



Australian Government

**Department of Broadband,
Communications and the Digital Economy**

Final Report 2012

Review of the *Interactive Gambling Act
2001*

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Foreword

On 27 May 2011, the Council of Australian Governments (COAG) Select Council on Gambling Reform announced that the Department of Broadband, Communications and the Digital Economy (the department) would undertake a review of the *Interactive Gambling Act 2001* (the IGA).

An interim report from the review was released for public comment on 29 May 2012. This final report takes into account the public comments on the interim report.

Summary and recommendations

The primary objective of the IGA is to reduce harm to problem gamblers and to those at risk of becoming problem gamblers. The evidence since the last review of the IGA suggests that it is making only a very minor contribution to this objective. The IGA may in fact be exacerbating the risk of harm because of the high level of usage by Australians of prohibited services which may not have the same protections that Australian licensed online gambling providers could be required to have.

- There may be around 2200 online gambling providers currently offering services to Australians that may be in contravention of the IGA.
- The number of Australians accessing these services is significant and growing.
- Some estimates suggest Australians lose around \$1 billion per annum to online gambling service providers that are not licensed in Australia¹. This is projected to continue growing strongly.

The effectiveness of the IGA in reducing the risk of harm could be increased by enabling and encouraging prohibited online gambling service providers, particularly those that are popular amongst Australians, to become licensed in Australia on condition that they:

- cease offering higher risk types of online gambling (for example, online slot machines) to Australians and only offer online gambling services that are of a relatively lower risk (for example, online tournament poker)
- agree to comply with a set of strong harm minimisation and consumer protection measures.

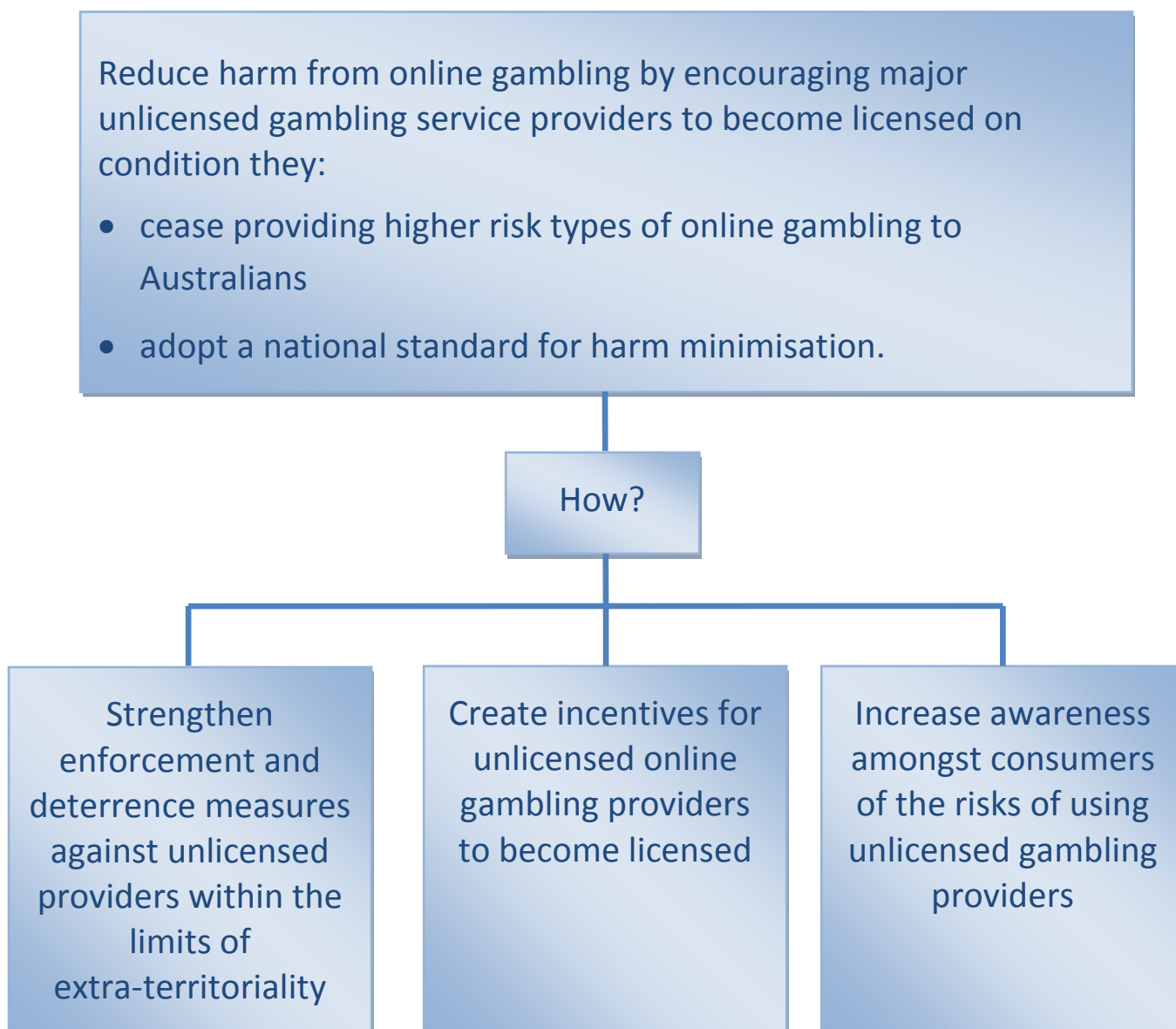
Implementation of such a strategy would require:

- introduction of a national standard for harm minimisation and consumer protection that licensed online gambling services must comply with
- online gambling providers that choose not to become licensed, and thereby do not sign up to the national standard, to be prohibited under the IGA
- targeted law enforcement and deterrence measures against online gambling providers who continue to offer services to Australians in contravention of the IGA (including cooperation with overseas law enforcement and regulatory bodies, while noting the limitations of extra-territoriality)
- appropriate incentives for online gambling service providers to become licensed in Australia
- measures to increase awareness amongst Australian users about the risks of using prohibited online gambling providers.

This strategy is summarised in Diagram 1.

¹ Dr Sally Gainsbury and Professor Alex Blaszczynski, Submission to the IGA review, p. 7.

Diagram 1: Proposed strategy to reduce harm from online gambling



Harm minimisation and consumer protection

The IGA permits the provision of certain types of online gambling, in particular online wagering and lotteries. The IGA does not, however, specify any particular harm minimisation or consumer protection measures for online gambling. These matters are dealt with in individual state/territory legislation. A number of submissions to the review argued for a national approach to harm minimisation and consumer protection for online gambling, especially as these online services can be accessed by Australians irrespective of the state in which they live and irrespective of the state in which the provider is licensed.

A national approach is needed to:

- ensure a minimum level of harm minimisation and consumer protection measures across all licensed online gambling providers
- maintain balance with the harm minimisation measures in the Electronic Gaming Machine (EGM) reforms
- reduce the risk of competition between jurisdictions to attract online gambling companies on the basis of 'less onerous regulation'.

Recommendation 1: The IGA should provide for the development of a national standard, applicable to all Australian licensed interactive gambling providers, that establishes the framework for a minimum set of harm minimisation and consumer protection measures for all types of interactive gambling that are permitted by the IGA.

- The standard should be developed by a joint working party of Commonwealth, states/territories, industry, gambling researchers and responsible gambling bodies under the auspices of the COAG Select Council on Gambling Reform.
- There should be clear timelines established for the development and implementation of the minimum standard—there may need to be a different timeline and some different features for this standard for online wagering and the proposed trial of online tournament poker.
- The minimum standard should be incorporated into state/territory legislation.
- States/territories should continue to be responsible for enforcement of harm minimisation and consumer protection as they are now.

Recommendation 2: Online gambling providers that do not become licensed by an Australian state/territory jurisdiction, and thus do not sign up to the national standard, should be prohibited under the IGA.

Recommendation 3: The harm minimisation and consumer protection measures in the proposed minimum standard should include (but not be limited to):

- standardised and significantly more prominent responsible gambling messages
- tightened rules around the capacity of online gambling providers being able to provide lines of credit to users—already announced
- limits on the types of betting inducements that can be offered, particularly those that encourage individuals to encourage other individuals to open an account—already announced
- a pre-commitment capability including in terms of total spend, total time played, number of bets placed and deposits made, including making it mandatory for users to set their own deposit limits
- protection of customer funds—already announced
- protection and storage of customer information consistent with Australian privacy principles

- **making data on the uptake and use of harm minimisation and consumer protection measures (consistent with Australian privacy principles) publicly available for research purposes**
- **quick identity verification and age identification of customers when opening a betting account, including consideration of using the Document Verification Service to expedite verification processes and a requirement to roll back all transactions in cases of proven underage gambling**
- **establishment of a national self-exclusion database to be jointly funded by state/territory governments and industry in proportion with their share of online gambling revenue**
- **highly-accessible spend-tracking facilities including a very prominent message on losses/profits incurred to date by the account holder at the point they log in**
- **targeted warning messages alerting consumers to gambling behaviour that is indicative of problem gambling (subject to consultations with vendors of software that may block such warning messages)**
- **prominent links to the National Gambling Helpline available on all pages of the websites of regulated online gambling service providers**
- **a link on the websites of regulated gambling service providers to the state/territory gambling regulatory authorities to which consumers can lodge complaints—state/territory gambling authorities should report publicly annually on the number and types of complaints made against each licensed online gambling service provider.**

Deterrence and enforcement

Deterrence and enforcement measures against prohibited online gambling service providers offering services to Australians should be strengthened, but this strengthening must recognise the limits of enforcement action against overseas-based companies, many of which operate out of countries which actively seek to attract such companies and provide them with legal protection.

During 2011, United States (US) law enforcement authorities took action against certain online gambling providers. It is important to note that this action was:

- able to be initiated because of evidence provided by a key individual
- against individuals who were in the US at the time and therefore could be apprehended by US law enforcement authorities—this is critical as the alternative is to use extradition laws which are unlikely to be effective
- taken using laws other than laws relating to online gambling.

Despite the difficulties of enforcement in this area, there is merit in making the enforcement provisions more streamlined, such that they can be used if the opportunity arises. It is also important that steps are taken to ensure the principals/directors of companies providing services to Australians in contravention of the IGA are informed:

- that they are breaking Australian law

- of the penalties involved for such breaches
- that Australian law enforcement authorities will take action if the opportunity arises
- of the steps they can take to comply with Australian law.

Recommendation 4: The IGA be amended to include a provision for a director, principal or other person acting in an official capacity for a provider to be issued with a notice requiring them to cause the provider to cease offering services in contravention of the IGA, with failure to comply with the notice being a strict liability offence.

Recommendation 5: The Australian Communications and Media Authority (the ACMA) should be the body responsible for administering civil penalties for the provision of prohibited gambling services hosted in Australia including:

- Issuing civil (including pecuniary) penalties by way of an infringement notice—this would be in addition to the existing criminal penalties in the IGA which are the responsibility of the Australian Federal Police (AFP).
- Issuing take-down notices to internet gambling service providers in relation to prohibited internet gambling content hosted in Australia—this would be similar to the provisions in Schedule 7 of the *Broadcasting Services Act 1992* in regard to prohibited content.
- Applying to the Federal Court for injunctive relief, if an Australian-hosted internet gambling service provider acts in contravention of the above proposed civil penalties or take-down notices. Subject to consistency with overarching Commonwealth legal policy, there should be a provision expressly conferring jurisdiction on the Federal Court to grant injunctive relief where such an application is made by the ACMA.
- Using discretionary powers to action complaints and investigations about prohibited internet gambling services.

Recommendation 6: The list of known prohibited internet gambling providers should be published and regularly updated on the ACMA website, accompanied by very clear information discouraging Australians from using these sites because of the risks they would be taking. This listing should be drawn to the attention of the operators of the prohibited online gambling service noting that failure to take reasonable steps to cease providing these services to Australian consumers may result in the commission of offences under the IGA, criminal liability for directors/principals of the provider and the placement of directors/principals of the service on the Movement Alert List. It may be appropriate for this website to also include a link to the websites of state/territory regulators which list the online gambling services that are licensed by states/territories and not prohibited by the IGA.

Recommendation 7: Online gambling service providers that are confirmed by the ACMA as providing prohibited services in contravention of the IGA, that do not respond to contest this assessment, and continue to offer the service within 28 days of the notice, should be subject to appropriate action as discussed above, including placement of the names of principals/directors of prohibited online gambling service providers onto the Movement Alert List, as well as being

referred to relevant state/territory authorities and the Australian Securities and Investments Commission (ASIC). The relevant persons should be notified of the actions taken.

In 2006, the US introduced legislation requiring financial institutions in the US to block financial transactions from US online gamblers with online gambling service providers. One submission to the review suggests that this legislation had a significant impact on the volume of online gambling by US gamblers. Other submissions suggest this impact was only short-term and that US gamblers and online gambling service providers found methods to circumvent the blocking that US financial institutions put in place. The website Online Casino City indicates that a much larger number of online gambling service providers do not allow US gamblers to access their services compared to the number of such providers that prevent Australians from accessing their services. It is possible this is the result of US financial transaction blocking legislation.

Consultations with financial institutions in Australia suggest that financial transaction blocking may be possible if the prohibited sites to be blocked and their details are maintained by government and made available to financial institutions. However, they also indicated that implementation of this would involve costs, require complex changes to systems and would still be capable of being readily circumvented. Dr Sally Gainsbury has noted in her submission to the interim report that there are now around 170 different payment methods accepted by online gambling sites providing services to Australians². Online gambling sites list a large number of payment options from which their customers can choose. Many of these payment methods involve overseas-based financial intermediaries that are outside the scope of Australian law.

Given the ease with which these overseas-based payment methods can be used, it would not be cost-effective to require Australian-based financial institutions to block payments to the over 2,000 prohibited online gambling providers that Australians can currently access. Experience of overseas countries that have attempted to block such transactions to date confirms this conclusion. Consultations with financial institutions in Australia have also indicated that blocking of payments to prohibited gambling providers would be easier to do for some financial institutions than for others.

On this basis, an appropriate next step would be to amend the IGA to provide a 'safe harbour' that allows financial institutions, as a service to their customers, to voluntarily block financial transactions between Australian consumers and unlicensed online gambling service providers. In addition, overseas developments regarding the use of financial transaction blocking measures should be monitored and such information provided to the Australian financial industry.

Recommendation 8: The IGA should be amended to provide a safe harbour for financial institutions that choose to voluntarily block financial transactions between Australian consumers and unlicensed online gambling service providers (or any intermediaries involved in such transactions) as part of their services to customers. The list of prohibited gambling service providers identified and published by the ACMA should be drawn to the attention of financial institutions by the department.

² Dr Sally Gainsbury, Submission on the interim report of the IGA review, p. 17.

Recommendation 9: The department and the Treasury should continue to monitor developments overseas in the use of financial payment blocking to prohibited gambling sites and draw relevant developments to the attention of Australian financial industry bodies.

Recommendation 10: Online gambling service providers that are confirmed by the ACMA as providing prohibited services in contravention of the IGA should continue to be included on the ACMA's list of prohibited URLs and/or websites that are subject to blocking by vendors of PC filters on the Internet Industry Association's (IIA) family friendly filter scheme. The IIA should also expand its family friendly filter scheme to include all popular filters used by Australians.

Education and awareness

Submissions to the review suggested that Australian consumers have a very limited understanding of which online gambling services are prohibited under the IGA and which are not.

Recommendation 11: The Australian licensed online gambling industry, in conjunction with the department, should consult with major Internet Service Providers (ISPs) and the vendors of security software on the possibility of them voluntarily enabling a standard warning page appearing whenever an Australian consumer accesses an unlicensed online gambling website as identified by the ACMA. The page would alert the user to the fact the website they have accessed is not regulated by any Australian authority, that standard Australian consumer protections may not be available, as well as alerting the consumer to a list of Australian licensed online gambling providers.

Recommendation 12: The Cybersafety Help Button should include a link to the National Gambling Helpline under the 'TALK' function, as well as other help button functionalities that would be of value in alerting users of the Help Button to the risks of using prohibited online gambling service providers. The National Gambling Helpline should be able to explain, on request, the difference between licensed and unlicensed providers.

Recommendation 13: Relevant ACMA programs should be tailored to address issues related to the risks to children of accessing online gambling sites, particularly prohibited online gambling sites.

Recommendation 14: The Consultative Working Group on Cybersafety should continue to monitor the risks to children of access to online gambling, including via social networking sites, and recommend appropriate action.

Recommendation 15: State and territory governments, in conjunction with industry, should also take steps to increase consumer awareness about the risks associated with using prohibited online gambling services.

Advertising and promotion

A number of submissions to the review expressed concern about an increase in the volume of online gambling advertising and promotion. This was both a concern about the extent of promotion of permitted services, as well as the nature of advertising and promotion of prohibited services.

In addition, some stakeholders suggested that some of the advertising provisions in the IGA are ambiguous. The Joint Select Committee on Gambling Reform (Joint Select Committee) recommended that these ambiguities be addressed.

The promotion of permitted services is being addressed via the Australian Government's initiative regarding in-program commentary and the promotion of live odds. On 29 June 2012 the Commonwealth announced that it secured the agreement of commercial and subscription broadcasters to reduce and control the promotion of live odds during sports broadcasts. Broadcasters agreed to amend their existing codes of practice to restrict live odds promotion, including by banning sporting commentators from mentioning live odds and banning all live odds promotion during play. Code amendments based on the government's agreed principles are to be developed by broadcasters, in consultation with the ACMA, and are expected to be registered by the end 2012³.

With respect to advertising of prohibited services, some adjustments and clarification of the relevant IGA provisions is warranted.

Recommendation 16: The advertising provisions of the IGA should include civil penalties (including pecuniary penalties) in addition to the existing criminal provisions under the IGA, as part of the range of penalties available under Part 7A of the IGA. The civil penalties should be administered by the ACMA. If an advertiser fails to comply with these civil penalty provisions, the ACMA should be able to apply to the Federal Court for injunctive relief in accordance with the proposed express injunctive relief provision, outlined above. This would provide clarity and certainty for the ACMA in exercising its powers.

Recommendation 17: That amendments be made to the IGA to clarify that the defendant has the burden of proof in relation to a defence or exemption to the advertising offence provisions.

Recommendation 18: That the Australian licensed online gambling industry establish an industry code of conduct to ensure such advertising is not contrary to community standards and expectations.

Recommendation 19: The definition of an 'accidental or incidental' advertisement as used in section 61ED of the IGA should be clarified to permit the broadcast of events taking place outside of Australia where the broadcaster has not added the writing, still or moving picture, sign, symbol or other visual image or audible message and does not receive any direct or indirect benefit for

³ Media Release, 'Government achieves agreement to reduce the promotion of live odds in sports broadcasts', 29 June 2012. Retrieved on 2 July 2012 from www.minister.dbcde.gov.au/media/media_releases/2012/106

the in-broadcast advertising in addition to any direct or indirect benefit that the person receives from broadcasting the event.

Recommendation 20: Part 7A of the IGA should be amended to put beyond doubt that advertisements for free-play sites that are associated with prohibited ‘for money’ sites are prohibited as they are promoting the prohibited service.

Recommendation 21: The strengthened regulatory framework for the prohibition against the advertising of prohibited interactive gambling services, as provided by the recommendations in this chapter, should continue to operate at the federal level and be administered by the ACMA.

Online gaming

The provision of all types of online casino-style gaming to Australians is prohibited by the IGA, irrespective of the relative risk to problem gambling of different types of online gaming. There may be around 2200 sites that offer online gaming services to Australians in contravention of the IGA. Many of these sites would not include harm minimisation or consumer protection measures of a standard that would be considered acceptable in Australia. As these services are hosted overseas, often in countries where they are both legal and the source of substantial tax revenue, enforcement of Australia’s online gaming regulatory framework faces significant challenges from an investigative and prosecutorial perspective.

Although online gaming services have been prohibited by the IGA for over 10 years, online gaming is very popular in Australia, particularly amongst younger Australians. One estimate suggests that of the \$1 billion in online gambling that Australians lose to overseas providers, the vast bulk of this would relate to online gaming. It is likely that Australians will continue to use online gaming services in growing numbers, possibly associated with a relative decline in such gaming at bricks and mortar gaming providers. It is notable that while the US has had an even stronger prohibition of online gambling, the online gambling market in the US is estimated at over \$92 billion per annum with around 7 million online gamblers. It is also notable that in the United Kingdom (UK), where services are permitted and regulated, the level of participation is similar in proportion to that of the US⁴.

The Joint Select Committee considered the issue of prohibition versus regulated access to online gaming in some detail. It reflected on the Productivity Commission’s recommendation to allow regulated online poker card playing (a subset of online gaming) subject to very strong harm minimisation and probity requirements as a better means of protecting the many Australians who use such services from overseas (that is, prohibited) websites. The Productivity Commission recommendation is in line with trends towards regulated access, particularly in Europe.

The Joint Select Committee identified a range of arguments both for and against prohibition/regulated access. While noting the IGA does not currently distinguish between online

4 Productivity Commission, Inquiry Report on Gambling (2010), p. 15.16. Retrieved on 20 February 2012 from www.pc.gov.au/_data/assets/pdf_file/0004/95701/18-chapter15.pdf

poker card playing and other forms of online gaming, the majority of the committee supported 'a cautious approach to regulation and does not support online poker being excluded from the IGA (that is, removal of the prohibition)'. In his submission to the interim report of the report, Senator Nick Xenophon warns of possible parallels between the opening-up of access to EGMs in the early 1990's and allowing regulated provision of online gaming⁵. The chair of the committee (Mr Andrew Wilkie MP), however, supported the Productivity Commission recommendation for regulated access to online poker card playing.

Addressing the current situation where the law prohibits the provision of specified online gaming services to Australians, yet a large and growing number of Australians are using these services, will require a multi-pronged approach including:

- appropriately targeted enforcement measures against online gaming service providers that remain outside any regulated arrangement
- education/awareness measures that better alert Australians to the risks of using unregulated service providers.

However, unless Australians also have access to regulated online gaming services, at least to gaming service types that are less risky, they will continue to seek out ways of accessing unregulated services in growing numbers. From a problem gambling perspective, if regulated access to online poker card playing is to be permitted, the approach would need to ensure that:

- the overall level of problem gambling amongst Australians that use online gaming services would not grow any more rapidly than it is already and ideally is reduced
- online gaming service providers that are most frequently used by Australians have sufficient incentive to become licensed in Australia even though they would need to accept stronger harm minimisation and consumer protection measures—a key to this would be the enforcement and prevention measures mentioned above and the competitiveness of the taxation regime that is applied
- Australians that currently use online gaming services switch to mainly using those that are licensed. There is evidence from France and Denmark that a regulated approach to low risk online gaming services can be effective in encouraging consumers to switch to a regulated environment.

In making its recommendation regarding regulated access, the Productivity Commission stressed the difference between online poker card playing and other forms of online gaming (for example online slot machines) noting that while all types of gambling carry some degree of risk, online poker card playing involves relatively lesser risk because:

- it has a different character to EGMs
- it is partly a game of skill

⁵ Senator Nick Xenophon, Submission on the interim report of the IGA review, pp 1-2.

- there is no evidence players experience the trance like states (at least to the same degree) that occur when playing EGMs
- there is a social dimension in that you are playing against other people so it is very interactive
- other online games can be played much more quickly and the stakeholder for other games is the casino
- the ground rules, with players competing for a pot of money to which they contribute, limit losses.

In responding to the interim report of the review, the Australian Psychological Society stated that it:

...endorses the findings and recommendations of the two Productivity Commission Reports into Gambling (1999, 2010) in relation to Online Gaming and the Interactive Gambling Act and in particular urges the government to take a gradual, staged approach to regulation that starts with relatively 'safe' forms of online gambling, followed by a rigorous, independent evaluation so consumer protection mechanisms can be adequately established before regulation is more widely implemented⁶.

Discussions with researchers and other stakeholders during the review made a further distinction between what are known as online poker cash games and online poker tournaments. The key differences between the two are that in an online poker tournament:

- the objective is as much to win the tournament as it is to win money
- the money staked at the start of the tournament is strictly set and cannot be added to for that tournament.

While it is possible for a person to be playing in many tournaments at the same time, the above factors suggest that online poker tournaments may have lesser problem gambling risk characteristics than online poker cash games.

In her submission on the interim report of the review, Dr Sally Gainsbury states that 'due to the fixed costs of tournament poker, this type of online poker appears to have relatively low likelihood of leading to gambling problems'⁷.

Recommendation 22: The IGA should be amended (subject to a sunset clause) to enable and encourage (currently prohibited) online gaming sites (as well as currently licensed sites that prevent Australians from accessing their online poker tournaments) to become licensed in Australia on condition that they:

- **cease offering higher-risk online gaming services to Australians and only offer online tournament poker (that is, the lowest risk type of online gaming)**

⁶ Australian Psychological Society, Submission on the interim report of the IGA review, p. 2.

⁷ Dr Sally Gainsbury, Submission on the interim report of the IGA review, p. 4.

- adopt the harm minimisation and consumer protection measures in the proposed national standard specific to regulated access to online tournament poker.

Recommendation 23: To test that such an approach would be effective in reducing problem gambling risks, this amendment to the IGA should be introduced on the basis of a five-year trial where:

- there is a minimum break in play for consumers after they have completed a tournament and have been playing for a defined period (subject to completion of any other tournaments they may be participating in at that time)
- the return to players from each tournament should be transparent to players before they enter the tournament
- no television advertising of these services should be permitted other than on programs that broadcast poker tournaments; all other types of advertising should be permitted subject to the standard restrictions
- industry makes an appropriate contribution, linked to the level of participation in this form of gambling by each provider, to funding support services for problem gamblers.

Recommendation 24: This trial should not start before the proposed national minimum standard for harm minimisation and consumer protection (as applicable to online poker tournaments) has been adopted and should only continue after its five-year sunset clause if recommended by a committee of eminent Australians and consideration by parliament. Enforcement and prevention measures in Chapter 4 should be timed to commence in conjunction with the trial.

Recommendation 25: The department, the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) and the Treasury should consult with states and territories, industry and leading Australian gambling researchers on the design and implementation of governance arrangements for the pilot, including more effective data collection to enable monitoring of the trial.

Online wagering

The IGA prohibits ‘in-play’ or ‘in-the-run’ sports wagering using the internet but permits this type of wagering when it is undertaken using a telephone. The original objective of this limitation was to reduce the risk to problem gamblers, particularly where this form of gambling has the characteristics of the highest risk form of gambling (that is, those that involve very short-term and repetitive betting similar to EGMs). More recently, this form of gambling has raised issues regarding the integrity of sports events.

There are three types of in-play betting that are relevant:

- betting on the final outcome of an event
- betting on particular contingencies such as who will score the next goal

- betting on the outcome of the next ball in cricket or the next point in tennis (that is, micro-betting).

The Joint Select Committee recommended that, notwithstanding the argument by some that banning such betting on the internet whilst permitting it via the telephone is becoming ‘obsolete and inconsistent’, the current prohibition on in-play betting should remain in place. But the committee also suggested that an alternative to the current ban that could be investigated might be to relax the ban on in-play betting online by allowing simple bet types such as which team will win a match, but continuing to restrict in-play betting on micro-events or discrete contingencies within an event. There appears to be some support for this approach amongst industry stakeholders and sports bodies.

Also relevant in this context are recommendations of the national policy on match fixing in sport where the intention is to give national sports bodies greater powers to limit the kinds of betting that can take place on their sports.

Diagram 2 provides an outline of the current and proposed approach to in-play betting that:

- achieves platform neutrality, noting that different rules for different platforms are unsustainable in the long run and are confusing for consumers
- enables national sports bodies to have a central role in ensuring only betting that minimises risk to the integrity of sports is permitted
- bans all types of micro-betting because this type of betting has the characteristics that pose the greatest risks to problem gamblers.

Diagram 2: Current and proposed approach to online wagering

Current and Proposed Approach to Online Wagering

Types of wagering		Before start of event		After start of event		
		Current	Recommended	Current	Recommended	
Horse racing	At physical venues (subject to State law)	Permitted	Permitted	Permitted	Permitted	Permitted
	On the telephone	Permitted	Permitted	Permitted	Permitted	
	On the internet	Permitted	Permitted	Permitted	Permitted	
Final outcome of sports events	At physical venues (subject to State law)	Permitted	Permitted	Permitted	Permitted	Permitted if authorised by state/territory regulatory authority and the relevant sports controlling body
	On the telephone	Permitted	Permitted	Permitted	Permitted	
	On the internet	Permitted	Permitted	Prohibited	Permitted	
Exotic bets (e.g. who scores first goal)	At physical venues (subject to State law)	Permitted	Permitted	Permitted	Permitted	Prohibited
	On the telephone	Permitted	Permitted	Permitted	Permitted	
	On the internet	Permitted	Permitted	Prohibited	Permitted	
Micro-bets	At physical venues (subject to State law)	N/A	N/A	Permitted	Prohibited	* Requires the agreement of the states
	On the telephone	N/A	N/A	Permitted	Prohibited	
	On the internet	N/A	N/A	Prohibited	Prohibited	

Recommendation 26: Because of the greater harm associated with micro-betting from a problem gambling perspective, micro-betting should be prohibited irrespective of the electronic medium (that is, telephone, internet, etc.) by which the bets are placed. This ban should also apply to wagering services provided through other devices and technologies such as smartphone applications and interactive television (that is, be platform neutral).

For the purpose of this recommendation, the following definition of micro-betting should be adopted:

Micro-betting involves the placement of bets having the following characteristics and circumstances:

- the placing, making, receiving or the acceptance of bets on particular events occurs during a session of a match or game
- the betting opportunity is repetitive, of a high frequency and is part of a structured component of the match or game (for example, ball-by-ball betting in a game of cricket; point-by-point betting in tennis)
- a bet is placed on one of a limited number of outcomes, although the number of possible outcomes may be more than two (for example, whether the next serve will be a fault; whether the next ball will be a no ball)
- the time between placing a bet and knowing the outcome is very short (usually less than five minutes, excepting appeals, intervals and interruptions).

The minister responsible for administering the IGA should be given the power to make regulations specifying whether a particular bet type is or is not a micro-bet.

Recommendation 27: State/territory governments should also prohibit micro-betting at all physical outlets.

Recommendation 28: The IGA be amended to dovetail its provisions regarding sports wagering with the provisions being developed by the Minister for Sport to deal with integrity in sports and match fixing:

- sports betting, irrespective of the electronic medium by which the bets are placed (that is platform neutrality) or whether they are pre-event or after the event has started, be permitted only where they have been authorised by the relevant state/territory regulatory authority and, the relevant national sports controlling body where one exists
- where a national sports controlling body does not exist, betting on that sports event be permitted only where it has been authorised by both the state/territory regulatory authority licensing the wagering provider and the relevant state/territory regulatory authority where the event is to take place
- for overseas-based sporting events the relevant governing body is the Australian state/territory regulatory authority in consultation with, where appropriate, the relevant Australian sports governing body for that sport.

Recommendation 29: The enhanced prevention and enforcement measures outlined in Chapter 4 should also apply to those overseas-based wagering providers that are not licensed in Australia and do not comply with the requirements outlined in Recommendations 26 and 28.

Recommendations 26 and 28 only be implemented after the national standard for harm minimisation and consumer protection at Recommendations 1-3 have been adopted as it relates to online wagering.

Other recommendations

Recommendation 30: Popular social media services, mobile content providers, console providers and online game developers closely monitor the impact of their user policies regarding the provision of online gambling services (both licensed and unlicensed) as well as gambling-style services that are popular with children to ensure the implementation of these policies aligns with Australian laws and community expectations. In particular, these providers should closely monitor gambling-style services to ensure that they are not inappropriately targeting younger children or that they possess simulated payout ratios that differ significantly from actual gambling services as a means of misleading children about their prospects for success with real gambling services.

Recommendation 31: In addition to Recommendation 30, and subject to the outcome of proposed Gambling Research Australia (GRA) research in this area, the department should consult with gambling regulators in like-minded countries regarding potential measures to address the access and marketing of online gambling-style services to children.

Recommendation 32: That the treatment of fantasy sports under the IGA be the subject of further consultation with the Coalition of Major Professional and Participation Sports (COMPPS), state and territory governments, and the promoters of fantasy sports competitions.

1. Introduction

Overview of the IGA

The IGA aims to minimise the scope for problem gambling online among Australians by limiting the provision of online gambling services to Australians through interactive technologies such as the internet⁸.

Under the IGA, it is an offence to provide certain interactive gambling services to customers physically located in Australia. This offence, which carries a maximum penalty of \$220 000 per day for individuals and \$1.1 million per day for corporations, applies to all interactive gambling service providers, whether based in Australia or offshore, and whether Australian or foreign-owned. Prohibited interactive services typically provide customers with access, via the internet, to games of chance, or games of mixed chance and skill—for example, online card games such as poker, or online casino-type games such as roulette and poker machines (slot machines). The IGA also makes it an offence to advertise prohibited interactive gambling services in Australia.

However, the IGA does not make it an offence for Australian customers to access and use prohibited interactive gambling services. Also, the IGA does not prohibit Australian-based companies providing prohibited services to people in other countries (although it has the capacity to do so with the IGA making it an offence to provide Australian-based interactive gambling services to customers in countries which the minister has declared ‘designated countries’).

The offences of providing and advertising interactive gambling services do not apply to all gambling services. For example, the following gambling services are not prohibited under the IGA:

- telephone betting services
- certain wagering services, including betting on a horse race, harness race, greyhound race or sporting event, or any other event, series of events or contingency, where the bet is placed prior to the event commencing
- most forms of lottery services, except for online instant lotteries such as online scratch lotteries
- gaming services provided to customers who are in a public place (for example, poker machines in a club or casino)
- services that have a designated broadcasting or datacasting link, including:
 - services expressly and exclusively associated with a particular program or a particular series of programs broadcast on a broadcasting service (for example, a television game show that involves viewers voting for prizes) and

⁸ Explanatory Memorandum—Interactive Gambling Bill 2001 (Cth). Retrieved on 17 July 2011 from http://archive.dcita.gov.au/__data/assets/pdf_file/0016/11536/Interactive_Gambling_Bill_2001_Revised_Explanatory_Memorandum.pdf

- services expressly and exclusively associated with particular content, or a particular series of content, transmitted on a datacasting service (for example, promotions or games conducted over the internet that involve the purchase of a product)
- services to the extent to which they relate to the entering into of contracts that are financial products within the meaning of Chapter 7 of the *Corporations Act 2001* (for example, futures contracts that involve speculation on whether the price of a share may rise or fall)
- any service declared exempt by the minister.

Agencies responsible for the administration of (and investigation in relation to) the current IGA enforcement provisions have taken a complaints-driven approach, whereby the department, police and the ACMA act upon information that is provided to them. The IGA review recommendations are not proposed to change the complaints-based investigation system.

Productivity Commission Inquiry

The Productivity Commission's Inquiry Report on Gambling, released in June 2010, identified a growing prevalence of Australians using online casino-style gambling services⁹. The report concluded that the IGA was not well designed to prevent this activity. The report noted that, while the IGA has probably limited the growth of online gambling in Australia, it has forced consumers to use overseas-based services which do not possess the harm-minimisation and probity measures available to users of legal Australian sports-wagering services. The report also suggested that the prohibition would be less effective as consumers become more comfortable in accessing these prohibited services and as operators over time develop reputations for safety and security.

The Productivity Commission also noted that, due to Australia's limited ability to enforce the IGA on the vast majority of prohibited gambling services based overseas, 'the real effect of the IGA has been to prevent companies located in Australia from selling online gaming services to Australians'¹⁰.

COAG Select Council on Gambling Reform

The COAG Select Council on Gambling Reform was established to develop a national response to the findings and recommendations of the Productivity Commission Inquiry Report on Gambling. The issues and impacts associated with online gambling are considered as part of the COAG Select Committee on Gambling Reform's forward work program.

Following a meeting of the COAG Select Committee on Gambling Reform on 27 May 2011, it was announced that the department would undertake a review of the IGA that would take into account the difficulties of enforcing the existing prohibition on certain types of online gambling and the

⁹ Productivity Commission, Inquiry Report on Gambling (2010). Retrieved on 2 August 2011 from <http://pc.gov.au/projects/inquiry/gambling-2009/report>

¹⁰ Productivity Commission, Inquiry Report on Gambling (2010), p. 15.2. Retrieved on 14 December 2011 from www.pc.gov.au/__data/assets/pdf_file/0004/95701/18-chapter15.pdf

growing number of Australian consumers gambling online in an unregulated environment. It would also include further consideration of international regulatory approaches to online gambling and their potential applicability to the Australian context, and examine the ability to improve harm minimisation measures for online gambling services.

Report of the Joint Select Committee on Gambling Reform

The Joint Select Committee on Gambling Reform (Joint Select Committee) completed an inquiry into the prevalence of interactive and online gambling and gambling advertising on 8 December 2011¹¹.

The committee made a number of recommendations relating to issues discussed in this report¹², including (but not limited to):

- the need for further data on online gambling to support policy (including regarding online in-play betting, and the potential effects of gambling advertising on children)
- clarification of certain aspects of the IGA related to the provision and advertising of prohibited gambling services
- the need for greater education and awareness on the regulation and risks of online gambling
- nationally-consistent consumer protection standards and responsible gambling messages
- amendment of the *Broadcasting Services Act 1992* to prohibit gambling advertising during times when children are likely to be watching.

The review of the IGA has taken the relevant findings of the committee into consideration for this report.

Commonwealth gambling reforms

The review of the IGA forms part of the Commonwealth's broader gambling reforms including work around the regulation of EGMs, the reduction and control of the promotion of live odds during sports coverage, and the prevention of gambling fraud or corruption in sport. These issues are interrelated with aspects of this review, but as they are not directly within the scope of the review will not be addressed in detail.

On 21 January 2012, the Commonwealth announced, amongst other measures, that it would work to:

- ban the promotion of live odds during sports coverage
- extend pre-commitment to online betting services

¹¹ Media release, Joint Select Committee on Gambling Reform, 8 December 2011. Retrieved on 12 December 2011 from www.aph.gov.au/Parliamentary_Business/Committees/Senate/Committees?url=gamblingreform_ctte/completed_inquiries/2010-13/interactive_online_gambling_advertising/media/081211.pdf

¹² *Ibid.*

- crack down on online sports betting companies offering credit and introduce stricter limits on betting inducements
- increase the powers of the ACMA to enforce these new rules.¹³

On 29 June 2012, the Commonwealth announced that it secured the agreement of commercial and subscription broadcasters to reduce and control the promotion of live odds during sports broadcasts. Broadcasters agreed to amend their existing codes of practice to restrict live odds promotion, including by banning sporting commentators from mentioning live odds and banning all live odds promotion during play¹⁴. Code amendments based on the Australian Government's agreed principles have been prepared by broadcasters in consultation with the ACMA, and are expected to be finalised and registered shortly.

Terms of reference

On 19 August 2011, the Minister for Broadband, Communications and the Digital Economy, Senator Stephen Conroy, released the terms of reference for the review:

Having regard to the issues facing the enforcement of the *Interactive Gambling Act 2001* (the Act), the Department of Broadband, Communications and the Digital Economy is to undertake a review of the operation of the Act, with reference to:

- the growth of online gambling services (both regulated and unregulated) in Australia and overseas, and the risk of this to the incidence of problem gambling
- the development of new technologies, including smartphones, and the convergence of existing technologies that may accelerate the current trend towards the take up of online gambling services in Australia and overseas
- the adequacy of the existing provisions of the Act, including technical, operational and enforcement issues relating to the prohibition of interactive gambling services and the advertising of such services
- consideration, where appropriate, of technology and platform neutrality, including current distinctions relating to 'betting in-the-run' and micro-betting
- international regulatory approaches to online gambling services including consideration of their effectiveness and cost
- examination of the social, tax, jurisdictional and enforcement aspects of regulated access to interactive gambling services currently prohibited under the Act
- harm minimisation strategies for online gambling

¹³ Media release, Tackling problem gambling in Australia, 21 January 2012. Retrieved on 24 January 2012 from www.pm.gov.au/press-office/tackling-problem-gambling-australia

¹⁴ Media Release, 'Government achieves agreement to reduce the promotion of live odds in sports broadcasts', 29 June 2012. Retrieved on 2 July 2012 from www.minister.dbcde.gov.au/media/media_releases/2012/106

- the findings of the Joint Select Committee on Gambling Reform inquiry into interactive and online gambling and gambling advertising, and the Productivity Commission Inquiry Report on Gambling (2010)
- any other relevant matters.

In undertaking the review the department will consult with key stakeholders, states and territories, and the broader Australian community. The department will commission additional research as needed.

The department is to provide a report of its findings to the Minister for Broadband, Communications and the Digital Economy by the first half of 2012, subject to the Joint Select Committee reporting by the end of 2011.

