

Online Gambling and COVID-19: The Australian Perspective

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Overview

The gambling sector is not immune from the effects of COVID-19. In some cases, the impact has been material (for example, the closure of venues, like casinos), but there has also been a distinct trend towards participation in online gambling.

It is during difficult times that circumstances exist that cause longstanding policy assumptions to be questioned and reviewed in all industry sectors, including the gambling sector. Is this the time to review Australia's policy towards the regulation of online gambling?

How has COVID-19 affected the Gambling Sector?

COVID-19 has affected everybody's lives and has changed the way in which we live. We are learning to adapt, as quickly as possible, to this constantly evolving situation.

No one has been spared the effect of COVID-19. This inevitably means that every business sector has also been affected by COVID-19, some positively due to higher demand for their products or services; others, unfortunately, negatively due to the extraordinary circumstances. This divergence has occurred in the gambling sector.

Land-based gambling operators have had to close their doors to limit the spread of the virus, while the Australian licensed online gambling industry has been affected directly by the suspension of almost all sports and racing events leaving them in a position where there no longer exists the core elements upon which their services to customers are based. But this adverse effect is by no means uniform across the entire gambling sector.

Online Gambling - Alternative means of Entertainment

People, now more than ever, are turning to online means of entertainment to keep them occupied while adhering to COVID-19 related precautions, such as social distancing. Online gambling is one form of online entertainment that remains readily available.

It would appear that demand for online gambling has increased since the advent of COVID-19¹. In a report which was released earlier this month (and which is updated weekly), data suggests a continued increase in the use of online gambling services.

¹ See www.alphabeta.com/illiontracking under the heading *Consumer Spending by Category*. This has also been reported in a number of press articles, for example, see "Jump of 300 per cent in Aussie gamblers risking their cash online in illegal offshore casinos" since COVID-19 shutdown. *Sydney Daily Telegraph* 4 May 2020.

Growth in online gambling – Regulated or Unregulated?

On the basis that this data reflects a growth in all online gambling services, this would cover both those gambling services which are regulated in Australia and those which are not. To the extent that this growth relates to regulated online gambling services, it would appear that both online lotteries and online betting services licensed in Australia have managed to maintain and extend their businesses during the COVID-19 crisis. This is probably more remarkable in the case of online betting services, due to the necessity to locate alternative sporting products as a result of the abandonment of many traditional sporting events, such as the US Masters Golf, Wimbledon and the suspension of the AFL and NRL competitions. It has been reported that there has been an increased interest for betting purposes on Belarus/Ukrainian football, table tennis and e-sports!

On the other hand, there is a distinct possibility that Australians have chosen to gamble online on unregulated sites (being operations not regulated in an Australian jurisdiction).

The *Interactive Gambling Act 2001* (the **IGA**) (the Australian federal law that regulates online gambling) prohibits the offering of all types of online gambling to people located in Australia, with the exception of betting and lotteries licensed in an Australian State or Territory (save for certain exceptions, such as online in-play betting on sports – see below). This means that the offering of online casino, online poker, and other types of online games of chance are prohibited and cannot be provided legally to persons located in Australia.

In practice, however, there have always been operators who, in breach of the IGA, target Australians with their online casino games and other prohibited games and allow Australians to deposit real money to play and win.

This level of engagement is reported to have increased as a result of COVID-19, with more Australians potentially looking to play online casino games especially now that gambling is not available at land-based casinos and clubs. Many people who enjoy playing pokies and/or other casino type games in venues (now indefinitely closed) may well look to participate online in forms of gambling with which they are familiar, while they are complying with the requirements to stay indoors to contain COVID-19.

There is also a risk that a number of Australians will be looking to offshore betting sites to fulfil their gambling needs. If so, those customers will be able to access either:

- (a) In-play betting services (which comprises up to 80% of the global betting market but is not available legally in Australia except over the phone or in TAB venues (which are currently closed));
- (b) Betting on events not approved by an Australian regulator for betting purposes; and/or
- (c) Betting using cryptocurrency (which cannot be used currently for betting purposes on any Australian licensed betting site).

Unfortunately, since only an illegal market is available for these gambling products, Australian players accessing those sites would not be provided with the level of security and player protection mechanisms

made available by Australian licensed online gambling operators². There is a real risk that, as we have seen in the past, players may be denied their winnings and/or have their deposits forfeited or lost, and not provided with harm minimisation options (such as limiting the time and/or amount of money that they play, and closure or suspension of their gambling account) which players may implement on Australian licensed online gambling sites when they feel that their gambling is no longer a means of entertainment but is becoming a problem.

The operators in the regulated Australian market are required to provide their gambling services in a responsible manner by having in place player protection mechanisms, and other measures to enable them to reach out pro-actively to players who appear to be playing excessively and/or beyond their means. Having these safeguards in place is fundamental for Australian licensed operators because their reputation and good standing is core to their business, not only with customers but also with regulators.

