Submission

on the

Criminal Code (Consent and Mistake of Fact) and Other Legislation Amendment Bill 2020

to the

Legal Affairs and Community Safety Committee

Parliament House
George Street
Brisbane Qld 4000
Email: lacsc@parliament.qld.gov.au
Website: https://www.parliament.qld.gov.au/work-of-committees/committees/LACSC/inquiries/current-inquiries/CrimCodeCandMoFOLAB2020

By

Greg Bondar
FamilyVoice Australia
National Project Leader – Gambling Reform
greg.bondar@familyvoice.org.au
4th Floor, 68 Grenfell Street
ADELAIDE SA 5000
Telephone: 1300 365 965
Website: www.familyvoice.org.au

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Table of Contents

1. Introduction 1

2. Gambling 1

2.1. 166B Prohibited inducements 2

2.2. 166C Wagering using free bets 2

2.3. 166D Restrictions on direct marketing 3

3. Conclusion 5

4. Endnotes 6

1. Introduction

On 13 August 2020, Hon Yvette D'Ath MP, Attorney General and Minister for Justice introduced the *Criminal Code (Consent and Mistake of Fact) and Other Legislation Amendment Bill 2020* (the Bill) and referred it to the Legal Affairs and Community Safety Committee for detailed consideration.

FamilyVoice Australia is a national Christian advocacy group – promoting family values for the benefit of all Australians. Our vision is to see strong families at the heart of a healthy society: where marriage is honoured, human life is respected, families flourish, Australia's Christian heritage is valued, and fundamental freedoms are valued and enjoyed.

The closing date for lodging written submissions is **10:00am on Tuesday 15 September 2020**.

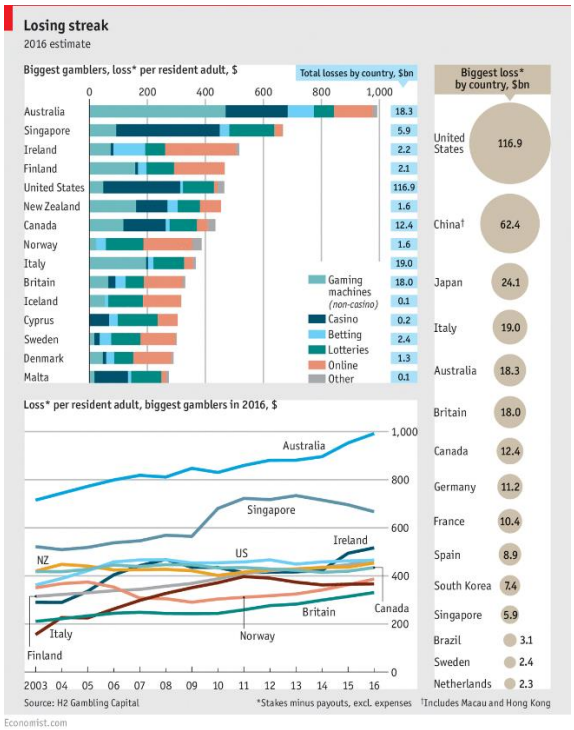
2. Gambling

The focus of this submission is on the gambling aspects of the *Criminal Code (Consent and Mistake of Fact) and Other Legislation Amendment Bill 2020.*

It is important that legislation keep up with changes in the gambling industry. As has been pointed out:

> *New technology is changing the nature of gambling with interactive modes of gambling becoming putatively associated with higher rates of problem gambling.*[1]

It is especially crucial that governments in Australia keep abreast of changes in the industry given Australians are the biggest gamblers in the world.[2,3]



2.1. 166B Prohibited inducements

Section 166B of the draft bill prohibits an interactive waging operator from providing an inducement to a person to open a gambling account, refer another person to open an account, or discourage a person from closing an account.

By extending the proposed ban to include inducements to gamblers to discourage them from closing accounts or from opting out of direct marketing, the draft bill goes further than the National Consumer Protection Framework for Online Wagering agreement between Commonwealth, State and Territory governments in late 2018. [4]

Recommendation 2.1

Section 166B, which prohibits gambling inducements, should be supported. Further, that a state educational campaign be undertaken to ensure that both gamblers and gambling providers are aware of the illegality of 'inducements'.

2.2. 166C Wagering using free bets

Section 166C prevents an interactive waging operator from offering free bets unless the customer can withdraw payouts arising from the free bet at any time. The offering of free bets increases gambling problems by enabling people to bet beyond their means.