Undertaking the review

Submissions to the review

On 24 August 2011, the department released a discussion paper for the review which sought to promote discussion of the issues relevant to the regulation of interactive gambling in Australia. The paper was structured to outline and briefly discuss the key issues examined in the review and included a number of broad questions relevant to these issues.

The department sought submissions providing comment on the discussion paper from 24 August to 21 October 2011. Submissions received were published on the department's website (subject to the submitter's consent)¹⁵. A list of public submissions received is provided at **Appendix B**.

The department used responses to the discussion paper to assess the policy objectives of the IGA and the roles that government, industry and consumers play in this area. The views expressed in these responses are used throughout this report.

On 29 May 2012, the department released an interim report of the review for public comment.

The department sought submissions providing comment on the interim report from 29 May to 25 June 2012. Submissions received were published on the department's website (subject to the submitter's consent). A list of public submissions received is provided at **Appendix B**.

¹⁵ Submissions to the review are available at www.dbcde.gov.au/broadband/online_gambling/2011_review_of_the_interactive_gambling_act_2001/submissions_received_for_the_iga_review

Consultations with gambling researchers

In August 2011, the department undertook consultation with key Australian gambling researchers to determine the evidence base required to undertake the review and key issues involved. These consultations enabled the department to identify evidence gaps, areas needing further research and an understanding of the research that could reasonably be undertaken within the review's timeframe.

Stakeholder workshops

Due to the wide range of stakeholder groups with an interest in this issue, the department held a series of workshop discussions with stakeholder groups to discuss the variety of issues raised through the submission process. The department met with state and territory government officials, broadcasting and content providers, community and counselling organisations, sports administrators, and with gambling providers. The department also met separately with representatives from the horse racing, clubs, and lottery industries. These discussions have been used to inform the issues discussed throughout this report.

Consultations with financial regulators and institutions

The department also consulted with financial regulators and a range of financial institutions to discuss the potential use of restrictions on financial transactions to prohibited online gambling services. These discussions provided information on the feasibility of such measures with regard to the Australian context. These measures are discussed in Chapter 4.

Commissioned research

The department commissioned several projects to provide an information base for the review. Research regarding access to online gambling and in-the-run betting was undertaken by the Allen Consulting Group (see **Appendix C** for research outline), including a review of the available literature on the prevalence of online gambling, the prevalence of online problem gambling and the risk factors associated with online gambling. An estimate of the potential size of an Australian online gaming service industry was prepared by KPMG (see **Appendix D** for research outline). Enex TestLab was also commissioned to provide technical advice on consumer warnings for prohibited gambling services (see **Appendix E** for project outline). The findings of these projects are used in the report.

2. Prevalence of online gambling

The prevalence of online gambling in Australia has grown significantly in recent years, in line with the increasing accessibility of the internet. In mid-2011 there were over 10.9 million internet subscriptions, compared with 3.8 million internet subscriptions in 2000 at around the time the IGA was introduced into parliament¹⁶. The increased use of this technology is changing the way Australians deal with many issues. The way they access gambling services is no different, with a steady trend away from traditional land-based gambling to gambling involving modern communication technology. For example, while the overall level of thoroughbred wagering in Australia has increased by approximately \$4.87 billion from 2000–01 to 2010–11, the biggest shift within forms of thoroughbred wagering in Australia has been the increase in TAB phone and internet betting, which more than doubled during this period, from \$1.07 billion in 2000–01 to \$2.47 billion in 2010–11, and increase in phone and internet betting for bookmakers which increased sixfold (from \$518 million in 2000–01 to \$3.6 billion in 2010–11). This is in stark contrast to many other forms of thoroughbred wagering that experienced a decline over this period, including bookmakers' face-to-face transactions and TAB retail outlets¹⁷.

Measurement of prevalence

There is difficulty in capturing the amount spent by Australians on online gambling since many of the services provided are prohibited and not captured by the tax system¹⁸. Under the IGA some forms of online wagering are allowed, while other forms of gambling are prohibited (for example, online casino-style gaming). The increasing number of emerging technologies and devices that enable access to online gambling, including smartphones and tablets, also makes measuring prevalence more difficult. As there is no national measure of online gambling participation, along with the fact that many Australians gamble on overseas websites, it is difficult to determine the precise number of Australians participating in online gambling. The Australian Psychological Society notes that:

This literature should be interpreted with caution as interactive gambling is a relatively new and under-researched area, with many studies adopting a 'loose' definition of 'online gambler', and the direction of causality remains unknown.¹⁹

¹⁶ Australian Bureau of Statistics, Internet Activity, Australia, June 2011, Catalogue No 8153.0. Retrieved from www.abs.gov.au/ausstats/abs@.nsf/mf/8153.0 See also Australian Bureau of Statistics, Internet Activity, Australia, September 2000, Catalogue No 8153.0. Retrieved from [www.ausstats.abs.gov.au/Ausstats/subscriber.nsf/0/B06E4FD4D75D2AD9CA256A15007E5EDC/\\$File/81530_sep%202000.pdf](http://www.ausstats.abs.gov.au/Ausstats/subscriber.nsf/0/B06E4FD4D75D2AD9CA256A15007E5EDC/$File/81530_sep%202000.pdf)

¹⁷ Australian Racing Board, 2011 Australian Racing Fact Book: A guide to the racing industry, p. 65. Retrieved from www.australianracingboard.com.au/uploadimg/factbook2011.pdf

¹⁸ Productivity Commission, Inquiry Report on Gambling (2010), p. 2.4. Retrieved on 20 February 2012 from www.pc.gov.au/__data/assets/pdf_file/0009/95688/05-chapter2.pdf

¹⁹ Australian Psychological Society, Submission on the interim report of the IGA review, p. 5.

KPMG, in its report, noted that little empirical research has been undertaken into online gambling in Australia and that there have been varying approaches to the issue at a global level. It also identified that there were further difficulties in the fact that online gamblers are often a hidden and a difficult-to-contact population²⁰.

The 2009 Allen Consulting Group review of online gambling, commissioned by FaHCSIA, found that the prevalence rates for Australian adults ranged from 0.2 to 2.7 per cent²¹. In its December 2011 report, the Joint Select Committee discussed various reported Australian prevalence rates. These included the 2010 Productivity Commission report on gambling that found the Australian prevalence rate was between 1 and 4 per cent, although some research indicates it may be as high as 30% of the adult population²². The Joint Select Committee ultimately concluded that the rates are difficult to determine, but that it is likely the prevalence rate is growing.

By comparison, the UK appears to have a somewhat higher prevalence of internet gambling with approximately 6.9 per cent in 2008 and a prevalence of 8.8 per cent for interactive gambling (that is, internet and telephone)²³. Online gambling rates for other overseas jurisdictions range from 1.3 per cent in New Zealand to 6.5 per cent in Norway²⁴. In Canada, approximately 2.1 per cent of the population uses online gambling services, with games of skill (such as poker) being the service utilised by the majority of Canadian online gamblers (59.7 per cent), followed by lotteries (23 per cent), sports wagering (16.7 per cent) and online casinos (7.6 per cent)²⁵.

At a global level, Global and Betting Gaming Consultants estimate that online, mobile and telephone gambling yielded approximately AU\$30.7 billion in 2010²⁶. In the same year, it was estimated that over \$968 million was spent by Australians on prohibited online gambling sites (compared with an estimated \$800 million in 2008²⁷), in addition to the \$600 million per annum spent on online betting alone²⁸. The total value of online gambling in Australia in 2010 could, therefore, be as high as

²⁰ KPMG, *Estimating the Potential Size of an Online Gaming Market in Australia* (2012), p. 13.

²¹ Department of Families, Housing, Community Services and Indigenous Affairs, *Review of current and future trends in interactive gambling activity and regulation* (2009), p. vii.

²² Dr Sally Gainsbury, *Submission on the interim report of the IGA review*, p. 5.

²³ Associate Professor RT Wood and Professor RJ Williams, *Internet Gambling: Prevalence, Patterns, Problems, and Policy Options—Final Report* prepared for the Ontario Problem Gambling Research Centre (2009), p. 83. Retrieved from www.uleth.ca/dspace/bitstream/handle/10133/693/2009-InternetPPPP-OPGRC.pdf?sequence=4

²⁴ Parliamentary Joint Select Committee on Gambling Reform, *Second report—Interactive and online gambling and gambling advertising; Interactive Gambling and Broadcasting Amendment (Online Transactions and Other Measures) Bill 2011*, pp 12–13.

²⁵ Associate Professor RT Wood and Professor RJ Williams, *Internet Gambling: Prevalence, Patterns, Problems, and Policy Options—Final Report* prepared for the Ontario Problem Gambling Research Centre (2009). Retrieved from www.uleth.ca/dspace/bitstream/handle/10133/693/2009-InternetPPPP-OPGRC.pdf?sequence=4

²⁶ KPMG, *Estimating the Potential Size of an Online Gaming Market in Australia* (2012), p. 19.

²⁷ Productivity Commission, *Inquiry Report on Gambling* (2010), p. 2.36. Retrieved from www.pc.gov.au/_data/assets/pdf_file/0009/95688/05-chapter2.pdf

²⁸ Dr Sally Gainsbury and Professor Alex Blaszczynski, *Submission to the Review of the IGA*, p. 7. See also Dr Sally Gainsbury and Professor Alex Blaszczynski, *An Investigation into Internet Gambling in Australia* (2011).

\$1.6 billion²⁹. This estimate aligns with that provided by bet365 in its submission on the interim report for the review, where they estimate that Australians are spending almost \$1.5 billion on online gambling; \$922 million with prohibited services based overseas (mainly in-play wagering, casino, poker and bingo) and \$574 million with Australian licensed services (mainly pre-game wagering, including horse racing)³⁰. In contrast, the proportion of Australian household expenditure on legal gambling (online and offline) in 2008–09 was approximately \$19 billion, or about 3.1 per cent of total household expenditure³¹.

Global Betting and Gaming Consultants found that since 2007 interactive gambling (including online, mobile and telephone services) has grown by 12 per cent per year, compared to a growth of 3 per cent for all gambling from 2007 to 2010. This trend is expected to continue. The interactive gambling market comprises of 7.7 per cent of the total global gambling market and this share is expected to increase to 8.9 per cent by 2013³². The Joint Select Committee noted that online gambling is a fast-growing industry with an expected global growth of 42 per cent from 2008 to 2012.

The Australian Racing Board (ARB) submission to the IGA review noted that, while phone betting is still twice the volume of online betting, the growth in online betting is much stronger. In 2006–07 online betting represented 10 per cent of wagering on thoroughbred racing, which was a threefold increase in five years³³. The ARB also cited a European Union review that found internet gambling is expected to grow rapidly as an increasing percentage of the population access technologies, populations become more familiar with playing electronic games, and as technologies become increasingly integrated, mobile and user-friendly³⁴.

In their joint supplementary submission to the review, Sportsbet Pty Ltd and Sportingbet Group Australia note H2 Gambling Capital's estimate that approximately 14 per cent of Australian expenditure on online wagering goes to unlicensed gambling providers based outside Australia, with the vast majority of this spend on online in-play betting as it cannot be offered by licensed Australian operators³⁵.

Gambling Research Australia (GRA) is a dedicated gambling research authority established by member jurisdictions of the Ministerial Council on Gambling (which reports to COAG). The GRA has commissioned a study by the Southern Cross University (SCU) Centre for Gambling Education and Research into the prevalence of interactive gambling in Australia³⁶. A separate study 'An

²⁹ KPMG, *Estimating the Potential Size of an Online Gaming Market in Australia* (2012), p. 32.

³⁰ bet365, *Submission on the interim report of the IGA review*, p. 2.

³¹ KPMG, *Estimating the Potential Size of an Online Gaming Market in Australia* (2012), p. 15.

³² KPMG, *Estimating the Potential Size of an Online Gaming Market in Australia* (2012), pp 20.

³³ Australian Racing Board, *Submission to the review of the IGA*, p. 8.

³⁴ *Ibid.*

³⁵ Sportsbet Pty Ltd and Sportingbet Group Australia, *Supplementary submission to the review of the IGA, Gambling and wagering market*, p. 1.

³⁶ 'Interactive Gambling', Centre for Gambling Education & Research, Southern Cross University. Retrieved from: http://cger.scu.edu.au/download.php?doc_id=10098&site_id=33&file_ext=.pdf

Investigation of Internet Gambling in Australia', also being undertaken by the Centre for Gambling Education and Research and funded by the Menzies Foundation, is expected to be complete over the next 30 months³⁷. In addition, there are five research priority themes agreed to by the Ministerial Council on Gambling for the GRA's 2009–14 research program, with one area of priority being the development of harm minimisation measures for online gambling.

Demographic profile of typical online gamblers

A recent study by the Centre for Gambling Education and Research found that online gamblers were more likely to be male and have a higher income than land-based gamblers³⁸. This is similar to findings from a Canadian study which found that international online gamblers are primarily male, employed with a household income of US\$60 000, of European ancestry, and aged around 45 years, with nearly half having completed some form of tertiary education and having high rates of substance use compared to the general population³⁹. The UK Gambling Commission has also found that nearly double the number of men use internet gambling in comparison to women⁴⁰.

The results of Roy Morgan research on gambler profiles for Australian adults undertaken between October 2009 and September 2011 appear to confirm some aspects of the findings from the SCU study and the Canadian study with respect to online gamblers. The Roy Morgan research looked at gambling attitudes, frequency of bets, and expenditure. The types of gambling categories involved in the study included interactive gambling (telephone and online), online gambling (wagering and gaming) and also land-based gambling. Findings from this research indicated that people who participate in online gaming (that is, poker, casino-style games) were on average younger, less educated and earned a lower income in comparison to other types of gamblers. Online gamblers (wagering and gaming) were more likely to be living in rental properties compared to other gamblers. Across all forms of online and telephone gambling the following characteristics were common:

- Australian born
- married or in a de-facto relationship with children
- employed full-time in a managerial or professional occupation
- considered large spenders in terms of discretionary spending.

The research also indicated that online and telephone gamblers generally decided on the amounts they were prepared to spend prior to participating (41.8–48 per cent), with over half reporting that

³⁷ Southern Cross University media release, 'Study finds popularity of internet gambling on the rise', 18 January 2012. Retrieved from www.scu.edu.au/news/media.php?item_id=3561&action=show_item&type=M

³⁸ *Ibid.*

³⁹ Associate Professor RT Wood and Professor RJ Williams, *Internet Gambling: Prevalence, Patterns, Problems, and Policy Options—Final Report* prepared for the Ontario Problem Gambling Research Centre (2009), pp 8–9. Retrieved from www.uleth.ca/dspace/bitstream/handle/10133/693/2009-InternetPPPP-OPGRC.pdf?sequence=4

⁴⁰ *Ibid.*, p. 86.

they played to win. This subset of the research was also found to bet more frequently than other gamblers, with 30 per cent gambling more than three times a week⁴¹.

The average age of European sports bettors was found to be 31 by Labrie (et al.) in 2007, compared with a Swedish study which found online poker players were largely aged in their twenties. A 2007 eCOGRA study⁴² found that the average age of online casino players is generally 46–55 and online poker players are usually male and aged between 26–35 years. Studies in the US have also shown that the average online gambler is aged in the 30s and has completed tertiary education⁴³.

A recent study of 6500 online gamblers by the SCU showed that half of the Australian participants had taken up internet gambling in the past six years. It is thought that the attraction of online gambling is the convenience and accessibility⁴⁴.

Prevalence of online problem gambling

Defining what comprises problem gambling can be challenging, given the impacts and indicators vary for each individual. In 2005, Dr Penny Neal, Dr Paul Delfabbro and Mr Michael O’Neil published what they considered to be a national definition being:

Problem gambling is characterised by difficulties in limiting money and/or time spent on gambling which leads to adverse consequences for the gambler, others or for the community⁴⁵.

There are several diagnostic tools used to assess problem gambling behaviour, including the Canadian Problem Gambling Index, the South Oak Gambling Screen, the Diagnostic and Statistical Manual of Mental Disorders, and the Victorian Gambling Screen. In using these diagnostic tools, it can be difficult to establish the prevalence of problem gambling due to exaggerated outcomes of many surveys (for example, participants providing false positives and negatives), the attribution of

⁴¹ Allen Consulting Group, Research for the review of the Interactive Gambling Act 2001 (2012), pp 35-38.

⁴² Jonathon Parke et al. (commissioned by eCOGRA), An Exploratory Investigation into the Attitudes and Behaviours of Internet Casino and Poker Players (2007).

⁴³ Associate Professor RT Wood and Professor RJ Williams, Internet Gambling: Prevalence, Patterns, Problems, and Policy Options—Final Report prepared for the Ontario Problem Gambling Research Centre (2009), pp 86-87. Retrieved from www.uleth.ca/dspace/bitstream/handle/10133/693/2009-InternetPPPP-OPGRC.pdf?sequence=4

⁴⁴ Suzanne Hill, ‘Online gaming the fastest growing form of gambling in Australia’, 18 January 2012, ABC News. Retrieved from www.abc.net.au/am/content/2012/s3410110.htm. See also Southern Cross University media release, ‘Study finds popularity of internet gambling on the rise’, 18 January 2012. Retrieved from www.scu.edu.au/news/media.php?item_id=3561&action=show_item&type=M

⁴⁵ Dr Penny Neal, Dr Paul Delfabbro and Mr Michael O’Neil, Problem Gambling and Harm: Towards a National Definition (2005). Retrieved from www.adelaide.edu.au/saces/gambling/publications/ProblemGamblingAndHarmTowardNationalDefinition.pdf

pre-existing problems such as mental health issues and the stigma associated with problem gambling⁴⁶.

From the Australian literature, it is unclear whether online gambling itself creates more problem gamblers or if it is simply more appealing to existing problem gamblers⁴⁷.

The Productivity Commission identified a growing prevalence of Australians using online casino-style gaming services, but found that while it could not determine definitively, the prevalence of problem gambling among adult Australians has probably declined since the 1990s⁴⁸. The Productivity Commission estimated that there were between 0.5 and 1.0 per cent of Australian adults with a significant gambling problem and a further 1.4 to 2.1 per cent of Australian adults that are at a moderate risk of problem gambling⁴⁹. Not surprisingly, this inquiry found that people who gambled more regularly were at greater risk of becoming a problem gambler and that participation in different forms of gambling have different levels of correlation with the likelihood of problem gambling. For example, several studies reviewed by the Productivity Commission found EGMs are more likely to be associated with problem gambling than casino table-games or lotteries⁵⁰.

The low prevalence of problem gambling associated with lotteries was highlighted in the Australian Lottery Bloc's submission to the IGA review:

The profile of lottery players has not changed significantly over the past decade, with players being generally representative of the adult population of Australia in terms of age distribution, income distribution, gender distribution and education level distribution.

Overall participation rates have remained consistently high ... while average national spend per capita on lottery products remains low at \$5.49 per week.

Despite being able to buy lottery entries online across most of the country for several years, the prevalence of problem gambling has not increased (in fact research shows it may have actually declined) thereby reinforcing the view that accessibility to lotteries on line does not lead to any discernible increase in problem gambling.⁵¹

The finding of relatively low rates of problem gambling in Australia by the Productivity Commission needs to be viewed in light of recent studies noted by the Joint Select Committee (including the 2010 British Prevalence Survey), which reported that rates of problem gambling in Australia (using

⁴⁶ Productivity Commission, Inquiry Report on Gambling (2010), p. 5.6. Retrieved from www.pc.gov.au/__data/assets/pdf_file/0003/95691/08-chapter5.pdf

⁴⁷ Dr Sally Gainsbury and Professor Alex Blaszczynski, Submission to Joint Select Committee on Gambling Reform, p. 6.

⁴⁸ Productivity Commission, Inquiry Report on Gambling (2010), p. 5.1. Retrieved from www.pc.gov.au/__data/assets/pdf_file/0003/95691/08-chapter5.pdf

⁴⁹ *Ibid.*

⁵⁰ Productivity Commission, Inquiry Report on Gambling (2010), p. 5.22–5.26. Retrieved from www.pc.gov.au/__data/assets/pdf_file/0003/95691/08-chapter5.pdf

⁵¹ Australian Lottery Blocs, Submission to the review of the IGA, p. 3.

the 2010 Productivity Commission figures) were still higher than that of countries such as Germany, Iceland, Norway, Canada New Zealand, Singapore, South Africa and Switzerland⁵². They also concluded that, although the evidence available on the prevalence of online gambling was mixed, it remains a cause for concern⁵³.

Research indicates that problem gambling in Australia is likely to affect men more than women⁵⁴. While a jurisdictional breakdown of problem gambling is difficult to undertake due to differences in survey methods used, the most recent available data suggests that Tasmania has the lowest prevalence of problem gamblers at 0.52 per cent and Victoria the highest at 0.7 per cent (both in 2007).

The 2011 SCU study of online gamblers found that 16 per cent of the 6500 participants were deemed to be problem gamblers, losing on average \$825 per month⁵⁵. When viewed with the findings of the Joint Select Committee, the SCU study indicates that Australian adults who gamble online are more likely to be at risk of low or moderate problem gambling, compared to land-based gamblers who were more likely to be classified as either non-problem or possible problem gamblers. The study also found that online problem gamblers were likely to be aged about 39 years, never married, unemployed or studying when compared to other internet gamblers. This cohort also used land-based gambling more than other online gamblers⁵⁶.

In its submission to the Joint Select Committee, the University of Sydney Gambling Treatment Clinic noted its observation of recent growth in problem gambling associated with sports betting:

... from representing less than 5% of our clients in the 2006-2007 financial year, problem gamblers with sports betting problems now represent 15-20% of new clients in the current financial year [2010-11]. Thus, whilst still representing a minority, reported problems with sports betting are rising, and rising rapidly⁵⁷.

However, in contrast, the profile of problem gamblers treated by the Flinders University School of Medicine showed that less than 1 per cent of problem gamblers treated said they had a problem

⁵² UK Gambling Commission, 2010 British Prevalence Study. Retrieved from www.gamblingcommission.gov.uk/PDF/British%20Gambling%20Prevalence%20Survey%202010.pdf

⁵³ Parliamentary Joint Select Committee on Gambling Reform, Second report—Interactive and online gambling and gambling advertising; Interactive Gambling and Broadcasting Amendment (Online Transactions and Other Measures) Bill 2011, p. 27.

⁵⁴ Associate Professor Delfabbro (commissioned by Gambling Research Australia), A Review of Australian Gambling Research (2008), pp 66–67. Retrieved from www.gamblingresearch.org.au/resources/45fa50dd-95ee-4829-9ab2-cfb7c5360a12/chapter+2.pdf

⁵⁵ Southern Cross University media release, 'Study finds popularity of internet gambling on the rise', 18 January 2012. Retrieved from www.scu.edu.au/news/media.php?item_id=3561&action=show_item&type=M

⁵⁶ Dr Sally Gainsbury, Professor Nerilee Hing, Professor Alex Blaszczynski and Dr Robert Wood, An investigation of Internet gambling in Australia (2011). Retrieved from http://cger.scu.edu.au/download.php?doc_id=11259&site_id=33&file_ext=.pdf

⁵⁷ University of Sydney Gambling Treatment Clinic, Submission to the Joint Select Committee on Gambling Reform, p. 2.

with online gambling, compared to 83.9 per cent with problem gambling due to poker machines. Professor Malcolm Battersby noted that any increase in sports betting and online gambling had not yet resulted in an increase of problem gamblers⁵⁸.

International research on the prevalence of problem gambling has provided a variety of results, but the general consensus is that those who use online gambling only may be more at risk of becoming a problem gambler than those who used land-based gambling only. This is also acknowledged in the submission to the IGA review by Dr Gainsbury and Professor Alex Blaszczynski⁵⁹. The 2011 SCU study, in which Dr Gainsbury and Professor Blaszczynski were also involved, found internet gamblers were also more likely to be involved in many types of gambling, including land-based gambling, and suggested online gambling may be a means of additional access. The privacy afforded by online gambling was also identified as a factor that enables problem gamblers to hide their habits. The researchers also looked at the convenience of online gambling and suggested that the internet was a facilitator for additional gambling⁶⁰.

A 2009 international survey by Associate Professor Wood and Professor Williams⁶¹ concluded that 16.6 per cent of people using a particular gambling website were moderate to severe problem gamblers, while finding only 5.7 per cent of people who gambled offline were severe to moderate problem gamblers. They found the prevalence of problem gamblers to be three to four times higher for internet gamblers compared to non-internet gamblers⁶². Similarly, a 2008 UK study by Griffith et al.⁶³ found that people who had gambled on the internet were far more likely to be problem gamblers (5 per cent) compared to those that had never used online gambling (0.5 per cent).

The international survey and the Canadian study conducted by Associate Professor Wood and Professor Williams showed that problem gamblers reported there was a specific type of gambling that contributed to their problems and, accordingly, the researchers drew the conclusion that internet gambling is not the cause of problem gambling, but that internet gamblers are usually heavy gamblers who had added internet gambling to their gambling pursuits. Approximately 9 per cent of all international internet problem gamblers had sought help for their problem, with the vast majority

⁵⁸ Miles Kemp, 'Gambling addicts prefer poker machines to online or sports betting', *Adelaidenow*, 11 July 2012, www.adelaidenow.com.au/gambling-addicts-prefer-poker-machines-to-online-or-sports-betting/story-e6frea6u-1226423849153

⁵⁹ Dr Sally Gainsbury and Professor Alex Blaszczynski, Submission to the review of the IGA, p. 4.

⁶⁰ Dr Sally Gainsbury, Professor Nerilee Hing, Professor Alex Blaszczynski and Dr Robert Wood, *An investigation of Internet gambling in Australia* (2011). Retrieved from http://cger.scu.edu.au/download.php?doc_id=11259&site_id=33&file_ext=.pdf

⁶¹ Productivity Commission, *Inquiry Report on Gambling* (2010), p. 15.11. Retrieved from www.pc.gov.au/__data/assets/pdf_file/0004/95701/18-chapter15.pdf

⁶² Associate Professor RT Wood and Professor RJ Williams, *Internet Gambling: Prevalence, Patterns, Problems, and Policy Options—Final Report* prepared for the Ontario Problem Gambling Research Centre (2009), p. 90. Retrieved from www.uleth.ca/dspace/bitstream/handle/10133/693/2009-InternetPPPP-OPGRC.pdf?sequence=4

⁶³ Productivity Commission, *Inquiry Report on Gambling* (2010), p. 15.12. Retrieved from www.pc.gov.au/__data/assets/pdf_file/0004/95701/18-chapter15.pdf

indicating they would prefer to seek face-to-face counselling assistance compared to internet-based counselling⁶⁴.

Risks and harms of online gambling

Many of the submissions to the review outlined what were perceived to be key risks associated with online gambling, and which may contribute to problem online gambling. In particular, the Australian Christian Lobby submission noted the ease of access, the use of credit cards, socially isolating environment, decreased ability for providers to monitor consumer behaviours, and risk to young people due to a lack of age verification measures and regulated advertising⁶⁵.

While all forms of gambling carry some form of risk, certain forms of online gambling may have a greater impact on problem gambling than others. For example, online slot machines are viewed as posing a greater risk for problem gambling, when compared with online wagering on the final outcome of an event, due to the rapid and repetitive nature of these services. The Productivity Commission have noted the different risk profiles of online poker compared with other online casino-style games⁶⁶, while Dr Gainsbury has also suggested that regulation should differentiate between the range of forms of online gambling as 'different gambling opportunities pose different risks to players'⁶⁷.

Problem gambling associated with online gambling may also be exacerbated by factors noted by Associate Professor William and Professor Woods including convenience, the comfort of being able to play at home, the anonymity that is afforded in an online environment, the solitary nature of play, the ability to play multiple games at once, and the ability to play under influence of drugs or alcohol without any third-party intervention, as features of online gambling that increase risks to consumers⁶⁸.

The extent to which online gambling places consumers at risk of greater co-morbidity of health issues such as mental and physical health issues, has not been the subject of extensive research; however, there is evidence to suggest that in comparison to land-based gamblers online gamblers

⁶⁴ Associate Professor RT Wood and Professor RJ Williams, Internet Gambling: Prevalence, Patterns, Problems, and Policy Options—Final Report prepared for the Ontario Problem Gambling Research Centre (2009). Retrieved from www.uleth.ca/dspace/bitstream/handle/10133/693/2009-InternetPPPP-OPGRC.pdf?sequence=4

⁶⁵ Australian Christian Lobby, Submission to the review of the IGA, p. 2.

⁶⁶ Productivity Commission (2010), Inquiry Report on Gambling, p. 15.31. Retrieved on 24 January 2012 from www.pc.gov.au/_data/assets/pdf_file/0004/95701/18-chapter15.pdf

⁶⁷ Dr Sally Gainsbury, Submission on the interim report of the IGA review, p. 22.

⁶⁸ Associate Professor RT Wood and Professor RJ Williams, Internet Gambling: Prevalence, Patterns, Problems, and Policy Options—Final Report prepared for the Ontario Problem Gambling Research Centre (2009), pp 90–91. Retrieved from www.uleth.ca/dspace/bitstream/handle/10133/693/2009-InternetPPPP-OPGRC.pdf?sequence=4

were more likely to drink alcohol⁶⁹. Other issues such as reliance on the use of credit cards, disruptive eating and sleeping patterns were also linked to internet gambling⁷⁰.

The 2011 SCU study suggested that the online platform provided the capacity for many tools and strategies that could be used to assist online gamblers. These included self-exclusion from gambling sites, messages to prompt players to set appropriate limits, and having tailored responsible gambling strategies based on the consumers account information—for example, prompting account holders to consider taking a break if playing for an extended period of time⁷¹.

Potential for other prevalence factors to be measured

Other online gambling prevalence factors could be measured through a national prevalence study that could include measuring—for example, the usage of different types of online gambling products, the links between different types of online gambling and problem gambling in Australia and the prevalence of youth participating in different forms of online gambling. It has also been suggested that patterns of play, markers of potentially risky behaviour, the socio-demographic profile of Australian online gambling users, and the expenditure and number of accounts held by online gamblers could be components of any future prevalence monitoring⁷². In its submission on the interim report of the review, the Australian Psychological Society suggests that:

Ongoing research into the prevalence of online gambling is required given the rapid shift in online technologies.⁷³

⁶⁹ Allen Consulting Group, Research for the review of the Interactive Gambling Act 2001 (2012), p. 60 (referencing Griffiths, Wardle, Orford, Sproston & Erens (2011)).

⁷⁰ Associate Professor RT Wood and Professor RJ Williams, Internet Gambling: Prevalence, Patterns, Problems, and Policy Options—Final Report prepared for the Ontario Problem Gambling Research Centre (2009), pp 90–91. Retrieved from www.uleth.ca/dspace/bitstream/handle/10133/693/2009-InternetPPPP-OPGRC.pdf?sequence=4

⁷¹ Dr Sally Gainsbury, Professor Nerilee Hing, Professor Alex Blaszczynski and Dr Robert Wood, An investigation of Internet gambling in Australia (2011). Retrieved from http://cger.scu.edu.au/download.php?doc_id=11259&site_id=33&file_ext=.pdf

⁷² Dr Sally Gainsbury and Professor Alex Blaszczynski, Submission to the review of the IGA, pp. 4–5 and p. 10.

⁷³ Australian Psychological Society, Submission on the interim report of the IGA review, p. 4.

3. Harm minimisation and consumer protection

A number of issues relating to harm minimisation and consumer protection were raised by stakeholders in submissions to the review and throughout the consultation process. The Joint Select Committee also explored these issues at length in its inquiry into online and interactive gambling and gambling advertising.

Current arrangements in Australia

The fact online gambling services are accessed through technology and require some degree of registration by the player means it is arguably easier to build in strong harm minimisation and consumer protection measures for online gambling services compared to offline services. Many Australian-based providers of online wagering services already provide harm minimisation facilities to their customers such as self-exclusion and pre-commitment. Technologies also exist to enable customers to readily access information on the status of their accounts, the amount of time or money they have spent gambling, and other measures to assist them in maintaining control of their gambling behaviours.

Harm minimisation and consumer protection measures are regulated by states and territories in a number of ways, including by the use of codes in relation to responsible gambling practices. Each jurisdiction has its own separate requirements for harm minimisation, which means the requirements differ between jurisdictions and implementation of requirements can differ for different types of gambling services. Some jurisdictions have stronger harm minimisation and consumer protection measures than others. Similarly, different online operators offer varying harm minimisation options to their customers, and may also present these on their websites in different ways (that is, some are more overt than others).

Some of the harm minimisation and consumer protection requirements applied by states and territories, described at **Appendix F**, include requiring licensees to make information available about support services, odds of winning at gambling facilities (Australian Capital Territory), options to self-exclude from internet-based gambling (Tasmania), and for websites promoting or advertising gambling to contain a problem gambling warning (Northern Territory). A comparison of harm minimisation measures in other countries is included at **Appendix G**.

This fragmented approach has raised concerns that consumers are not guaranteed certain levels of harm minimisation and consumer protection. Tabcorp noted in its submission to the Joint Select Committee:

Wagering operators will seek out a business environment that enables them to maximise returns. Where a non-level playing field exists, customers and wagering operators will "jurisdiction shop" to find the environment that best suits them.⁷⁴

⁷⁴ Tabcorp, Submission to the Joint Select Committee on Gambling Reform, p. 51.

In these circumstances, some operators may be attracted to establish themselves in jurisdictions with less onerous harm minimisation and consumer protection requirements. The risk is that it enables the provision of gambling services with inadequate levels of harm minimisation, which can increase the risks of problem gambling. Given the nature of the internet, consumers in jurisdictions which may have relatively stronger harm minimisation and consumer protection requirements would still be able to access services that do not have the same level of protection. Indeed, consumers may actually choose to do so in an effort to maximise winnings from sites that are able to offer better odds or payout ratios (as a result of having to comply with less onerous harm minimisation and consumer protection requirements).

The Joint Select Committee noted:

One of the key issues raised during the inquiry was that regulatory approaches differed considerably between jurisdictions. These inconsistencies have resulted in corporate bookmakers gravitating to more 'progressive' jurisdictions to establish and grow their operations.⁷⁵

The Joint Select Committee made a number of recommendations for a substantially more consistent approach to certain types of harm minimisation and consumer protection measures.

National harmonised approach

For traditional land-based gambling, regulation on a state-by-state basis has been effective for many years as the gambling activity was located in a known, defined geographic area. For online gambling, however, where the technology means there are no geographic boundaries, a significant majority of consumers will be from a jurisdiction other than the one in which every single provider is licensed. In an internet-enabled world, a state-by-state approach to harm minimisation and consumer protection makes less sense.

To address issues relating to fragmented harm minimisation and consumer protection requirements across state and territory jurisdictions and the risks that this generates from a problem gambling and consumer protection perspective, there was strong support in submissions for a nationally consistent approach to harm minimisation and consumer protection. For example, in its submission to the review, the Responsible Gambling Advocacy Centre noted:

Many of these [harm minimisation] features can already be found [on] the sites of Australian providers but they are optional, piecemeal and by no means standardised. Both consumers and industry would benefit from the regularisation and protection a code or codes would bring.⁷⁶

⁷⁵ Parliamentary Joint Select Committee on Gambling Reform, Second report—Interactive and online gambling and gambling advertising; Interactive Gambling and Broadcasting Amendment (Online Transactions and Other Measures) Bill 2011, p. 220.

⁷⁶ Responsible Gambling Advocacy Centre, Submission to the Review of the IGA, p. 10.

The Queensland Department of Justice and Attorney-General suggested that 'tighter regulatory control should be considered by the Australian Government' with respect to harm minimisation and consumer protection measures⁷⁷.

In her submission on the interim report of the review, Dr Gainsbury suggests:

There is some evidence to support consumer demand for effective responsible gambling tools and options. A survey of 10 865 Internet gamblers from 96 countries found that 63% of respondents reported there is 'some' or 'a lot of' need for improvements to responsible gambling features on Internet gambling sites.⁷⁸

There would be a number of benefits with a consistent, national set of harm minimisation and consumer protection measures, applicable to all licensed interactive gambling providers that are permitted by the IGA. These would include:

- ensuring consumers had the same robust protections available to them, regardless of the state or territory in which the provider is licensed
- reducing the risk of competition between states and territories to attract online gambling companies on the basis of 'less onerous regulation'
- maintain balance with the harm minimisation measures in the EGM reforms.

The national standard should be developed by a joint working party comprising relevant Commonwealth, state and territory, industry and responsible gambling bodies under the auspices of the COAG Select Committee on Gambling Reform.

Discussions with states and territories have identified four possible approaches (which are discussed in further detail below) for the development and implementation of a national standard for harm minimisation and consumer protection measures:

- amending the IGA to include the proposed measures
- amending the IGA to provide a framework for the proposed measures and implementing the detail of these through state and territory model legislation
- adopting a set of minimum standards through an intergovernmental agreement between the Commonwealth, and states and territories
- adopting a set of principles through an intergovernmental agreement between the Commonwealth, and states and territories, with individual states applying these principles within their own legislation.

⁷⁷ Queensland Department of Justice and Attorney-General, Submission to the review of the IGA, p. 7.

⁷⁸ Dr Sally Gainsbury – Submission on the interim report of the IGA review – p. 8.

Under all of these options state and territory governments would retain responsibility for enforcing harm minimisation and consumer protection measures, including those articulated in the national standard, through their licensing and enforcement arrangements.

Including measures in the IGA

Under this approach, the harm minimisation and consumer protection measures which comprise the national standard would be included in the IGA, with states and territories enforcing these through their individual licensing frameworks.

Outlining the measures in Commonwealth legislation would allow the standard to apply uniformly across jurisdictions, providing both industry and consumers with clear expectations of what is required.

Such an approach does have drawbacks, however; legislating in this manner may result in a loss of flexibility, as changes to legislation would need to be passed by the Commonwealth parliament and would normally involve seeking consensus across all states/territories, particularly in relation to any enforcement action by state officials or agencies. Legislating at the Commonwealth level may also be more likely to pose constitutional issues where enforcement occurs at the state and territory level.

An alternative to this approach would be for the Commonwealth to become responsible for compliance and enforcement as the details of the national standard would be included in Commonwealth legislation. It should be noted, however, that enforcement of harm minimisation and consumer protection has to this point been done at the state and territory level, and developing the systems and expertise to undertake this at Commonwealth level would involve a very significant change to current arrangements. It would also require consideration of the revenue sharing arrangements between the Commonwealth and states and territories, as well as raising constitutional issues.

Model legislation for states and territories

The IGA could be amended to provide a framework for the national standard with the detail of the national standard implemented through model legislation, which could be developed collaboratively by states and territories (and other relevant stakeholders) and enacted by each jurisdiction.

One of the challenges with such an approach is that the development and passage of parallel legislative instruments is historically difficult due to the time required to reach consensus, particularly given the differing approaches to governance and gambling licensing used by jurisdictions. It also reduces flexibility/responsiveness as all amendments would also require consensus amongst states and territories. Constitutional issues may also arise under this model.

Adopting minimum standards

A more flexible approach would be the development of a set of minimum standards that jurisdictions would agree to meet, but could choose to adopt measures over and above the standard if they see fit (or if they do so already). This approach would provide a more dynamic system capable of responding more quickly to emerging issues, although changes to the minimum standard would still require consensus amongst states and territories.

This option may be particularly beneficial in limiting the impact of different regulatory and governance practices, as jurisdictions would have some flexibility in how they implemented the standard, while still providing a level of consistency across jurisdictions.

It would also be beneficial in avoiding potential constitutional issues that may arise through enacting the standard at a Commonwealth level.

Timeframes for implementation

Consideration will need to be given to the timeframe for the implementation of the national standard regarding the measures proposed in recommendations 22-25 (online gaming) and 26-29 (online wagering). Given that significant requirements for the licensing and regulation of online wagering already exist in Australia, it may be possible to implement a national standard relating to online wagering earlier than measures directed at online gaming, which is not currently regulated in Australia. A more focused approach to implementing harm minimisation measures according to different gambling types would provide Australian consumers with better protections for online wagering sooner, and could assist in the development of more appropriate requirements for these different gambling types.

Adopting a set of principles

The most flexible approach suggested was for the Commonwealth and states and territories to agree to a set of high-level principles for harm minimisation and consumer protection, but for individual jurisdictions to implement these principles into their legislation as they consider appropriate. The principles could be focused on key outcomes that would seek to limit the impact of problem gambling and support consumers more generally. It would be then determined by jurisdictions how they achieved the principles through their individual enforcement arrangements.

This approach would be beneficial in avoiding potential constitutional issues that may arise through enacting the standard at the Commonwealth level and requiring enforcement at the state and territory level. The approach would also provide a great deal of flexibility for jurisdictions to achieve outcomes considering their differing regulatory and governance arrangements for gambling services. However, an acceptable level of consistency may be difficult to achieve under this approach.

While further consultation on these options is needed, including determining the appropriate timeframes for implementation, the adoption of a set of minimum standards for harm minimisation and consumer protection would seem appropriate.

Recommendation 1: The IGA should provide for the development of a national standard, applicable to all Australian licensed interactive gambling providers, that establishes the framework for a minimum set of harm minimisation and consumer protection measures for all types of interactive gambling that are permitted by the IGA.

