limited prospects given that the definition of illegal gambling differs across countries.

ANZ would be happy to further discuss the issues raised in this submission with DCITA. As a way forward, ANZ would be willing to participate in a working party with representatives of DCITA, the banking industry and the credit card schemes, to develop a practical approach to addressing this issue.

1. Introduction

The *Interactive Gambling Act 2001* (the Act) prohibits the provision of certain interactive gambling services to customers physically located in Australia. The prohibition does not apply to all interactive gambling services. A number of gaming and wagering services are excluded, such as telephone betting services, betting on horse races, harness races, greyhound races, sporting events where the bet is placed prior to commencing and most forms of lottery services.

The Act applies to both Australian-based and overseas-based interactive gambling service providers. In addition, Australian-based interactive gambling service providers are prohibited from providing services to customers located in “designated countries” of the Act.

While the Department of Communication, Information Technology and the Arts (DCITA) is inviting comment on a number of issues associated with the Act, the focus of this submission is on the feasibility of and capacity to regulate financial transactions associated with the provision of interactive gambling services.

Section 69A of the Act aims to reduce the incentive to provide interactive gambling services to customers in Australia through the development of regulations essentially making all agreements involving illegal interactive gambling services unenforceable. The background paper released by DCITA outlines two broad approaches for the development of regulations under section 69A:

1. Make regulations under the provisions of section 69A, which would render agreements for the provision of illegal interactive gambling services to customers in Australia unenforceable after any debt has been incurred.
2. Require financial institutions to block credit card transactions related to illegal interactive gambling services.

In ANZ’s view any regulations that are drafted to address section 69A should be limited in their effects on financial institutions. Clearly, the intent of the legislation is to minimise the harm to society from problem gambling and the intent of section 69A to reduce the incentive to provide certain forms of gambling, which are seen to contribute significantly to the gambling problem.

ANZ sees merit in the Government's attempts to address problem gambling and has taken steps, as outlined later in this submission, to ensure its actions as a provider of financial services do not magnify problem gambling.

2. Implications of section 69A for financial institutions

Payment for interactive gambling services is made predominantly by credit card and as a result section 69A will have implications in relation to credit card transactions under two circumstances:

1. Where ANZ is the acquiring bank providing merchant services to an interactive gambling service provider; and
2. Where ANZ is the card-issuing bank providing credit to a customer.

As an acquiring bank, ANZ does not provide merchant services to illegal operations such as illegal interactive gambling service providers. To ensure this, ANZ screens all parties applying for merchant services at the point of application and believes that these screening processes are effective in identifying providers of illegal services. However, if ANZ does receive any queries or concerns regarding a merchant's operations these concerns are investigated.

In ANZ's view financial institutions face much greater risks under section 69A in their role as credit card-issuers. When a customer performs a transaction with an ANZ credit card the card scheme honours the transaction, which is in turn honoured by ANZ.

If an ANZ customer uses their credit card to purchase an illegal gambling service over the Internet, payment of that credit card debt is unenforceable under section 69A. At present, the credit card schemes do not have a valid chargeback code relating to transactions between consumers present in Australia and interactive gambling service providers, so that card-issuing banks can chargeback to the acquiring bank. ANZ would be therefore liable for that debt.

3. Options for regulation

As highlighted above, DCITA has outlined two broad approaches for the development of regulations under section 69A:

1. Make regulations under the provisions of section 69A, which would render agreements for the provision of illegal interactive gambling services to customers in Australia unenforceable after any debt has been incurred.
2. Require financial institutions to block credit card transactions related to illegal interactive gambling services.

In ANZ's view, the outcome of both options proposed by DCITA is the same. By rendering agreements relating to interactive gambling services to customers in Australia unenforceable after any debt has been incurred, financial institutions will bear the cost of credit debt if a customer does not pay. There will be no right to chargeback the debt to the merchant. Therefore, in order to comply with the first option and to limit the risk of being liable for the customer's debt, financial institutions will need to block credit card transactions related to illegal interactive gambling services before they occur.