This is less of an issue for unlicensed operators who have much less at stake when providing their gambling services.

On the other hand, to the extent that there is growth in the demand for the gambling services provided by unlicensed operators based overseas, it is appropriate to ask the question – Why are the services they offer not available legally in Australia?

Negative Economic Impact of COVID-19

COVID-19 is putting many businesses under considerable pressure which is leading to the closure of businesses and loss of employment. The Australian economy will also continue to feel the effect due to increased costs in health care, greater unemployment, subsidies and incentives to assist businesses and Australians to navigate this difficult period, with potential long-term adverse effects on the economy.

The hospitality and gambling sector have not been immune from the effects of COVID-19. Clubs, pubs, TAB venues and casinos have closed, and it is not yet clear when they will reopen.

We have also seen that the way business is conducted in many sectors has had to be reviewed. Certain restrictions have been eased or removed to allow for the provision of services and/or the continuation of business activities. This has included the introduction of measures such as the relaxation of restrictions on liquor businesses and on certain types of co-operative conduct between supermarkets (that might otherwise been suggested as anti-competitive) and businesses being allowed to have longer opening hours to accommodate the demand. These exceptional times have also required consideration of various measures (and changes in business strategies) to help minimise the adverse impact of the COVID-19 crisis.

As part of these changes, numerous businesses have moved online. For example, many restaurants have launched online offerings, so that customers can have delivered, or pick up meals accompanied by wine, in a manner never considered necessary or possible, before the advent of COVID-19.

² See Daily Telegraph article at [1] above. NSW Office of Responsible Gambling Director, Natalie Wright is quoted as saying “Overseas gambling websites are illegal in Australia, and people who use them face additional risks than when they gamble with a licensed Australian operator.”

Yet these options are not available to land-based gambling venues in Australia in respect of their provision of regulated gambling services.

Could the Regulation of Online Gaming be an Alternative?

Government incentives and financial packages have been announced to address the economic pressures brought by COVID-19. In other times and outside Australia, the regulation and licensing of online gambling, namely casino games, poker, and/or other games of chance has been viewed as a solution. This was the case in Italy in response to the 2009 earthquake in the region of Abruzzo.

Gambling is a means of entertainment for which there is a public demand and which governments see as a means to raise revenues. Yet any consideration of an expansion of the online gambling services that could be made available is contrary to Australia's regulatory policy relating to online gambling. The policy stated by governments on numerous occasions is that online gaming and online in-play sports betting should be prohibited principally due to the harmful social effects that result. This regulatory approach has been maintained despite submissions to various enquiries that, if online gambling were to be regulated in Australia, measures could be implemented to:

- provide players with harm minimisation mechanisms;
- protect player funds deposited and won with the licensed operator;
- limit advertising to appropriate hours of the day where children and minors are not exposed;
- provide players the opportunity to refer complaints to a regulator about any wrongdoing by a licensed operator;
- combat money laundering and terrorism financing; and
- enforce effectively breaches of law against licensed operators who contravene obligations in a statute or licence conditions.

In certain countries, the regulation and licensing of online gambling activities has been effective in eliminating almost wholly the illegal offerings to their residents due to players having the option to participate with a licensed operator - this ensures that local residents can gamble in a safer environment.

As the data referred to above suggests, it would appear that COVID-19 has resulted in greater demand for offshore gambling sites. This gives rise to a conundrum, particularly if that growth continues; for example will greater enforcement mechanisms be introduced? Will they be effective?

To the extent that they are not, there is a real risk that Australians will continue to access offshore gambling sites (with the attendant social harmful effects).

This dilemma exists because the licensing of online gaming and the extension of regulated online gambling services to include services, such as online in-play betting services, is opposed by the Australian Federal Government. This stance means that, before the advent of COVID-19, it was very unlikely that this policy would be revisited in the short term. However, if Australians continue to access unlicensed offshore gambling

sites during (and after) COVID-19 to a significant extent (and this demand cannot be restricted), it may be appropriate for this policy to be reviewed.

Conclusion

The principal objective of gambling regulation is to ensure that gambling is fair and free from crime, and to protect minors and vulnerable persons.

It is also an objective of gambling regulatory policy that consumers' demand is met by gambling services provided by licensees operating within the local regulatory framework.

There will always be parties who operate outside the regulatory framework: operators which conduct business in a manner that is not compliant with the local laws and players who, deliberately or inadvertently, seek to access gambling services not licensed locally. Where circumstances exist which suggest that local laws are ineffective in preventing this seepage from occurring, it may be appropriate to revisit some of the principles underlying the current gambling regulatory policy.

COVID-19 is and will continue to, unfortunately, present challenges to all forms of policy, economic and regulatory. It remains to be seen whether the trend illustrated in the Alphabeta/Ilion report continues. If so, and if there continues to be a growth in offshore online gambling, it may be appropriate to review the existing regulatory policy.

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