- **The standard should be developed by a joint working party of Commonwealth, state/territory, industry, gambling researchers and responsible gambling bodies under the auspices of the COAG Select Council on Gambling Reform.**
- **There should be clear timelines established for the development and implementation of the minimum standard—there may need to be a different timeline and some different features for this standard for online wagering and the proposed trial of online tournament poker.**
- **The minimum standard should be incorporated into state/territory legislation.**
- **States/territories should continue to be responsible for enforcement of harm minimisation and consumer protection as they are now.**

Unlicensed online gambling providers

Online gambling providers that are not licensed by any Australian jurisdiction, and therefore have not signed up to the proposed national standard, should be prohibited by the IGA. Presently there are a number of online gambling providers that are licensed within an Australian jurisdiction and provide legal services to Australian consumers (for example, Betfair, Sportsbet, etc.). There is also a large number of online gambling providers that are not licensed by an Australian jurisdiction (and are therefore unlicensed), but are providing services which are not prohibited by the IGA.

As such, unlicensed providers are in direct competition with Australian-licensed providers in the Australian market, which, at times, places Australian-licensed providers at a competitive disadvantage as they must comply with Australian laws and regulations (including state and territory requirements for harm minimisation and consumer protection). These unlicensed providers will, in many cases, be offering a combination of services that are legal to offer to Australians and service prohibited by the IGA (for example, online in-play wagering or online poker services such as those shown in Figure 1). It is therefore reasonable to expect that online gambling providers that offer services to Australian customers be required to comply with Australian licensing requirements.

Figure 1: BetVictor



Subject to consistency with Australia's trade obligations, it is proposed that the IGA be amended to prohibit any services being offered to Australians by an unlicensed provider. As such, unlicensed services would be subject to any necessary enforcement action available under the IGA.

This amendment is designed to encourage unlicensed providers to participate within the Australian regulatory framework, whereby they would need to comply with Australian rules and regulations if they wish to operate within the Australian market. As a condition of obtaining a license to operate in Australia, providers would need to offer standardised harm minimisation and consumer protection measures, pay relevant sports product fees and participate in the sports integrity framework (discussed later in Chapter 8).

Recommendation 2: Online gambling providers that do not become licensed by an Australian state/territory jurisdiction, and thus do not sign up to the national standard, should be prohibited under the IGA.

Key areas to be addressed

The following areas should be addressed by the national standard, noting that jurisdictions already possess regulations requiring the majority of these measures and that different types of gambling services may require different harm minimisation measures:

- responsible gambling messages
- tightened rules around the capacity of online gambling providers being able to provide lines of credit to users
- limits on the types of betting inducements that can be offered

- a pre-commitment capability including in terms of total spend, total time played, number of bets placed and deposits made, including making it mandatory for users to set their own deposit limits
- protection of customer funds
- protection, storage and use of customer information consistent with Australian privacy principles
- making data on the uptake and use of harm minimisation and consumer protection measures (consistent with Australian privacy principles) publicly available for research purposes
- quick identity verification and age identification of customers when opening a betting account, including consideration of using the Document Verification System (DVS) to expedite verification processes and a requirement to roll back all transactions in cases of proven underage gambling
- establishment of a national self-exclusion database to be funded by state/territory governments and industry in proportion with their share of online gambling revenue
- spend tracking facilities including a very prominent message on losses/profits incurred to date by the account holder at the point they log in
- targeted warning messages alerting consumers to gambling behaviour that is indicative of problem gambling
- prominent links to the gambling helpline available on all pages of the websites of regulated online gambling service providers
- a link on the website of regulated gambling service providers to the state/territory gambling regulatory authorities to which a consumer can lodge complaints.

A discussion of harm minimisation and consumer protection measures specific to the trial of online tournament poker, including the use of mandatory breaks in play, is contained in Chapter 7.

Responsible gambling messages

Submissions to the review and consultations with stakeholders raised concerns about the display of responsible gambling messages and consumer information on online gambling service websites as well as in other advertising. Requirements that stipulate details on the presentation of such messages are outlined in some (but not all) state and territory level responsible gambling codes of practice. However, there is a marked variability in the specificity of these requirements, with some more prescriptive than others.

In Tasmania, a Gambling Licence holder's website must contain responsible gambling information, for example, gambling helpline details⁷⁹. In contrast, the Responsible Gambling Queensland Code of Practice states:

⁷⁹ Tasmanian Responsible Gambling Mandatory Code of Practice, clauses 10.1 and 10.4.

Where appropriate, positive responsible gambling messages are incorporated in advertising and promotion.⁸⁰

The Responsible Gambling Advocacy Centre suggests:

A code is needed that clearly formulates the content of the responsible gambling message, and how it should be included in advertising. For example, to encourage people to think about their gambling choices, effective language combined with a certain font, size, colour, text and background makes the message accessible and more clear.⁸¹

The use of responsible gambling messages already occurs in some Australian states and territories—for example, at totalizators in New South Wales operators must display specific signage, provide brochures about problem gambling, counselling services and warnings⁸².

The Joint Select Committee recommended that ‘the COAG Select Council on Gambling Reform work towards nationally-consistent requirements for responsible gambling messages to ensure they work effectively as harm minimisation measures to counter-balance the promotion of gambling.’⁸³

Greater specificity regarding responsible gambling messages should be a component of the proposed national code on harm minimisation and consumer protection.

Credit betting

Credit betting refers to the provision of a line of credit by a gambling provider to allow a customer to place bets and reconcile the account at a later date. Credit betting is different from betting using a traditional credit card.

Some stakeholders suggested that credit betting should be prohibited as it can lead to the accumulation of debts which may not be able to be repaid. It is also a means by which problem gamblers in particular can chase losses in an unsustainable manner.

Gambling providers and other stakeholders argue that credit betting is used responsibly and does not have an effect on problem gambling. Tabcorp notes in its submission to the review:

If governments prohibited Australian bookmakers from extending credit to certain customers, there would be unintended consequences. For example, these customers would be forced to access credit from less scrupulous operators, such as illegal SP bookmakers and

⁸⁰ Responsible Gambling Queensland Code of Practice. Retrieved on 30 January 2013 from www.olgr.qld.gov.au/resources/responsibleGamblingDocuments/responsibleGamblingCodeOfPractice.pdf

⁸¹ Responsible Gambling Advocacy Centre, Submission to the Review of the IGA, p. 8.

⁸² New South Wales, Totalizator Regulations 2005.

⁸³ Parliamentary Joint Select Committee on Gambling Reform, Second report—Interactive and online gambling and gambling advertising; Interactive Gambling and Broadcasting Amendment (Online Transactions and Other Measures) Bill 2011, p. 260.

loan sharks, and be charged significant interest on their loans and become subject to undesirable collection methods ... the more appropriate policy response is to tightly manage the extension of credit by Australian bookmakers to customers, for example through codes of conduct and/or as part of licensing requirements.⁸⁴

Sportsbet, in its submission to the review, estimates that 7 per cent of its customers have an approved credit facility. Customers consider it a 'convenient mechanism for managing their wagering spend, with 81 per cent of customers who access credit facilities having a limit of \$200 or less and 91 per cent having a limit of \$1000 or less.' Bad debt write-offs represent about 0.05 per cent of annual turnover and Sportsbet therefore considers that the figures demonstrate that most customers use their credit facility responsibly.

Some stakeholders have suggested that more stringent and uniform guidelines would be helpful in limiting the risk to problem gamblers. In their submission to the review, Sportsbet suggest some initiatives that could strengthen consumer protection in terms of credit betting:

- Inclusion of a cooling-off period—where approval is given for a credit facility in excess of \$5000, a 24-hour cooling off period is to be applied before the customer can access funds.
- Changes to credit limits—an existing credit limit can only be increased once in a 24-hour period.
- If legislation changes and an online gaming industry is to be regulated within Australia, customers should not be able to access credit facilities.⁸⁵

On the other hand, the Northern Territory prohibits gambling providers (except for bookmakers) from providing credit or lending money for gambling under the *Gaming Control Act* and the Code of Practice for Responsible Gambling.

Betfair notes in its submission on the interim report of the review that it offers 'terms of trade to a small number of high volume customers, all of who must be pre-approved by the Tasmanian Gaming Commission and must settle with Betfair on a weekly basis'⁸⁶. The inclusion of requirements for the pre-approval of customers by gambling regulators and stringent settlement timeframes in the national standard may have merit.

In discussions with the department, industry noted that it would be willing to adhere to a mandatory code of conduct on the provision of deferred settlement of account ('Facilities').

The Joint Select Committee examined the issue, noting that while credit betting is a longstanding practice traditionally reserved for professional punters at race courses, its use in an online environment raised concerns. The committee concluded that the COAG Select Committee on Gambling Reform, in consultation with the COAG Legislative and Governance Forum on Consumer

⁸⁴ Tabcorp. Submission to the Review of the IGA. p.1.

⁸⁵ Sportsbet. Supplementary submission to the Review of the IGA. p. 4.

⁸⁶ Betfair, Submission on the interim report of the IGA review, p. 5.

Affairs, should investigate nationally-consistent regulations in relation to tighter controls on credit betting⁸⁷.

On 21 January 2012, the Commonwealth announced, amongst other measures, that it would work with the states and territories so that online betting agencies will not be able to offer credit to account holders, except for professional punters^{88, 89}. Consultations with states and territories in this regard are proceeding.

Use of credit cards

The use of credit cards to access online gambling services has also been raised in the context of problem gambling and consumer protection, with some stakeholders suggesting it should be prohibited. In its submission to the review, the Australian Christian Lobby suggests:

Though the use of credit cards may force gamblers to confront the losses they have incurred, they may also magnify the financial harms from excessive gambling. Rather than putting money they have through a slot machine, for example, problem gamblers may accumulate large debts on credit which they have no means of repaying. Not only can problem gamblers lose what they do have, online there is the potential to end up deeply in debt.⁹⁰

Clubs Australia states:

Clubs Australia is opposed to people gambling on credit, either online or at a venue, given that it potentially encourages reckless behaviour and enables gamblers to spend money they do not actually have ... Online gambling sites (including legal wagering providers) enable credit funded gambling and therefore allow problem gamblers to finance their habit through what is effectively a short term loan. If the initial amount is not paid off within a specified time period, interest accrues, worsening the financial situation of the gambler.⁹¹

There are examples of some restrictions in the use of credit cards in differing gambling contexts in Australia. In New South Wales the *Totalizator Act 1997* does not allow a person to pay for bets using a credit card at a retail outlet.

⁸⁷ Parliamentary Joint Select Committee on Gambling Reform. Second report—Interactive and online gambling and gambling advertising; Interactive Gambling and Broadcasting Amendment (Online Transactions and Other Measures) Bill 2011, p. 236.

⁸⁸ Media release, Tackling problem gambling in Australia, 21 January 2012. Retrieved on 24 January 2012 from www.pm.gov.au/press-office/tackling-problem-gambling-australia

⁸⁹ The Australian Taxation Office has issued a tax ruling in relation to whether a taxpayer is carrying on a business of gambling – Income Tax Ruling 2655.

⁹⁰ Australian Christian Lobby, Submission to the Review of the IGA, p. 3.

⁹¹ Clubs Australia, Submission to the Review of the IGA, p.6.

The department also received a confidential submission from the spouse of a problem gambler who implored the Australian Government to restrict the use of credit cards for online gambling:

Many gamblers are on credit blacklists but it is becoming easier and easier to use credit cards without an identity check or PIN. I live in fear of my spouse successfully using my credit card for gambling, and since we are family the credit card companies would not accept liability for his debts as they would otherwise do for a stolen credit card—he would be liable, which means the debts would come back to me.

Since it is impossible to prevent or effectively restrict online gambling sites, legislation should restrict credit card use for gambling⁹².

In their submission to the review, Dr Gainsbury and Professor Blaszczyński noted that easy access to credit cards is cause for concern, particularly for young people:

Many online gambling sites, particularly those regulated in less stringent jurisdictions, have minimal provisions to prevent youth from playing and underage youth may also use a friend or family member's account, or credit card and identification to gain access.⁹³

Gambling providers argue that the use of credit cards is well ingrained in online commerce (including online gambling) and any ban is likely to be highly disruptive. Sportsbet contends:

There is no tangible evidence supporting a ban to be introduced on online wagering operators allowing customers to transact using their credit cards. Properly administered, the use of credit cards by the overwhelming majority of consumers is part of an individual's every-day management of their purchases and cash flow in both the physical and online worlds.⁹⁴

The Joint Select Committee considered the use of credit cards in online gambling as part of its inquiry, concluding:

While the committee accepts that a monthly credit card statement may assist some people to confront the amount of money they spend gambling online, the ability to repay only a minimum amount, increase limits and obtain multiple cards does not make this a feature to be relied upon to assist problem gamblers. In addition, by the time the statement has arrived, significant losses may already have occurred.⁹⁵

⁹² Private individual No. 1, Submission to the Review of the IGA.

⁹³ Gainsbury and Blaszczyński, Submission to the Review of the IGA, p. 5.

⁹⁴ Sportsbet, Supplementary submission to the Review of the IGA, p. 1.

⁹⁵ Parliamentary Joint Select Committee on Gambling Reform, Second report—Interactive and online gambling and gambling advertising; Interactive Gambling and Broadcasting Amendment (Online Transactions and Other Measures) Bill 2011, p. 32.

The issue of credit card use was considered by the Productivity Commission in its Inquiry Report on Australia's Gambling industries where it considered the advantages and disadvantages. In concluding its analysis, the commission stated:

... [that it] does not see net benefits in, and is not recommending, a ban on the use of credit cards for internet gambling (both online gaming and online wagering). This does not represent a precedent for other forms of gambling, however, as the costs and effectiveness of such a ban are different in a venue-based setting. Further, whilst the use of credit cards for online gaming may be permitted, it reinforces the need for the adoption and adherence to the other harm minimisation measures outlined.⁹⁶

The use of credit cards for a range of online related activity is now standard within Australian society. Credit cards are issued on the basis of a credit application meeting a strict and consistent set of eligibility criteria. Further, the issuing of credit cards involves the credit provider approving the line of credit for general use, not specifically for online gambling.

Inducements and payment of commissions to third parties

The offering of inducements to open gambling accounts and to spend money, and the payment of commissions to third parties for the referral of new customers can encourage players to 'play, play longer and play beyond their means'⁹⁷.

In his submission to the Joint Select Committee, Dr McMullan said:

... acknowledged that on one hand, advertising is 'one of several factors contributing to problem gambling including opportunities to play, access to money, machine design characteristics, and speed of play'. However, 'advertising that appeals to problem gamblers in the form of strategically located enticements, persistent inducements and constant reminders to play, as is often the case with online gambling, is likely to arouse negative habitual patterns and faulty cognitive beliefs that cause harm'. He concluded that the findings regarding gambling advertising and problem gambling 'signal the need for a vigilant approach to advertising'.⁹⁸

The Joint Select Committee examined the impact of inducements in promoting gambling services, commenting:

⁹⁶ Productivity Commission, Inquiry Report on Gambling (2010), p. 15.27.

⁹⁷ Dr John McMullan, Submission to the Joint Select Committee on Gambling Reform, pp 10–11.

⁹⁸ *Ibid.*, p. 8.

If the ability to advertise and offer inducements in a regulated Australian environment was limited, this could make people more likely to use overseas websites if they are susceptible to such advertising and offers.⁹⁹

The advertising of legal online wagering services is regulated by states and territories, many of which (but not all) restrict the offering of inducements to consumers. Some stakeholders argue that the current arrangements are not sufficient:

Clubs Australia believes that a national approach is needed to establish a ban on inducements, eradicating inconsistencies between online and offline gambling platforms.¹⁰⁰

The Responsible Gambling Advocacy Centre suggests that:

Offers of free bets in any form need to be subject to limitations within a code of conduct overseen by a regulator.¹⁰¹

The Joint Select Committee looked at the issue of payment of commissions to third parties in some detail, and heard the case of a man who ran up \$80 000 in debt with Sportsbet¹⁰². Following consideration of the views of stakeholders (including gambling support services and gambling researchers), the committee concluded that:

... inducements to gamble such as: free games; offering credit; free credit; free money to play; deposit matching to recruit new customers; and practice sites encourage people to gamble, to gamble for longer and in some cases, beyond their means.¹⁰³

The committee was 'unconvinced that all inducements to bet should be treated as simply standard advertising practice'¹⁰⁴ and recommended that the COAG Select Committee on Gambling Reform, in consultation with the COAG Legislative and Governance Forum on Consumer Affairs, develop a mandatory national code of conduct for advertising by wagering providers including (among other things) inducements to bet¹⁰⁵. In addition, the committee recommended that development of nationally-consistent consumer protection standards for greater transparency around the practice of paying third-party commissions by betting agencies¹⁰⁶.

⁹⁹ Parliamentary Joint Select Committee on Gambling Reform, Second report—Interactive and online gambling and gambling advertising; Interactive Gambling and Broadcasting Amendment (Online Transactions and Other Measures) Bill 2011, p. 62.

¹⁰⁰ Clubs Australia, Submission to the Review of the IGA, p. 8.

¹⁰¹ Responsible Gambling Advocacy Centre, Submission to the Review of the IGA, p. 6.

¹⁰² Richard Willingham, 'Betting agency settles over man's \$80,000 debt', *The Age*, 26 July 2011.

¹⁰³ Parliamentary Joint Select Committee on Gambling Reform, Second report—Interactive and online gambling and gambling advertising; Interactive Gambling and Broadcasting Amendment (Online Transactions and Other Measures) Bill 2011, p. 178.

¹⁰⁴ *Ibid.*, p. 249.

¹⁰⁵ *Ibid.*, p. 277.

¹⁰⁶ *Ibid.*, Recommendations 10 and 11, p. 238.

In its submission to the Joint Select Committee, Sportsbet argued that inducements and promotional activities are pro-competitive:

New entrants will seek to invest heavily in advertising and inducements; we would expect that the returns to advertising spending would only materialise after a threshold level is exceeded ... The Productivity Commission found that inducements may serve primarily to reduce the cost to consumers of switching from incumbents to new entrants, and could therefore be pro-competitive. Incumbents will seek to invest in promotional activities, but they also stand to gain from restrictions on such activities. This is because their reputational advantage as incumbents means that an inability to spend an extra dollar on such activities will disadvantage new entrants to a much greater extent than it would the incumbents.¹⁰⁷

Regarding the payment of third-party commissions for the referral of new customers, Mr Cormac Barry (Chief Executive Officer, Sportsbet), noted in his appearance before the Joint Select Committee:

... it is a reasonably standard business practice for referrals to occur. I think many businesses would operate on the basis that people get recommended to another service if they enjoy using a service or they believe an individual may wish to use that service.¹⁰⁸

In its submission on the interim report of the review, bet365 note the relationship between gambling providers and 'affiliates':

...it has to be recognised that the great majority of these, at least in bet365's case, are to 'affiliates' such as sports information sites who may get a commission but who are perhaps better described as advertising partners. These affiliates are given no knowledge of who the customer is, and are not involved in any way with the customer relationship on an ongoing basis.¹⁰⁹

Sportsbet and Sportingbet also commented on these practices:

The affiliate concept is common among e-commerce businesses worldwide, with some of the largest/well known merchants offering affiliate arrangements. Examples include eBay, Amazon, Qantas and Google.¹¹⁰

Tasmania and the Australian Capital Territory both have implemented restrictions on the use of inducements for gambling. In Tasmania the Responsible Gambling Mandatory Code of Practice prevents operators from offering incentive-based sponsorships, whilst the Australian Capital Territory's Gaming and Racing Control (Code of Practice) Regulation 2010, Schedule 1, restricts

¹⁰⁷ Sportsbet, Submission to the Joint Select Committee on Gambling Reform, Attachment A, p. 41.

¹⁰⁸ Mr Cormac Barry, Joint Select Committee Hansard, 11 August 2011, p. 5.

¹⁰⁹ bet365, Submission on the interim report of the IGA review, p. 6.

¹¹⁰ Sportsbet and Sportingbet, Submission on the interim report of the IGA review, p. 9.

licensees of gambling facilities from offering certain inducements and promotions that encourage people to gamble (that is, time-based inducements or expenditure inducements).

On 21 January 2012, the Commonwealth announced that it would work with the states and territories to introduce stricter limits on betting inducements¹¹¹. Provisions will be put in place to ensure there are strict limits on the types of betting inducements that can be offered by gambling providers—for example, limiting the paying of commissions to third parties to encourage people to open gambling accounts online. Consideration will need to be given to clearly defining inducements, including differentiation between affiliate payments which may be acceptable in a limited form and payment of commissions to third-parties with a commercial interest in and on-going relationship with the customer.

Pre-commitment

On 21 January 2012, the Commonwealth announced it will work with states and territories to make effective pre-commitment mechanisms available to account holders on all licensed online betting services¹¹².

As noted in the Productivity Commission's 2010 report on gambling, some gamblers find it difficult to control the amount of money they spend on their gambling activities. Furthermore, the features and design of gambling services can hinder a gambler's ability to undertake safe gambling behaviour. Facilities that allow gamblers to set limits on their gambling activities, including the amount of money and time they spend, are known as pre-commitment. Such measures can be an important mechanism in reducing the risks associated with problem gambling¹¹³.

For example, Victoria's *Gambling Regulation Act 2003*, which also applies to interactive gambling, enables registered players to set limits for wagering, and any changes to increase or withdraw the limits cannot be acted upon by the provider until seven days after receipt.

Each licensed online gambling service provider should put in place pre-commitment capabilities for each account holder in terms of total spend, total time played, total losses, number of bets placed and deposits made, with cooling-off periods for any increases in spending limits. Such limits could be daily, weekly or monthly at the discretion of the consumer. Under such measures, consumers will decide how much money and time they are willing to spend when using online gambling services. These measures will provide consumers with a robust protective framework and will help to limit problem gambling risks.

¹¹¹ Media release, Tackling problem gambling in Australia, 21 January 2012. Retrieved on 24 January 2012 from www.pm.gov.au/press-office/tackling-problem-gambling-australia

¹¹² *Ibid.*

¹¹³ Productivity Commission (2010), Inquiry Report on Gambling, pp 10.1–10.6. Retrieved on 14 February 2012 from www.pc.gov.au/projects/inquiry/gambling-2009/report

Consideration would need to be given to the appropriate application of such limits for different gambling types; for example, Betfair note in their submission on the interim report of the review that:

...a consumer may wish to bet on a full day of racing, which extends over an entire afternoon and is therefore not properly addressed by a time based pre-commitment measure.¹¹⁴

In her submission on the interim report of the review, Dr Gainsbury suggests:

Deposit limits are likely to be the most effective way to encourage players to gamble within their means and should be mandatory for all online gamblers.¹¹⁵

In his submission on the interim report of the review, Senator Nick Xenophon suggested that proposed pre-commitment measures outlined in the national standard should also include forced breaks in play and compulsory exclusion from gambling websites¹¹⁶.

Measures that remove access to gambling services on a time-regulated basis have merit in limiting the risk of problem gambling. However, they may only be appropriate for certain types of online gambling services. There is, for example, a significant difference between the time/expenditure equation for EGMs and the time/expenditure equation for tournament poker. Licensed providers participating in the proposed trial of online tournament poker should be required to put in place measures to ensure that, following the completion of their involvement in a tournament and if they have been playing for a defined period, players are excluded from commencing another tournament for a suitable period of time.

Further discussion of the application of forced breaks in play to different forms of online gambling can be found in Chapter 7.

Consideration should be given to implementing a mandatory requirement for consumers to set their own deposit limits when they open an account with a gambling provider and before they can begin gambling.

Industry has noted that it is willing to consider introduction of a mandatory requirement to set deposit limits on condition that the proposals for changes to the regulation of in-play wagering and the trial of online tournament poker are adopted.

Protection of funds

The fair and responsible operation of online gambling services is key to ensuring that consumers can access services with confidence and security. There has been recent enforcement activity in the US

¹¹⁴ Betfair, Submission on the interim report of the IGA review, p. 7.

¹¹⁵ Dr Sally Gainsbury, Submission on the interim report of the IGA review, p. 11.

¹¹⁶ Senator Nick Xenophon, Submission on the interim report of the IGA review, p. 5.

in response to an online poker company inappropriately using player funds and being unable to payout funds to players¹¹⁷. In using overseas based online gambling services, a consumer runs the risk that their funds will not be afforded an appropriate level of access and protection, and they are not covered by Australian consumer laws if they wish to make a complaint about the actions of a service.

In Tasmania, licensed gambling providers must remit funds to consumers after a specified period of account inactivity¹¹⁸. This is in addition to the provider only being able to access the consumers' funds for specific purposes contained in the *Gaming Control Act 1993* (Tasmania).

To ensure that operators act in the interests of consumers, licensed providers should ensure that customer funds are adequately protected and can be paid out as required. The Australian Government has announced that it will work with the states and territories to introduce stronger provisions and enforcement of consumer rights regarding the protection of consumer funds¹¹⁹.

Protection of customer information

The protection and appropriate use of customer information by online gambling providers, including personal details and financial information, is fundamental for safe and secure e-commerce, and to limit opportunities for identity theft and fraud. By using overseas-based online gambling services, Australian consumers cannot guarantee that their personal information will be used securely and appropriately.

To ensure that operators manage customer information appropriately, licensed providers should comply with relevant Australian privacy provisions, including the *Privacy Act 1988* and the National Privacy Principles.

Gambling researchers are interested in investigating the participation in and impact of interactive gambling in order to monitor and evaluate any resulting harms, as well as be used as basis to inform policy responses. Due to the fact that online gambling, except for the legal forms of online wagering permitted under the IGA, is currently undertaken with overseas based providers, this type of data is not presently able to be captured. The Australian Psychological Society notes that there is a lack of research into the prevalence and impact of online gambling.¹²⁰ In discussions with the department, industry was supportive of establishing data-sharing arrangements with Australian gambling researchers. The data would need to be collected in accordance with Australian privacy provisions,

¹¹⁷ Joseph Menn and Roger Blitz, 'Full Tilt Poker directors face US Ponzi probe', *Financial Times*, 20 September 2011. Retrieved on 14 February 2012 from www.ft.com/intl/cms/s/0/3046acc6-e3b4-11e0-bd3d-00144feabdc0.html#axzz1mK5G0G4D

¹¹⁸ Section 76ZP, *Gaming Control Act 1993* (Tas) and *Unclaimed Monies Act 1918* (Tas).

¹¹⁹ Media release, Tackling problem gambling in Australia, 21 January 2012. Retrieved on 24 January 2012 from www.pm.gov.au/press-office/tackling-problem-gambling-australia

¹²⁰ Australian Psychological Society, Submission on the interim report of the IGA review, p. 4.

de-identified and have commercially sensitive details removed. This would enable such data to be evaluated in a rigorous and credible manner.

Prevention of underage gambling

A number of stakeholders noted the importance of stringent measures to limit the access of online gambling services by young people, considering the greater risk of potential harm to this group. Access of online gambling services by young people poses a particularly increased risk for problem gambling behaviour. Licensed providers should be subject to stringent age verification requirements to limit access by minors. Verification of age and identity should occur quickly when a customer opens an account, rather than the current 90-day period.

Most Australian jurisdictions require age verification in order to establish gambling accounts with legal gambling service providers, but the details of how their requirements are implemented differs between states/territories. For example in Queensland, under the *Interactive Gambling Player Protection Act 1998*¹²¹, to register a player must provide evidence of their identity, place of residence and proof of age. In the Northern Territory, bookmakers are 'specifically required to identify new clients within 90 days of an account being opened to the '100 point' identification requirement'¹²².

The Australian Christian Lobby argues that while land-based gambling is easily restricted to adults, the same age restrictions are not applicable online:

Although the predominance of credit cards in online gambling may mitigate against this risk, even stringent age-verification can be circumvented by a child using an adult's credit card.¹²³

Betfair noted the importance of having appropriate systems in place to 'eliminate (as far as possible) the risk that minors will be able to operate an online gambling account' and suggest that Australian gambling providers be subject to a strict identity verification regime. Betfair indicated it is strongly committed to preventing minors from transacting on their websites.¹²⁴

When examining the issue, the Joint Select Committee noted that a proper balance was required between customer convenience and a duty of care towards minors, recommending:

¹²¹ *Interactive Gambling (Player Protection) Act 1998* (QLD), Part 2, Division 3, 18. Retrieved from www.legislation.qld.gov.au/LEGISLTN/CURRENT/I/InterGamPPA98.pdf

¹²² Northern Territory Government, Submission on the interim report of the IGA review, p. 6.

¹²³ Australian Christian Lobby, Submission to the review of the IGA, p. 2

¹²⁴ Betfair, Submission to the review of the IGA, p. 9.

As gambling is a risky product, the committee believes that to further minimise the risk to minors, the 90-day timeframe to verify identity (including age) should be reduced to 72 hours.¹²⁵

In his appearance before the Joint Select Committee, Mr Cormac Barry (Chief Executive Officer, Sportsbet), argued against a significantly shorter verification period:

I think a barrier of that level would be very onerous ... The key thing when we are looking at regulation here is to strike a balance between allowing the business to operate and to put in processes that protect the customers, whether they are minors or responsible gamblers. It has to be proven that those processes would actually improve those procedures for minors or responsible gamblers. But there is a balance to be struck, because if we have very onerous obligations and very strong barriers to entry to our product it would only serve to drive consumers to offshore operators who operate with much less rigorous regulatory standards.¹²⁶

A number of stakeholders have also suggested that the speed with which a consumer's identity could be verified could be improved through the use of Australian Government databases by gambling providers. The Document Verification Service (DVS) is a national, real-time, online document verification system that can be used to check the validity and identifying details contained on a range of Australian Government-issued documents. The Australian Government has announced that access to the service will be expanded to the telecommunications and financial sectors to allow them to meet their customer identity checking requirements. Consideration could be given to expanding the service to online gambling operators as a means of reducing the time required to verify the identities of users opening gambling accounts. The DVS would allow operators to do an online check of a person's claimed date of birth by verifying information on documents such as passports, citizenship certificates, visas, birth certificates and drivers' licences. Further consultation with the Attorney-General's Department would be required to determine if the DVS could be used in this context.

In discussions with the department, industry noted that it would be supportive of a 30-day verification timeframe only if a new system is introduced allowing service providers to have greater access to databases and results in a significant increase in success rates for online verification.

In its submission on the interim report of the review, gambling provider bwin.party suggests that, as a further measure to limit the impact of underage gambling:

...operators should be required to roll back all transactions in case of proven underage gambling. Since all player transactions are saved and readily accessible in online gambling,

¹²⁵ Parliamentary Joint Select Committee on Gambling Reform, Second report—Interactive and online gambling and gambling advertising; Interactive Gambling and Broadcasting Amendment (Online Transactions and Other Measures) Bill 2011, p. 215.

¹²⁶ Mr Cormac Barry, Joint Select Committee Hansard, 11 August 2011, p. 9.

operators are in the position to roll back all transactions and consequentially remit all deposits.¹²⁷

Such measures may have merit and should be considered further by the working party in the development of the standard.

Self-exclusion

In a similar way to pre-commitment measures, self-exclusion allows consumers to bar themselves from gambling services in order to prevent themselves from gambling. The Productivity Commission suggested that, as with other measures outlined above, the account-based nature of online gambling makes self-exclusion from any given website more effective than in a land-based environment¹²⁸. Self-exclusion would allow consumers to make more effective and informed choices about their gambling activities, and place restrictions on their activities if they have (or may) become problematic. Victoria's *Gambling Regulations Act 2003* enables players to self-exclude if they send a self-exclusion order to the licensee and to the Victorian Commissioner for Gambling Regulation.

All licensed online gambling providers should make user-friendly and effective self-exclusion provisions available to consumers. Such measures will allow consumers to exclude themselves from accessing particular services they may feel are detrimental. These provisions could apply for different periods of time (for example six months, 12 months, etc.) and could include cooling-off periods during which the decision could be reversed. Non-permanent exclusion for shorter time periods could also be provided for consumers at high risk times, such as the days on which they are paid. Provisions could also include the ability for a third party (such as a close relative) to undertake the exclusion (as already available to Betfair customers¹²⁹). Issues around the potential duty of care online gambling providers have in offering self-exclusion and other harm minimisation facilities to consumers will also need to be considered.

Database of self-excluded persons

A number of stakeholders (including Dr Gainsbury, bwin.party, Sportsbet and Sportingbet) have suggested that consideration also be given to the establishment and implementation of a centralised database for consumers that have self-excluded, to be used by all online gambling providers licensed in Australia. Such a facility would ensure that consumers who have excluded themselves from using one provider are not able to use other providers.

¹²⁷ bwin.party, Submission on the interim report of the IGA review, p. 10.

¹²⁸ Productivity Commission (2010), Inquiry Report on Gambling, pp 15.23–15.24. Retrieved on 14 February 2012 from www.pc.gov.au/projects/inquiry/gambling-2009/report

¹²⁹ Betfair, Submission to the review of the IGA, p. 28.

Dr Gainsbury also notes that such a system would be a ‘useful step in assisting problem gamblers’, noting that similar measures have been implemented in Denmark and France¹³⁰.

Industry is supportive of such a scheme, but proposes that the funding, establishment and administration of the database be independent of industry and undertaken by the states and territories.

Given the increasing availability and accessibility of online gambling, coupled with the growing uptake of online gambling services by consumers, there would be great value in such a system. In consultation with the national standard working party, such a system should be developed to hold the account details of individuals registered with licensed Australian providers so that all providers can be notified when a consumer excludes themselves. All licensed providers should be required to uphold any exclusion orders they receive upon notification. The system should be administered and funded by state/territory governments and industry in proportion with their share of online gambling revenue.

Spend-tracking

The Productivity Commission noted that some online gambling products—for example, casino-style games or online poker machines—are more socially isolating and thereby increase the risk of consumers losing track of their spending¹³¹.

Dr Gainsbury and Prof Blaszczyński in their submission to the IGA review suggest that there should be strict harm minimisation standards for consumers to assist with tracking their spending to ensure they do not spend beyond their financial means. This could include mechanisms such as prominently displayed account information and the receipt of regular financial statements.

To help address this issue, licensed online providers should provide highly-accessible spend-tracking facilities for consumers. Such facilities should include a very prominent message providing information on the losses or profits incurred to date by the account holder at the point they log in. The presentation of this information will help consumers make informed decisions about their gambling activities and remind them of the accumulation of losses incurred where problem gambling exists.

Dynamic warning messages

A key aspect of many harm minimisation measures is the provision of information to consumers that assists them in making informed decisions about their gambling activities.

¹³⁰ Dr Sally Gainsbury, Submission on the interim report of the IGA review, p. 12.

¹³¹ Productivity Commission (2010), Inquiry Report on Gambling, p. 15.8. Retrieved on 14 February 2012 from www.pc.gov.au/projects/inquiry/gambling-2009/report

The account-based nature of online gambling allows providers to determine if consumers are undertaking potentially dangerous patterns of play and present warning messages accordingly. Research indicates that warning messages can be an effective responsible gambling tool for online gambling services^{132, 133}. Italy is considering the use of a real-time alert system to warn individual players about possible compulsive gambling behaviour. In France gambling service providers are required to provide regular pop-up warnings about problem gambling¹³⁴.

Licensed online providers should provide facilities to present dynamic warning messages to consumers if their gambling activities are indicative of problem gambling. Such messages will help to ensure that consumers are aware of their gambling activities and the potential for problem gambling. These messages have been used in France where regular pop-ups are used to warn about problem gambling¹³⁵. It would be important that the way these messages are provided can still operate effectively with software that blocks pop-ups. Consultation with vendors that provide such software will be needed to progress this approach.

Easily accessible counselling services

As outlined in the Productivity Commission report on gambling, the internet allows online gambling operators to provide a range of preventative and support measures to consumers at risk of developing a gambling problem. The internet can also be used to offer treatment and counselling services for those seeking help¹³⁶. The availability of such services will help limit the risks of problem gambling by providing consumers with a safety net.

An example of an existing measure is under the Australian Capital Territory's Gaming and Racing Control (Code of Practice) Regulation 2002, where a licensee cannot publish gambling advertising unless it contains the contact details for an approved gambling counselling service in the Australian Capital Territory. Nationally, there is a gambling helpline (1800 858 858) and associated website, which is an initiative of the Ministerial Council on Gambling. By calling the helpline or accessing the website, gambling counselling and assistance can be sought 24 hours a day¹³⁷.

¹³² Sally Monaghan, Initial Submission to the Productivity Commission, March 2009. Retrieved on 9 February 2012 from www.pc.gov.au/__data/assets/pdf_file/0003/87096/sub058.pdf

¹³³ Dr Michael Wohl and Paul Pellizzari, 'Player tools, do they work? New research and implications for operators' — Presentation to Nova Scotia Gaming Corporation Responsible Gambling Conference (October 2011). Retrieved on 9 February 2012 from responsiblegamblingns.headspacedesign.ca/documents/Pellizzari.Wohl.Halifax.2011.Do_Player_Tools_Work.pdf

¹³⁴ Allen Consulting Group, Research for the review of the Interactive Gambling Act 2001 (2012), p. 101.

¹³⁵ *Ibid.*

¹³⁶ Productivity Commission (2010), Inquiry Report on Gambling, p. 15.22. Retrieved on 14 February 2012 from www.pc.gov.au/projects/inquiry/gambling-2009/report

¹³⁷ Gambling Help Online, www.gamblinghelponline.org.au/

Licensed online providers should include links to the National Gambling Helpline on all pages of their websites. It is important that these links are readily accessible to ensure that consumers can easily contact support services if required.

Readily-accessible regulatory information

As with the availability of information on the potential risks and harms of gambling, consumers may benefit from the availability of information about how online gambling services are regulated and the operation of complaints mechanisms.

The availability of such information will assist consumers in lodging complaints if required, and ensure that they are accessing services that are operated in a fair and reasonable manner.

Licensed online gambling service providers should include a link to the relevant gambling regulatory authorities on their websites (for example, a service licensed in South Australia is required to provide a link to South Australia's Consumer and Business Services).

Annual complaints reporting

As with the accessibility of regulatory and complaints mechanism information above, the availability of reports outlining consumer complaints against online gambling services would enable consumers to make informed choices about their gambling activities and which operator they choose to gamble with. In addition, such reporting would provide an incentive for online gambling services to improve customer service.

State and territory gambling authorities should report annually on the number and types of complaints made against each licensed online gambling service provider and make this information readily available to consumers.

Recommendation 3: The harm minimisation and consumer protection measures in the proposed minimum standard should include (but not be limited to):

- **standardised and significantly more prominent responsible gambling messages**
- **tightened rules around the capacity of online gambling providers being able to provide lines of credit to users—already announced**
- **limits on the types of betting inducements that can be offered, particularly those that encourage individuals to encourage other individuals to open an account—already announced**
- **a pre-commitment capability including in terms of total spend, total time played, number of bets placed and deposits made, including making it mandatory for users to set their own deposit limits**
- **protection of customer funds—already announced**
- **protection and storage of customer information consistent with Australian privacy principles**

- **making data on the uptake and use of harm minimisation and consumer protection measures (consistent with Australian privacy principles) publicly available for research purposes**
- **quick identity verification and age identification of customers when opening a betting account, including consideration of using the Document Verification Service to expedite verification processes and a requirement to roll back all transactions in cases of proven underage gambling**
- **establishment of a national self-exclusion database to be jointly funded by state/territory governments and industry in proportion with their share of online gambling revenue**
- **highly accessible spend tracking facilities including a very prominent message on losses/profits incurred to date by the account holder at the point they log in**
- **targeted warning messages alerting consumers to gambling behaviour that is indicative of problem gambling (subject to consultations with vendors of software that may block such warning messages)**
- **prominent links to the National Gambling Helpline available on all pages of the websites of regulated online gambling service providers**
- **a link on the websites of regulated gambling service providers to the state/territory gambling regulatory authorities to which consumers can lodge complaints—state/territory gambling authorities should report publicly annually on the number and types of complaints made against each licensed online gambling service provider.**

4. Deterrence and enforcement

The IGA prohibits the provision of certain interactive gambling services to customers physically located in Australia. These prohibited services typically provide customers with access, via the internet, to games of chance, or games of mixed chance and skill (including online poker, online roulette and online poker machines or slot machines). In general, the provision of online wagering services that allow bets to be placed after an event has commenced is also prohibited. Under the IGA it is also an offence to advertise prohibited interactive gambling services in Australia.

Issues and challenges

The IGA has been highly effective in limiting Australian-based operators from providing prohibited gambling services to Australians; very few (if any) prohibited services have operated from Australia due to the provisions in place. The lack of Australian-based online gaming providers offering and advertising their services (and the corresponding lack of complaints and investigations about them) illustrates the successful deterrent effect that these provisions have had in preventing the operation of these services. Both the Productivity Commission and the Joint Select Committee have noted this outcome^{138, 139}.