The *Sydney Morning Herald* has detailed problematic behaviour by betting companies with respect to free bets:

> *Some gambling companies are using a legal loophole to induce punters to gamble online while regulators are cracking down on others.*
>
> *NSW passed laws in July 2018 banning the promotion or inducement to gamble, although an exemption allows such advertising on racing websites.*
>
> *Since then, 19 prosecutions have caught online gambling companies breaking this law by using other sites such as on Apple's app store.*
>
> *Regulators are cracking down on these companies with prosecutions running twice a month on average since July last year but the fines are a mere "cost of doing business", critics say.*
>
> *A Sun-Herald investigation found dozens of offers that may breach the law.*
>
> *PointsBet, Sportsbet, Sportschamps, Ubet, Neds, Bet 365, Tabcorp and Ladbrokes have all been convicted of illegally advertising to entice people to gamble since July last year. Courts have imposed fines worth $131,950 plus $184,139 in court costs.*
>
> *The Sun-Herald tested both the TAB and Sportsbet's promotional offerings on racing websites, using a Sydney address, and found, once an account was opened, both companies offered to match a deposit instead of providing what was advertised on the racing websites.*
>
> *A Tabcorp spokesman said its sign-up advertising was fully compliant with NSW laws on the advertising of inducements and the provision of bonus bets.*
>
> *"Sign-up bonuses, which are advertised legally under the exemption for exclusive racing publications, are not provided to customers in NSW," he said.*
>
> *"Any bonuses provided to NSW customers are non-sign-up offers made only after customers have chosen to create an account."*

> *Liquor & Gaming NSW said the new rules threaten maximum fines of $55,000, 10 times higher than previously and any potential breaches would be investigated.*
>
> *"We recently put all wagering operators on notice that responsible gambling conduct needs to improve," a Liquor & Gaming NSW spokesman said.*
>
> *Monash University Associate Professor Charles Livingstone said the fines were "barely slaps on the wrist", given the scale of revenue available to gambling operators, who might see it "as a cost of doing business".*
>
> *"The companies know that the benefits they receive will almost certainly be in excess of the likely penalties," Dr Livingstone said.*
>
> *"Until the regulators both have the capacity and the willingness to cancel or suspend licences, as well as [impose a] fine for breaches, the companies will continue to flout the regulations."*
>
> *Sportsbet, owned by London-listed gambling giant Paddy Power Betfair, banked $752 million in local turnover last year and was fined $10,000 plus legal costs in March for an ad that read: "Refer a Friend – Get a $100 Bonus Bet for every friend you refer to join sportsbet.com.au (excl. VIC, NSW, WA & SA)."*
>
> *Sportsbet's local marketing efforts were estimated to cost more than $490 million between January 2013 and June 2018, an ABC investigation found.*
>
> *PointsBet, which recently bought the rights to name the Cronulla Sharks home ground PointsBet Stadium, pleaded guilty to using a sign-up bonus.*
>
> *Magistrate Garry Still said the ad may not have been easy to find (on the Apple app store), but it had the potential to drive people to the offer and fined the company $20,000.*[5]

It is important therefore that penalties imposed for wagering free bets are adequate and not seen as simply a "cost of doing business".

Recommendation 2.2

Section 166C, which bans the use of free bets that cannot be withdrawn, should be supported with an advertising campaign highlighting the penalties for breaches.

Recommendation 2.2.1

Penalties, with respect to breaching section 166C, should be reviewed 12 months after the passing of the legislation to ensure they are adequate. Any, such review should involve a Community Consultative Committee (CCC) which would make recommendations to the appropriate Minister.

2.3. 166D Restrictions on direct marketing

Section 166D of the draft bill prohibits interactive waging operators from marketing directly to persons by email, SMS or other means unless they have permission to do so.