4. Feasibility of blocking 'illegal' credit card transactions

Intuitively it would appear that the best way to overcome this situation would be through monitoring customers' transactions and automatically rejecting any transactions relating to interactive gambling. However, the systems currently in place do not make it possible for ANZ to identify and block these transactions in real time.

The two largest open credit card schemes, Visa and MasterCard, have each developed a system of codes that allows credit card-issuing members to identify the nature of the credit card transaction when it is presented for Authorisation. This is a long-standing system and was developed to facilitate processing and authorisation of credit card payments. However, the system relies on acquiring banks ensuring a merchant is coded correctly. It is also important to note that not all transactions go through the Authorisation process.

Internet gambling merchants are required to use a combination of an electronic commerce indicator code and a gaming merchant category code. When a transaction is performed, this code combination informs the card-issuing bank that the transaction is an Internet gambling transaction. The card-issuing bank can then choose to authorise or deny the transaction on this basis.

However, the combination of these two codes only tells the card-issuing bank that the transaction is an Internet gambling transaction and not whether the service purchased is for legal or illegal Internet gambling. At present, there is no coding system that distinguishes between different types of gambling. As a consequence, the only way for ANZ to comply with the current requirements of section 69A is to block all Internet gambling transactions, both legal and illegal, essentially capturing such legal transactions as betting on the Melbourne Cup.

The only way to avoid this is for international credit card schemes to introduce new scheme codes at an international level, which distinguish between legal and illegal forms of gambling.

5. Issues to be addressed

By their very nature, interactive gambling and Internet transactions in general, are international. At the time of the transaction the merchant, the acquiring bank, the card-issuing bank and the credit card holder may be located in different jurisdictions. As a consequence, there are a number of issues that need to be addressed, which complicate compliance and limit the capacity to curb Internet gambling through regulating financial transactions.

5.1. Identifying the location of the cardholder

One of the key difficulties with blocking credit card transactions is in being able to identify the location of the cardholder as “present in Australia” for the purposes of the Act.

For Internet transactions ANZ is unable to determine where the customer is located. The merchant’s code is the only proxy that card-issuing banks have to identify the location of the customer. Therefore, if a customer is located in Australia at the time they access an interactive gambling site where the server is located overseas, ANZ is not able to identify that the cardholder is located in Australia at the time of the transaction. In this instance, it is just as likely that the customer is residing or travelling in another country when they access the interactive gambling site.

There is also a question of whether the location requirement is for the consumer to be present in Australia at the time of the transaction (that is, when the card is debited), or at the time of using the interactive gambling service (for example, the consumer

may purchase gambling credits in one country but not actually use those credits on the site until they are present in Australia).

As it currently stands, the only way in which ANZ's computer system can identify a cardholder when they perform a transaction is by the cardholder's credit card number. It is not possible for ANZ to identify the cardholder's location while performing the transaction in real time. Therefore, for the purpose of complying with the Act, ANZ would have to block these transactions regardless of whether the customer was located in Australia or not.

5.2. Defining 'illegal' Internet gambling

Like Australia, a number of countries such as the United States, Canada and United Kingdom have either taken steps to regulate, or are considering regulation of, Internet gambling. However, what is clear is that the approach taken by each varies significantly, further complicating Australia's need for an amendment to international credit card scheme code systems.

In particular, the types of gambling that are considered legal or illegal under Internet gambling legislation varies across jurisdictions. This makes it increasingly difficult for Australian financial institutions to push for the Visa and MasterCard schemes to develop codes for the purposes of distinguishing illegal Internet gambling from legal Internet gambling as defined under Australian regulations. To date, Visa and MasterCard have been unable to develop codes to accommodate different definitions of illegal Internet gambling adopted by different jurisdictions in the United States, pending the passage of federal legislation.

5.3. Identifying the merchant

The ability for card issuing banks to block illegal interactive gambling transactions is reliant on the integrity of the credit card schemes' coding systems during the transaction Authorisation process.

To ensure that overseas located interactive gambling service providers do not provide these services in Australia, ANZ is reliant on overseas-based acquiring banks correctly identifying and coding these merchants during the transaction Authorisation process, or not providing merchant services to interactive gambling service providers at all. In the latter case, it would be difficult to make

such a demand given that the provision of interactive gambling services is not illegal in many countries and therefore, there is no reason for financial institutions to exclude these operators.