However, evidence provided to the Joint Select Committee and to the review confirmed the Productivity Commission's earlier finding that the IGA has not been effective in preventing overseas-based gambling operators from providing prohibited services to Australians¹⁴⁰.

Significant challenges exist in enforcing the laws regulating online gambling in Australia to ensure that such laws achieve their objective. These challenges have resulted in dissatisfaction and significant concern¹⁴¹ with the current arrangements among stakeholders, with many recommending that reform is necessary. For example, Betfair noted in its submission to the review:

Betfair considers that the IGA is outdated and fails to adequately cater for the current state of play in the online wagering industry – therefore it cannot effectively deal with the social and economic impact of online gambling.¹⁴²

¹³⁸ Productivity Commission, *Inquiry Report on Gambling* (2010), p. 15.18. Retrieved from www.pc.gov.au/_data/assets/pdf_file/0004/95701/18-chapter15.pdf

¹³⁹ Parliamentary Joint Select Committee on Gambling Reform, *Second report—Interactive and online gambling and gambling advertising; Interactive Gambling and Broadcasting Amendment (Online Transactions and Other Measures) Bill 2011*, p. 146.

¹⁴⁰ *Ibid.*

¹⁴¹ New South Wales Government, *Submission to the Review of the IGA*, p. 8.

¹⁴² Betfair, *Submission to the Review of the IGA*, p. 19.

Racing and Wagering Western Australia contended:

The IGA is a responsible control however the current regulatory approach suffers from a lack of enforcement capability. Amendments to Australia's overall regulatory approach to online gambling services as well as the provision of appropriate resources to actively enforce the IGA are necessary to ensure that its objectives can be more effectively met.¹⁴³

The New South Wales Government noted in its submission:

With no prosecutions having been conducted under the Act to date, the Act's ability to effectively prevent Australians from accessing overseas online gaming sites would appear to be minimal.¹⁴⁴

Jurisdictional issues

The provision of gambling services in the borderless world of the internet poses major challenges for the enforcement of the IGA. The difficulties of enforcing the IGA largely arise from issues of extra-territoriality as almost all of the providers of prohibited services that have been identified to date have been based overseas.

One complication of enforcing IGA provisions where online gaming sites are located overseas is gathering evidence from foreign jurisdictions to support an investigation or prosecution in Australia. Mutual legal assistance is the formal process by which countries provide assistance to each other in the investigation and prosecution of criminal matters. However, many countries will only provide mutual legal assistance in circumstances where the alleged criminal conduct also constitutes an offence in the country from which assistance is sought (dual criminality). In most countries in which off-shore online gambling providers are located, the provision of online gambling services is legal. Therefore, if these countries require dual criminality to be established as a prerequisite to the provision of assistance, the assistance sought is unlikely to be forthcoming. Dual criminality is also a fundamental requirement of the extradition process, which may preclude extradition to Australia for offences under the IGA from countries where the provision of online gambling services is legal.

Other jurisdictions that prohibit online gambling or have introduced frameworks for regulated access have also encountered similar enforcement issues in those instances where the offender is located in a country that permits the provision of online gambling services. For example, the efforts of the US to limit access to online gambling services provided from territories outside its jurisdiction have been hampered due to difficulties successfully prosecuting key personnel of major providers. A number of submissions to the review highlighted the recent law enforcement action in the US against three major online poker companies. It is important to note that this action was:

- able to be initiated because of evidence provided by a key individual

¹⁴³ Racing and Wagering Western Australian, Submission to the Review of the IGA, p. 2.

¹⁴⁴ New South Wales Government, Submission to the Review of the IGA, p. 8.

- against individuals who were physically in the US at the time and therefore could be apprehended by US law enforcement authorities—this is critical as the alternative is to use extradition laws which are unlikely to be timely or effective
- taken using laws other than laws relating to online gambling.

Box 1: United States federal cases against online poker companies

On April 15 2011, US authorities charged the operators of PokerStars, Full Tilt Poker and Absolute Poker with breaching the *Unlawful Internet Gambling Enforcement Act 2006* (the UIGEA), and for undertaking money laundering and bank fraud to process financial transactions with customers. Authorities also filed a civil suit seeking to recover approximately US\$3 billion in assets from the companies. The companies were based outside the US, but held the three largest shares of the US market. The bank accounts and website addresses used by the companies were seized, the latter replaced with a takedown notice (although the domains of PokerStars and Full Tilt were later returned after the companies agreed not to provide services to customers in the US)¹⁴⁵.

It was reported that the founder of online payments processor Intabill, Daniel Tzvetkoff, provided US authorities with the inside information that helped build a case against the companies. Tzvetkoff was arrested in 2010 for money laundering, bank fraud and wire fraud in connection with Full Tilt Poker, PokerStars and Absolute Poker, then acted as an informant against the companies to provide information on the methods used to disguise payments¹⁴⁶.

Despite the charges, only those defendants present in the US (or within jurisdictional reach such as Ira Rubin in Costa Rica¹⁴⁷) have so far been arrested. US authorities are working with foreign law enforcement agencies and Interpol to secure the arrest of the defendants and seize criminal proceeds located outside the US¹⁴⁸.

More recently, on 28 February 2012, US authorities indicted Bodog Entertainment Group and its founder Calvin Ayre, for conducting an illegal sports gambling business and conspiring to commit

¹⁴⁵ Joseph Menn, 'Founders of online poker sites charged', *Financial Times*, 16 April 2011. Retrieved from www.ft.com/intl/cms/s/0/806f108c-67b6-11e0-9138-00144feab49a.html#axzz1jwNyPhO5

¹⁴⁶ 'How a Vegas boy bet the house and lost it all', *Sydney Morning Herald*, 25 April 2011. Retrieved from www.smh.com.au/technology/technology-news/how-a-vegas-boy-bet-the-house-and-lost-it-all-20110425-1dt81.html

¹⁴⁷ Ellen Rosen, 'Inspector General, Volcker Rule, Piracy, EU: Compliance', *Bloomberg*, 19 January 2012. Retrieved from www.bloomberg.com/news/2012-01-18/inspector-general-volcker-rule-piracy-eu-compliance.html

¹⁴⁸ United States Attorney Southern District of New York, 'Manhattan U.S. Attorney Charges Principals of Three Largest Internet Poker Companies With Bank Fraud, Illegal Gambling Offenses and Laundering Billions in Illegal Gambling Proceeds', 22 April 2011. Retrieved on 23 January 2012 from www.justice.gov/usao/nys/pressreleases/April11/scheinbergetalindictmentpr.pdf

money laundering¹⁴⁹. The company's domain name was also seized. The indictment alleges that Bodog, one of the world's largest online gambling companies, moved funds from accounts in Switzerland, England, Malta, Canada and elsewhere to pay gamblers, media brokers and advertisers in the US. It has been reported that none of the defendants named in the indictment are in custody, and they are believed to remain in Canada¹⁵⁰. It was reported that a former Bodog employee provided US authorities with information on the corporate structure of the company, and details of its operations in Canada and Costa Rica¹⁵¹.

The ongoing efforts of US authorities to extradite the defendants residing outside the US highlight the jurisdictional issues encountered when services operating in an online world are regulated at a country-specific level. These challenges are shared by Australian authorities in seeking to enforce Australia's online gambling regulatory framework in circumstances where relevant evidence and alleged offenders are located in foreign jurisdictions; particularly foreign jurisdictions where online gambling services are legal. International engagement and cooperation will remain an important component of Australia's law enforcement strategy; however, the limitations of such endeavours must be acknowledged in circumstances where jurisdictions adopt opposing positions on the legality of certain online gambling services.

Strategies to improve enforcement and prevention

With consideration of the issues and challenges outlined above, three possible strategies to improve the operational effectiveness and efficiency of the IGA provisions have been identified by stakeholders during the course of the review.

These include:

- streamlining the IGA enforcement provisions so that they are more likely to facilitate action that may be taken by the enforcement body or regulator when required
- increasing awareness of the IGA's requirements amongst the directors and principals of prohibited service providers and amongst relevant overseas authorities
- restricting access to prohibited service providers.

¹⁴⁹ United States Attorney's Office for the District of Maryland, 'Bodog and four Canadian individuals indicted for conducting internet gambling business generating over \$100 million in sports gambling winnings', 28 February 2012. Retrieved on 5 March 2012 from www.justice.gov/usao/md/Public-Affairs/press_releases/Press12/BodogandFourCanadiansIndictedforConductingInternetGamblingBusinessGeneratingover100Million.html

¹⁵⁰ Nathan Vardi, 'Feds indict former online gambling billionaire Calvin Ayre', *Forbes*, 28 February 2012. Retrieved on 5 March 2012 from www.forbes.com/sites/nathanvardi/2012/02/28/feds-indict-former-online-gambling-billionaire-calvin-ayre/

¹⁵¹ Justin Fenton, 'Bodog founder, operators federally indicted in Maryland', *The Baltimore Sun*, 28 February 2012. Retrieved on 5 March 2012 from www.baltimoresun.com/news/maryland/crime/blog/bal-bodog-founder-operators-federally-indicted-in-maryland-20120228,0,3131584.story

Streamlining enforcement provisions

As noted earlier, the prioritisation of complaints under the AFP's Case Categorisation and Prioritisation Model (CCPM) has to date resulted in few investigations being undertaken by the AFP. Each referral received by the AFP for investigation is assessed on a case-by-case basis using the AFP CCPM that takes into consideration a wide range of matters including:

- the incident type
- the impact of the matter on Australian society
- the importance of the matter to both the client and the AFP in terms of the roles assigned to them by government and ministerial direction
- the resources required by the AFP to undertake the matter.

Given the extra-territoriality issues and difficulties in establishing existing fault elements, it is unlikely IGA offences would be able to be highly prioritised by the AFP in accordance with the CCPM. Each referral will, however, continue to be assessed on a case-by-case basis.

Apart from extra-territoriality issues, the IGA's reliance on criminal offence provisions and penalties has also had an impact on the ability of regulators to enforce the legislation. Under the IGA it is a criminal offence to intentionally provide interactive gambling services. Consequently, for a conviction to be secured, it has to be proven, beyond a reasonable doubt, that the relevant person (for example, the director, principal or other persons acting in an official capacity for the company that provides the service) intended to provide the service that would be in contravention of the IGA. The creation of a strict liability offence in relation principals, directors or officials, could provide an alternative enforcement mechanism that is, potentially, able to be more readily enforced. The structure of any new alternative offences would, of course, need to be consistent with Commonwealth criminal law policy, including the Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers.

While the extra-territoriality difficulties associated with the IGA would remain, the introduction of a strict liability offence would mean there would be no requirement to prove that online gambling service operators had an intention to provide a prohibited gambling service. It would only be necessary to prove that they, in fact, continued to operate a gambling service in contravention of the IGA, despite notice that to do so constituted a criminal offence. It is intended that the notice will have a deterrent effect on prohibited gambling providers offering services to Australian consumers, and that these providers would seek to limit access to their services by Australian consumers.

Such streamlining of offence provisions should help to increase the capacity of law enforcement agencies and regulators to take action should the opportunity arise.

Civil penalties for provision of prohibited services

The IGA's enforcement provisions could be improved by the introduction of civil offences and penalty provisions to be enforced by the ACMA. Civil offences have a lower standard of proof than

criminal offences, and may, therefore, be more readily enforced by authorities. The introduction of civil penalty provisions would also address the issue of potential breaches of the IGA being considered a lower priority for the AFP—as the AFP would not be involved in the enforcement of civil penalties.

Subject to consistency with overarching Commonwealth legal policy, it is proposed that the civil penalty provisions be supplemented by provisions expressly allowing the regulator or enforcement body (for example, the ACMA) to seek injunctive relief from the Federal Court for contravention of the civil penalty provisions. This would provide clarity to the scheme and certainty for the ACMA in exercising its powers. It would also provide the Federal Court with express jurisdiction in these matters.

The details of how the civil penalty provisions would operate would require further consideration by drafters and key stakeholders. Consistent with its current role, it is envisaged that the ACMA would be the entity to issue relevant notices (including infringement notices) and enforce such penalties. Injunctive relief may assist the ACMA in situations where it seeks to prevent an activity or where it seeks to pursue a particular course of action. For example, the ACMA may obtain an injunction to ensure that a person does not leave the country whilst they finalise an investigation. Injunctions are often a more timely and simpler form of court enforcement.

The inclusion of such penalties is designed to promote a greater level of effective regulation through more easily enforceable sanctions. Civil penalties would reduce the level of reliance on the AFP. This greater enforcement capacity may serve as a stronger deterrent to breaching provisions.

As part of the civil penalty regime for the provision of prohibited services, the ACMA could be provided with the power to issue and act upon take-down notices to remove prohibited content of gambling service providers hosted in Australia in a timely manner. A key part of these powers would also involve the expansion of the ACMA's ability to seek injunctions and variations against parties (and the clarification of the jurisdiction of the Federal Court in such matters). This approach would provide clarity and certainty for the ACMA in exercising its powers. The proposed provisions could be modelled on sections in the *Spam Act 2003* that provide for the granting of performance and interim injunctions by the Federal Court on application by the ACMA in relation to contravention of civil penalty provisions.

As with any penalty scheme, it would need to be implemented with judgement and proportionality. No regulator would have the resources to pursue every possible infringement of the IGA and especially those by overseas-based entities. It is envisaged that the proposed new regime would operate so that the ACMA would also continue to operate primarily as a complaints-driven regulator, but with the capacity to target its activities on those complaints and sites that are likely to have greatest effect on Australian consumers.

The ACMA should be given discretionary powers to action complaints and investigations about prohibited internet gambling services. In line with the anticipated Australian Law Reform Commission approach, a possible provision conferring discretion on the ACMA could read:

In deciding whether to investigate particular content, the ACMA should consider the following matters, to the extent they are relevant:

- *where the content is hosted*
- *the likely size of the Australian audience able to access the content*
- *the number of complaints to which the content has been subject*
- *the likely nature of the content (prohibited or not)*
- *any relevant previous decision on the content or similar content*
- *the profile of the service provider or content in the Australian community.*

The revised legislation should clarify that the ACMA is not required to afford procedural fairness before making a decision on whether or not a particular gambling service is prohibited, although the ACMA would retain the discretion to do so on a case by case basis.

The inclusion of civil penalty provisions in the IGA would not, however, address the jurisdictional and extra-territoriality issues associated with the operation of prohibited overseas providers, which would continue to mostly remain outside the reach of Australian law.

In drafting legislative amendments to establish these measures, consideration of the relationship between terminologies used throughout the IGA will be required to allow inter-operability of the legislation across enforcement agencies. This will help to ensure that the IGA can be more effectively enforced in the future, and elicit partnering opportunities for the ACMA and the AFP on future enforcement activities as required.

Penalties for support services

It has been suggested that the IGA be amended so that it prohibits the operation of services that support the provision of a prohibited online gambling service in Australia. It has previously been alleged that a number of Australian-based services assist prohibited online gambling services based overseas with financial transactions, marketing and customer support for consumers, some of whom may be Australian consumers accessing prohibited overseas websites. For example, regarding the recent action taken by US authorities against three major online poker websites, it was reported that support services for one of these sites was provided by a company based in Australia.

The inclusion of enforceable penalties (which may be in the form of civil or pecuniary penalties) for the operation of such services would assist in disrupting the provision and advertising of the prohibited gambling services to Australian consumers, thereby limiting the availability of these services.

Once again, the identification and definition of such services would need to be considered carefully so not to mistakenly capture legal and legitimate services.

Tax issues

Stakeholders have suggested that strengthened enforcement activity should include action to address tax evasion by prohibited gambling providers transacting with Australian consumers. In its submission on the interim report of the review, the Victorian Interchurch Gambling Taskforce notes:

It is expected that losses to offshore gambling providers illegally allowing Australians to gamble on their sites and paying no tax to the Australian Government on the losses is expected to continue to grow. These tax evasion losses will continue to grow even if the Government allows for legalised online poker tournaments. The level of the tax evasion losses justifies a greater level of counter activity to curb these losses than a complaints-based investigation system. Even a modest curbing off losses is likely to pay for itself...The Taskforce notes that it is possible for the [Australian Taxation Office] ATO to seek payment of taxes on illegal activities.¹⁵²

The ATO advises that foreign residents are, broadly speaking, taxed on income derived from Australian sources and not on income from other sources. In addition, where there is an applicable tax treaty between Australia and the foreign resident's country, Australia's right to tax the foreign resident's business income is generally limited to where the non-resident is carrying on business in Australia at or through a permanent establishment. Determining both the source of income and the existence of a permanent establishment are questions of fact determined by the circumstances of each case. It is not therefore possible to definitively state whether or not income from the provision of online gambling services by foreign residents is taxable in Australia.

In so far as such income is not taxable in Australia, it would in general not be correct to characterise the non-taxability of that income as tax evasion losses, nor to suggest that the ATO could take any administrative action to deal with this phenomenon.

Recommendation 4: The IGA be amended to include a provision for a director, principal or other person acting in an official capacity for a provider to be issued with a notice requiring them to cause the provider to cease offering services in contravention of the IGA, with failure to comply with the notice being a strict liability offence.

Recommendation 5: The ACMA should be the body responsible for administering civil penalties for the provision of prohibited gambling services hosted in Australia including:

- **Issuing civil (including pecuniary) penalties by way of an infringement notice – this would be in addition to the existing criminal penalties in the IGA which are the responsibility of the AFP.**
- **Issuing take-down notices to internet gambling service providers in relation to prohibited internet gambling content hosted in Australia—this would be similar to the provisions in Schedule 7 of the *Broadcasting Services Act 1992* in regard to prohibited content.**

¹⁵² Victorian InterChurch Gambling Taskforce, Submission on the interim report of the IGA review, p.14.

- **Applying to the Federal Court for injunctive relief, if an Australian-hosted internet gambling service provider acts in contravention of the above proposed civil penalties or take-down notice. Subject to consistency with overarching Commonwealth legal policy, there should be a provision expressly conferring jurisdiction on the Federal Court to grant injunctive relief where such an application is made by the ACMA.**
- **Using discretionary powers to action complaints and investigations about prohibited internet gambling services.**

Ensuring operators of prohibited services are aware of IGA provisions

The deterrence objectives of the IGA will only be effective if operators of prohibited services are aware of the relevant IGA provisions, the penalties involved, the intent of law enforcement and regulatory bodies to take enforcement action, and the options operators of prohibited services have of becoming licensed in Australia. As the IGA has now been in place for over 10 years, with no prosecutions, it is likely that operators of prohibited services are either unaware of the Australian law or believe they are beyond its reach. If the IGA is to be at all effective, this needs to be addressed.

Listing of prohibited websites by the ACMA

In their submission to the review, Dr Gainsbury and Professor Blaszczyński made reference to Online Casino City, a website promoting and providing information on the availability of over 2500 online gambling services (approximately 2200 of which may accept play from Australia)¹⁵³. The department, in conjunction with the ACMA, has investigated this website for possible infringements relating to the provision and advertising of prohibited online gambling services and referred the matter to the AFP for further action. The ACMA is continuing its investigation into the more popular online gambling service providers listed on the Online Casino City website. The ACMA has completed investigations into 21 more popular services, finding that 16 offered prohibited online gambling services which were accessible by Australian end-users. As a result, these services were referred to the AFP and their URLs provided to PC filter vendors.

Those providers who are identified by the ACMA as providing a service in contravention of the IGA should be listed on the ACMA website. It is intended that, in this context a ‘provider’ could mean a service hosting gambling content (for example gambling software that can be downloaded), the content producer (for example an application developer) or the gambling website itself. To ensure that there is clarity around who the ACMA is able to investigate and act against, the content and services intended to be captured under this term would need to be clarified in legislative amendments for this measure.

¹⁵³ Dr Sally Gainsbury and Professor Alex Blaszczyński, Submission to the review of the IGA, p. 2.

This list should include a very clear explanation that these sites have been found to be in breach of Australian law. These service providers could then contact the ACMA to have this listing removed if they can prove they have ceased offering prohibited services to Australian consumers.

The ACMA have suggested that entries on the list should include the specific URL investigated. The ACMA could also use discretion to include the title of the website and a very brief description of why the site was prohibited, as relevant on a case by case basis.

To limit the risks to the ACMA of accruing liability for inadvertent errors in publishing providers on the ACMA website, suitable statutory indemnities and protections would need to be included in legislative amendments introducing the measures.

Recommendation 6: The list of known prohibited internet gambling providers should be published and regularly updated on the ACMA website accompanied by very clear information discouraging Australians from using these sites because of the risks they would be taking. This listing should be drawn to the attention of the operators of the prohibited online gambling service noting that failure to take reasonable steps to cease providing these services to Australian consumers may result in the commission of offences under the IGA, criminal liability for directors/principals of the provider and the placement of directors/principals of the service on the Movement Alert List. It may be appropriate for this website to also include a link to the websites of state/territory regulators which list the online gambling services that are licensed by states/territories and not prohibited by the IGA.

Movement Alert List (MAL)

The deterrence impact of the IGA could also be increased if operators of prohibited services were aware that law enforcement bodies may be monitoring any attempts by them to enter Australia. This may potentially be implemented through use of the MAL, administered by the Department of Immigration and Citizenship (DIAC). MAL is a computer database that stores biographic details of identities and travel documents of immigration concern to Australia. MAL is a key tool used by DIAC to apply the legislation governing the entry to and presence in Australia of non-citizens who are of character concern¹⁵⁴. It is also used by relevant law enforcement bodies such as the AFP to assist in law enforcement.

Operators of prohibited interactive gambling services are doing so in contravention of an Australian law that carries significant criminal penalties. Given this, the names and details of the principals and directors of these companies can be placed on MAL for the purposes of alerting relevant authorities when these people enter Australia. The level of detail required to accurately identify these people would need to include their full name, date of birth and nationality. Should the Australian Government choose to deny these people a visa for entry into Australia, the *Migration Regulations 1994* could be amended to create a specific Public Interest Criterion for this purpose.

¹⁵⁴ Department of Immigration and Citizenship, Fact Sheet 77—The Movement Alert List (MAL). Retrieved on 22 December 2011 from www.immi.gov.au/media/fact-sheets/77mal.htm

It is of course the case that these people may never choose to travel to Australia, or would use an alias to avoid detection (the department has undertaken an internet search and found that the names of the principals/directors of the most popular online gaming providers are not difficult to find). Nevertheless, there is potentially a significant deterrence impact from a MAL listing, especially if an appropriate agency were to:

- write to the relevant principals/directors informing them that:
 - their companies have been found by the ACMA to be offering services to Australians in contravention of the IGA
 - there are penalties associated with doing so, not just for the companies but also the individual
 - their names have been placed on MAL to alert relevant agencies if they seek to enter Australia
 - they can have their names removed from MAL if they permanently cease offering prohibited services to Australians.
- copy the letter to the relevant law enforcement and regulatory bodies in the countries in which these companies are based
- write to law enforcement bodies in other countries where online gambling services are prohibited encouraging them to take similar action.

The names and details of the principals/directors could also be referred to relevant state or territory authorities for any appropriate action that can be taken under state or territory law. An example of such action could be that the state or territory regulator could use such information to decline to register an online gambling provider from setting up a new operation within that jurisdiction, where that company, or the directors of the company, are continuing to offer to Australians services that are prohibited under the IGA.

These details could also be provided to the Australian Securities and Investment Commission (ASIC) to place on their business register so as to prevent directors and principals engaging in other types of business within Australia.

Recommendation 7: Online gambling service providers that are confirmed by the ACMA as providing prohibited services in contravention of the IGA, that do not respond to contest this assessment, and continue to offer the service within 28 days of the notice should be subject to appropriate action as discussed above, including placement of the names of principals/directors of prohibited online gambling service providers onto the Movement Alert List, as well as being referred to relevant state/territory authorities and ASIC. The relevant persons should be notified of the actions taken.

Measures to restrict access to prohibited gambling services

Criminal penalties for access

During review discussions, some stakeholders suggested the possible use of criminal penalties for accessing prohibited gambling services. While the use of such measures (if effectively enforced) could help to limit problem gamblers' access to online gambling services, and also minimise the harm caused by these services, criminalising the accessing of online gambling services could be seen as penalising rather than protecting potential problem gamblers, and would be a very heavy-handed approach. The enforcement of such measures would also be highly resource intensive in terms of consumer monitoring, investigation and prosecution to be truly effective. These measures also do not address the availability of online gambling services, which would still be accessible to Australian consumers via overseas providers. Such measures would also not be in line with societal norms, or with the approach being taken by many other Western democracies, where online gambling is becoming increasingly regulated.

This view is confirmed by the Victorian InterChurch Gambling Taskforce, which notes in its submission on the interim report of the review, that establishing such an offence is 'highly unlikely to reduce problem gambling associated with online gambling and would be likely to reduce help-seeking from those with gambling problems'.¹⁵⁵

There is strong demand by Australians for online gambling services, and there are many overseas-based online gaming operators that will supply these services. Even if online gaming service providers were to be regulated, as a number of European countries are now doing, not all overseas providers would choose to become licensed in Australia. There would, therefore, be a need to at least disrupt the ability of unlicensed providers to successfully offer online gaming services to large numbers of Australians.

Submissions to the review suggested two other measures that would help to prevent (or at least restrict) access to prohibited online gambling services. These are:

- blocking of financial transactions with prohibited online gambling service providers
- blocking of access to websites of prohibited online gambling service providers.

Restricting financial transactions

A number of countries have adopted measures to restrict financial transactions with unlicensed or prohibited online gambling service providers. For example, in the US restrictions on online gambling are applied through the UIGEA which:

- criminalises the acceptance of US-initiated financial instruments by operators of online gambling websites in connection with unlawful internet gambling

¹⁵⁵ Victorian InterChurch Gambling Taskforce, Submission on the interim report of the IGA review, p. 8.

- prohibits US financial transaction providers from processing transfers of funds to unlawful Internet gambling businesses.

The regulations implementing the UIGEA specify that non-exempt participants in the designated payment systems must ‘establish and implement written policies and procedures reasonably designed to identify and block or otherwise prevent or prohibit restricted transactions’. It should be noted, that the obligation to ‘identify and block’ only applies to card systems; all other designated payment systems must ‘prevent or prohibit’. The Australian Bankers’ Association (ABA) advises that this can be implemented through due diligence at the account opening stage as this is a form of prevention. Due diligence only applies to new commercial customer accounts; it does not apply to individual customers, and aims to restrict the ability for certain gambling businesses to attain accounts from which payments can be made and accepted. An overview of the UIGEA is shown in Box 2 below.

Box 2: Application of the UIGEA

Under the UIGEA, the US Department of the Treasury and the Federal Reserve Board have applied regulations requiring certain participants in payment systems to have ‘policies and procedures reasonably designed to identify and block or otherwise prevent or prohibit the processing of restricted transactions’.

A ‘participant’ is defined as ‘an operator of a designated payment system, a financial transaction provider that is a member of, or has contracted for financial transaction services with, or is otherwise participating in, a designated payment system, or a third-party processor.’ This does not include a participant’s customer, unless the customer is also a financial transaction provider participating on its own behalf in the designated payment system¹⁵⁶. Five payment systems are designated as covered by the UIGEA:

- automated clearing house (ACH) systems
- card systems
- check collection systems
- money transmitting businesses
- wire transfer systems.

All participants in designated payment systems are exempt from the requirement to have policies and procedures unless they are specified as ‘non-exempt’ under the regulations¹⁵⁷. In general,

¹⁵⁶ Office of the Comptroller of the Currency, United States Department of the Treasury, Examination Handbook (EH770)—Unlawful Internet Gambling Enforcement Act, May 2010. Retrieved on 5 March 2012 from www.occ.gov/static/news-issuances/ots/exam-handbook/ots-exam-handbook-770.pdf

¹⁵⁷ See Office of the Comptroller of the Currency, United States Department of the Treasury, Examination Handbook (EH770aa), Appendix A: Summary Chart—UIGEA: Designated Payment Systems and Requirements of Participants, May

participants in a designated payment system are exempt unless they have direct relationships with commercial customers. It should be noted that, in relation to card systems, banks are not required to make blocking decisions on individual transaction, nor determine whether individual customers are gamblers; it was determined that this would be impractical for a number of reasons, including the volume and speed of card authorisations.

The regulations provide non-exclusive examples of acceptable policies and procedures that provide a safe harbour for non-exempt participants in the designated payment systems. The regulations focus on due diligence to be conducted by financial institutions and third-party processors in establishing and maintaining commercial customer accounts.

Card systems are the only designated payment systems for which the regulations suggest that transactions could be blocked during processing, as they are the only payment systems that commonly use a merchant and transaction coding framework that affords such identification and blocking¹⁵⁸.

A number of stakeholders have suggested that financial restriction measures be implemented in Australia to support enforcement of the IGA. For example Clubs Australia suggests:

In the US, laws prevent banks and credit card companies from processing payments to and from prohibited websites. Although this approach has some complications, it has resulted in many offshore sites refusing to take bets from American citizens.¹⁵⁹

While these measures appear feasible, their effectiveness has not yet been sufficiently verified.

The size and continued growth of the US online gambling market illustrates the limited effectiveness of these measures as applied to date in the US. The American Gaming Association noted that:

Enactment of [the] UIGEA in 2006 temporarily reduced online gambling by US residents, but the volume of online bets from the United States soon recovered. In 2010, online gambling revenues from US bettors exceeded \$4 billion.¹⁶⁰

This is corroborated in research by H2 Gambling Capital which noted that gross revenues of US\$5.1 billion were generated during 2009 in terms of gross win (stakes less prizes but including

2010. Retrieved on 5 March 2012 from www.occ.gov/static/news-issuances/ots/exam-handbook/ots-exam-handbook-770aa.pdf

¹⁵⁸ *Ibid.*

¹⁵⁹ Clubs Australia, Submission to the Review of the IGA, p. 11.

¹⁶⁰ David Stewart, American Gaming Association White Paper—Online Gambling Five Years After UIGEA (2011). Retrieved on 6 January 2012 from www.americangaming.org/sites/default/files/uploads/docs/whitepapers/final_online_gambling_white_paper_5-18-11.pdf

bonuses). This compares to a peak of US\$6.0 billion in 2006, the year that UIGEA was signed into law¹⁶¹.

The Joint Select Committee also noted challenges with the effectiveness of the measures used in the US, noting that while they have had some impact, circumvention methods still allow access:

Professor Robert Williams and Associate Professor Robert Wood agreed that the introduction of the UIGEA resulted in a 25 per cent decrease in the number of online gambling sites accepting bets from US citizens. However, they argued that this reduction has not been permanent, with many US citizens participating in online gambling and finding ways around the restrictions imposed by the legislation.¹⁶²

Box 3: Norway's approach to financial transaction blocking

Norway first implemented payment blocking measures to offshore gambling websites in June 2010 using merchant codes. A recent study evaluating the effectiveness of such measures concluded that 35 per cent of online gamblers found it more difficult to access online gambling sites and 28 per cent said that as a result of the measures it had become more difficult to gamble online. The increased payment blocking measures had also impacted on the recruitment of new players to non-licensed gambling websites as the number of players on overseas websites had not increased¹⁶³. However, the payment ban has had less impact on the rate of gambling on offshore websites than was expected by the regulators.

A Norwegian Gaming Board report released on 25 January 2012 showed that 54 per cent of online gamblers played as frequently as they did prior to the prohibition and five per cent of players played more frequently on foreign websites. It appears that measures have not been as successful as expected due to the ease of circumvention and the increasing use of payment options that do not involve financial institutions. The report has, however, reinforced the fact that the ban has made it more difficult for casual players to use unlicensed providers and for unlicensed operators to recruit new online gamblers¹⁶⁴.

¹⁶¹ Simon Holliday, Gavin Kelleher, Michael Bradbury and Joel Keeble (H2 Gambling Capital), United States: Regulated internet gambling economic impact assessment, 15 April 2010. Retrieved on 6 January 2012 from http://waysandmeans.house.gov/media/pdf/111/2010May19_H2_Gambling_Capital_Submission.pdf

¹⁶² Parliamentary Joint Select Committee on Gambling Reform, Second report—Interactive and online gambling and gambling advertising; Interactive Gambling and Broadcasting Amendment (Online Transactions and Other Measures) Bill 2011, p. 97.

¹⁶³ Allen Consulting Group, Research for the review of the Interactive Gambling Act 2001 (2012), p. 83.

¹⁶⁴ Daniel Macadam, 'Norway's Payment Ban Fails to Halt Offshore Gambling in 2011', *Gambling Compliance*, 30 January 2012, www.gamblingcompliance.com/node/48408

The department undertook consultations with key financial institutions in Australia on the types of measures that could be used. In order to understand what measures could be implemented it is first necessary to understand how payment systems work.

Payment systems

Proprietary card schemes

Visa and MasterCard operate a proprietary payment system for debit and credit transactions. Every transaction involves four parties: the cardholder, the card issuer (that is, a bank), the merchant, and the merchant acquirer (a bank). When a merchant applies to a merchant acquirer to use the system, the acquirer assigns them with a four-digit merchant category code (MCC) as defined by Visa or MasterCard based on the goods or services provided by the merchant. The merchant describes their good or service to the acquirer through the application, and the acquirer confirms this and a range of other matters through due diligence. There is a MCC for gambling, which applies to all forms of gambling, including gaming, wagering and lotteries (although some government lotteries may be identified as government transactions). However, the MCC is not able to differentiate between different types of gambling, or between legal or prohibited services offered by the same operator¹⁶⁵.

Interbank system

In a domestic context, electronic transactions that directly debit the customer's account (direct electronic funds transfer) are authorised by the customer and a transfer of monies (payment) is made instantaneously and the customer's account debited according to the payment authorised. A BSB, account number and account name are required for direct electronic funds transfers.

International money transfers are conducted by banks and other financial institutions using payment instructions via an automated interbank payment system—for example, the Society for Worldwide Interbank Financial Telecommunication (SWIFT) platform. This is a very different system from the proprietary networks operated by the debit and credit card companies to execute transactions via scheme debit and credit cards.

The SWIFT platform operates via financial messages based on industry standard codes. Data is generated upon payment instructions specified by the customer to their bank or other financial institution. A tele-transmission is sent via file transfer protocol by a bank or other financial institution to an overseas counterparty (that is, beneficiary bank, financial institution or SWIFT member) giving instructions to make a payment to their customer (that is, beneficiary) for a specified amount.

Unlike the card proprietary networks, SWIFT does not use a MCC nor is generic coding used to identify the type of business offered by the merchant (that is, gambling). Transactions conducted via the SWIFT platform are facilitated by transaction codes, routing information and other data based

¹⁶⁵ Email dated 4 January 2012 from Mastercard to DBCDE regarding consultations on the review.

on syntax standards for transmission of financial messages over 'SWIFTNet'—including bank identifier code (SWIFT code); beneficiary bank, name, address and number (SWIFT code); beneficiary account name and number (IBAN code); amount and currency; and reason for payment. Therefore, while the proprietary systems include merchant identifier details, the interbank system operates on the basis of bank account details.

It is also important to note that the SWIFT platform is not only used for interbank payments but also to execute financial market transactions—such as securities, trade and treasury transactions.

The ABA advises that the US does not require SWIFT transfers to unlawful internet gambling providers to be identified or blocked given the practical difficulties and complexities associated with this interbank system. It was recognised that card (credit and debit) transactions were the only types of transactions that could reasonably be identified and blocked (in real time) utilising the current coding system of this proprietary network. The ABA considers that the US legislation has not required banks and other financial institutions to implement new automated or manual processes. Instead, the ABA advises that banks and financial institutions are required to put in place policies and procedures for due diligence at the account opening stage for new commercial accounts.

PayPal

Whereas card schemes use a four-party payment system (cardholder, the card issuer, the merchant, and the merchant acquirer), systems such as PayPal could be described as a three-party system (customer, PayPal, merchant). If a credit or debit card is used, the card issuer will not have the ultimate payee's (the merchant's) details; rather, the transfer will be authorised to PayPal as the payee.

PayPal has the advantage of direct relationships with the customers and the merchants. PayPal has advised that it does not enter into relationships with gambling sites, unless those gambling sites have been vetted and found not to be providing prohibited gambling services.

Discussions with PayPal suggested that measures to restrict transactions to prohibited gambling providers were feasible, and are already undertaken to some extent by some financial providers. PayPal notes:

PayPal's user agreement and acceptable use policy already prevent PayPal from enabling payments on any gambling sites, unless they have been specifically pre-approved ... Given the experience that PayPal already has in placing focused financial restrictions on illegal online gambling service providers, Pay Pal believes that the formal imposition of such restrictions by the Australian Government would be highly effective, at least in so far as preventing the use of PayPal for such transactions.¹⁶⁶

¹⁶⁶ Letter, PayPal to DBCDE dated 2 December 2011.

e-wallets

Stakeholders also raised the use of digital wallets (or 'e-wallets') as a method for consumers to undertake transactions with online gambling service providers.

An e-wallet is an online stored-value account that enables customers to add, withdraw and transfer funds to other users (including merchants and other e-wallet customers). Such accounts are also accessible through mobile applications. Examples of such services include Neteller, Allied Wallet's eWallet, Ukash, POLi, DaoPay and Money Online (MOL)^{167,168,169,170,171,172}.

An individual's bank account, credit card and other information can also be linked to the e-wallet, but is not shared when a transaction is made¹⁷³.

Such services are regulated as financial services in different jurisdictions. For example, Neteller is authorised by the UK Financial Services Authority under the Electronic Money Regulations 2011 for the issuing of electronic money¹⁷⁴.

In her submission on the interim report of the review, Dr Gainsbury notes that there are 173 different payment methods accepted by sites providing online gambling to Australians, including e-wallets that would allow transactions with online gambling operators to be undetected¹⁷⁵. A few of the popular payment methods available to Australian consumers is illustrated by Figure 2 below.

In its submission to the Joint Select Committee, iBus Media also noted that consumers can use e-wallets to circumvent the restrictions imposed by the UIGEA:

Electronic accounts or e-wallets are online accounts which draw on a consumer's bank account or credit or debit card and then route the consumer's funds to the online operator, many of which are offshore and therefore not regulated in the US. This model makes it difficult for US financial institutions to distinguish between a gambling transaction and other transactions.¹⁷⁶

¹⁶⁷ Neteller, About. Retrieved on 21 February 2012 from www.neteller.com/about/

¹⁶⁸ Allied Wallet, eWallet. Retrieved on 21 February 2012 from www.alliedwallet.com/ewallet

¹⁶⁹ Ukash. Retrieved on 10 July 2012 from www.ukash.com/au/en/home.aspx

¹⁷⁰ POLi Payments. Retrieved on 10 July 2012 from www.polipayments.com/

¹⁷¹ Daopay. Retrieved on 10 July 2012 from www.daopay.com/

¹⁷² MOL Money Online. Retrieved on 10 July 2012 from <https://global.mol.com/au/portal/en/default.aspx>

¹⁷³ *Ibid* 162.

¹⁷⁴ *Ibid* 162.

¹⁷⁵ Dr Sally Gainsbury, Submission on the interim report of the IGA review, p. 17.

¹⁷⁶ iBus Media Limited, Submission to the Joint Select Committee, p. 15.

Figure 2 – Payment types



Options for restricting financial transactions

From consultations with various organisations involved in the Australian banking and financial services industry, two options to restrict participants in payment systems from processing the transfer of funds from Australian customers to unlicensed online gambling providers were identified (there may be others, but they did not arise during consultations). As noted earlier, currently no Australian-licensed businesses can provide prohibited internet gambling services to Australian customers; the enforcement issues experienced with the current regulatory framework relate to prohibited providers not licensed in Australia. As such, these options would also need to be considered in light of Australia’s international trade commitments.

Option 1—Blocking transactions to unlicensed gambling providers using the existing gambling merchant category code and a due diligence approach (as used by the US and Norway)

Under this option, financial institutions have written policies and procedures to identify and block transactions to prohibited online gambling providers that are made via credit and debit cards by any of its customers (including individual, non-commercial account holders). Card issuers could rely on the policies and procedures established by the card networks (for example, Visa or Mastercard) and would not have to create a separate process to block card transactions internally. This option may only be relevant to proprietary card schemes as it could not be practically implemented for other payment systems.

Non-exclusive examples of acceptable (compliant policies and procedures) could be provided, which are not only a means of complying with the rule, but also provide a safe harbour for participants in the card payment system. For example, card networks could meet their obligations by:

- Establishing due diligence procedures to review merchants accepting debit or credit cards to determine if they are acting as lawful internet gambling businesses.
- Developing a system of merchant and/or transactions codes of gambling payments that could be blocked (that is, deny authorisation by using a coding solution). However, as noted above, it does not necessitate that the coding differentiates between lawful and unlawful gambling.

The ABA suggest that such measures focus on a targeted area of concern—that is, on credit and debit cards where identification and blocking of restricted transactions could effectively be implemented. It should be noted, however, that if one payment avenue is blocked others will then be exploited.