There has been widespread concern about the saturation of gambling advertising, particularly around sports. For example:

> *GAMBLING advertising during AFL games is "out of control" according to Western Bulldogs premiership captain Easton Wood.*
>
> *Wood took to Twitter during the telecast of Friday night's AFLW game between the Bulldogs and Adelaide to raise his concerns and asked fans whether they agreed.*
>
> *…*
>
> *In a note attached to the tweet, he said the Bulldogs this week had their annual education session with the AFL, which he described as "both informative and well run."*
>
> *But he questioned why there was so much gambling advertising if gambling was such a big issue that it required an annual information session from the League.*
>
> *"Why – as an industry – do we support the onslaught of gambling advertising you're now faced with when watching an AFL game?" he wrote in the tweet.*
>
> *"The obvious issue here is the effect this advertising has on children every time we pull on our boots. The big question is do we think the normalization of gambling – particularly to kids – is acceptable in this day and age?"*[6]

In the UK, similar concerns have been raised about the prevalence of gambling advertising:

> *The boss of Britain's largest gambling firm last night called for a complete ban on betting adverts around live football matches before 9pm.*
>
> *Kenny Alexander, chief executive of GVC Holdings – the company that owns bookmakers Ladbrokes Coral – said he had decided to support the proposed ban after speaking to gambling addicts in rehab centres.*
>
> *He said he had learned that problem gambling can be 'dangerous and destructive' and can leave people 'without hope'.*
>
> *And he accepted that there are 'undoubtedly far, far too many adverts' around football games.*
>
> *Mr Alexander said he hoped other bookmakers, such as Paddy Power and William Hill, would agree to a voluntary ban on betting around live football matches before the 9pm watershed.*
>
> *But if they did not do so, the Government should step in and impose one.*
>
> *The Daily Mail has highlighted the dangers of gambling adverts which appear before live games and at half time, and give viewers up-to-the-minute odds for betting on the score or, for example, how many corners there will be.*
>
> *Campaigners are alarmed because they give viewers the impression they have only a short period to take advantage of the odds on offer, which psychiatrists say encourages spur-of-the-moment gambling and fuels addiction.*[7]

While the banning of gambling marketing directly to persons by email and SMS without permission is supported, governments need to do more to address the problem of gambling advertisements which are not directly marketed.

Recommendation 2.3

Section 166D of the draft bill which prohibits gambling marketing directly to persons by email and SMS, unless they have permission, should be supported.
2.3.1

Further, no 'permissions' be deemed to be acceptable by minors or young adults up to 18 years of age.

Recommendation 2.3.2

That the Queensland Government work together with the Federal Government to gambling advertisements during sports and TV news bulletins, particularly between the hours of 6:00pm and 8:00pm

3. Conclusion

Australians are the biggest gamblers in the world, so it is imperative that governments do more to minimise problem gambling, especially interactive gambling which is an increasing problem.

The proposed legislative changes – to prohibit inducements, free bets and restrict direct marketing – are sensible and should be supported. However, more should be done between federal and state governments to address TV gambling advertisements during sports and news bulletins.

4. Endnotes

[1] Gainsbury, S. M., Russell, A., Hing, N., Wood, R., Lubman, D. I., & Blaszczynski, A. (2014). The prevalence and determinants of problem gambling in Australia: Assessing the impact of interactive gambling and new technologies. Psychology of Addictive Behaviors, 28(3), 769-779. http://dx.doi.org/10.1037/a0036207

[2] "The world's biggest gamblers", 9 February 2017, https://www.economist.com/graphic-detail/2017/02/09/the-worlds-biggest-gamblers

[3] Stephen Letts, "Chart of the day: Are Australians the world's biggest gambling losers? You can bet on it", ABC News, 20 November 2018, https://www.abc.net.au/news/2018-11-20/australians-worlds-biggest-gambling-losers/10495566?nw=0

[4] Attorney-General and Minister for Justice The Honourable Yvette D'Ath, "Online wagering inducements to be banned in Queensland", 13 August, 2020, https://statements.qld.gov.au/statements/90417

[5] Nigel Gladstone, "Online betting agencies using illegal offers to lure new users", *Sydney Morning Herald*, 12 May 2019, https://www.smh.com.au/national/nsw/online-betting-agencies-using-illegal-offers-to-lure-new-users-20190507-p51ku0.html

[6] Ashley Browne, "Gambling ads 'out of control', says premiership Dog Wood", AFL.com.au, 11 February 2017, https://www.afl.com.au/news/142790/gambling-ads-out-of-control-says-premiership-dog-wood

[7] Daniel Martin, "Gambling adverts are 'out of control' and should be banned before the 9pm watershed, says Ladbrokes boss", *Daily Mail*, 10 October 2018, https://www.dailymail.co.uk/news/article-6258047/Gambling-adverts-control-says-Ladbrokes-boss.html