Credit card schemes do monitor transactions for fraud and impose penalties on acquiring banks if they have coded merchants incorrectly. However there are ways of getting around this. For example, a merchant may offer more than one good or service through its website, for example interactive gambling as well as the sale of particular goods. This merchant could use a secondary merchant code to identify what is really an interactive gambling transaction.

A further possibility is for merchants to use an aggregator service. In this case, cardholders could use an on-line payment aggregator service to pay for interactive gambling services. The card-issuing bank would not be able to identify the transaction as being originally for an interactive gambling service.

5.4. Digital cash

A developing means of payment over the Internet is digital cash. The availability of digital cash could also make it difficult for card-issuers to identify an illegal interactive gambling transaction. For example, a cardholder could purchase digital cash on a website which offers a number of different services and shopping options and later use this cash for interactive gambling on that site. Again, the merchant operating the website could be coded as a type of retail merchant, quite legitimately. Technically, the illegal gambling service has not occurred until the customer actually uses the digital cash, long after the credit card transaction has been performed.

6. What steps can ANZ take?

ANZ is willing to take steps to prevent the transfer of money for the purposes of illegal interactive gambling.

As discussed above, ANZ has measures in place to ensure that as an acquiring bank it does not provide merchant services to illegal operations such as illegal interactive gambling service providers. ANZ acknowledges that it is important for these measures to continue so that the Act can be effective in reducing the incentive for Australian-based illegal interactive gambling service providers to provide these services to persons in Australia. In addition, ANZ

already has processes in place such that if any customer raises concerns about the activities of a particular merchant, these concerns will be investigated.

As a card-issuing bank, ANZ informs customers of the credit card conditions of use that ANZ credit cards should not be used for any illegal transaction. ANZ is willing to explore any further role that it may have in the distribution of the information on customers' rights and obligations with respect to interactive gambling.

However, even through taking these steps ANZ is in a position only to limit the transfer of money for illegal interactive gambling where ANZ is the acquiring bank for an interactive gambling service provider located in Australia. As a card-issuing bank, ANZ is not able to block the actual credit card transactions involving illegal interactive gambling, where the interactive gambling service provider is located overseas and where the merchant or the acquirer acts outside the respective Visa and MasterCard Credit Card Scheme Rules.

From a card-issuing perspective, the only option ANZ has to comply with the legislation is to block all forms of Internet gambling, both legal and illegal during the transaction Authorisation process.

7. Conclusion

The purpose of section 69A of the Act is to reduce the incentive to provide interactive gambling services to customers in Australia through the development of regulations essentially making all agreements involving illegal interactive gambling services unenforceable.

DCITA has outlined two broad approaches for the development of regulations under section 69A. In ANZ's view the outcome of these approaches are the same. By rendering agreements relating to interactive gambling services to customers in Australia unenforceable after any debt has been incurred, credit card-issuing institutions will bear the cost of credit debt if a customer does not pay. In order to comply with the legislation and to limit the risk of being liable for the customer's debt, financial institutions would need to block credit card transactions related to illegal interactive gambling services before they occur.

However as explained in this submission, ANZ is not in a position to put measures in place which will block credit card transactions related to illegal interactive gambling as defined under the Act.

The international credit card schemes' coding systems only allow card-issuing institutions to identify a transaction as an Internet gambling transaction and not whether it is legal or illegal as defined under the Act. The only way to address this is to introduce new gambling codes, which can only be introduced at an international scheme level.

This is further complicated by a number of factors including the fact that a number of countries have taken different approaches to defining what is considered legal and illegal interactive gambling.

In the absence of there being existing scheme codes which will identify illegal interactive gambling transactions, the only way for ANZ to comply with the requirements of section 69A as a card issuer is to block all Internet gambling transactions during the transaction Authorisation process, both legal and illegal.

ANZ would be happy to further discuss the issues raised in this submission with DCITA. As a way forward, ANZ would be willing to participate in a working party with representatives of DCITA, the banking industry and the credit card schemes, to develop a practical approach to addressing this issue.