Participants would not be required to make blocking decisions on individual transactions, nor determine whether individual customers are gamblers, as it would be impractical for participants to

monitor and block suspicious individual transactions because of the volume and speed of card authorisations and the card issuing bank's ignorance of the merchants involved.

With the introduction of the UIGEA in the US, it was expected that card systems would find using a MCC as the 'method of choice' to identify and block restricted transactions. This ensured that financial institutions were not required to implement burdensome and costly new automated systems and manual processes.

Participants would not be liable for blocking legal transactions. If a participant has chosen to block all gambling transactions, then they may continue to implement this business decision. In other words, banks could block or over-block all transactions related to gambling if they choose, without liability.

Mastercard advises that:

It may be technically possible, although administratively burdensome for MasterCard customers to block transactions they see to/from merchants with a gambling MCC from an overseas jurisdiction—it should be noted however that legal and illegal services may have transactions blocked.

Such measures would target the major overseas gambling organisations, covering the vast majority of transactions to prohibited gambling providers.

Appearing before the Joint Select Committee, Mr Steven Munchenberg (Chief Executive Officer of the ABA) suggested such a system could be used; however, it could not be considered foolproof as merchant identification numbers could be changed and all transactions to blacklisted merchant numbers could never be perfectly captured¹⁷⁷. In addition, it was noted that the cooperation of international third-party payment companies (such as PayPal or Western Union) would be required in cases of indirect payments as banks would not be able to determine the vendor's details (that is, the online gambling provider). As such, in the case of international third-party payment companies, the financial intermediaries themselves would need to be relied on to identify merchant numbers¹⁷⁸.

This option also possesses some key disadvantages, however. As outlined above, the MCC is operator-specific. Therefore, the MCC is not able to differentiate between different types of gambling, or between legal or prohibited services offered by the same provider, and may inadvertently capture legal transactions to all offshore gambling providers. This would include not only interactive gambling providers, but any merchant with a gambling MCC. For example, this could include a Las Vegas casino or a hotel room within a gambling venue (if a gambling MCC has been allocated for all transactions related to that venue). The ABA advises that this over-blocking of lawful transactions would occur in Australia if these measures were introduced and could impact on the

¹⁷⁷ Parliamentary Joint Select Committee on Gambling Reform, Second report—Interactive and online gambling and gambling advertising; Interactive Gambling and Broadcasting Amendment (Online Transactions and Other Measures) Bill 2011, pp 331–333.

¹⁷⁸ *Ibid.*

confidence of the Australian payments system. Conversely, many online gambling sites use an incorrect MCC or change their identifying information and would not be blocked ('under-blocking').

Restrictions could also be circumvented by customers using alternative payment methods (such as the e-wallets outlined above) or by fraudulent merchants deliberately miscoding their services (as occurred in the case outlined in Box 1). For example, transactions to an online casino could be coded as non-gambling services such as a hotel rooms, souvenirs, etc¹⁷⁹.

For payment systems other than those involving credit and debit card transactions, this approach would require financial institutions to implement their own risk-based, due diligence procedures in dealing with their commercial customers. Designated payment systems would be required to introduce policies and procedures outlined what action they will take:

- to undertake due diligence at the account opening stage for commercial customers
- to give notice to commercial customers that restricted transactions cannot be processed
- if they gain 'actual knowledge' that a commercial customer is receiving restricted financial transactions.

If implemented, such measures would require a significant amount of monitoring and investigation to be effective. It is likely that these functions would have to be undertaken by the financial institutions involved, which could result in the costs incurred being passed on to consumers. The Queensland Department of Justice and Attorney-General noted in its submission:

... the major concern from institutions in the United States has been the compliance costs associated with monitoring and identifying internet gambling transactions.¹⁸⁰

This view was shared by the Joint Select Committee majority, which was 'not convinced of this approach' and suggested that further research was required before a sound judgement could be made on the use of these measures¹⁸¹.

In addition, there are trade implications that must be considered. In 2003, Antigua and Barbuda brought a claim against the US before the World Trade Organization (WTO), alleging that laws prohibiting online gambling (including the *Wire Act 1961* and various US state laws) violated the US's trade obligations, and had a negative impact on Antigua and Barbuda's online gambling industry^{182,183}.

¹⁷⁹ Feedback from DBCDE consultation with Mastercard in December 2011.

¹⁸⁰ Queensland Department of Justice and Attorney-General, Submission to the Review of the IGA, p. 10.

¹⁸¹ Parliamentary Joint Select Committee on Gambling Reform, Second report—Interactive and online gambling and gambling advertising; Interactive Gambling and Broadcasting Amendment (Online Transactions and Other Measures) Bill 2011, p. 148.

¹⁸² World Trade Organisation, Dispute Settlement: Dispute DS285: United States—Measures Affecting the Cross-Border Supply of Gambling and Betting Services. Retrieved on 19 March 2012 from www.wto.org/english/tratop_e/dispu_e/cases_e/ds285_e.htm

The US contested the case over several years, mounting a number of arguments against the claim; however, in 2005 the WTO ruled against the US holding that its anti-gambling laws violated specific US commitments under its General Agreement on Trade in Services (GATS) schedule.

In 2006, Antigua and Barbuda made a further complaint to the WTO regarding US compliance with the ruling, which was later upheld by the WTO. The WTO later granted Antigua and Barbuda permission to suspend trade concessions granted to the US at a level not exceeding \$21 million annually. The trade dispute remains ongoing, with the US and Antigua and Barbuda trying to reach a mutually-agreed solution on the matter.

Noting the dispute between the US and Antigua and Barbuda above, if this approach was to be adopted, care would need to be taken to ensure compliance with Australia's trade obligations.

Option 2—Blocking transactions to gambling organisations on a blacklist

Under this option, banks and financial institutions block financial transactions to prohibited gambling organisations included on a central blacklist. The blacklist would comprise relevant financial details, and would be administered and maintained by a federal agency. The blacklist would be regularly disseminated for the use of financial institutions. Such a list could be developed using information on online gambling services included on the on the ACMA's list of prohibited internet gambling content which it currently provides to Family-Friendly Filter vendors. This approach is analogous to the targeted financial sanctions regime administered by the Department of Foreign Affairs and Trade (DFAT), whereby all persons (not simply financial institutions) are prohibited from "making assets available" to persons and entities designated under the sanction.

As with Option 1, such measures would focus on the major overseas gambling organisations, but could provide more targeted coverage of those organisations identified by authorities as providing prohibited services to Australian consumers.

There are a number of issues, however, associated with a blacklist approach to restricting transactions to prohibited gambling providers.

One major issue relates to the collection of accurate information on the prohibited gambling providers. Transactions to prohibited providers may not necessarily be made payable to the business's listed name (for example, to an individual instead), while other details of the payee may also frequently change (for example, the business could be operated in one country, but payments could be cleared through another country). As a result, the list may become quickly outdated as businesses can quickly change their payment information to evade detection and pose difficulties for Australian financial institutions in maintaining the restrictions.

In addition, even where the business's listed name is used on the transaction, some payment systems do not process the transaction based on the payee name, rather the authorization messages

¹⁸³ Latham & Watkins LLP, Firm Publication, 'Online Gambling: The Geolocated Road Ahead', February 16 2012. Retrieved on 30 January 2013 from www.lw.com/thoughtLeadership/doj-limits-wire-act-to-sporting-events

contain codes. The relevant codes would, therefore have to be provided to financial institutions as part of the blacklist. This would be most problematic for an international interbank system such as the SWIFT platform, which includes both personal remittances and financial market transactions (for example, foreign exchange and trading settlements).

The second key issue relates to the ongoing administration and monitoring of the list, which would be highly resource intensive for both industry and the federal agencies involved. The validation of details from the websites of gambling providers (URLs), business trading details and payee details would require continuous monitoring and updating and would be extremely resource intensive.

The ABA advises that financial institutions would be required to implement new automated systems and burdensome and costly manual processes to perform searches, track transactions and respond to alerts. Searching payment systems for prohibited gambling services could return thousands of results, and would require a manual process to check these results against the blacklist.

Support would also need to be provided to banks and financial institutions to verify suspicious transactions and match data, including false positives. For example, under the targeted financial sanctions regime administered by DFAT, regulations currently provide for Australian Government assistance to persons to verify matches as being true or false (usually to a degree of probability as opposed to outright confirmation).

The ABA noted that, prior to the introduction of the UIGEA, the US concluded that such a list would pose major challenges in preventing unlawful internet gambling. Such a system was rejected in favour of a more flexible, risk-based due diligence approach.

Conclusion

Notwithstanding the challenges associated with circumvention, and the potential cost and efficiency impacts, a financial transaction blocking mechanism may still have value in causing a disruptive effect on the operation of prohibited gambling providers. In its submission to the review, the Victorian InterChurch Gambling Taskforce notes:

The Taskforce would put the position a regulatory measure that does not completely prevent an activity or which can be circumvented can still have value if it disrupts and deters the activity in question. The Taskforce would argue that the true measure between two regulatory approaches in relation to gambling should be assessing harm prevention. Thus the Taskforce would value a disruptive strategy that results in a lower level of harm over a permissive regulatory regime that results in higher levels of net harm.¹⁸⁴

This view was shared by Mr Wilkie, as outlined in his additional comments in the Joint Select Committee report on online and interactive gambling:

¹⁸⁴ Victorian InterChurch Gambling Taskforce, Submission to the Review of the IGA, p. 2.

Measures to block payments to overseas websites would be likely to steer most people towards the safer, well-regulated domestic sites. I recognise that such measures are not likely to achieve a total prohibition on Australians' access to overseas gambling websites, but would be likely to dissuade all but the most determined.¹⁸⁵

The key is whether there is a sufficiently cost-effective means of financial transaction blocking that would enable a significant level of disruption to the ability of prohibited online gaming providers to access Australian customers—noting that any such blocking would be capable of being circumvented by people sufficiently motivated to do so. Focusing transaction restrictions on one payment type may lead to increased use in other payment types to avoid the restrictions in place. Dr Gainsbury states that:

Blocking credit card transactions and masking online gambling payments may have an undesirable impact of reducing the ability of gamblers to clearly track their online gambling expenditure through credit card statements, and would also potentially hide this from significant others and enable gambling to occur in secret.¹⁸⁶

To protect financial institutions that voluntarily decide to block payments to suspected illegal online gambling merchants from redress (from both merchants and customers in Australia), the provision of a safe harbour through the IGA should be considered.

In designing a safe harbour provision for the IGA, a number of key issues and risks would need to be carefully considered. These include the specific methods for blocking transactions, and how they could be carefully defined to avoid unintended consequences (that is, the blocking of legal transactions), as well as the impact on the parties to inadvertently blocked transactions. The department is aware of concerns in the US that lotteries and other legal forms of online gambling have previously been blocked by institutions unable to distinguish between legal and illegal transactions.

In addition, the application of a safe harbour to financial institutions' overseas operations should be considered. The role of intermediaries in the payments process, and how a safe harbour may affect them, should also be examined.

In developing the safe harbour provisions, the department will consult with the Treasury, financial service providers and other relevant stakeholders.

In submissions on the interim report of the review, both Visa and Mastercard note their support for the development of safe harbour provisions and a voluntary approach to financial restrictions^{187,188}.

¹⁸⁵ Parliamentary Joint Select Committee on Gambling Reform, Second report—Interactive and online gambling and gambling advertising; Interactive Gambling and Broadcasting Amendment (Online Transactions and Other Measures) Bill 2011, pp 374–375.

¹⁸⁶ Dr Sally Gainsbury, Submission on the interim report of the IGA review, p. 17.

¹⁸⁷ Visa, Submission on the interim report of the IGA review, p. 2.

¹⁸⁸ Mastercard, Submission on the interim report of the IGA review, p. 1.

Recommendation 8: The IGA should be amended to provide a safe harbour for financial institutions that choose to voluntarily block financial transactions between Australian consumers and unlicensed online gambling service providers (or any intermediaries involved in such transactions) as part of their services to customers. The list of prohibited gambling service providers identified and published by the ACMA should be drawn to the attention of financial institutions by the department.

Recommendation 9: The department and the Treasury should continue to monitor developments overseas in the use of financial payment blocking to prohibited gambling sites and draw relevant developments to the attention of Australian financial industry bodies.

Blocking of websites

The blocking of online gambling websites, either by ISPs or at the PC level, is another enforcement measure that is used by some countries. At the ISP level, such measures are currently utilised to support regulated access in France, Italy and Bulgaria.

The use of such measures has been suggested by a number of stakeholders as another way to limit access to prohibited gambling services. Clubs Australia acknowledged that these measures can be circumvented but suggests that they would have some impact:

It is sometimes argued that it is futile to attempt to censor or contain the internet given the immensity of the task. A savvy internet user can find ways to circumvent net filters or disguise payments in order to evade suspicions. However, it is also true that the inconvenience of bypassing net filters will deter a majority from flouting legal provisions¹⁸⁹.

Others have argued that the apparent ease of circumvention methods means such blocking tools are unlikely to be an effective mechanism. Betfair noted in its submission to the review:

Betfair has serious concerns about the effectiveness of ISP blocking and indeed the Productivity Commission Report found that the effectiveness of any ISP blocking system is undermined by the existence of a number of methods by which the block can be bypassed.¹⁹⁰

This approach places ISPs in a position where they would be enforcing prohibitions on gambling with overseas providers where there is no law that currently prevents Australian citizens from gambling on these sites. Implementing such blocking tools would be strongly opposed by ISPs and other key stakeholders.

The Australian Government has clearly stated its position that blocking of websites by ISPs should target child sexual abuse material.

¹⁸⁹ Clubs Australia, Submission to the Review of the IGA, p. 12.

¹⁹⁰ Betfair, Submission to the Review of the IGA, p. 21.

The ACMA maintains a list of URLs providing prohibited content for use by vendors of PC filter software which have been tested and accredited by the Internet Industry Association (IIA) as part of the IIA's family-friendly filter scheme. This is an option that individual users can choose to adopt if they consider it would be helpful to them and their families. The PC filtering scheme should continue to include prohibited online gambling sites.

Recommendation 10: Online gambling service providers that are confirmed by the ACMA as providing prohibited services in contravention of the IGA should continue to be included on the ACMA's list of prohibited URLs and/or websites that are subject to blocking by vendors of PC filters on the IIA's family friendly filter scheme. The IIA should also expand its family friendly filter scheme to include all popular filters used by Australians.

5. Education and awareness

Submissions to the review noted that Australian consumers have a very limited understanding of which online gambling services are prohibited and which are permitted under the IGA. Consumers also appear to be largely unaware of the potential risks associated with using prohibited overseas-based services.

Most of the existing activity around education and awareness is associated with the harms of problem gambling. It has also been suggested that a particular gap exists with respect to awareness amongst children and young adults of the risks associated with gambling. At a national level, the FaHCSIA website contains links to a number of counselling services and educational publications in respect of problem gambling. This includes the National Gambling Helpline (1800 858 858) which provides assistance in relation to gambling issues (including those associated with online gambling), and the National Snapshot of Harm Minimisation Strategies in Australia paper which outlines information on the harm minimisation measures provided by each Australian jurisdiction¹⁹¹.

The Victorian Department of Justice (VDoJ) runs community awareness and education programs and its website provides information on problem gambling, gaming, racing and sports betting, including where to get help and how to recognise the signs of problem gambling¹⁹². The VDoJ is also involved in Responsible Gambling Awareness Week in partnership with local government, industry, employers and community groups in order to promote responsible gambling messages across the state. In March 2012 the Tasmanian Government also launched a multimedia awareness campaign about online problem gambling based on the Victorian model.

Many of the community groups that provided submissions to the IGA review also included information in their submission about the education and awareness work in which they were involved, or further suggestions for what could be achieved in this area.

- ACTTAB stated that its training program for staff included the area of problem gambling and how to be vigilant and respond to requests for assistance in a sensitive and helpful manner as well as monitoring customer behaviour, which may lead to the detection of a problem gambler¹⁹³.
- Australian Lottery Bloc submission stated that 'for more than a decade, Australian lottery operators have been active participants in the development and implementation of responsible gambling policy and programs in Australia'¹⁹⁴.

¹⁹¹ Department of Families, Housing, Community Services and Indigenous Affairs, 'A National Snapshot of Harm Minimisation Strategies'. Retrieved from www.fahcsia.gov.au/our-responsibilities/communities-and-vulnerable-people/publications-articles/a-national-snapshot-of-harm-minimisation-strategies

¹⁹² Department of Justice, Victoria, Liquor, Gambling and Racing. Retrieved from www.justice.vic.gov.au/home/liquor+gambling+and+racing/gaming/

¹⁹³ ACTTAB, Submission to the review of the IGA, pp. 7–8

¹⁹⁴ Australian Lottery Bloc, Submission to the review of the IGA, p. 5.

- Betfair drew attention to its awareness training for staff. It also stated that responsible gambling messages were incorporated in its advertising and that its website includes links to Australian responsible gambling websites and the National Gambling Helpline¹⁹⁵.

Submissions to the review supported the need for further education and awareness in relation to online gambling.

- The Australian Newsagents' Federation and Lottery Agents' Association of Tasmania submission referred to a study conducted by the University of Tasmania which recommended that there be increased community education about online gambling, that service providers become involved in screening for online gambling problems and that there be education campaigns targeted at adolescents¹⁹⁶.
- The Queensland Department of Justice and the Attorney-General suggested that education campaigns should target the fact that there is a prohibition on online gambling in Australia and the dangers with gambling on unregulated sites¹⁹⁷. They believe the campaign should also highlight that some forms of lotteries are excluded.
- The Newsagents Association of New South Wales and ACT (NANA) proposed that 'appropriate federal taxation and licensing fees should be channelled towards improving and expanding public and social education as well as counselling of problem gamblers'.

Similar to the conclusion of the Queensland Department of Justice and the Attorney-General, the Joint Select Committee made the following recommendation:

The committee recommends that following the review of the *Interactive Gambling Act 2011* by the Department of Broadband, Communications and the Digital Economy, an education campaign be developed for consumers to provide clarification of online gambling regulation and highlight the risks of harm.¹⁹⁸

The Joint Select Committee report included commentary from Relationships Australia about the need for awareness and education to be delivered in such a way that it does not inadvertently promote online gambling. Their comments also echoed the sentiment of the NANA submission in respect of ensuring that family members also need support to deal with problem gamblers¹⁹⁹. The chair of the Joint Select Committee recommended that if online poker is to be regulated, an

¹⁹⁵ Betfair, Submission to the review of the IGA, p. 28.

¹⁹⁶ Australian Newsagents' Federation and Lottery Agents' Association of Tasmania, Submission to the review of the IGA, p. 6.

¹⁹⁷ Queensland Department of Justice and Attorney General, Submission to the review of the IGA, p. 8.

¹⁹⁸ Recommendation 4 of Joint Select Committee on Gambling Reform—Inquiry on interactive and online gambling and gambling advertising; Interactive Gambling and Broadcasting Amendment (Online Transactions and Other Measures) Bill 2011.

¹⁹⁹ Parliamentary Joint Select Committee on Gambling Reform, Second report—Interactive and online gambling and gambling advertising; Interactive Gambling and Broadcasting Amendment (Online Transactions and Other Measures) Bill 2011, p. 37.

educational campaign (as suggested by Dr Gainsbury) should occur, to inform Australians about online gambling prohibitions and increase awareness about the difference in regulated and unregulated sites²⁰⁰.

Having regard to the issues discussed above and the submissions received, the following education and awareness raising measures were considered by the review:

- the ACMA listing prohibited gambling websites (see also Recommendation 7)
- warning pages for prohibited websites with clear information about the risks of using such websites
- additional Cybersafety Help Button functions
- the ACMA outreach programs to include a component on the risks of online gambling
- consultation with Cybersafety Working Group, Youth Advisory Group and Teachers and Parents Advisory Group on Cybersafety, and
- a greater role for states and territories working with the industry to increase education and awareness.

Listing of prohibited websites by the ACMA

At present, the ACMA considers potential breaches of the IGA regarding the provision of prohibited gambling services to Australian consumers. Under the IGA and the relevant industry code, the ACMA investigates overseas-hosted gambling services, and if satisfied that a service is prohibited, it must notify the service to accredited PC filter providers and a police force if appropriate. The notification of filter providers is done so using a list of prohibited gambling websites found to be in breach of the IGA. This list is not currently published or provided to the general public.

As outlined in recommendation 7, there is an option for the list of prohibited gambling websites made available to filter providers to be published on the ACMA website²⁰¹. In addition to alerting prohibited online gambling service providers that they are operating in contravention of Australian law, such a listing would also assist Australian customers in identifying the prohibited gambling sites which are unlicensed and not subject to Australian law. Publication of the list, in conjunction with clear information that these sites are not licensed by any Australian jurisdiction, would help to raise awareness that such sites may not provide the harm minimisation and consumer protections required of online gambling providers that are licensed in Australia.

²⁰⁰ Parliamentary Joint Select Committee on Gambling Reform, Second report—Interactive and online gambling and gambling advertising; Interactive Gambling and Broadcasting Amendment (Online Transactions and Other Measures) Bill 2011, p. 370.

²⁰¹ This is a different list to the list of URLs containing prohibited content or potentially prohibited content under the Online Content Scheme under Schedule 5 of the *Broadcasting Services Act 1992*.

This approach of raising awareness of risks needs to be weighed against the prospect that publicly listing the sites might lead more people to gamble on these sites. As long as the list is published with appropriate warnings, there would be an overall public benefit, especially if publishing the list also leads to some of these online gambling service providers withdrawing from the Australian market.

Warning pages

The Queensland Department of Justice and Attorney General has suggested²⁰² (also mentioned by the Victorian InterChurch Gambling Taskforce²⁰³) the use of ISP-level warning pages to provide Australian consumers with information on the risks of using unregulated sites, and also further information for those seeking help with a gambling problem. As well as playing a role in consumer education, warning messages would also have an important harm minimisation function.

Enex TestLab (Enex) has advised that it is feasible for an ISP-based, web browser warning page to provide information and advice for consumers accessing specific, prohibited gambling websites. The warning page would be triggered by the browsing request, prior to entering the site. The intention would not be to block access to the site, but rather to provide information and advice to the consumer prior to interacting with the site. The sites for which such warning pages could be provided would be those identified by the ACMA and published on the ACMA website.

The department commissioned Enex to examine the feasibility of such a measure. In its report, Enex concluded:

There is no one-size-fits-all solution for ISP initiated information or advice to be pushed to an end -user's web browser ... Any initiative needs to factor the diverse network topologies and architectures used through the ISP ecosystem.

Enex noted that the value of such a system, compared to the cost of implementation across Australian ISP networks, will vary depending on the outcome desired and the volume of sites involved. A number of methods are available to ISPs to provide information or advice to an end user via a redirect or warning page. In response to the interim report of the review, Telstra endorsed the Enex advice and agreed that 'ISPs should be closely consulted on the details of any warning-page scheme the department may wish to develop'²⁰⁴.

Circumvention methods do exist, however; end users are able to install software and browser add-ons/extensions that can block pop-ups and content that resembles online advertising. In addition, some software security software suites also offer these capabilities. Further consultation on this would be needed with vendors of such security software to ensure any warning pages are compatible with such software. The implementation of such messages would need to be consistent

²⁰² Queensland Department of Justice and Attorney-General, Submission to the Review of the IGA, p. 9.

²⁰³ Victorian InterChurch Gambling Taskforce, Submission to the Review of the IGA, p. 8.

²⁰⁴ Telstra, Submission on the interim report of the IGA review, p. 1.

the Australian Government's information security management guidelines outlined in the Protective Security Policy Framework to minimise cybersecurity risks to the public.

Further consultation with ISPs is also required to understand how such measures could be implemented, and the potential costs and security implications involved. It is important that Australia's online gambling industry play a key role in these consultations. Appropriate legal protection for ISPs under such a scheme would also need to be considered.

It may also be possible for information and advice to be provided to consumers accessing prohibited online gambling services via content providers such as search engines. Such measures would offer a reasonably targeted method of increasing consumer awareness of the risks associated with prohibited gambling services, as these would be brought to the attention of those seeking to access such services. It would be best for relevant organisations to voluntarily provide this information to their customers, with the government providing safe harbour protections. Further consultation is needed with relevant organisations to determine the feasibility of such measures, and the potential costs involved.

Cybersafety Help Button

The Cybersafety Help Button (the Help Button) provides internet users, particularly children, with 24-hour access to cybersafety information and resources. The Help Button is free to download and is available for personal computers, mobile devices and web browsers. The Help Button includes a 'REPORT' function which allows users to click through to site-specific information on how to report issues of concern to participating social networking sites. Through the 'LEARN' function of the Help Button, a link could be provided to relevant gambling educational resources and assistance. These resources may be particularly useful to parents and teachers. Through the 'TALK' function of the Help Button, access could be provided to the National Gambling Helpline. There may also be merit in exploring the option of the Help Button providing warning pages relating to prohibited online gambling sites for users who have installed the Help Button. This functionality would be provided at the user's request.

ACMA outreach

The ACMA runs an outreach program to provide cybersafety awareness to teachers, parents and students, and also provides comprehensive cybersafety resources through its Cybersmart website. This is in addition to the Cybersafety Outreach Professional Development for Educators program and the Cybersafety Outreach Pre-Service Teacher program²⁰⁵.

The Connect.ed online professional development program was launched in mid-2011 and currently has 4308 teachers registered, while the Face-to-face teacher Professional Development workshops was launched in January 2009 and involves 10 309 teachers, representing 2626 schools in total. The

²⁰⁵ DBCDE, Online safety and security. Retrieved from www.dbcde.gov.au/online_safety_and_security

Internet Safety Awareness Presentation program, launched in January 2009, involves 1698 schools, with total a participation of 411 319 teachers, students and parents. The Pre-Service Teacher program, launched nationally in January 2011 operates across the university sector and involves 45 universities, with 5034 university students participating. In total, over 4324 schools have participated in an ACMA outreach event.

Existing education and awareness initiatives could be tailored to address online gambling-related issues, including relevant ACMA programs targeting Year 10, 11 and 12 students, teachers and parents.

Consultative Working Group on Cybersafety, Youth Advisory Group and Teachers and Parents Advisory Group on Cybersafety

The Consultative Working Group on Cybersafety (CWG) provides advice to the Australian Government on measures to protect Australian children from online risks, including cyberbullying and exposure to prohibited content. The group comprises a range of community, business, Australian Government, industry and ISP representatives. The CWG is considering the risks to children regarding exposure to online gambling services.

As part of the government's Cybersafety Plan, the department runs the Youth Advisory Group on Cybersafety (YAG), an online group of young Australians aged 8 to 17 who provide formal advice to the Australian Government on cybersafety issues, programs and resources from a young person's perspective. Since its commencement in 2009, the YAG has provided advice to the Australian Government on topics including cyberbullying, socialising online, digital citizenship, computer games, online crime, mobile phone safety and inappropriate content. In 2011, the YAG included over 1100 primary and secondary students from 125 schools around Australia. In 2012, the YAG aims to include some 3000 primary and secondary students from 400 schools around Australia.

In conjunction with the online consultations, the department also hosts the annual Youth Advisory Group on Cybersafety Summit. This provides an opportunity for the Australian Government to consult face-to-face with selected students, teachers and parents on cybersafety issues.

The department also runs the Teachers and Parents Advisory Group on Cybersafety (TAP), which consists of teachers and educators from around Australia who convene online to provide advice to the Australian Government on cybersafety issues affecting young people. The TAP also provides a space for teachers and parents to learn about cybersafety education programs, discuss cybersafety topics of interest and share cybersafety strategies that have been successful in their local areas and schools.

The YAG and the TAP could be tasked with providing advice on young people's experiences regarding online gambling and their views on how best to keep young people informed of the risks of using prohibited online gambling sites.

Role for states and territories and industry

The legal online gambling industry has an interest in ensuring its customers are aware of prohibited gambling service providers and the associated risks they pose to consumers. It is appropriate for industry, in close consultation with state/territory governments, to take a proactive role to increase consumer awareness about the law in relation on online gambling and the risks of using prohibited gambling services. The Commonwealth should discuss possible initiatives that jurisdictions could take to raise awareness of the risks of using unlicensed online gambling services.

Industry has noted that, while it is supportive of such education initiatives, activities should be undertaken independently of industry by states and territories.

Recommendation 11: The Australian licensed online gambling industry, in conjunction with the department, should consult with major ISPs and the vendors of security software on the possibility of them voluntarily enabling a standard warning page appearing whenever an Australian consumer accesses an unlicensed online gambling website as identified by the ACMA. The page would alert the user to the fact the website they have accessed is not regulated by any Australian authority, that standard Australian consumer protections may not be available, as well as alerting the consumers to a list of Australian licensed online gambling providers.

Recommendation 12: The Cybersafety Help Button should include a link to the National Gambling Helpline under the 'TALK' function, as well as other help button functionalities that would be of value in alerting users of the Help Button to the risks of using prohibited online gambling service providers. The National Gambling Helpline should be able to explain, on request, the difference between licensed and unlicensed providers.

Recommendation 13: Relevant ACMA programs should be tailored to address issues related to the risks to children of accessing online gambling sites, particularly prohibited online gambling sites.

Recommendation 14: The Consultative Working Group on Cybersafety should continue to monitor the risks to children of access to online gambling, including via social networking sites, and recommend appropriate action.

Recommendation 15: State and territory governments, in conjunction with industry, should also take steps to increase consumer awareness about the risks associated with using prohibited online gambling services.

6. Advertising and promotion

The advertising and promotion of online gambling services (including both permitted and prohibited services) has been identified as a key issue in submissions to the review and stakeholder consultations, as well by the Joint Select Committee. The manner in which these services are presented to consumers, along with their treatment under the IGA, has caused some confusion and concern for stakeholders.

Current IGA advertising provisions

The IGA prohibits the broadcasting or publishing of advertisements for prohibited interactive gambling services in Australia. Interactive gambling service advertisements include sponsored advertising and any material broadcast or published that gives publicity to, or otherwise promotes or is intended to promote:

- a prohibited interactive gambling service
- prohibited interactive gambling services in general
- trademarks or the internet addresses or domain names of such services
- words closely associated with prohibited interactive gambling services.

The ban on the advertising of prohibited gambling services under the IGA extends to all forms of media, both electronic and non-electronic, including advertising via the internet, broadcast services, print media, billboards and hoardings, subject to certain exceptions. For example, the accidental or incidental publication or broadcast of a prohibited interactive gambling service advertisement is not prohibited by the IGA.

The prohibition does not extend to the publication, broadcast or datacast of prohibited interactive gambling service advertisements overseas, such as in magazines that are published overseas, or on websites that are mainly accessed by people who are not physically present in Australia. However, in certain circumstances, the inclusion of a prohibited interactive gambling service advertisement on a website will be taken as a publication of the advertisement in Australia. An interactive gambling service advertisement published on a website may be considered to have been published in Australia if:

- the relevant website is accessed, or is available for access, by end-users in Australia
- the content and marketing of the relevant website indicates that the majority of people who access the website are physically present in Australia.

To assist in the identification of these publications, appropriate criteria should be developed by the ACMA in consultation with the department. For example, an advertisement included on a website that contains information relevant to or intended for use by Australian consumers (for example, availability of Australian currency, results of sporting matches held in Australia, Australian imagery and cultural references, etc.) may be regarded as having been published in Australia. On the other

hand, an advertisement included on a website that has an international focus, with little or no mention of matters specific to Australia, may not be deemed to have been published in Australia²⁰⁶. As such, it is unlikely that an advertisement on a global search engine or an international news site would be regarded as a prohibited advertisement, while it is likely that an advertisement on an Australia-specific search engine or news site with an Australian focus would be prohibited.

It is also a condition of each commercial television broadcasting licence and each subscription television broadcasting licence that the licensee will not broadcast a prohibited interactive gambling service advertisement in contravention of Part 7A of the IGA. Under the *Broadcasting Services Act 1992*, it is a condition of each commercial television and subscription television broadcasting licence that the licensee is not to use a broadcasting service in the commission of an offence against another law of a state or territory. It is the responsibility of individual broadcasters, internet content providers and print publishers to ensure that a particular program or advertisement complies with the IGA.

In the absence of provisions conferring the function on the ACMA, the department has undertaken responsibility for the preliminary assessment of complaints about potential breaches of the advertising prohibition under Part 7A of the IGA. Where a contravention is suspected, the department refers the matter to the AFP, and also to the ACMA if it relates to a possible breach of broadcasting licence conditions. The current investigation system is a complaints-driven system and it is not proposed in this review to change the means in which investigations are initiated.

Enforcement of advertising provisions for prohibited services

In the period 1 January 2011 to 31 December 2011, the department undertook preliminary investigations into 24 matters regarding the publishing, broadcasting or datacasting of interactive gambling service advertisements. Of these matters, 20 were referred to the AFP for further investigation. Of the complaints referred to the AFP, the AFP advised that investigation into three of these matters would not proceed due to other priorities, and six complaints regarding overseas-hosted websites were provided to the relevant overseas law enforcement authorities via the Interpol network for consideration. The remaining 11 matters are currently under consideration by the AFP. When commenting on its previous decisions not to investigate matters under the IGA, the AFP advised the Joint Select Committee:

In isolation, when compared to other criminal activity, these referrals were categorised as low priority for investigation and consequently not investigated.²⁰⁷

²⁰⁶ Explanatory Memorandum, Interactive Gambling Bill 2001 (Cth). Retrieved on 17 July 2011 from http://archive.dcita.gov.au/__data/assets/pdf_file/0016/11536/Interactive_Gambling_Bill_2001_Revised_Explanatory_Memorandum.pdf

²⁰⁷ Parliamentary Joint Select Committee on Gambling Reform, Second report—Interactive and online gambling and gambling advertising; Interactive Gambling and Broadcasting Amendment (Online Transactions and Other Measures) Bill 2011, p. 131

Some stakeholders suggest that a more proactive approach is required to combat the marketing of prohibited services to Australians²⁰⁸. In their submission to the review, Dr Gainsbury and Professor Blaszczynski suggested ‘... that further action should be taken to block advertising online and offline by offshore sites ...’²⁰⁹.

Other stakeholders contend that the current framework need only be bolstered with a more effective and practical system of enforcement. In its submission to the review Betfair noted:

The advertising prohibition as it currently stands in the IGA is sufficient—however, what is lacking is the ability and commitment of the authorities to undertake enforcement action.²¹⁰

Currently, enforcement of the IGA’s advertising offences is limited by the fact that these offences are criminal offences (and therefore only criminal penalties are available to address breaches). This is a limitation because other criminal matters have tended to be a higher priority for the AFP. To increase the effectiveness of the enforcement process, the advertising provisions in the IGA could also include use of civil penalties, to be enforced by the ACMA. The IGA could also be amended to include express powers dealing with the seeking and granting of injunctive relief for contravention of the civil penalty provisions.

The inclusion of civil penalty provisions would provide a greater enforcement capability because civil penalties provide a more readily-accessible sanction. The use of civil penalty provisions would reduce reliance on the AFP for criminal investigation, which requires greater time and resources and higher burdens of proof. An additional method of enforcement would also increase the deterrent effect on those considering breaching the advertising provisions of the IGA.

Another issue with the existing provisions relates to where the onus of proof lays for exemptions or defences to these offences. As presently drafted, the exemptions form part of the offence provisions; that is, the IGA states that an offence has occurred unless an exemption applies. This requires the prosecution to prove beyond a reasonable doubt not only that the advertisement was published, broadcast, or otherwise advertised, but also that none of the listed exemptions apply. This places an unnecessary burden on the prosecution, and is inconsistent with requirements for similar offences where such exemptions are listed as defences. To address this, an option may be to amend the current drafting of the offence provisions of the IGA to make clear that the defendant (for example, the provider of a prohibited service) should bear the burden of proof in relation to the application of an exemption or defence to the advertising offence provisions – these being matters clearly within his/her knowledge.

Recommendation 16: The advertising provisions of the IGA should include civil penalties (including pecuniary penalties) in addition to the existing criminal provisions under the IGA, as part of the range of penalties available under Part 7A of the IGA. The civil penalties should be administered

²⁰⁸ Victorian InterChurch Gambling Taskforce, Submission to the Review of the IGA, p. 9.

²⁰⁹ Dr Sally Gainsbury and Professor Alex Blaszczynski, Submission to the Review of the IGA, p. 8.

²¹⁰ Betfair, Submission to the Review of the IGA, p. 21.

by the ACMA. If an advertiser fails to comply with these civil penalty provisions, the ACMA should be able to apply to the Federal Court for injunctive relief in accordance with the proposed new express injunctive relief provision outlined above. This would provide clarity and certainty for the ACMA in exercising its powers.

Recommendation 17: That amendments be made to the IGA to clarify that the defendant has the burden of proof in relation to a defence or exemption to the advertising offence provisions.

Advertising of legal online gambling services

A number of submissions to the review raised concerns regarding the volume of advertising of online gambling services permitted under the IGA, particularly sports betting advertising on television, and the associated risks towards vulnerable groups including children. In its submission to the review, Clubs Australia argued:

While the Interactive Gambling Act (IGA) prohibits the advertising of interactive gambling services (with questionable levels of success), there are virtually no restrictions on the advertising of gambling products such as sports betting, online or through mainstream media. Children who watch sporting events cannot avoid gambling promotions which take place both during the match and commercial breaks.²¹¹

This view is echoed by the Responsible Gambling Advocacy Centre, which also noted the potential for negative impacts on sport as a spectacle:

Members of the community are also clearly uncomfortable, even hostile, to the amount of advertising that takes place for online gambling. They are concerned about its effects on children, about it changing the experience of games that the community feels ownership of, and the potential of gambling to corrupt sporting events.²¹²

Submissions made by FamilyVoice Australia and the Australian Christian Lobby also described the increasing pervasiveness of gambling advertising in society and the potential for young people to become interested in gambling due to the normalisation of these activities^{213,214}.

A number of stakeholders have suggested that such advertising be more tightly regulated, for example in line with cigarette and alcohol advertising²¹⁵. Other stakeholders suggest that such advertising should be banned altogether:

²¹¹ Clubs Australia, Submission to the Review of the IGA, p. 7.

²¹² Responsible Gambling Advocacy Centre, Submission to the Review of the IGA, p. 3.

²¹³ FamilyVoice Australia, Submission to the Review of the IGA, pp 3-5.

²¹⁴ Australian Christian Lobby, Submission to the Review of the IGA, p. 3.

²¹⁵ Victorian InterChurch Gambling Taskforce, Submission to the Review of the IGA, p. 10.

Clubs Australia advocates the development of a uniform, national ban on gambling advertising, implemented homogeneously across the gambling industry.²¹⁶

In its submission to the review, the Responsible Gambling Advocacy Centre suggests that the implementation of national standards to regulate online gambling advertising is required:

While states and territories are cooperating with the Commonwealth government through Coalition of Australian Governments (COAG) to address some of these issues, it is clear that national legislation regulating the advertising and inducements offered by online providers is needed.²¹⁷

One of the major concerns regarding gambling advertising raised by stakeholders in submissions and through consultations for the review, and also the Joint Select Committee, has been the frequency and aggressiveness with which betting odds have been promoted during the broadcast of sporting events^{218,219,220}.

A recent study by Monash University examined the amount of advertising for sports gambling products and services shown during a round of the Australian Football League in 2011—finding that, when simultaneous promotions were counted separately, supporters at games at the Melbourne Cricket Ground and Etihad Stadium were shown an average of 341 minutes of gambling advertising²²¹. Dr Samantha Thomas noted:

Gambling advertising is no longer restricted to ‘commercial breaks’ or live odds announcements. One of the key findings of the study was the extent to which the advertising was embedded within the match.²²²

The Australian Government and state and territory governments have expressed concern through the COAG Select Committee that the promotion of live odds during sports coverage can significantly influence vulnerable people, particularly young people, and normalise gambling behaviour. On 29 June 2012, the Australian Government announced that it secured the agreement of commercial and subscription broadcasters to reduce and control the promotion of live odds during sports broadcasts following negotiations with peak industry bodies Free TV Australia, Commercial Radio Australia and the Australian Subscription Television and Radio Association. The Minister for Broadband,

²¹⁶ Clubs Australia, Submission to the Review of the IGA, p. 7.

²¹⁷ Responsible Gambling Advocacy Centre, Submission to the Review of the IGA, p. 5.

²¹⁸ Parliamentary Joint Select Committee on Gambling Reform, Second report—Interactive and online gambling and gambling advertising; Interactive Gambling and Broadcasting Amendment (Online Transactions and Other Measures) Bill 2011, p. 263.

²¹⁹ *Ibid* 211.

²²⁰ Dr Sally Gainsbury and Professor Alex Blaszczynski, Submission to the Review of the IGA, p. 2.

²²¹ Richard Willingham, ‘Too many ads at footy? You bet’, *The Age*, 4 April 2012. Retrieved on 4 April 2012 from www.theage.com.au/national/too-many-ads-at-footy-you-bet-20120403-1wav6.html

²²² Monash University, ‘More gambling advertising during sport? You bet’, 4 April 2012. Retrieved on 4 April 2012 from www.monash.edu.au/news/show/more-gambling-advertising-during-sport-you-bet

Communications and the Digital Economy, Senator Stephen Conroy stated that broadcasters had agreed to:

...amend their existing codes of practice to restrict live odds promotion, including by banning sporting commentators from mentioning live odds and banning all live odds promotion during play. Code amendments based on the Government's agreed principles will be developed by broadcasters in consultation with the Australian Communications and Media Authority (ACMA) and we expect to see them registered by the end of the year²²³.

The Australian Government also noted that it will continue to monitor the issue, including through the COAG Select Committee on Gambling Reform. The states and territories will also examine ways to limit the promotion of live odds at sporting grounds.

In discussions with the department, the Australian licensed gambling industry indicated it is willing to establish an industry code of conduct on advertising standards.

Recommendation 18: That the Australian licensed online gambling industry establish an industry code of conduct to ensure such advertising is not contrary to community standards and expectations.

Accidental and incidental advertising

As described above, the IGA prohibits the broadcasting, datacasting or publishing of advertisements for prohibited interactive gambling services in Australia. However, an exception to this rule is the *accidental or incidental publication*, broadcast or datacast of a prohibited interactive gambling service advertisement. An example of an accidental or incidental broadcast would be the rebroadcast of an overseas sporting event, where the prohibited interactive gambling service advertisement is present at the venue in which the event is taking place (for example, the advertising hoardings at an overseas football match). Some stakeholders have indicated that there is ambiguity in the drafting of the IGA which contributes to the difficulties experienced enforcing the IGA with respect to accidental and incidental advertising. Particular concerns, as described in submissions to the review are as follows.

Free TV Australia noted:

The current IGA creates uncertainty for free-to-air television broadcasters as to whether broadcasts of these sporting events risks placing the broadcaster in breach of the IGA or their licence conditions.²²⁴

Broadcasters suggest that provisions in the IGA need to be clarified to address these concerns:

²²³ Media Release, 'Government achieves agreement to reduce the promotion of live odds in sports broadcasts', 29 June 2012. Retrieved on 2 July 2012 from www.minister.dbcde.gov.au/media/media_releases/2012/106

²²⁴ Free TV Australia, Submission to the Review of the IGA, p. 8.

ASTRA submits that provisions in the IGA relating to advertising interactive gambling services should be clarified to place beyond doubt whether advertisements for, or sponsorships by, entities related to interactive gambling services are permitted on broadcasting services.²²⁵

More specifically, Free TV Australia has recommended that provisions relating to the 'accidental or incidental broadcast' of prohibited gambling advertising (Part 7A, 61DB of the Act) be examined and amended:

Greater clarity on the meaning of "accidental" and "incidental" broadcasting will assist broadcasters with making the decision on when the broadcast needs to be withheld or the extent of editing required.²²⁶

During consultations, sporting bodies supported the need for greater clarity in these advertising provisions, but cautioned that any possible changes should take into account the increasingly global nature of sporting competitions, including those domestic competitions which contain teams from other countries (for example, Super XV Rugby, netball), which may not have the same advertising restrictions as Australia-based teams.

Recommendation 19: The definition of an 'accidental or incidental' advertisement as used in section 61ED of the IGA should be clarified to permit the broadcast of events taking place outside of Australia where the broadcaster has not added the writing, still or moving picture, sign, symbol or other visual image or audible message and does not receive any direct or indirect benefit for the in broadcast advertising in addition to any direct or indirect benefit that the person receives from broadcasting the event.

Advertising of associated services

Online poker free-play or practice sites are free services generally provided for new poker players to learn the game. These services are often branded to strongly resemble their related cash service. The free-play sites often have .net URLs, compared with the cash services utilising .com URLs. Issues related to the access of gambling simulation applications via social media and content providers are discussed separately in Chapter 9.

The IGA prohibits advertising that gives publicity, or otherwise promotes (or is intended to promote) prohibited online gambling services. As such, the advertising of these free-play sites has been found by the ACMA to be in contravention of the IGA as these are in effect advertisements for the related prohibited service. The free-play sites themselves may also be considered to be prohibited advertisements, if they are accessible by Australians and deemed (by virtue of content and marketing) to be aimed at a predominantly Australian audience.

²²⁵ Australian Subscription Television and Radio Association (ASTRA), Submission to the Review of the IGA, p. 2.

²²⁶ Free TV Australia, Submission to the Review of the IGA, p. 10.

Some stakeholders disagree with this interpretation of the IGA with regard to these services, with Free TV Australia noting in its submission to the review:

In December 2010, the ACMA found that certain licensees had breached the IGA by broadcasting interactive gambling service advertisements. The broadcasts concerned advertisements of "PokerStars.net" ... It was submitted by the licensees that the broadcasts were not interactive gambling service announcements as the PokerStars trade mark was used in relation to free services, including a free tour and free site and not just online gambling services. Furthermore, it was submitted that the website URL PokerStars.net was not a domain name for an interactive gambling service, but rather hosted a free poker program ... This decision indicates just how little guidance is provided under the IGA in relation to prohibited advertisements and how broadly the provisions can be interpreted.²²⁷

Some providers of these free-play services have previously sponsored Australian sports teams, arguing that these sponsorships are permissible because the specific sites advertised are not played for money or anything else of value, and thereby do not satisfy the definition of a prohibited gambling service under the IGA²²⁸.

In addition to the points of contention raised regarding the application of the advertising provisions in the IGA to free-play sites, other stakeholder submissions suggested that tighter restrictions in relation to the advertising of these sites are required to prevent the promotion of prohibited online gambling services²²⁹. There is concern that such practice sites can act as a misleading pathway for consumers to move to cash gambling by offering better odds and less complex game-styles. It is purported that such services may not actually mirror real gambling services in respect of odds and returns to customers, which can lead to misleading impressions of real gambling²³⁰. These services may also deceive consumers into thinking that they are more skilled than they actually are, and are more easily able to encourage greater spending on the related paid sites²³¹.

A 2008-09 survey of 8598 students from 201 schools in the UK demonstrated that a quarter used a money-free mode to play online and that gambling in money-free mode was the most important predictor of whether an adolescent would gamble for real money²³².

The Joint Select Committee concluded that the IGA should be strengthened in order to ensure that inducements (including offering practice sites) for a prohibited interactive gambling service are

²²⁷ Free TV Australia, Submission to the review of the IGA, p. 8.

²²⁸ 'Online gambling sites accused of flouting the law', *7:30 Report*, ABC TV, 10 June 2010. Retrieved on 27 January 2012 from www.abc.net.au/7.30/content/2010/s2924162.htm

²²⁹ Dr Sally Gainsbury and Professor Alex Blaszczynski, Submission to the Review of the IGA, p. 3.

²³⁰ Responsible Gambling Advocacy Centre, Discussion paper—Children and Gambling. Retrieved from www.responsiblegambling.org.au/images/pdf/rgac_discussion_paper_children_and_gambling.pdf

²³¹ Professor Alex Blaszczynski, Joint Select Committee Hansard, 16 September 2011, p. 41.

²³² Dr John McMullan, Submission to the Joint Select Committee, p. 3.

banned²³³. The issue of inducements is discussed further in Chapter 3 on harm minimisation and consumer protection.

Recommendation 20: Part 7A of the IGA should be amended to put beyond doubt that advertisements for free-play sites that are associated with prohibited ‘for money’ sites are prohibited as they are promoting the prohibited service.

Regulatory framework

Stakeholders have made clear their preference for a simple regulatory framework for the enforcement of the advertising prohibition at either the federal level or by states and territories. For example:

Free TV does not support having a dual federal and state/territory regulatory approach for enforcement of the advertising prohibition. The potential for different requirements and approaches adds further complexity to gambling and gambling advertisement regulation.²³⁴

The use of industry codes for gambling advertising has been suggested as an option to provide a more enforceable framework, operating in a similar fashion to radio or television advertising. However, it has been argued that the use of such codes may not result in a system that is robust owing to the fragmentary nature of the internet industry and the broad range of other advertising opportunities such as billboards, team sponsorships and press advertising.

States and territories have different rules in relation to the advertising of licensed gambling services which will need to be considered.

Recommendation 21: The strengthened regulatory framework for the prohibition on advertising of prohibited interactive gambling services, as provided by the recommendations in this chapter, should continue to operate at the federal level and be administered by the ACMA.

²³³ Parliamentary Joint Select Committee on Gambling Reform, Second report—Interactive and online gambling and gambling advertising; Interactive Gambling and Broadcasting Amendment (Online Transactions and Other Measures) Bill 2011, p. 178.

²³⁴ Free TV Australia, Submission to the Review of the IGA, p. 12.

7. Online gaming

Gaming refers to the playing of games of chance, or mixed chance and skill (for example, card games such as poker, and casino-style games such as roulette and slot machines) for money or something else of value. Interactive forms of this type of gambling (that is, provided via the internet) are generally prohibited under the IGA. The exception is that gaming services provided to customers who are in a public place (for example, a bar, club, or casino) are specifically excluded from the IGA definition of a prohibited internet gambling service.

Effectiveness of the gaming provisions of the IGA

The IGA and, in particular, the provisions prohibiting online gaming, aim to minimise the scope for problem gambling among Australians by limiting the provision of gambling services to Australians through interactive technologies such as the internet²³⁵.

The IGA has been effective in limiting the operation of Australian-based online gaming services; something with which both the Productivity Commission and the Joint Select Committee have agreed^{236,237}. The lack of Australian-based online gaming providers offering and advertising their services (and the corresponding lack of complaints and investigations about them) illustrates the successful deterrent effect that these provisions have had in preventing Australian-based operators offering these services.

The IGA has had little impact, however, in limiting the provision of these services by overseas-based providers. Submissions to the review noted there may be around 2200 overseas-based sites that offer online gaming services to Australians in contravention of the IGA²³⁸. Many of these sites would not offer acceptable harm minimisation or consumer protection standards. As these services are hosted overseas, often in countries where they are both legal and the source of substantial tax revenue, enforcement of Australia's online gaming regulatory framework faces significant challenges from an investigative and prosecutorial perspective.

Despite online gaming services having been prohibited by the IGA for over 10 years, online gaming is very popular in Australia, particularly amongst younger Australians. The expenditure by Australian consumers on these services in 2010 was estimated to be over \$968 million²³⁹, with the overall

²³⁵ Explanatory Memorandum—*Interactive Gambling Act 2001*. Retrieved on 17 July 2011 from archive.dcita.gov.au/__data/assets/pdf_file/0016/11536/Interactive_Gambling_Bill_2001_Revised_Explanatory_Memorandum.pdf

²³⁶ Productivity Commission, *Inquiry Report on Gambling* (2010), p. 15.18. Retrieved from www.pc.gov.au/projects/inquiry/gambling-2009/report

²³⁷ Parliamentary Joint Select Committee on Gambling Reform, *Second report—Interactive and online gambling and gambling advertising; Interactive Gambling and Broadcasting Amendment (Online Transactions and Other Measures)* Bill 2011, p. 146.

²³⁸ Dr Sally Gainsbury and Professor Alex Blaszczynski, *Submission to the Review of the IGA*, p. 2.

²³⁹ *Ibid*, p. 7.

online gaming market expected to continue to grow strongly. It is likely that Australians will continue to use online gaming services in growing numbers. The 2010 Productivity Commission report suggested that the ban on online gaming services was likely to become less effective over time, which may have significant social, commercial and tax revenue implications²⁴⁰.

Prohibition versus regulation

Given the number of Australian consumers accessing prohibited online gaming services, and the lack of sufficient harm minimisation measures often employed by these services, it is clear that the status quo cannot remain. Stakeholders are divided on the best approach to address this issue; some argue that the current prohibitory framework is suitable, but requires a greater level of enforcement to be effective, while others contend that prohibition will never work and that the operation of such services should instead be strictly regulated and controlled.

Reasoning for maintaining the prohibition on online gaming services

It has been suggested that online gaming services pose too great a risk to be regulated, due to their accessibility and potential for social isolation. The Australian Christian Lobby noted in its submission to the review:

... there are no geographical barriers (other than barriers to internet access); and there are no time restraints which exist for offline gambling other than 24-hour casinos. This means that nearly anybody in the country, from any location in the country, has access to gambling all day, every day ... This allows for a much wider reach and greater frequency of gambling and may increase the rates of problem gambling.²⁴¹

Dr Gainsbury and Professor Blaszczynski noted in their submission to the review:

Increased availability of gambling opportunities typically results in a simultaneous increase in gambling behaviour and problem gambling.²⁴²

In addition, research has shown online gambling is associated with higher rates of problem gambling when compared with other forms. The Tasmanian Department of Treasury noted in its submission to the review:

While the available research into online gambling prevalence rates is limited and the data is weak, it nevertheless suggests that gamblers who play online have relatively higher rates of problem gambling than other forms of gambling with the possible exception of EGMs.²⁴³

²⁴⁰ Productivity Commission, Inquiry Report on Gambling (2010), p. 15.18. Retrieved from www.pc.gov.au/projects/inquiry/gambling-2009/report

²⁴¹ Australian Christian Lobby, Submission to the Review of the IGA, p. 2.

²⁴² Dr Sally Gainsbury and Professor Alex Blaszczynski, Submission to the Review of the IGA, p. 3.

²⁴³ Tasmanian Department of Treasury, Submission to the Review of the IGA, p. 6.

The Victorian Interchurch Gambling Taskforce noted:

The report by Wood and Williams (2008) estimated that 41.3 per cent of all reported gambling losses on internet gambling in Canada came from people with gambling problems, while internationally, 27 per cent of the revenue of internet gambling providers comes from problem gamblers.²⁴⁴

Some stakeholders have also suggested that precedent exists for the effective prohibition of online gambling services utilising some of the disruptive enforcement measures outlined in Chapter 4. For example, the Victorian Interchurch Gambling Taskforce:

... supports the US approach of disrupting access to online gambling providers by having made it illegal for financial institutions to process financial transactions involving online gambling providers. This would curtail Australians doing business with such sites and reduce the incentive of offshore-based providers to market to Australian customers.²⁴⁵

FamilyVoice Australia recommended in its submission:

Online gambling sites hosted offshore should be included in the categories of sites to be subject to the proposed national mandatory filtering scheme.²⁴⁶

Stakeholders have also suggested that the regulation of online gaming services would provide the games with an air of legitimacy, resulting in an increased uptake of these services and associated harms. FamilyVoice Australia suggested:

Given the legitimacy domestic supply would provide, it would also probably recruit a much larger group of people to online gaming. If these players developed difficulties controlling their gambling in the domestic market, there is a risk that they would continue to play abroad on unsafe sites when confronted with the harm minimisation features of Australian licensed sites (for example when they reach their pre-committed maximum gambling loss).²⁴⁷

Clubs Australia suggested:

There remains a concern that moves to legalise the remaining online segment would provide online gambling with a sense of legitimacy, resulting in increased participation in online gambling activities and problem gambling prevalence levels.²⁴⁸

²⁴⁴ Victorian Interchurch Gambling Taskforce, Submission to the Review of the IGA, p. 3.

²⁴⁵ Victorian Interchurch Gambling Taskforce, Submission to the Review of the IGA, p. 7.

²⁴⁶ FamilyVoice Australia, Submission to the Review of the IGA, p. 5.

²⁴⁷ *Ibid.*

²⁴⁸ Clubs Australia, Submission to the Review of the IGA, p. 3.

If online gaming were to be regulated, some stakeholders argue that it would be very difficult to establish a market that was internationally competitive. FamilyVoice Australia contend that:

Even though regulated online gaming services may lead to somewhat less problem gambling than unregulated offshore online gaming services it is unclear how the existence of regulated Australian gaming services will necessarily attract problem gamblers in particular away from offshore unregulated online gaming services.²⁴⁹

A similar view was expressed by the Victorian Interchurch Gambling Taskforce in its submission to the review:

A regulated Australian online gambling market cannot be protected from offshore gambling providers out-competing the regulated Australian providers, other than by offering the same low tax and low consumer protection levels of regulation. In other words, entering into a regulated online gambling regime is to enter a race to the bottom on tax rates and consumer protection.²⁵⁰

It was suggested by Clubs Australia that regulated online gaming services could also impact upon Australia's land-based gaming industry:

... there are concerns that the liberalisation of online gaming may have a negative effect on the land-based gaming industry. Internet gambling operations have the potential to cannibalise land-based gaming revenues, which would have flow on effects for capital investment, jobs, state government revenue and community funding.²⁵¹

Reasoning for the regulation of online gaming services

A number of stakeholders suggested that the prohibition of online gaming services is unenforceable, and such services should instead be regulated and subject to harm minimisation measures. Betfair noted in its submission:

Betfair believes that any move to strengthen the bans will ultimately prove fruitless and serve only to consolidate the global market positions of the companies that have so far defied the bans. Accordingly, Betfair reiterates its view that the government should take steps to allow Australians betting with these operators to migrate to Australian licensed and regulated operators under strict regulatory controls.²⁵²

A similar view is raised by Dr Gainsbury and Professor Blaszczynski in their submission to the review:

²⁴⁹ FamilyVoice Australia, Submission to the Review of the IGA, p. 4.

²⁵⁰ Victorian Interchurch Gambling Taskforce, Submission to the Review of the IGA, p. 5.

²⁵¹ Clubs Australia, Submission to the Review of the IGA, p. 4.

²⁵² Betfair, Submission to the Review of the IGA, p. 20.

The concern raised is that the IGA will increasingly become ineffective in preventing Australians from gambling online or preventing significant amounts of un-taxed revenue being taken offshore.²⁵³

Stakeholders also noted that while some research on the social impacts of online gambling and online gaming is available, it is limited and has proven somewhat inconsistent. The rapid growth and change of the industry makes it difficult to examine possible effects on consumers. Dr Gainsbury and Professor Blaszczynski note in their submission to the review:

The interactive gambling literature is characterised by few, small-scale studies that often have methodological issues such as the use of non-representative, self-selected samples, which limit the validity of results. Furthermore, the findings of these become rapidly outdated as (a) result of constant changes in technology and the market. In addition, very little research has directly examined interactive gambling in Australia.²⁵⁴

Tabcorp noted:

Research into the incidence of problem gambling consistently demonstrates that the vast majority of gamblers do so responsibly and do not have a problem with their gambling. Therefore, there is a balance to be struck in the development of policy to ensure that the costs to recreational gamblers of introducing new initiatives aimed at minimising harm are not outweighed by the benefits to those people who have a problem.²⁵⁵

It has been suggested that, due to the maturity of the Australian gambling market, regulated access to online gaming services would result in a consumer shift to such services, rather than creating new users. Sportsbet noted in its submission:

It's unlikely that a regulated online gaming regime in Australia would see an increase in the number of Australians who gamble online - such a regime would merely facilitate a shift among Australian gamblers from unregulated offshore websites to Australian-based websites.²⁵⁶

It was also suggested that accessibility to online gambling services will only continue to grow into the future, and as such Australian consumers would be better off with regulated services that are subject to strong harm minimisation and consumer protection measures. Sportsbet noted:

Maintaining these prohibitions in the current form will only serve to exacerbate the risk of harm to Australian gamblers and problem gamblers in particular. These risks will become

²⁵³ Dr Sally Gainsbury and Professor Alex Blaszczynski, Submission to the Review of the IGA, p. 7.

²⁵⁴ Dr Sally Gainsbury and Professor Alex Blaszczynski, Submission to the Review of the IGA, p. 10.

²⁵⁵ Tabcorp, Submission to the Review of the IGA, p. 10.

²⁵⁶ Sportsbet, Submission to the Review of the IGA, p. 3.

greater as the proliferation of internet usage continues and the number of Australian's accessing offshore gambling websites increases.²⁵⁷

In addition, Sportsbet contend that use of unregulated online gaming services by Australian consumers will continue to have an impact on rates of problem gambling:

There is a distinct risk that the level of problem gambling online will increase because more Australians will gamble even more through unregulated overseas websites. Australians already gamble up to \$1 billion through unregulated overseas websites each year.²⁵⁸

The capacity for online gaming services to offer strong harm minimisation and consumer protection measures, such as those outlined in Chapter 3, along with access to counselling services and other consumer information sources, is put forward as justification for a regulatory approach.

Dr Gainsbury and Professor Blaszczynski note:

A strong regulatory model must be developed before online gambling is legalised in any jurisdiction. A careful balance must be achieved by any regulator to ensure that responsible gambling tools are available and used where appropriate by players, without being excessively restrictive and subsequently unappealing to players ... Despite the association with gambling problems, Internet gambling sites also have the potential to provide a responsible environment.²⁵⁹

Some stakeholders who support prohibition of these services concede that, if such services were to be regulated, suitable harm minimisation measures would be necessary. For example, the Australian Christian Lobby recommends 'that there be no expansion of online gambling in Australia', however 'if the Interactive Gambling Act is amended to liberalise gambling regulations' a range of harm minimisation measures be required for the operation of online gambling service providers²⁶⁰.

The trends overseas indicate that regulated access to online gaming services is viewed as a more effective option for minimising the possible harms associated with gambling. Betfair suggested:

The international experience strongly points to the fact that the jurisdictions that implement a strict regulatory regime for the provision of online gambling services have been more effective in protecting consumers than those that have prohibited online gambling. For example, despite the prohibitions contained in the UIGEA the online gambling industry in the United States remains the world's largest.²⁶¹

In its submission on the interim report, Clubs Australia suggests that clubs could provide online gaming services to their customers:

²⁵⁷ Sportsbet, Submission to the Review of the IGA, p. 9.

²⁵⁸ Sportsbet, Submission to the Review of the IGA, p. 23.

²⁵⁹ Dr Sally Gainsbury and Professor Alex Blaszczynski, Submission to the Review of the IGA, pp 3-4.

²⁶⁰ Australian Christian Lobby, Submission to the Review of the IGA, p. 4.

²⁶¹ Betfair, Submission to the Review of the IGA, p. 21.

...that a community-owned structure, delivered through not-for-profit clubs, is the preferred model for the delivery of gambling regardless of the platform. A community-owned gaming model coupled with effective harm minimisation measures, taxation regimes and community benefit programs will provide the maximum possible benefit to Australian consumers and local communities.²⁶²

The Joint Select Committee report contains extensive discussion of the merits or otherwise of:

- continuing the current prohibition on the provision of online gaming services to Australians
- pursuing a regulated approach to online gaming.

The committee was divided on this issue. While most committee members supported retaining the current prohibition of online gaming²⁶³, The Chair, Mr Andrew Wilkie MP, was of a different view favouring:

... a hybrid approach where, following the recommendations of the Productivity Commission, we liberalise the Australian online poker market, appropriately regulate it and put in place safeguards...in addition, we implement measures to encourage people to use these well regulated sites.²⁶⁴

The Chair identified a number of issues that would need to be addressed before a regulated approach to online gaming could be considered. These include the need:

- for a robust national approach to harm minimisation and consumer protection for all online gambling services (as discussed at Chapter 3)
- to limit the level of advertising of these services that would arise if online gaming was legalised (as discussed at Chapter 6).

Box 4: Online gambling reforms in France

The experience with online gambling in France is highly instructive. In 2002, France's monopoly lottery operator began offering a very limited form of online gambling. Despite this operator being the sole provider of legal online gambling in France, it only attracted five per cent of the French gambling market.

In 2010, France introduced regulations to permit online wagering for horse racing and sports events, online poker (for both tournaments and cash games) and online lotteries. Online casino games and bingo remain prohibited. Under the French approach, online gambling service providers must obtain

²⁶² Clubs Australia, Submission on the interim report of the IGA review, p. 7.

²⁶³ Parliamentary Joint Select Committee on Gambling Reform, Second report—Interactive and online gambling and gambling advertising; Interactive Gambling and Broadcasting Amendment (Online Transactions and Other Measures) Bill 2011, p. 145.

²⁶⁴ *Ibid.*, p. 371.

a licence to offer services to French residents and are required to meet taxation and a range of operation requirements to ensure integrity, harm minimisation and consumer protection.

At the same time as legalising certain types of online gambling, the French government also moved to introduce a range of enforcement measures against online gambling providers that continue to offer services to French residents without obtaining a licence. These measures include:

- requiring ISPs to block websites of unlicensed providers
- use of financial restrictions to block transactions and freeze accounts
- issuing of fines or imprisonment for contravention of provisions²⁶⁵.

These measures led to a situation where, of the French residents who play online poker, around 95 per cent now use regulated online gambling services. It is reported that, to a significant degree, this is due to the highly competitive way in which this form of gaming is taxed. On the other hand, a significantly smaller percentage of French residents who participate in online sports betting are reported to have switched to the regulated market. It is reported that this is due to the uncompetitive tax arrangements for this form of online gambling²⁶⁶.

As discussed in Chapters 4 and 5, more can be done to discourage overseas-based online gaming providers from offering their services to Australians and to help Australians understand the risks of using sites that are not regulated in Australia. However, the nature of the internet and the extra-territoriality issues suggest there will always be unlicensed overseas-based service providers that will seek to attract Australian customers. Given the already very large number of Australians that access unlicensed/prohibited sites and the worldwide popularity of online poker in particular, Australians will continue to seek out ways to play poker online as well as other online casino type games. It is against this background that the Productivity Commission recommended a pilot for regulated access to online gaming.

All stakeholders agree that the overarching aim of policy in this area should be to reduce harm to Australian consumers. The challenge is whether Australia can find an approach whereby:

- the more popular online gaming providers are prepared to become licensed in Australia such that they:
 - cease offering the higher risk types of online gaming to Australians (for example, online slot machines and roulette)
 - comply with a strong set of national harm minimisation and consumer protection measures

²⁶⁵ Parliamentary Joint Select Committee on Gambling Reform, Second report—Interactive and online gambling and gambling advertising; Interactive Gambling and Broadcasting Amendment (Online Transactions and Other Measures) Bill 2011, p. 85.

²⁶⁶ KPMG, Estimating the Potential Size of an Online Gaming Market in Australia (2012), p. 45-46.

- the bulk of Australian customers that currently use prohibited online gaming services, particularly the higher risk services, switch to using Australian regulated services
- any increase in the number of Australians using the services (above what is likely to occur in any case) is limited and does not contribute to an overall increase in problem gambling.

Drawing from the UK, French, Danish and Italian experiences, this would require a multi-pronged approach including:

- appropriately-targeted enforcement measures against online gaming service providers that remain outside any regulated arrangement
- education and awareness measures that better alert Australians of the risks of using unregulated service providers.

However, unless Australians also have access to regulated online gaming services, at least of gaming service types that are less risky from a problem gambling perspective, they will continue to seek out ways of accessing unregulated services in growing numbers.

Box 5: Prevalence of different types of online casino games

The different types of online games can be categorised by the means they are played—for example, tournament poker versus cash poker. In their report examining the potential size of an online gaming market in Australia, KPMG estimated the global revenue derived for each online game type, as outlined below in Table 1.

Table 1: Breakdown of the prohibited online gaming sector by game type²⁶⁷

Total prohibited online gaming in Australia			
\$943.8m ^a			
Online Poker		Online Casinos	
32% of total ^a		68% of total ^a	
Poker cash games	Poker tournaments	Slot machines	Other casino games
90% of online poker ^b	10% of online poker ^b	74% of online casinos ^c	26% of online casinos ^c

a: ABS, GBGC and Productivity Commission data.

b: MAG Associate Consultants, *Jeux en ligne in the French Market*, Feb 2011.

c: BCLC annual report 2011.

²⁶⁷ Adapted from KPMG, *Estimating the Potential Size of an Online Gaming Market in Australia* (2012), Table 4.2.

The Productivity Commission²⁶⁸ and some submissions to the inquiry²⁶⁹ suggested that the different types of online games have different risks associated with them in terms of harm and problem gambling. While little research has been conducted comparing the problem gambling risk profiles of different online games, online poker machines and online roulette are seen as posing the most risk to consumers due to their repetitive nature of play.

Poker is seen to pose less risk due to the element of skill and decision making involved in playing, although it is suggested that different forms of poker have different levels of risk due to the speed and style of the games.

In making its recommendation regarding regulated access, the Productivity Commission stressed the difference between online poker card playing and other forms of online gaming, noting that while all types of gambling carry some degree of risk, online poker card playing involves relatively lesser risk because:

- it has a different character to electronic gaming machines
- it is partly a game of skill
- there is no evidence players experience the trance like states that occur when playing EGMs
- there is a social dimension in that you are playing against other people so it is very interactive
- other online games can be played much more quickly and the stakeholder for other games is the casino and there is little need to respond to the strategies of other players
- the ground rules, with players competing for a pot of money to which they contribute, limit losses²⁷⁰.

Dr Gainsbury notes that, in a recent online survey of 6682 Australian gamblers, median monthly losses for online poker players were \$1, suggesting most players gamble for relatively low stakes. In the study, this was the lowest monthly loss reported for any gambling activity (although Dr Gainsbury noted caution in interpreting expenditure data due to large variation in responses)²⁷¹.

From discussions with researchers and other stakeholders, tournament poker is considered the safest and relatively less risky form of online gaming from a problem gambling perspective. This is due to the relatively long period of time between commencing and finishing the game, along with the (often) relatively small amounts of money required to participate. Indeed, some states suggested that online tournament poker may not be deemed as gambling under their legislation, but instead as a competition because it only involves a one-off payment to enter the game rather than frequent payments. In addition, the prize for such tournament is a function of the number of

²⁶⁸ Productivity Commission (2010), Inquiry Report on Gambling, p. 15.31. Retrieved on 24 January 2012 from www.pc.gov.au/__data/assets/pdf_file/0004/95701/18-chapter15.pdf

²⁶⁹ iBus Media, Submission to the review of the IGA, p. 34.

²⁷⁰ Productivity Commission (2010), Inquiry Report on Gambling, p. 15.31. Retrieved on 24 January 2012 from www.pc.gov.au/__data/assets/pdf_file/0004/95701/18-chapter15.pdf

²⁷¹ Dr Sally Gainsbury, Submission on the interim report of the IGA review, p. 23.

participants involved rather than the amount of money bet during the game (that is after the initial stake).

Compared with online poker cash games, in tournament poker the objective is as much to win the tournament as it is to win money. In addition, the money staked at the start of the tournament is strictly set and cannot be added to for that tournament.

Cash poker can be played at a higher level of speed, with money lost quickly. Players can increase their stakes whilst playing cash games at any time. As a result, losses can grow much more quickly than in tournament poker.

In her submission on the interim report of the review, Dr Gainsbury calls for regulation of online gambling based on an assessment of the potential risks different types of online gambling pose to problem gamblers:

The IGA must differentiate between various forms of online gambling and recognise that online gambling is not a homogenous activity, but that different gambling opportunities pose different risks to players²⁷².

Targeted pilot

To progress this issue, it would be sensible to test, through a properly designed and tightly-confined legislative pilot, the proposition that a regulated approach can have a net positive impact in terms of reducing harm to Australian consumers. The benefits of focusing this pilot solely on online poker tournaments are that:

- this type of gaming appears to have lesser problem gambling characteristics
- the portion of consumers that play this type of game is relatively small and hence suitable for a pilot
- there is a legal argument that under the legislation of some states, tournament poker may not be viewed as gambling but as a competition. This is not currently the case under the IGA.

Subject to further consultation with stakeholders, the key features of the pilot should include:

- A five-year sunset clause to allow gaming providers sufficient time to establish their services and provide meaningful data for evaluation. A robust evaluation process would be required to enable the Australian Government (including consideration by an independent committee of eminent Australians, as well as input to design of the pilot by a team of Australia's leading gambling researchers) the opportunity to assess the impact of the pilot, along with any social effects.
- The national minimum standard for harm minimisation and consumer protection measures (as applicable to online tournament poker) described in Chapter 3 would need to be agreed upon by

²⁷² Dr Sally Gainsbury, Submission on the interim report of the IGA review, p. 22.

states and territories before commencement of the pilot to ensure that such measures are available to consumers. These measures should include consideration of a minimum break in play for consumers after they have completed a tournament and have been playing for a defined period. Providers of the new services would need to adopt such measures as a condition of their operation.

- The enforcement and deterrence measures (Chapter 4) and education and awareness measures (Chapter 5) should be initiated at the same time as the start of the pilot as a means of encouraging the more popular online gaming providers to switch to a regulated environment.
- Providers must only offer online tournament poker (that is, the lowest risk type of online gaming) and should cease offering higher risk online gaming services to Australians. The aim of this would be to reduce the risk of problem gambling to consumers from higher risk gambling activities noting that:
 - some Australians will continue to want to play these higher risk types of online gaming
 - (despite the enforcement and deterrence measures) some providers may not switch to the regulated environment because this would involve losing significant revenue.
- All those accessing the services must be real individuals (and not artificial players) to ensure fair services are available to consumers.
- Transparent publication of the return to player from each tournament prior to entry must be provided to allow consumers to make informed choices about the services they are accessing.

The pilot should also be an opportunity for local gambling providers, including those licensed operators currently offering wagering services, to provide online tournament poker to Australian consumers, and compete with newly-licensed gambling providers.

To assist licensed providers in competing with unlicensed operators, licensed providers should be permitted to advertise their services (subject to the current restrictions), although television advertising of these services should be limited to broadcasts of actual poker tournaments only.

Upon the completion of the pilot, an evaluation by an independent committee of eminent Australians would be undertaken to determine if the desired outcomes and objectives were achieved. The possible continuation of online tournament poker in Australia beyond the five-year sunset clause would occur only if approved by parliament.

Amendments to the IGA will be required to allow the pilot to occur; however, there are a variety of ways in which the governance arrangements for the pilot could be implemented. For example, through a lead state or territory government; regulation at the Commonwealth level through amendments to the IGA; or through an intergovernmental agreement between the Commonwealth, states and territories. In determining the most appropriate approach, it should be noted that states and territories already possess the necessary expertise and frameworks for gambling regulation, through their existing licensing and enforcement arrangements.

Consideration will also need to be given to the most appropriate tax arrangements, which will need to be internationally competitive, and the appropriate distribution of revenue collected from the pilot. It should be noted that under current gambling taxation arrangements, the bulk of tax revenue derived from the pilot will flow to states and territories.

A portion of such revenue could be used to fund for example:

- problem gambling counselling services targeted at online gamblers
- robust monitoring and evaluation of the pilot supported by a team of Australia’s leading gambling researchers, including an annual household survey of gambling activities
- relevant administration and enforcement costs.

Further consultation with states and territories on the governance arrangements for the pilot is therefore required, including on issues such as licensing, enforcement, taxation, revenue sharing arrangements and any potential constitutional issues. Industry and Australia’s leading researchers should also be consulted during the development of the pilot.

Box 6: Online gambling trials in Italy

International precedents for such a trial exist with Italy employing a similar exercise in 2006. This has led to a staged approach for the introduction of certain online gambling services in Italy²⁷³.

Italy first legalised interactive peer-to-peer remote betting on fixed odds (betting exchanges) and real-money remote skill games. This was followed by the legalisation of online poker tournaments in 2007. In 2009, online fixed-odds games of chance (online casinos and Vegas-style games), bingo and betting on virtual events and video lottery games were legalised. In February 2011, online casino and poker cash games were legalised^{274,275}.

While Italy has taken a series of steps in this way, it would be important that there is a thorough evaluation before any further steps towards regulated access in Australia are considered. No such additional steps are suggested by the review beyond the pilot of online tournament poker.

In response to the recommendation of a trial of online tournament poker contained in the interim report of the review, Senator Xenophon suggested a proposed trial would be akin to ‘opening the floodgates’ for online gambling²⁷⁶. As noted above, online tournament poker makes up a small

²⁷³ KPMG, *Estimating the Potential Size of an Online Gaming Market in Australia* (2012), p. 24.

²⁷⁴ Online Gambling Regulation in Italy—Viaden Gaming. Retrieved on 21 February 2012 from www.viaden.com/products/italy_license.html

²⁷⁵ GamingLaw.eu, Italian Regulatory Update Q01/11. Retrieved on 21 February 2012 from www.gaminglaw.eu/news/italian-regulatory-update-%E2%80%93-q0111/

²⁷⁶ Senator Nick Xenophon, Submission on the interim report of the IGA review, p. 8.

proportion of the overall online poker market. The Victorian InterChurch Gambling Taskforce acknowledges this in its submission on the interim report of the review, noting that 'globally, tournament poker [consists] is estimated to be 30 per cent of the online poker market'²⁷⁷. In fact, KPMG estimate that online poker may represent around 32 per cent of the total spend on online gaming by Australians and that online tournament poker may represent only around 10 per cent of 32 per cent.

In her submission on the interim report of the review, Dr Gainsbury concludes that:

...due to the fixed costs of tournament poker, this type of online poker appears to have relatively low likelihood of leading to gambling problems...regulation of this mode of online gambling may encourage online poker players to use regulated sites. The ability to provide tournament poker may encourage offshore operators to become regulated in Australia.²⁷⁸

This view is shared by the Australian Psychological Society, which notes in its submission on the interim report of the review:

...we urge the government to follow the recommendations of the Productivity Commission (2010) in taking a gradual, staged approach to regulation that starts with relatively 'safe' forms of online gambling – e.g., poker card games – followed by a rigorous, independent evaluation so consumer protections mechanisms can be adequately established before regulation is more widely implemented. This precautionary approach appears to offer the most potential for minimising harm and reducing risk.²⁷⁹

Clubs Australia stated following in its response to the interim report:

Online casinos account for 70% of the total amount spent offshore by Australians on illegal online gaming more than double the amount spent on online poker. In fact, Australians spend more on illegal online casinos than they do on both online wagering and sports betting combined.²⁸⁰

In his submission on the interim report of the review, Senator Xenophon draws a parallel between arguments in the early 1990s to support liberalising of EGMs and the proposed trial of online tournament poker²⁸¹. A comparison of the two situations is therefore appropriate:

- **Access:** In the early 1990s, the number of EGMs in Australia and the number of locations in which these existed was relatively limited. Availability of EGMs has grown rapidly since that time. By contrast, the number of unlicensed internet sites that offer online poker to Australian

²⁷⁷ Victorian InterChurch Gambling Taskforce, Submission on the interim report of the IGA review, p. 13.

²⁷⁸ Dr Sally Gainsbury, Submission on the interim report of the IGA review, p. 2.

²⁷⁹ Australian Psychological Society, Submission on the interim report of the IGA review, p. 7.

²⁸⁰ Clubs Australia, Submission on the interim report of the IGA review, p. 3.

²⁸¹ Senator Nick Xenophon, Submission on the interim report of the IGA review, pp 1-2.

consumers is over 400²⁸². The number of Australians who can play these sites at any point in time is unlimited. As a result, a large and growing number of Australians are already accessing these unlicensed sites regularly (in other words the increased access has already occurred). There are only some 40 online gambling sites that are licensed in Australia. Because of the nature of the internet, allowing these (as well as overseas based sites to become licensed in Australia) to offer online poker tournaments legally is unlikely to have much impact on the accessibility of online poker tournaments to Australians. What it will do is enable Australians to play online tournament poker in a safer environment.

- **Problem gambling risk characteristics:** EGMs have most of the characteristics of the highest risk types of gambling from a problem gambling perspective. The rate at which gamblers on Australian poker machines lose money can be up to \$1200 per hour played²⁸³. By comparison online poker tournaments have relatively fewer problem gambling characteristics. In her submission on the interim report of the review, Dr Gainsbury notes that, in a recent online survey of 6682 Australian gamblers, median monthly losses for online poker players were \$1, suggesting most players gamble for relatively low stakes. In the study, this was the lowest monthly loss reported for any gambling activity (although Dr Gainsbury noted caution in interpreting expenditure data due to large variation in responses)²⁸⁴. This is predominantly because the poker tournaments involve an up-front stake that on average is relatively small (around \$10) and cannot generally be increased during the game which can run for a number of hours (under the proposed trial, there would be no scope for players to increase their stakes once the game has started).
- **Harm minimisation:** The increase in EGMs in Australia in the early 1990s was implemented with no national harm minimisation strategy in place. The proposal to enable a trial of online poker card playing tournaments by Australian licensed providers is subject to prior adoption of a set of rigorous national harm minimisation measures. This would include increased funding from licensed providers for gambling counselling services that would be available to all Australians, as well as a national self-exclusion database.
- **Sunset clause, monitoring and evaluation:** Expansion of the availability of EGMs in the 1990s was not subject to a rigorous national trial or sunset clause. The proposal for a national trial of online tournament poker will be subject to close monitoring and evaluation by an independent panel of experts. The trial could not continue without approval of Parliament.

In its submission on the interim report of the review, the Northern Territory Government is broadly supportive of the trial of tournament poker, stating that:

²⁸² Online Casino City, Online Poker Rooms. Retrieved on 2 August 2012 from online.casinocity.com/poker/

²⁸³ Productivity Commission (2010), Inquiry Report on Gambling, p. 11.7. Retrieved on 10 July 2012 from www.pc.gov.au/__data/assets/pdf_file/0009/95697/14-chapter11.pdf

²⁸⁴ Dr Sally Gainsbury, Submission on the interim report of the IGA review, p. 23.

...the Northern Territory, given its existing robust compliance and regulation policy, is well placed and willing to be the host jurisdiction for any trial of online poker offered by Australian providers²⁸⁵.

Recommendation 22: The IGA should be amended (subject to a sunset clause) to enable and encourage (currently prohibited) online gaming sites (as well as currently licensed sites that prevent Australians from accessing their online poker tournaments) to become licensed in Australia on condition that they:

- **cease offering higher risk online gaming services to Australians and only offer online tournament poker (that is, the lowest risk type of online gaming)**
- **adopt the harm minimisation and consumer protection measures in the proposed national standard specific to regulated access to online tournament poker.**

Recommendation 23: To test that such an approach would be effective in reducing problem gambling risks, this amendment to the IGA should be introduced on the basis of a five-year trial where:

- **there is a minimum break in play for consumers after they have completed a tournament and have been playing for a defined period (subject to completion of any other tournaments they may be participating in at that time)**
- **the return to players from each tournament should be transparent to players before they enter the tournament**
- **no television advertising of these services should be permitted other than on programs that broadcast poker tournaments; all other types of advertising should be permitted subject to the standard restrictions**
- **industry makes an appropriate contribution, linked to the level of participation in this form of gambling by each provider, to funding support services for problem gamblers.**

Recommendation 24: This trial should not start before the proposed national minimum standard for harm minimisation and consumer protection (as applicable to online poker tournaments) has been adopted and should only continue after its five-year sunset clause if recommended by a committee of eminent Australians and consideration by parliament. Enforcement and prevention measures in Chapter 4 should be timed to commence in conjunction with the trial.

Recommendation 25: The department, FaHCSIA and the Treasury should consult with states and territories, industry and leading Australian gambling researchers on the design and implementation of governance arrangements for the pilot, including more effective data collection to enable monitoring of the trial.

²⁸⁵ Northern Territory Government, Submission on the interim report of the IGA review, p. 7.

8. Online wagering

Wagering (or betting) refers to gambling on the outcome of racing, sporting or other events, or on contingencies within an event. The provision of online wagering services has become increasingly popular with the growth of the internet, with sports-wagering services in particular becoming more widespread due to advertising and competition among providers. More recently, this form of gambling has raised issues regarding the integrity of sports events. Under the IGA, online wagering providers are allowed to provide these services, which are subject to state and territory law.

The Productivity Commission estimated that around 424 000 Australian online sports-wagering accounts were active in 2008. In addition, it estimated that around \$391 million was spent on online sports wagering by Australians in 2008. However, it is not possible to accurately ascertain from this data the proportion of the population participating in online wagering as one person may have several accounts with different providers²⁸⁶, or indeed the one account may be used by more than one consumer.

Submissions from stakeholders suggest that the overall level of online sports wagering in Australia has grown significantly since 2008. This is evidenced by the fact that during 2010–11, sports wagering on the internet in Australia generated around \$1.5 billion in turnover²⁸⁷. A recent report by Deloitte also suggests that online sports wagering by Australian consumers is increasingly undertaken with Australian-based providers and that ‘the significant growth in online wagering in Australia has coincided with an overall decline, since 2008, in the amount of wagering estimated to be offshore’. The report estimates (using data sourced from H2 Gambling Capital) that 13.8% of wagering turnover was undertaken with offshore providers in 2011, compared to 29.5% in 2008 and 37.7% in 2003²⁸⁸.

In-play betting

In-play betting (also known as betting in-the-run or live betting) is a form of continuous wagering whereby the bettor is able to place bets after that event has begun (for example betting on the outcome of a football match at half time).

In-play wagering using the internet is prohibited under the IGA, other than in respect of horse and greyhound racing.

In-play wagering using the telephone, however, is not prohibited by the IGA. A telephone wagering service is defined in the IGA as ‘a gambling service provided on the basis that dealings with customers are wholly by way of voice calls made using a standard telephone service’. This means

²⁸⁶ Productivity Commission, *Inquiry Report on Gambling* (2010), p. 2.39. Retrieved on 14 December from www.pc.gov.au/_data/assets/pdf_file/0009/95688/05-chapter2.pdf

²⁸⁷ Australian Racing Board, *2011 Australian Racing Fact Book—A guide to the racing industry in Australia*, p. 64.

²⁸⁸ Deloitte Report, ‘Optimal Product Fee Models for Australian Sporting Bodies’, July 2012, p. 13.

that, while services offering in-play wagering *online* during a sporting event are prohibited under the IGA, similar services and dealings with the customer provided by a *telephone* wagering service are permitted. Similar services are also permitted at land-based venues such as TABs. Both telephone betting services and land-based services are subject to state and territory law.

Types of in-play betting

There is a range of in-play bet types, including betting on:

- the final outcome of an event—for example, which team will win a cricket match after it has started
- contingencies that may or may not happen in the course of an event (also known as exotic wagering)—for example, which player will score the next goal in a football game
- the outcome of the next ball in a cricket match or the next point in a tennis match (micro-betting).

Issues with current IGA provisions

Stakeholders raised three main issues with the current IGA provisions relating to online wagering, and in particular in-play betting. These are that the provisions:

- are unnecessarily complicated and not platform neutral
- do not adequately target the types of in-play that are of higher risk from a problem gambling perspective
- do not address the emerging risks that the growth in online wagering poses to the integrity of sports.

Complexity of provisions and platform neutrality

Stakeholders have suggested that the IGA provisions relating to in-play betting are ambiguous and complex, and have the potential to confuse consumers and unnecessarily increase compliance costs for the industry. Examples of the complexity of the IGA provisions in this area are:

- consumers are able to bet in-play on a horse or greyhound race online, but not on a sporting event
- consumers are able to place in-play bets over the telephone, but they are unable to do so online with an Australian-based provider
- the meaning of an ‘event’ appears to be highly uncertain.

One particular aspect of the provisions identified as ambiguous relates to the meaning of an ‘event’ under the IGA by gambling providers. For example, a practice has developed in which Australian online wagering providers will accept bets on a test cricket match at the end of a day’s play (and before the next day’s play has commenced), even though a test match may be viewed as a single

event. In contrast, they do not accept bets at scheduled breaks in play in an AFL or rugby league match.

In its submission to the review, Betfair noted:

The IGA in its entirety is a confusing piece of legislation. It is difficult for regulators, industry and particularly consumers to understand and appreciate. Preliminary research conducted by Dr Sally Gainsbury suggests that there is a “high level of confusion” regarding the legalities of internet gambling amongst Australians. However, there can be little doubt that offshore operators who are providing illegal gambling products to Australians, know that they are doing so illegally. In this sense, the current issue is effectiveness and enforceability; not clarity.²⁸⁹

Sporting bodies suggested that maintaining the prohibition on in-play betting (and especially micro-betting) over the internet would require a clearer definition of these services to be effective.

Another concern is that the regulation of interactive gambling services to permit in-play betting via telephone, but prohibit the same bets from being placed online, and that this contravenes the principle of platform neutrality. The convergence of technologies (for example smartphones using gambling applications or gambling via interactive television) will mean that such a distinction will become increasingly difficult for consumers to understand, and become increasingly obsolete.

Stakeholders have suggested that platform neutrality, whereby the same rules would apply to wagers placed on different platforms such as telephone or internet, would be preferred to the current approach. Betfair noted in its submission to the review:

Platform neutrality in the online gambling sector is preferable because it will ensure that the IGA will be well equipped to deal with future consumer trends and methods of delivery, therefore allowing the provisions to have an increased shelf-life.²⁹⁰

Free TV Australia noted in its submission:

Free TV supports a platform neutral approach to regulating interactive gambling services. A consistent and technology neutral approach to regulation across all mediums provides certainty and minimises the risk that gambling operators will simply move across to unregulated platforms to operate in breach of any legislative framework.²⁹¹

The Joint Select Committee noted that a number of wagering providers had submitted that the restriction on in-play betting on sport was obsolete in light of new developments in technology, and cited Betfair’s submission to the committee as an example which said:

²⁸⁹ Betfair, Submission to the Review of the IGA, p. 19

²⁹⁰ Betfair, Submission to the Review of the IGA, p. 11

²⁹¹ Free TV Australia, Submission to the Review of the IGA, p. 3.

... restrictions on in-play betting have extended beyond their intended scope, which was to prevent micro-betting (or exotic betting) (i.e. discrete contingencies within a broader event, such as whether the next call of a ... cricket match would be a wide). The practicality of banning punters from betting in-play using the internet has effectively been rendered obsolete due to the convergence over the last decade (since the Interactive Gambling Act was enacted) of telephone and internet technologies.²⁹²

Scope of the prohibition on in-play betting

The current IGA provisions in relation to in-play betting are broadly defined, capturing types of betting that do not represent the most significant risk to problem gamblers. The current provisions cover all types of in-play betting using the internet, even though ball-by-ball or micro-betting is the type of betting that creates the highest problem gambling risk. For example, the submission from Racing and Wagering Western Australia noted that:

‘in-the-run micro-betting’ ... would be akin to games of chance for the majority of the target audience and expose greater risks of problem gambling...²⁹³

In its submission to the Joint Select Committee, the Australian Internet Bookmakers Association stated:

This approach reflected an inability to distinguish between “betting in the run” and “micro-event wagering” when the Act was developed. “Betting in the run” refers to betting on approved bet types (e.g., who will win) after the event has commenced. “Micro-event wagering” is the much publicised notion of whether the next ball bowled in a cricket match will be a Googly, or whether a tennis player will serve an ace on the next point. Although the restriction was imposed in the light of concerns with “micro-event wagering”, “betting in the run” was caught up in the process. The amendment allowed “betting in the run” by Australians with Australian betting providers only when it was undertaken by means of the telephone. The internet could not be used.²⁹⁴

In addition, the Australian Bookmakers Association notes:

There seems to be little point in continuing the ban on sports betting options that involve other than “ball by ball” or rapid repeat “micro” betting activity. Simple non-repetitive contingency bets should be allowed to be offered in-play via the internet and other interactive platforms.²⁹⁵

²⁹² Betfair, Submission to the Joint Select Committee on Gambling Reform, p.11.

²⁹³ Racing and Wagering Western Australia, Submission to the Review of the IGA, p. 5.

²⁹⁴ Australian Internet Bookmakers Association, Submission to the Joint Select Committee, p. 24.

²⁹⁵ Australian Bookmakers Association, Submission to the Review of the IGA, p. 2.

Gambling providers suggested that, rather than banning certain types of in-the-run betting, restrictions be placed on the amount that can be wagered on a micro-event so that the large financial incentives to fix such events are removed and exposure is limited. An alternative proposal would be to lift the existing ban on in-play betting, with the exception of micro-betting which should continue to be banned.

In contrast, Clubs Australia noted the risks in arguing that the current prohibition should remain in place:

Clubs Australia believes that the prohibition on interactive live betting should be maintained, given the potential for high rapidity betting within a 24 hour, credit enabled environment.²⁹⁶

During consultations on this issue, gambling providers generally did not support the perception that, when compared to other forms of gambling, in-play betting leads to higher levels of problem gambling. Betfair noted:

According to a report conducted by the UK Gambling Commission in 2009, there is no evidence that online in-play betting (including micro-betting after an event has commenced) poses a “specific, identifiable risk to problem gambling as opposed to other forms of betting or online gambling.”²⁹⁷

Moreover, in its submission to the Joint Select Committee, Betchoice noted:

The argument is particularly weak when in-play betting is permitted in terrestrial betting outlets ... online operators have mechanisms available which can be used to detect and prevent those customers that are at risk of problem gambling behaviour. Ironically, such mechanisms are not necessarily available to terrestrial operators that are permitted to offer these bet types.²⁹⁸

Online wagering and integrity of sport

When the IGA was first developed, integrity of sport was not a major consideration. Since that time, concerns around the integrity of sport and online gambling have become a prominent issue.

In response to concerns around match-fixing and sports integrity, on 10 June 2011, all Australian sports ministers endorsed on behalf of their governments a National Policy on Match-Fixing in Sport, with the aim of protecting the integrity of Australian sport.

Box 7: Sports integrity and match fixing

²⁹⁶ Clubs Australia, Submission to the Review of the IGA, p. 10

²⁹⁷ Betfair, Submission to the Review of the IGA, p. 8

²⁹⁸ Betchoice, Submission to the Joint Select Committee on Gambling Reform, pp 14–15.

The National Policy represents a commitment by all governments to work together to address the issue of inappropriate and fraudulent sports betting and match-fixing activities.

Under the National Policy, Commonwealth and state and territory governments agreed to pursue:

- nationally-consistent approach to deterring and dealing with match-fixing in Australia
- information sharing arrangements and highly efficient networks between governments, major sports, betting operators and law enforcers
- consistent code of conduct principles for sports
- active participation in international efforts to combat corruption in sport including an international code of conduct and an international body.

On 30 September 2011, sports ministers subsequently endorsed a model to give effect to the National Policy. The model includes the following elements:

- sporting organisations can apply to the relevant state and territory regulator to become a sports controlling body
- sports controlling bodies can enter into integrity agreements with betting agencies which provide for information exchange, a return of revenue to the sport and a right of veto on bet types
- all sporting organisations which receive government funding will be required to meet integrity benchmarks as agreed under the National Policy.

For sports and sporting organisations without a national controlling body, there may also be merit in the development of standards to outline relationships between these sports and gambling providers. Such standards could assist in the prevention of corruption, particularly in amateur sports or sports involving the participation of minors.

Through the review of the IGA, sports administrators have also raised concerns around certain bet types, and sports integrity issues. Consistent with the National Policy on Match-Fixing, sports administrators (with support from some gambling providers) have suggested that they are best placed to control problematic bet-types, through the right of veto over bets on the grounds of concern over the integrity of the type of bet²⁹⁹, supported by national legislation. The Coalition of Major Professional and Participation Sports (COMPPS) noted:

We support a system in which Australian-based betting operators are permitted to offer online gambling services, including in-the-run betting, to Australians. This would then enable betting on the sports controlled by the COMPPS members to be regulated within the existing

²⁹⁹ Coalition of Major Professional and Participation Sports, Submission to the Review of the IGA, p. 9.

Australian system, and if the Sports Betting Act was enacted nationally, sports would have a direct relationship with all betting providers.³⁰⁰

and

Rather than the current system, which has the potential to and probably will drive some gamblers offshore, the sports' preference is that online in-play betting in Australia be legalised under the Interactive Gambling Act so that the betting takes place in Australia and is subject to the regulatory controls that occur in Australia.³⁰¹

Other concerns regarding sports integrity have been raised about Australian and overseas-based bookmakers offering odds on local sporting events, including suburban and country amateur football competitions³⁰². To address such issues, it has been suggested that wagering on these events should be prohibited³⁰³. Stakeholders also note that national sports controlling bodies lack the resources to administer gambling policies for all levels of their sports.

To limit the risk of corruption in these competitions, a better approach may be for sports that are not governed by a national controlling body, the state/territory regulatory authority that licenses the wagering provider involved should, as a matter of good practice, consult with the relevant state/territory regulatory authority where the event is to take place, before wagering on the event can be offered.

Concerns have also been raised that the prohibition on online in-play wagering in Australia has led to consumers instead using services provided by offshore operators, resulting in difficulties regarding sports integrity, enforcement of Australian laws and the potential lack of harm minimisation measures. COMPPS suggested:

This form of betting is being driven offshore by the current prohibition. Australian sports and regulators have no access to suspicious betting data and have no means of tracking illegal activity.³⁰⁴

Gambling providers suggested that greater restrictions imposed on in-play betting services would exacerbate the risk of consumers migrating to offshore providers, reducing the efficacy of the integrity measures put in place by domestic sports and gambling providers. In its submission to the review, COMPPS noted:

³⁰⁰ *Ibid.*, p. 10.

³⁰¹ Mr Malcolm Speed (Executive Director, COMPPS), Joint Select Committee Hansard, 11 August 2011, p. 15.

³⁰² Richard Willingham, 'Bookmakers offering odds on local games', 8 June 2012, *The Age*. Retrieved on 29 June 2012 from www.theage.com.au/national/bookmakers-offering-odds-on-local-games-20120607-1zz00.html

³⁰³ Richard Willingham and Jason Dowling, 'Greens back betting bans on local footy', 11 June 2012, *The Age*. Retrieved on 29 June 2012 from www.theage.com.au/opinion/political-news/greens-back-betting-bans-on-local-footy-20120610-204fe.html

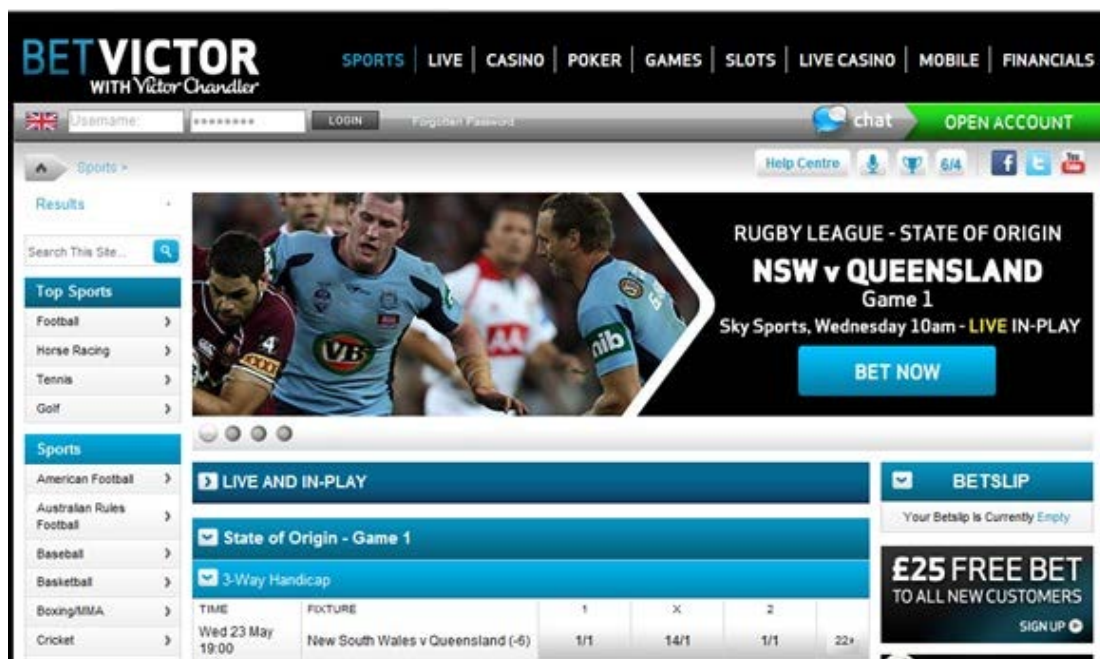
³⁰⁴ Coalition of Major Professional and Participation Sports, Submission to the Review of the IGA, p. 3.

Most importantly, Australian sports do not have information sharing arrangements with foreign bookmakers, which limits their ability to monitor suspicious activity in their sports. If the current legislative regime is maintained, these risks will continue to exist and as online gambling becomes more prevalent, they will increase in frequency.³⁰⁵

Concerns have also been raised about the potential for Australian wagering providers to transfer their operations offshore to avoid tax obligations and the payment of product fees to sports administrations, particularly if current rules are to be tightened. Some stakeholders have suggested that the High Court's dismissal of a challenge by corporate bookmakers against the constitutionality of state product fee arrangements³⁰⁶ will provide greater incentive to do so.

It is already the case that major online gambling providers based overseas and unlicensed in Australia are specifically targeting the Australian market. In doing so, they are also taking advantage of the opportunity to provide in-the-run wagering services (see Figure 3 below).

Figure 3: Betvictor



This places these services at a distinct advantage over Australian based services, as well as potentially undermining the scope of Australian sports bodies from receiving payment for their products and putting the integrity of Australian sports at risk.

³⁰⁵ *Ibid.*, p. 5.

³⁰⁶ High Court Ruling, [2012] HCA 13, *Sportsbet Pty Ltd v State of New South Wales & ORS*. Retrieved from www.hcourt.gov.au/assets/publications/judgment-summaries/2012/hcs13_2012_03_30_Sportsbet.pdf

In its submission on the interim report of the review, the European Sports Security Association states that it does not believe ‘restrictions on any aspect of in-play betting, such as micro betting, on the licensed market will benefit the integrity of sport’³⁰⁷.

Box 8: Wagering on non-sporting events

As noted in Chapter 1, the provisions of the IGA do not prohibit wagering on an event, a series of events or contingency, which can include wagering on non-sporting events. Such novelty bets provide consumers with the opportunity to gamble on the outcome of events such elections, or as recently publicised, the punctuality of public transport networks³⁰⁸, although this market was later removed³⁰⁹. In such circumstances, state and territory gambling regulator should consult with the relevant body involved in regulating the event or with information about the event to be wagered upon (e.g. for wagering upon the Federal election, the Australian Electoral Commission to be consulted) before the market can be offered by gambling providers.

The Joint Select Committee recommended that the current prohibition on the provision of online in-play betting should remain in place, asserting that the current restrictions achieve the correct balance between the availability of services (via telephone and land-based services) and harm minimisation. The committee also recommended that research be conducted as part of the review of the IGA to assess the attractions, risks and potential harms on online in-play betting³¹⁰.

The committee also suggested that another approach to be investigated may be for the placing of simple bet types, such as the outcome of an event, online during play to be permitted, while continuing to restrict online in-play exotic betting³¹¹.

Noting this suggestion from the Joint Select Committee, an approach that has the following characteristics would have merit.

- Adoption of the principle of platform neutrality—this can be achieved by applying the same rules to online wagering as are used for wagering on the telephone or at physical venues. This approach should help consumer understanding of the rules, as well as reducing compliance costs for gambling service providers.
- Extension of the ban on micro-betting to all circumstances and platforms—as micro-betting is the highest risk form of wagering from a problem gambling perspective, this type of wagering

³⁰⁷ European Sports Security Association, Submission on the interim report of the IGA review, p, 2,

³⁰⁸ Wes Hosking, ‘Your train running late? You can bet on it’, 12 June 2012, *The Herald Sun*. Retrieved on 28 June 2012 from www.heraldsun.com.au/news/more-news/your-train-running-late-you-can-bet-on-it/story-fn7x8me2-1226392357135

³⁰⁹ ‘Betting company stops giving odds on train delays’, 15 June 2012, *ABC News Online*. Retrieved on 28 June 2012 from www.abc.net.au/news/2012-06-15/betting-company-stops-giving-odds-on-train-delays/4072946

³¹⁰ Parliamentary Joint Select Committee on Gambling Reform, Second report—Interactive and online gambling and gambling advertising; Interactive Gambling and Broadcasting Amendment (Online Transactions and Other Measures) Bill 2011, pp 211–212.

³¹¹ *Ibid.*

should be banned irrespective of the platform on which it is provided. An agreed definition of micro-betting would need to be developed.

- Only allowing sports wagering of the types permitted by the relevant national sports body and state/territory regulatory body.

The characteristics of such an approach are reflected in Diagram 2 below.

Diagram 2: Current and proposed approach to online wagering

Current and Proposed Approach to Online Wagering

Types of wagering		Before start of event		After start of event		
		Current	Recommended	Current	Recommended	
Horse racing	At physical venues (subject to State law)	Permitted	Permitted	Permitted	Permitted	Permitted
	On the telephone	Permitted	Permitted	Permitted	Permitted	
	On the internet	Permitted	Permitted	Permitted	Permitted	
Final outcome of sports events	At physical venues (subject to State law)	Permitted	Permitted if authorised by state/territory regulatory authority and the relevant sports controlling body	Permitted	Permitted if authorised by state/territory regulatory authority and the relevant sports controlling body	Permitted if authorised by state/territory regulatory authority and the relevant sports controlling body
	On the telephone	Permitted	Permitted if authorised by state/territory regulatory authority and the relevant sports controlling body	Permitted	Permitted if authorised by state/territory regulatory authority and the relevant sports controlling body	
	On the internet	Permitted	Permitted if authorised by state/territory regulatory authority and the relevant sports controlling body	Prohibited	Permitted if authorised by state/territory regulatory authority and the relevant sports controlling body	
Exotic bets (e.g. who scores first goal)	At physical venues (subject to State law)	Permitted	Permitted if authorised by state/territory regulatory authority and the relevant sports controlling body	Permitted	Permitted if authorised by state/territory regulatory authority and the relevant sports controlling body	Prohibited
	On the telephone	Permitted	Permitted if authorised by state/territory regulatory authority and the relevant sports controlling body	Permitted	Permitted if authorised by state/territory regulatory authority and the relevant sports controlling body	
	On the internet	Permitted	Permitted if authorised by state/territory regulatory authority and the relevant sports controlling body	Prohibited	Permitted if authorised by state/territory regulatory authority and the relevant sports controlling body	
Micro-bets	At physical venues (subject to State law)	N/A	N/A	Permitted	Prohibited	* Requires the agreement of the states
	On the telephone	N/A	N/A	Permitted	Prohibited	
	On the internet	N/A	N/A	Prohibited	Prohibited	

Discussions with wagering providers have indicated that the majority of online in-play wagering is conducted on the final outcome of an event, rather than on contingencies within the event (e.g. 'exotic' bets such as who will score the first goal in a football match). While there appears to be no evidence suggesting online in-play exotic bets pose greater risk to problem gambling compared with online in-play wagering on outcomes, consideration could be given to restricting online in-play wagering to just the final outcome of an event. However, in order to achieve platform neutrality, exotic bets on all platforms would also need to be banned. The public policy case for banning all forms of exotic bets, especially if this form of gambling is driven off-shore, has not been established.

Recommendation 26: Because of the greater harm associated with micro-betting from a problem gambling perspective, micro-betting should be prohibited irrespective of the electronic medium (that is, telephone, internet, etc.) by which the bets are placed. This ban should also apply to wagering services provided through other devices and technologies such as smartphone applications and interactive television (that is, be platform neutral).

For the purpose of this recommendation, the following definition of micro-betting should be adopted:

Micro-betting involves the placement of bets having the following characteristics and circumstances:

- **the placing, making, receiving or the acceptance of bets on particular events occurs during a session of a match or game**
- **the betting opportunity is repetitive, of a high frequency and is part of a structured component of the match or game (for example, ball-by-ball betting in a game of cricket; point-by-point betting in tennis)**
- **a bet is placed on one of a limited number of outcomes, although the number of possible outcomes may be more than two (for example, whether the next serve will be a fault; whether the next ball will be a no ball)**
- **the time between placing a bet and knowing the outcome is very short (usually less than five minutes, excepting appeals, intervals and interruptions).**

The minister responsible for administering the IGA should be given the power to make regulations specifying whether a particular bet type is or is not a micro-bet.

Recommendation 27: State/territory governments should also prohibit micro-betting at all physical outlets.

Recommendation 28: The IGA be amended to dovetail its provisions regarding sports wagering with the provisions being developed by the Minister for Sport to deal with integrity in sports and match fixing:

- **sports betting, irrespective of the electronic medium by which the bets are placed (that is, platform neutrality) or whether they are pre-event or after the event has started, be permitted only where they have been authorised by the state/territory regulatory authority and the relevant national sports controlling body where one exists**
- **where a national sports controlling body does not exist, betting on that sports event be permitted only where it has been authorised by both the state/territory regulatory authority licensing the wagering provider and the relevant state/territory regulatory authority where the event is to take place**
- **For overseas-based sporting events the relevant governing body is the Australian state/territory regulatory authority in consultation with, where appropriate, the relevant Australian sports governing body for that sport.**

Recommendation 29: The enhanced prevention and enforcement measures outlined in Chapter 4 should also apply to those overseas-based wagering providers that are not licensed in Australia and do not comply with the requirements outlined in Recommendations 26 and 28.

Recommendations 26 and 28 only be implemented after the national standard for harm minimisation and consumer protection at Recommendations 1-3 has been adopted as it relates to online wagering.

9. Online gambling on social media and other online platforms

The increasing popularity of social media and interactive games, accessed through a variety of platforms and devices, raises new questions about potential risks from online gambling for children and youth³¹². There are three issues in relation to online gambling and social media and other interactive games:

- the potential normalisation of gambling amongst children through the provision of casino-style gambling simulations
- the advertising of prohibited services (both overtly and covertly) through these platforms
- the provision of paid gambling services through these platforms.

Normalisation of gambling behaviour in children

Some social media services and online content providers currently offer applications, usually provided by third-party content developers, which are of a casino-style and/or gambling-like nature. Increasingly, such games are being made available on social media platforms, such as Facebook, and for download on mobile platforms and on games consoles. These gambling-like services are very popular and highly accessed by children and the youth, including children under the age of 13. An example of the various gambling-like services that are available on social networking sites and online application stores include simulated poker, blackjack, or other simulated games of skill or chance such as online slot machines. There are also signs of commercial gambling companies acquiring the game developers who make these services/applications.

Many of these services/applications, whilst offering a simulated gambling experience, are not prohibited under the IGA, as they are played for virtual money or credits rather than for real money and are thus not caught by the definition of gambling in the IGA. This is the case even where the virtual money is purchased with (usually a nominal amount of) real money, as long as the virtual chips cannot be converted back to real money or anything else of value. Zynga Poker and Slotomania are examples of such casino-style gambling simulations.

Most social media providers, content providers and providers of such games through other platforms have guidelines and policies relating to content and advertising that specifically exclude the offering of paid online gambling services, including wagering and gaming, in countries where the provision of such services is prohibited. However, consistent with a policy of operating within domestic law for gambling services, gambling applications with real-money prizes such as Bingo

³¹² Richard Willingham, 'Pokies app under fire for aiming at children', *The Age*, 18 January 2012.

Friendzy have become available to Facebook users in the UK, although access to these services is restricted to those aged 18 and over³¹³. This issue is discussed later in this chapter.

There is growing evidence that the lower the age that people are exposed to gambling the more likely they are to gamble as adults³¹⁴. Dr Jeffrey Derevensky in his appearance before the Joint Select Committee advised that international research suggests that four per cent of youth experience gambling problems whilst a further 8–10 per cent are at risk. He also raised concerns about the number of internet gambling companies that are placing games or simulated gambling activities on social networking sites which are popular with youth³¹⁵.

Recent research indicates that exposure to gambling-style games at a young age is a predictor for the later development of problem gambling behaviour^{316,317,318,319}. Some stakeholders have expressed concern that the popularity and accessibility of gambling simulation games through social media, mobile platforms and console devices may make children and youth vulnerable to being exposed and potentially targeted by casino-style gambling providers. Such exposure may contribute to normalising gambling behaviour at an early age.

A further issue associated with many gambling simulations is how the odds are often geared to benefit the player, which may provide a false impression of the ease of winning. In their evidence to the Joint Select Committee, Professor Blaszczynski and Dr Gainsbury identified a Canadian research study which compared the payout rates of free and paid online slot machine games and found that 39 per cent of the free-play sites provided higher than usual odds in favour of the player³²⁰. Professor Blaszczynski noted that this then encouraged people to play on paid gambling sites where

³¹³ Emma Barnett, 'Facebook moves into gambling with bingo app', *The Telegraph*, 7 August 2012. Retrieved from www.telegraph.co.uk/technology/facebook/9457984/Facebook-moves-into-gambling-with-bingo-app.html

³¹⁴ Paul Delfabbro, Mark Griffiths and Daniel King, 'The convergence of gambling and digital media: implications for gambling in young people', *Journal of Gambling Studies*, Issue 26.2, June 2010, pp 175-187.

³¹⁵ Parliamentary Joint Select Committee on Gambling Reform, Second report—Interactive and online gambling and gambling advertising; Interactive Gambling and Broadcasting Amendment (Online Transactions and Other Measures) Bill 2011, p. 35.

³¹⁶ Carolyn Downs, 'Young people playing with risk? Social networking and the normalisation of behaviours' in M Stuart-Hoyle and J Lovell (eds), *Leisure Experiences: Space, Place and Performance—Leisure Studies Association* (109), June 2010, p. 25–47.

³¹⁷ Department of Justice, Victoria, Australian Teens and Poker: Gambling prevalence, influences and implications, October 2011. Retrieved from www.justice.vic.gov.au/resources/8bad8ef1-76c8-4180-a4fa-e149ea2936cd/reportforwebaustralianteensandpoker.pdf

³¹⁸ Responsible Gambling Advocacy Centre, Discussion paper: 'Children and Gambling: What do we know?', April 2011. Retrieved from www.responsiblegambling.org.au/images/pdf/rgac_discussion_paper_children_and_gambling.pdf

³¹⁹ Jaime Wiebe and Agata Falkowski-Ham, Understanding the Audience: The Key to Preventing Youth Gambling Problem, November 2003, pp 1–2. Retrieved from www.responsiblegambling.org/en/research/rgcresearch-details.cfm?intID=6435

³²⁰ 'Internet Gambling: Strategies to Recruit and Retain Gamblers,' Dr Jamie Wiebe, October 2008, p. 16, www.gamblingresearch.org/applydownload.php?docid=10999

the odds are different and players end up losing³²¹. Such sites may also result in dissociation between players' actions and the results if they are not losing real money³²².

The appeal of casino-style game simulators to youth and children through social networking sites and mobile platforms has been the subject of several newspaper and journal articles³²³. Some stakeholders have expressed concern that the growing number of casino-style gambling simulations available via social media and mobile platforms are arguably designed to attract young people through the use of colour, graphics and marketing and the lack of age verification checks³²⁴. Concerns have been raised that many casino-style games currently offered through these services may use their popularity to garner the next generation of gamblers, by developing in these children an interest in gambling activities which will encourage them to later take up games for real currency³²⁵.

Facebook has commented that social gaming, including casino-style games, is part of a growing industry trend within the gaming industry and that the type of colours, graphics and marketing are consistent with social games generally. In addition, Facebook has noted that the fact that the Classification Board has rated gambling simulation games as 'G' confirms that no age verification is necessary³²⁶.

In her appearance before the Joint Select Committee, Dr Gainsbury noted:

... if you look at Facebook, which is obviously one of the most popular sites in the world and certainly in Australia, there are already a lot of gambling opportunities. Zynga Poker is the most popular Facebook platform, which is a credit base—so free—site. It is incredibly popular, especially amongst youth, as well, so it is a sort of normalising activity...³²⁷

On the other hand, it has been reported that the biggest market for Zynga's games is not children, but mums, in the Crikey article 'Game On: why your mum is now playing video games'³²⁸.

³²¹ Parliamentary Joint Select Committee on Gambling Reform, Second report—Interactive and online gambling and gambling advertising; Interactive Gambling and Broadcasting Amendment (Online Transactions and Other Measures) Bill 2011, p. 164.

³²² 'Review of current and future trends in interactive gambling activity and regulation', FaHCSIA, June 2009, p. 21.

³²³ Joe Hildebrand, 'Online Betting Aiming at Kids', *The Daily Telegraph*, 21 July 2011.

³²⁴ *Ibid.*, 311 and 314.

³²⁵ Anne Wright, 'Explosion in smartphone gambling; Apps luring youth punt', *The Herald Sun*, 6 June 2011.

³²⁶ A search of the Australian Classification Database for 'gambling poker casino' lists a number of 'G' classified computer games:

www.classification.gov.au/Pages/Results.aspx?ncdctx=%2b4taNrhZWjmbbUC%2bHS4TOO8AjDB0tnM9qoduRM6VDp7XTre8SKw8j6Jd5gLI4oyB

³²⁷ Dr Sally Gainsbury, Joint Select Committee on Gambling Reform Hansard, 16 September 2011, p. 41.

³²⁸ Daniel Golding, 'Game On: why your mum is now playing video games', *Crikey*, 25 January 2012.

Box 8: Zynga Poker

According to the Zynga Poker Facebook page, 'Zynga is connecting the world through games. We're the #1 provider of gaming experiences on social networks, connecting you to your friends through word games, casino games, role-playing games and more!'³²⁹

The Zynga website describes Zynga Poker as 'the largest free-to-play online poker game in the world. Players have the option to play at any table, meet new people from around the world or join friends for a game, choosing from casual Hold 'Em tables, tournament play or VIP tables. A leader board shows players how they compare in chip ranking to their friends and through the gift shop players can personalize and decorate their seat at the table. Players interact with other players by chatting, completing challenges and sending and receiving gifts, including poker chips. According to AppData, it is the fourth most popular game on Facebook, four years after its launch. Also available on Google Android and Apple iOS, Zynga Poker has been a top 10 grossing game in the Apple App Store.'³³⁰

It has recently been reported that Zynga will seek to offer real-money online poker in the first half of 2013, subject to licensing approvals. It is likely that the game will be aimed at consumers outside the US, as online gambling with real-money remains prohibited in the vast majority of US states.³³¹

One example that Clubs Australia referred to in its submission to the review (and which the New South Wales Law Reform Commission referred to in its submissions to the Joint Select Committee) was that of a casino style game Slotomania, which 'features colourful cartoon characters that encourage players to "share" experiences with online friends'. Clubs Australia also expressed concern about the lack of age verification associated with using online and mobile applications to play casino style games³³².

In January 2012, DoubleDown Casino, which offers free online casino games, was acquired by International Game Technology (IGT), a company that designs, develops and manufactures gaming machines and online gaming solutions for paid gambling markets. This move may bolster IGT's popularity across multiple platforms as it accesses new players.

The Chief Executive Officer of IGT, Ms Patti Hart, has recognised that a new audience can be reached by purchasing Double Down:

The addition of Double Down launches IGT into a leadership position in social gaming, extends our global reach through new mediums, and leverages our unmatched expertise in

³²⁹ As found on Facebook on 30 January 2012: www.facebook.com/pages/Zynga-Poker/141094772576049?sk=info

³³⁰ Zynga Poker, <http://company.zynga.com/games/zynga-poker>

³³¹ Anthong Ha, 'Zynga's Mark Pincus: Real-Money Gambling Coming (Outside US) In First Half of 2013', 25 July 2012, TechCrunch. Retrieved on 26 July 2012 from www.techcrunch.com/2012/07/25/zynga-gambling-2013/

³³² Clubs Australia, Submission to the review of the IGA, pp 4–5.

game development. We intend to drive meaningful value from this rapidly growing distribution platform that reaches a new, but complementary, demographic of gamers³³³

Gaming analysts have associated the purchase by IGT as a means to potentially attract new customers to land-based machines by offering the same games online. Land-based gaming companies venturing into online games also put such companies in a position to take advantage of any new developments in the online gaming environment, particularly if countries such as the US take steps to legalise online gaming in the future³³⁴. As per the recent announcement by the US Department of Justice regarding its reinterpretation of the *Wire Act 1961*, such steps may already have been taken.

Box 9: Interpretation of the US Wire Act 1961

On 23 December 2011, the US Department of Justice announced that it had changed its interpretation of the *Wire Act 1961* to mean that interstate transmissions of wire communications that do not relate to a sporting event or contest fall outside the scope of the Act. Accordingly, it is possible that online lotteries, poker and other casino-style games are now unlikely to be captured by the Act, and the blocking of financial transactions for these services may no longer be required under the UIGEA. Individual states are, however, able to enact legislation to prohibit these other types of forms of online gambling or to regulate it³³⁵.

In May 2011 Playtika, the company which created Slotomania, received a 'strategic investment' from Caesar's Entertainment which is the world's largest gaming company with over 50 casinos. Caesar's Entertainment acquired the remainder of the company in December 2011³³⁶. Playtika has about 10 million users every month. Caesar's Interactive Chief Executive Officer, Mitch Gerber, has indicated the company will be focusing on 'widening its activity on social networks other than Facebook'³³⁷.

Facebook noted that these acquisitions can also be viewed as confirming of the rising trend in social gaming. As one prominent technology blog has noted:

³³³ PR Newswire, 'International Game Technology to Acquire Social Gaming Company Double Down Interactive'. Retrieved from www.prnewswire.com/news-releases/international-game-technology-to-acquire-social-gaming-company-double-down-interactive-137209833.html

³³⁴ Howard Stutz, 'Benefits cited to IGT's purchase of Double Down Interactive', *Casino City Times*, 16 January 2012. Retrieved from www.casinocitytimes.com/news/article/benefits-cited-to-igts-purchase-of-double-down-interactive-199724

³³⁵ Nathan Vardi, 'Department of Justice flip-flops on internet gambling', *Forbes*, 23 December 2011. Retrieved from www.forbes.com/sites/nathanvardi/2011/12/23/departement-of-justice-flip-flops-on-internet-gambling/

³³⁶ Playtika, About: <http://playtika.com/about.html>

³³⁷ Tali Tsipori, 'Caesars seeks more Israeli acquisitions', *Globes*, 22 December 2011. Retrieved from <http://www.globes.co.il/serveen/globes/docview.asp?did=1000709145>

Like most industries, gaming has been shaken up by the web and its new platforms for entertainment. The games that once required a substantial investment in console, cartridge and TV can now be downloaded to your mobile for \$0.99, or played for free with a browser and a Facebook account.³³⁸

Box 10: Slotomania

The Playtika website describes Slotomania as:

... a Video Slots experience like no other, it brings a Vegas experience to social networks. Introduced to the world of social gaming in October 2010, and has been immediately embraced by game lovers all over the world. Its unique blend of top tier graphics and high quality sound effects combine to create a top notch gaming experience.

Slotomania robust selection of machines and exciting bonus games are frequently updated ensuring that players' experience never subsides.

The games are simple to use and understand, making them accessible to everyone. Users simply select a machine of their choice, choose their bet and number of paylines and start spinning.³³⁹

Slotomania uses a range of cartoon graphics on its video slots ranging from cats and dogs to mafia cartoons to Egyptian slots to appeal to a variety of players.

The Joint Select Committee identified children as a vulnerable market³⁴⁰ and its recommendation 5 is directed towards addressing this emerging trend of gambling directed at youth. It recommends that the COAG Select Committee on Gambling Reform review new gambling opportunities, particularly those which appear to target youth, with a view to developing a national approach.

As social media sites, mobile platforms and game developers operate in a dynamic environment, with their platforms being a potential interface between online gambling organisations and consumers of all ages, it is essential that government maintains a close dialogue with such providers on this issue. The CWG has been considering issues around the risks of online gambling to Australian children. The issues surrounding children and exposure to prohibited internet gambling services or gambling simulation applications will continue to require attention.

³³⁸ Matt Silverman, 'The Influence of Social Gaming on Consoles', *Mashable*, <http://mashable.com/2011/02/22/consoles-social-gaming/>

³³⁹ As found on 30 January 2012 at <http://playtika.com/slotomania.html>

³⁴⁰ Parliamentary Joint Select Committee on Gambling Reform, Second report—Interactive and online gambling and gambling advertising; Interactive Gambling and Broadcasting Amendment (Online Transactions and Other Measures) Bill 2011, p. 163.

Advertising of prohibited services and misleading advertising

Stakeholders have raised concerns that prohibited online gambling services are being advertised (both overtly and covertly) on social media and other content platforms. The issue of misleading advertising on such platforms was also raised in submissions to the review and consultations with stakeholders.

The IGA makes it an offence to advertise such services to customers in Australia. This prohibition also applies to the advertising of any prohibited services offered on social media services, interactive games platforms, or delivered through smartphone or tablet applications.

The guidelines and policies of many social media providers and content platforms contain provisions relating to the advertising of paid online gambling, wagering or gaming. These policies require the appropriate targeting of such advertising, and compliance with relevant laws, regulations, and industry codes. Prior authorisation of the provider can also be required before such advertising can be used.

Any breach of these guidelines and policies is essentially a private contractual matter between the social media or content platform and the advertiser. However, it is unclear at this stage what enforcement action occurs when policies are breached on these platforms. If there was a breach of the guidelines and policies which was also a breach under Australian law—for example, advertising of a prohibited internet gambling service via an interactive platform—then the social media or content platform and the advertiser would be exposed to potential liability.

However, the Joint Select Committee noted that some social networking sites had recently changed their advertising policies to enable the provision of commercials for online gambling subject to regulation of the advertised game³⁴¹.

The Joint Select Committee was also informed of an individual who had not gambled previously who saw an advertisement on a social networking site to make extra money of up to \$2000 or \$3000 a week. When the individual clicked on the advertisement it took him to an overseas gaming website, Casino.com, where he was encouraged to gamble using free credits initially. The advertisement on the social networking site was reported to have not mentioned gambling at all; rather it promoted 'smart investing' and 'part-time business'³⁴².

In relation to this type of advertising, the Joint Select Committee recommended that the IGA be amended to address the inconsistencies and ambiguities regarding the advertising of prohibited

³⁴¹ Parliamentary Joint Select Committee on Gambling Reform, Second report—Interactive and online gambling and gambling advertising; Interactive Gambling and Broadcasting Amendment (Online Transactions and Other Measures) Bill 2011, p. 164.

³⁴² Witness A, Joint Select Committee on Gambling Reform Hansard, 16 September 2011, p. 55.

interactive gambling services, specifically to capture methods of avoidance such as advertisements that do not mention gambling linked to gambling websites³⁴³.

It should be noted that the case mentioned above was in respect of a gambling service which is itself prohibited by the IGA.

There is no need to differentiate treatment of advertising on or through social networking sites as it is already covered by the advertising provisions of the IGA. As described in Chapter 6, advertising of the sort described above is prohibited under the current advertising provisions of the IGA if it is accessible by Australians and if the content of the advertising site, and the way the advertising site is itself advertised or promoted, suggests that a majority of persons accessing the advertising site are physically present in Australia. This view is supported by stakeholders, including Yahoo! which noted following discussions as part of the CWG regarding online gambling and social media:

... the advertising prohibitions contained within the IGA are entirely appropriate and applicable to social media sites.³⁴⁴

Any amendments to the IGA to enhance the enforcement of the advertising provisions would also apply. For example, recommendation 16 would assist in enforcement of these provisions subject to issues of extra-territoriality.

Provision of gaming services via social media and content providers on a commercial basis

Paid gambling-type activities on social media sites and other interactive platforms fall into two categories:

- games played with virtual currency that require real money to be paid for participation
- games played with real money and cash winnings.

Some gambling applications available via social media and other interactive platforms (e.g. mobile devices and gaming consoles) offer products and services which are free to use until a certain amount of virtual credit (provided upon start-up) is used up, at which point the consumer is required to purchase further virtual credits to continue to play. Alternatively, products and services encourage consumers to register to play and receive a free no-deposit bonus amount, then once they win they are required to make real cash deposits into their casino accounts to access or withdraw cash winnings (an example is Virtual City Casino³⁴⁵).

³⁴³ Parliamentary Joint Select Committee on Gambling Reform, Second report—Interactive and online gambling and gambling advertising; Interactive Gambling and Broadcasting Amendment (Online Transactions and Other Measures) Bill 2011, pp 173–174.

³⁴⁴ Email comments from Yahoo! regarding discussions of the Consultative Working Group on Cybersafety, 15 March 2012.

³⁴⁵ Retrieved from www.facebook.com/pages/Virtual-City-Casino/321716184506468

Games played with virtual currency

Games which involve paying an entry-type fee and which do not provide for cash winnings, such as online gambling simulators, are akin to traditional arcade games and more recent pay-for-play online multiplayer games (such as World of Warcraft, etc.). Some online games also incorporate gambling elements as mini-games or activities to be played within the game. For example, the massively multiplayer online role-playing game Runescape includes the activity Squeal of Fortune where players can spin a wheel to win virtual items to use within the game. Players regularly receive free spins, however additional spins can also be purchased with real money^{346,347}.

The distinction between these games and gambling is that there is no cash prize on the outcome and no cash at risk during the game. Therefore, these services are not prohibited gambling services under the IGA. However, as is the case with free-play sites discussed in Chapter 6, if these sites have close links to prohibited gambling sites then the advertising of these virtual simulators is likely to be prohibited.

The issue of gambling simulation services utilising virtual credits (or chips) was highlighted by Senator Nick Xenophon with respect to DoubleDown Casino, which allows consumers to purchase additional credits to continue to play once a certain amount of credit is used. Slotomania (see Figure 4 below) and Zynga Poker are other examples of services where virtual currency can be purchased with real money.

³⁴⁶ 'Turning gamers into gamblers', Screen Play Blog, 21 June 2012, The Sydney Morning Herald. Retrieved on 29 June 2012 from: www.smh.com.au/digital-life/games/blogs/screenplay/turning-gamers-into-gamblers-20120620-20obm.html

³⁴⁷ 'Squeal of Fortune', Runescape Wiki. Retrieved on 29 June 2012 from: http://runescape.wikia.com/wiki/Squeal_of_Fortune

Figure 4: Slotomania



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Some stakeholders have suggested that online social gaming be regulated in the same way as traditional online gambling services. The CEO of online gambling provider William Hill, Ralph Topping has noted:

...a child can buy chips to play an online slot which is almost as good as anything you find on William Hill Online...In fact, it might even pay out more than a slot you might find on an online gambling site, which could also encourage the vulnerable...But that's OK because the chips aren't real money. Or are they?³⁴⁸

Some media articles and commentators responding to the interim report of the review have expressed concern that it makes no recommendation on a “loophole that stings thousands of Australians and softens them up for more losses down the track.” This concern relates to games such as DoubleDown Casino providing players with the option of paying, for example, \$8 to receive \$750 000 worth of virtual chips to use within the game. Some games allow customers to purchase

³⁴⁸ Chris Sieroty, 'William Hill's CEO wants social gaming regulated', 10 July 2012, *The Las Vegas Review-Journal*. Retrieved on 11 July 2012 from www.lvrj.com/business/william-hill-s-ceo-wants-social-gaming-regulated-161947515.html

large amounts of virtual chips at one time, for example Slotomania provides the option to purchase 800 000 'coins' for USD\$200. If the player loses these they may purchase additional chips to continue using the game. Such games also provide free virtual chips to players at regular time intervals (e.g. every 4 hours) or as reward for frequent use. While consumers can choose to purchase virtual chips, it is entirely possible to play many of these games without making such purchases. The terms and conditions make clear to consumers that virtual currency cannot be redeemed for real money, goods, or other items of monetary value.

These games are not prohibited under the IGA as they do not satisfy the definition of a gambling service, due to the virtual currency not being redeemable for real money or anything else of value. It has been suggested by some stakeholders that the IGA should be amended to capture these services, closing the loophole for purchasing virtual chips to play gambling simulations.

The public policy argument for prohibiting access to such gaming simulations is that it potentially normalises gambling amongst children and may lead them to become problem gamblers in the future. The research evidence to support this view is at an embryonic stage. Gambling Research Australia is considering commissioning research into social media and gambling. It is also relevant that no other countries have, at this stage, been identified as having banned such gambling simulations or are considering doing so, although the UK Gambling Commission has noted that it is monitoring developments in this area³⁴⁹.

If the government was inclined to consider banning such gambling simulations, this would require:

- the characteristics of these games to be identified and defined in the legislation
- the identification of how any legal requirements to ban such games would be enforced such that the access to these games by Australians (or by Australian children) could be prevented by the platforms on which these games are delivered.

There are three main characteristics of such games that appear to be of concern:

- the games look very much like many real casino games – some may use a simulated rate of return that gives players an unrealistic impression of the rates of return for actual online casinos
- there is an incentive to use virtual chips to unlock elements of the game (e.g. new levels, items); the fastest way to do so is to purchase additional virtual chips with real money
- if a player loses all their virtual chips, they are able to purchase more chips to continue playing the game.

³⁴⁹ Keith Gladdis, 'Facebook 'creating a generation of gambling addicts because of site's Las Vegas style games'', 15 July 2012, *The Daily Mail*. Retrieved on 16 July 2012 from www.dailymail.co.uk/news/article-2174024/Facebook-creating-generation-gambling-addicts-sites-Las-Vegas-style-games.html#ixzz20kKlr0qD

There are thousands of gaming applications (apps) available on social networking sites, mobile platforms and games consoles that require upfront payments to enable them to be used. This payment usually represents a return to the game developer and/or the platform provider. The number of these apps is growing and the market continues to evolve rapidly. The decision to play games like DoubleDown Casino and Zynga Poker, where additional virtual chips can be purchased, is currently a matter of consumer choice (and parental guidance where children are involved).

A key difficulty in attempting to prohibit gambling-like applications that allow the purchase of virtual currency with real money would be defining such games in a way that did not inadvertently capture other games that contain some gambling elements. For example, while some games may require payment of an entry fee, and elements of chance for progress in the game, they are not seen as traditional gaming (e.g. playing board games which can be played online or as tournaments). The constant evolution of social gaming and consumer trends would also pose difficulties in applying an effective definition.

If a suitable definition could be developed in order to ban these services, the global nature of the platforms through which they are accessed, and the global nature of the developers that create them, would pose challenges for enforcement. Platforms and developers would be required to comply with a legal requirement for access to their services by Australians (or Australian children) which does not currently exist in any other jurisdiction. Such requirements are likely to be resisted strongly and would require a high level of co-operation with platforms and providers to put in place, particularly as most of the relevant global platforms operate under the laws of other countries. The challenges associated with extra-territoriality outlined in Chapter 4 would also be relevant.

The ability of children to purchase access to such games, and the role of parents in deciding whether their children should access such games, is important to consider. Concerns have been raised regarding children purchasing smartphone and tablet applications, including applications containing gambling-style elements, and the ease and speed with which they are able to make additional purchases within these applications (in-app purchases)³⁵⁰.

In order to purchase virtual chips or other items within a gambling simulation, the consumer must have access to a credit card or one of the many other forms of online payment systems (see Chapter 4), with some parental input and consent. The child may either have access to their own credit card/online payment account (with the parent's consent), or be using their parent's card/account with or without consent. Payments for these games could also be made by using emerging mobile phone payment methods. The latter may be easier for some children to access but would show up on the mobile phone bill that parents receive (if the parent has provided the mobile phone to their child). The case may be that the parent does not clearly understand the purchases being made by the child as they are for what is viewed to be a game rather than a gambling-like service.

³⁵⁰ Tineka Everaardt, 'Apps that trap', 13 July 2012, *Today Tonight*, Channel 7. Retrieved on 16 July 2012 from au.news.yahoo.com/today-tonight/latest/article/-/14229350/apps-that-trap/

Further education and awareness for parents on these issues is warranted, and the need for greater diligence by parents in checking credit card or online payment records and their children's online activities more generally. In addition, parents can choose to voluntarily block access to websites and services they feel are inappropriate for their children using approved family-friendly filters, or by disabling in-app purchases for gambling-like applications.

Age verification measures are also a potential solution to better limit access by children to gambling-like applications. Cooperation with providers would be required to put in place any such mechanisms that can operate effectively.

Games played for cash winnings

As outlined above, many social media services and other providers have guidelines and policies that prohibit the facilitation of paid online gambling in countries where the provision of such services is not permitted. These policies are now resulting in differential treatment of countries with respect to gambling on social networking sites, with the recent decision by Facebook to provide UK users aged 18 and over with access to online bingo with real-money prizes³⁵¹. The game operator is required to ensure that the users of the gambling services are 18 or over. Gamesys, the developer of the games, has stated that it has put controls in place to restrict access to underage users and to protect vulnerable people, with users subject to strict account acceptance controls to confirm their identity, age and location in the UK³⁵².

Facebook has advised that such games are not accessible by Australian Facebook users, consistent with the Facebook policy of only offering gambling services, including advertising, consistent with domestic law. This would likely be a contravention of the IGA if it were to occur and the range of jurisdictional and enforcement issues discussed in Chapter 4 would be relevant.

Despite the restrictions employed by Facebook and the Bingo Friendly application to prevent access by underage Facebook users in the UK, concerns that the application is aimed at children have been raised due to the use of cartoon characters and graphics, and similarities with the popular children's online game Moshi Monsters³⁵³.

³⁵¹ Emma Barnett, 'Facebook moves into gambling with bingo app', *The Telegraph*, 7 August 2012. Retrieved from www.telegraph.co.uk/technology/facebook/9457984/Facebook-moves-into-gambling-with-bingo-app.html

³⁵² 'First real-money gambling app launched on Facebook', *Gaming Intelligence*, 7 August 2012 (pay walled). Retrieved from www.gamingintelligence.com/premium-news-and-archive/17109-first-real-money-gambling-app-launched-on-facebook

³⁵³ Mark Prigg, 'Facebook slammed for gambling game that allows visitors to win up to £50,000 of REAL money', *The Daily Mail*, 7 August 2012. Retrieved from www.dailymail.co.uk/sciencetech/article-2184906/Facebook-slammed-game-allows-visitors-gamble-REAL-money.html

It has been reported that the application Big Fish Casino, an online slot machine game involving real-money prizes, will also shortly become available to UK residents through Apple Inc's App Store³⁵⁴.

The recent change in position by the US Department of Justice with respect to its interpretation of US Federal gambling legislation may also provide opportunities for companies such as Playtika and Zynga. Zynga Chief Executive Officer, Mark Pincus, has said about the change in the Department of Justice position:

We're watching it with interest. Virtual reality is about the connection between the virtual and the real, and there's just such a close and perfect connection between the virtual and the real when you're gambling, because these chips have real world value.³⁵⁵

As noted earlier, it has also been recently announced that Zynga will seek to offer real-money online poker in the first half of 2013, subject to licensing approval. It is likely that the game will be aimed at consumers outside the US, as online gambling with real-money remains prohibited in the vast majority of US states.³⁵⁶

Conclusion

The relationship between social networking sites, mobile platforms and gambling is evolving. While many have policies in place which prevent paid gambling services being offered on the site, they do support free gambling-like games, and virtual gambling simulators. Because some of these also require an entry fee, and sometimes additional money to buy virtual chips or credits, they are starting to push the boundaries between gambling services and types of arcade games. There are early indicators of paid casino-style gaming being offered on social networking and mobile platforms, although at this stage they do not appear to be available to Australian customers. There are also signs of major global paid gambling companies acquiring free or virtual games, which may be another signal of an eventual move to offer paid gambling games on social networking sites or through mobile devices.

Further research is required to properly inform policy decisions on issues in this area, such as that which is being considered by Gambling Research Australia. These developments should be closely monitored, including by the CWG in respect of risks to children.

Parents have a crucial role to play in the access of these services, particularly in relation to those services where additional credits or items can be purchased with real money via credit card or other online payment methods. Greater education and awareness of the operation of these services

³⁵⁴ Douglas McMillan, 'iPhones become mobile casinos by adding real-money bets', *Bloomberg*, 17 August 2012. Retrieved from www.bloomberg.com/news/2012-08-16/iphones-become-mobile-casinos-by-adding-real-money-bets.html

³⁵⁵ Ann Wright, 'Explosion in smartphone gambling among youth a worrying trend', *Herald Sun*, 6 June 2011. Retrieved from www.heraldsun.com.au/news/more-news/explosion-in-smartphone-gambling/story-fn7x8me2-1226069765065

³⁵⁶ Anthon Ha, 'Zynga's Mark Pincus: Real-Money Gambling Coming (Outside US) In First Half of 2013', 25 July 2012, TechCrunch. Retrieved on 26 July 2012 from www.techcrunch.com/2012/07/25/zynga-gambling-2013/

should be made available to parents, including via tools such as the Easy Guide to Social Networking Sites³⁵⁷.

Recommendation 30: Popular social media services, mobile content providers, console providers and online game developers closely monitor the impact of their user policies regarding the provision of online gambling services (both licensed and unlicensed) as well as gambling-style services that are popular with children to ensure the implementation of these policies aligns with Australian laws and community expectations. In particular, these providers should closely monitor gambling-style services to ensure that they are not inappropriately targeting younger children or that they possess simulated payout ratios that differ significantly from actual gambling services as a means of misleading children about their prospects for success with real gambling services.

Recommendation 31: In addition to Recommendation 30 and subject to the outcome of proposed GRA research in this area, the department should consult with gambling regulators in like-minded countries regarding potential measures to address the access and marketing of online gambling-style services to children.

³⁵⁷ Available from www.dbcde.gov.au/easyguide/social_networking

10. International approaches to the regulation of online gambling

Countries around the world have approached the regulation and control of online gambling in a number of different ways. China, Thailand, Singapore and the US (although the recent re-interpretation of *the Wire Act 1961* has significantly changed the situation in the US) have taken a prohibitory stance towards online gambling, whereas other countries such as France, Italy, Malta, Spain and the UK have all legalised components of online gambling. The sections below provide an outline of the regulatory frameworks in place in some countries, and recent efforts to improve information sharing among countries to assist with the operation of these frameworks. The specific measures used by jurisdictions to enforce their regulatory regimes are discussed in more detail in Chapter 4.

Regulation of gambling in other countries

The regulation of gambling in the US is a layered approach—the states are responsible for regulating gambling activity within their jurisdiction and the federal government has prohibited interstate online gambling and also the processing of unlawful online gambling transactions by service providers via two pieces of legislation—the UIGEA and the *Wire Act 1961*. The UIGEA does not criminalise players but it does make executives of gambling companies that do not comply with the legislation criminally responsible.

On 23 December 2011, the US Department of Justice announced that it had changed its interpretation of the *Wire Act 1961* to mean that interstate transmissions of wire communications that do not relate to a sporting event or contest fall outside the scope of the Act. Accordingly, it is possible that online lotteries, poker and other casino-style games are now unlikely to be captured by the Act, and the blocking of financial transactions for these services may no longer apply under the UIGEA. Individual states are, however, able to enact legislation to prohibit these other types of forms of online gambling³⁵⁸. Several US states have introduced legislation to regulate online gambling within their own jurisdictions³⁵⁹.

The UK's *Gambling Act 2005* enables entities to be licensed in the UK to offer online gambling services. The UK Gambling Commission is the body responsible for the regulation and licensing for online gambling providers that offer casino gambling, games of chance, games of skill and chance, wagering and lotteries³⁶⁰. Until recently, the UK also enabled online gambling service providers who operate in the European Economic Area (EEA) to advertise and provide services without a licence, by

³⁵⁸ Nathan Vardi, 'Department of Justice flip-flops on internet gambling', *Forbes*, 23 December 2011. Retrieved from www.forbes.com/sites/nathanvardi/2011/12/23/departement-of-justice-flip-flops-on-internet-gambling/

³⁵⁹ Parliamentary Joint Select Committee on Gambling Reform, Second report—Interactive and online gambling and gambling advertising; Interactive Gambling and Broadcasting Amendment (Online Transactions and Other Measures) Bill 2011, pp 96–101.

³⁶⁰ *Ibid.*, p. 74.

way of mutual recognition, provided they satisfied criteria set by the UK Gambling Commission. Providers who operated outside of the EEA and wished to provide online gambling services had to be added to a white list and enter into a good practice agreement. However, the UK recently announced that all service providers will be required to apply for a UK licence. To advertise in the UK there are several codes of practice that licensees must comply with including the Gambling Industry Code for Socially Responsible Advertising and The British Code of Advertising, Sales Promotion and Direct Marketing.

France permits online poker and sports betting services to be provided by licensed domestic providers, but prohibits unlicensed overseas providers and all other forms of online gambling. These regulations can be enforced by requiring ISPs to block websites, restrict financial transactions with prohibited online gambling providers and issuing fines or imprisonment for those found to be providing prohibited services. Advertising is prohibited if it appears to target children or if it is to appear in a youth-based publication³⁶¹.

Italy is one of Europe's largest online gambling markets which provides for a regulated access regime. In 2006, Italy opened up its online sports wagering market to providers only from other EEA countries (including countries such as Spain, Estonia and Ireland³⁶²) and since then it has progressively liberalised online gambling services to now include poker and casino style games. For online gambling providers to acquire a licence they must pay Italian gambling taxes and be located in an EEA country³⁶³.

A brief summary of the approaches taken by selected countries is included at **Appendix H**.

International agreements on regulating online gambling

Information sharing agreements are emerging between certain like-minded countries. France and Italy have led the way by signing a cooperation agreement to enable information sharing on issues concerning sports integrity, prohibited gambling websites, consumer safety and fraud. To strengthen its enforcement capabilities and reduce the availability of prohibited online gambling services, Italy signed a co-operation agreement in June 2011 with the French gambling authority ARJEL. Both countries have similar business models and many licensees in common. There are approximately 15 operators who are licensed to legally provide online gambling services in both countries. The

³⁶¹ Parliamentary Joint Select Committee on Gambling Reform, Second report—Interactive and online gambling and gambling advertising; Interactive Gambling and Broadcasting Amendment (Online Transactions and Other Measures) Bill 2011, p. 85.

³⁶² Companies House, List of European Economic Area Countries. Retrieved from www.companieshouse.gov.uk/about/miscellaneous/listeeaCountries.shtml

³⁶³ Amministrazione autonoma dei monopoli di Stato: www.aams.gov.it/

cooperation agreement will commit each country to improving the effectiveness of their systems, monitoring of legal providers, sports integrity and the protection of players from prohibited sites³⁶⁴.

Belgium has also reached agreement with Alderney and Gibraltar with respect to ensuring that those countries refrain from offering Belgian consumers' unlicensed online gaming services. If providers from either country are caught offering services in Belgium without a licence, they will be subject to prosecution in Belgium. Recently, the Alderney Gambling Control Commission entered into an agreement with the Canadian province Ontario. The memorandum of understanding Alderney has entered into with the Alcohol and Gaming Commission of Ontario is to regulate the exchange of information and cooperation during investigations aimed at boosting consumer protection and anti-crime measures³⁶⁵.

In mid-2011 regulators from Belgium, Hungary, Germany, Italy, the Netherlands, Norway and Poland met to discuss the issue of information sharing in respect of online gambling³⁶⁶.

In its submission to the review Betfair suggested that:

Participation by Australian regulators in initiatives such as the CEN [the European Committee for Standardization] Workshop Agreements would be beneficial to Australia forming part of a coordinated regulatory approach to online gambling.³⁶⁷

The Joint Select Committee also supported further examination of international regulatory approaches and opportunities for international collaboration that may be applicable to Australians³⁶⁸.

The creation of any information sharing agreements would heavily depend on the countries involved and their approach to online gambling. Such agreements are a new phenomenon and, accordingly, there is little precedent for the content of such information sharing agreements and enforcement. Dr Gainsbury and Professor Blaszczynski recognised in their submission to the Joint Select Committee that the global nature of online gambling creates many problems in forming an international standard that is acceptable to the needs of local populations, and that this course of action is a long term goal that cannot be achieved quickly if it is to be of any substance and have practical effect³⁶⁹.

³⁶⁴ 'French and Italian regulators sign co-operation agreement', *Gaming Intelligence*, 29 June 2011 (pay walled). Retrieved from www.gamingintelligence.com/premium-news-and-archive/12492-french-and-italian-regulators-sign-co-operation-agreement

³⁶⁵ 'Alderney signs cooperation agreement with Ontario regulator', *Gaming Intelligence*, 1 February 2012 (pay walled). Retrieved from www.gamingintelligence.com/legal/14779-alderney-signs-cooperation-agreement-with-ontario-regulator

³⁶⁶ Allen Consulting Group, Research for the review of the Interactive Gambling Act 2001 (2012), pp. 87-88.

³⁶⁷ Betfair, Submission to the review of the IGA, p. 33.

³⁶⁸ Parliamentary Joint Select Committee on Gambling Reform, Second report—Interactive and online gambling and gambling advertising; Interactive Gambling and Broadcasting Amendment (Online Transactions and Other Measures) Bill 2011, p. 111.

³⁶⁹ *Ibid.*

It is likely that the formation of any agreement with Australia would be a long process. There is a high degree of variance in stances towards online gambling across the world, ranging from (what used to be) a total prohibition in some countries such as the US, partial prohibition in countries like Australia and France, to a relatively open but regulated regime in countries such as the UK. Given this variance, reaching agreement on a common set of principles is unlikely. There may be some reluctance by key countries to engage with Australia on this issue, particularly those with popular online gambling providers which seek to attract such providers with favourable regulatory regimes. Nevertheless, the Australian Government should continue to monitor international developments in this area and seek to participate in international agreement making processes where there are strong prospects of a tangible benefit to Australian consumers.

11. Lotteries

In general, a lottery refers to any 'scheme or arrangement for raising money ... by the sale of a large number of tickets, certain among which, as determined by chance after the sale, entitle the holders to prizes'³⁷⁰.

States and territories regulate the operation of lotteries in their own jurisdictions, with many of the lottery services offered across Australia being owned and/or operated by state or territory lottery commissions. Most of these lottery services offer the sale of certain lottery products over the internet, or are considering doing so. For example, South Australia has recently announced that it will enable the purchase of online lottery tickets as of mid-2012³⁷¹, while in New South Wales lottery products have been available for purchase online since 2008.

Most forms of electronic or online lottery services are permitted under the IGA (as excluded lottery services), except for electronic scratch lotteries or other instant lotteries. These instant products include frequently-drawn and highly-repetitive types of online scratchies, which pose greater problem gambling risks due to their repetitive nature.

Prevalence and harm profile

The submission to the review by the Australian Lottery Blocs argued that, since the introduction of the IGA, there has been no significant increase in the nature of the games played, the participation rate nor the prevalence of associated problem gambling. For Tatts Lotteries, which accounts for the majority of online sales, internet-based sales represented approximately 5.7 per cent of total sales for 2010–11, with the average weekly spend being \$9.02 (lower than the average \$13.88 average weekly spend during the same period by registered retail-only player card members)³⁷².

The Australian Newsagents' Federation (ANF) and Lottery Agents Association of Tasmania (LAAT) submission to the review notes that Tattersall's online lottery sales have increased by 5.6 per cent in 2011 and by as much as 115.7 per cent over the past five years³⁷³. In comparison, the Lottery Agents' Association of Victoria (LAAV) and Lottery Agents Queensland (LAQ) indicate that retail instant lottery turnover has declined over the past five years by 24 per cent³⁷⁴. While there has been an increase in online lottery sales, the 2010 Productivity Commission report showed that there had been a significant decrease in the market share of lotteries in the gambling industry. In 1986–87,

³⁷⁰ Macquarie Dictionary, definition of 'lottery'. Retrieved on 25 January 2012 from www.macquariedictionary.com.au/

³⁷¹ 'Lotto tickets to be sold online', ABC News, 30 December 2011. Retrieved from www.abc.net.au/news/2011-12-30/lottery-tickets-online-sales-sa/3752812?section=sa

³⁷² Australian Lottery Blocs, Submission to the review of the IGA, p. 2 and p. 5.

³⁷³ Australian Newsagents' Federation and Lottery Agents Association of Tasmania, Submission to the review of the IGA, p. 4.

³⁷⁴ Lottery Agents' Association of Victoria and Lottery Agents Queensland, Submission to the review of the IGA, p. 3.

lotteries comprised approximately 26 per cent of all gambling spending. In 2008–09 it accounted for about 12 per cent, largely due to the increase in spending on EGMs and casinos³⁷⁵.

The ANF and LAAT believe that the growth in online lotteries may result in a higher incidence of problem gambling as these services do not possess the same retail controls as land-based retail providers³⁷⁶. In addition, it suggested that the availability of other gambling products alongside lottery products could have an impact on problem gambling³⁷⁷.

The LAAV and LAQ raised the same concern and cited a report by Dr James Phillips and Professor Alex Blaszczynski that stated that internet lottery purchases were infrequent, but problem gamblers were six times more likely to purchase a ticket online³⁷⁸.

To limit access to offshore lotteries not licensed in Australia, the Newsagents Association of NSW and ACT (NANA) suggest that financial restrictions be used to block transactions to prohibited providers, and that use of financial instruments for prohibited gambling be criminalised³⁷⁹. See Chapter 4 for further discussion on this issue.

Harm minimisation

The Australian Lottery Blocs argued that lotteries continue to maintain a low harm profile and that only a small percentage of sales are generated online. The Australian Lottery Blocs contend that, despite the availability of lottery tickets over the internet, neither the harm profile of lotteries nor the prevalence of problem gambling has increased, and suggest that the exemption for lotteries should be retained, and expanded to include all lottery products approved/licensed by states and territories³⁸⁰. The 2010 report on gambling from the Productivity Commission also arrived at a similar conclusion in its Finding 4.2, where it recognised lotteries being a low-risk gambling activity, particularly in comparison to gaming and wagering³⁸¹.

Submissions to the review outlined a number of harm minimisation measures that online lottery providers have implemented in Australia, including age verification measures, self-exclusion and weekly expenditure limits. Some lottery commissions have gone even further and also limit online trading hours and deposit limits³⁸².

³⁷⁵ Lottery Agents' Association of Victoria and Lottery Agents Queensland, Submission to the review of the IGA, p. 6.

³⁷⁶ Australian Newsagents' Federation and Lottery Agents Association of Tasmania, Submission to the review of the IGA, p. 6.

³⁷⁷ Australian Newsagents' Federation and Lottery Agents Association of Tasmania, Submission to the review of the IGA, p. 4.

³⁷⁸ Lottery Agents' Association of Victoria and Lottery Agents Queensland, Submission to the review of the IGA, pp 8–9.

³⁷⁹ Newsagents' Association of NSW and ACT, Submission to the review of the IGA, p. 7.

³⁸⁰ *Ibid* 372.

³⁸¹ Productivity Commission, Inquiry Report on Gambling (2010). Retrieved from www.pc.gov.au/projects/inquiry/gambling-2009/report

³⁸² Australian Lottery Blocs, Submission to the review of the IGA, p. 6.

Submissions from the NANA, the LAAV and LAQ recommended a \$200 per person per week spend limit for online lotteries, in line with requirements in Western Australia^{383, 384}. In addition, the NANA suggested that player registration for online lotteries should occur through trusted land-based retailers to authenticate identification³⁸⁵.

The ANF and LAAT consider they may be able to provide assistance in mitigating any online lottery problem gambling through their experience in managing problem gambling, coupled with the right business model for harm minimisation³⁸⁶.

Recommendations relating to a national approach to harm minimisation and consumer protection are detailed at Chapter 3.

Online instant lotteries

The Australian Lotteries Blocs are of the opinion that lotto, keno-style products and instant scratchies are not problematic and are unlikely to lead to problem gambling due to the size of the prizes offered being proportionate to the amount invested, low average player spend with high participation, random chances and the absence of any skill requirements. The Australian Lotteries Blocs suggest that the current lottery exclusion be redefined to allow instant style lottery games³⁸⁷.

In its submission on the interim report of the review, the Australian Lottery Blocs state that:

Whilst online instant games can be of a higher play frequency than online draw lottery games, appropriate responsible play measures can be implemented to match the game characteristics and minimize the risk of problem play.³⁸⁸

There are examples from international jurisdictions where online lottery products include instant scratchies and other instant win games in addition to keno and traditional lottery draws. One operator who offers such products is Camelot, appointed by the UK National Lottery Commission. Camelot has a range of harm minimisation strategies to prevent excessive play and underage players and to promote the adoption of responsible gaming framework.

Because of the potential high frequency and repetitive nature of instant online products and online scratchies, however, the underlying rationale for their prohibition under the IGA remains. That is, they continue to pose a significantly greater risk, in comparison to other online lottery services, in terms of having characteristics that are recognised as increasing the incidence of problem gambling.

³⁸³ Lottery Agents' Association of Victoria and Lottery Agents Queensland, Submission to the review of the IGA, p. 12.

³⁸⁴ *Ibid* 378.

³⁸⁵ *Ibid* 379.

³⁸⁶ *Ibid* 377.

³⁸⁷ Australian Lottery Blocs, Submission to the review of the IGA, pp 9–10.

³⁸⁸ Australian Lottery Blocs, Submission on the interim report of the IGA review, p. 2.

Concerns have been raised about the uptake of lottery products by young people, particularly online and via mobile platforms. A 2011 GRA report noted that Australian studies had found the most popular forms of gambling for Australian adolescents include lotteries and scratch-tickets³⁸⁹. The report also noted that research examining the UK's National Lottery had found that 8% of a sample of 12 to 15-year-olds had at some time played a National Lottery game on the internet³⁹⁰. Given young people are early adopters of technology, increased availability and accessibility of instant lottery products online may have a negative impact from a problem gambling perspective on this group. In its submission on the interim report of the review, the Australian Psychological Society note that the increasing ability for young people to undertake online gambling using mobile phone platforms, and while isolated from others, magnifies the risk for this group³⁹¹.

Significant further evidence that the harm potential is small would be needed to justify any change from the current prohibition.

Ongoing viability of lottery retailers

A further issue raised by the ANF and LAAT, LAAV and LAQ, and the NANA, is that online lotteries may represent a threat to the viability of small business retail lottery outlets. They point to the significant growth of online lotto (LAAV and LAQ cite approximately 7.5 per cent of Tatts Group lottery sales) but has not resulted in an increase in net lotto turnover³⁹². They propose that retail outlets be given a greater role in harm minimisation for lotteries. This is an issue best addressed by individual jurisdictions, rather than through the IGA.

³⁸⁹ Gambling Research Australia, 'Gambling and Young People in Australia' (2011), p. 9. Retrieved from www.gamblingresearch.org.au/home/research/gra+research+reports/gambling+and+young+people+in+australia+%282011%29

³⁹⁰ Gambling Research Australia, 'Gambling and Young People in Australia' (2011), p. 24. Retrieved from www.gamblingresearch.org.au/home/research/gra+research+reports/gambling+and+young+people+in+australia+%282011%29

³⁹¹ Australian Psychological Society, Submission on the interim report of the IGA review, p. 6.

³⁹² Australian Newsagents Federation and Lottery Agents Association of Tasmania, Submission to the review of the IGA, pp 4–6. See also LAAV and LAQ, Submission to the review of the IGA, pp 4–6.

12. Fantasy sports

Fantasy sports have been popular since commencing online in the mid-1990s and are particularly popular in North America. In the US, fantasy sports contribute up to \$5 billion per year to the economy. Fantasy sports competitions are growing in popularity in Australia³⁹³. In recent years the popularity of these games has risen considerably with the growth of such games through social networking sites, media websites and sports governing bodies, including the *Herald Sun's* 'SuperCoach' and the Australian Football League (AFL) Dream Team competitions.

Fantasy sports enable the player to 'manage' the operations of a sports team for a season (depending on the competition entered) based on the real statistics of professional players and teams in that sport to compete against other fantasy teams for prizes. Fantasy sports competitions enable participants to trade, cut and sign players just as teams can in reality. Some competitions charge entrance fees to register. Prizes usually comprise a monetary sum, but sometimes there are other forms of prizes. For example, Professional Golfers' Association (PGA) Tour Yahoo! Fantasy Golf offers a weekly prize of golf balls for the highest score that week and the overall prize is tickets to attend a day at the PGA Tour.

In Australia sporting codes are beginning to endorse particular fantasy sporting competitions. For example, the AFL promotes the AFL Dream Team competition. Associate Professor Heath McDonald has found that:

Fantasy sport players are primarily young (over three quarters are under 35), male (74 per cent) and 22 per cent are current members of AFL clubs. Over half of the fantasy sport playing population comes from Victoria but significant consumption of fantasy sport exists in developing markets in Queensland and New South Wales.³⁹⁴

The Fantasy Sports Trade Association estimates that over 32 million North Americans aged over 12 participated in fantasy sports in 2010, representing growth of 60 per cent since 2007. Studies have shown that males who have tertiary qualifications and are employed on a full-time basis are more likely to participate in fantasy sports³⁹⁵.

Fantasy sports competitions are not specifically defined in the IGA. In its submission to the review, News Limited indicated that it offers online fantasy games to readers across a number of sports to enable them to 'feel they are really involved with the game and, their favourite team and players throughout the season'. To ensure compliance with Commonwealth and state/territory legislation, News Limited's submission stated that it held its fantasy sports competitions as free-to-enter trade promotion lotteries, but that it would like to be able to charge a small fee for people to enter the competitions to cover administration costs and enable further development of the games.

³⁹³ Deakin University, 'Fantasy football fans backbone of the code', 7 February 2011. Retrieved from www.deakin.edu.au/research/stories/2011/02/07/fantasy-football-fans-backbone-of-the-code

³⁹⁴ *Ibid.*

³⁹⁵ Fantasy Sports Trade Association, What is the FSTA. Retrieved from www.fsta.org/what_is_the_fsta

News Limited asserted that fantasy sports competitions were substantially different to gambling services as there was no continual investment required to participate and that such games are used primarily for participants to compete socially with family and friends. As the availability of such fantasy sports games is increasing on mobile devices, News Limited also contends that the IGA should explicitly allow for payments for mobile applications offering such games³⁹⁶.

Fantasy sports competitions are not captured by the UIGEA provided the prizes are determined in advance of the competition and are not influenced by fees or number of participants³⁹⁷.

News Limited also noted in its submission that Massively Multiplayer Online (MMO) games are becoming increasingly popular and would like to see these games also specifically exempt from the IGA. MMOs allow participants to compete in a sport against other users connected in the internet. Such games are usually free, with the opportunity to purchase 'cards' to increase player skills at various points during the game. There are apparently limits on skill cards regarding purchase quantities and price³⁹⁸.

As fantasy sports are based upon real statistics of professional players and teams, they more closely resemble wagering on a sporting event (which is permitted under the IGA), than a casino-style game (which is prohibited). There is no evidence at this time that fantasy sports represent a risk to problem gambling any greater than other wagering activities. However, there may be issues relating to the integrity of sport that are relevant.

Recommendation 32: That the treatment of fantasy sports under the IGA be the subject of further consultation with the Coalition of Major Professional and Participation Sports (COMPPS), state and territory governments, and the promoters of fantasy sports competitions.

³⁹⁶ News Limited, Submission to the review of the IGA.

³⁹⁷ 'H.R. 4954, 'Security and Accountability For Every Port Act of 2006', p. 71. Retrieved on 25 January 2012 retrieved from http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=109_cong_bills&docid=f:h4954enr.txt.pdf

³⁹⁸ *Ibid* 395.

Appendix A: Glossary of key terms

The following definitions are provided for convenience only. They are not exhaustive, nor are they to be considered legal definitions for the purposes of statutory construction.

Accidental or incidental advertising	<p>Broadly, the IGA permits an interactive gambling service advertisement to be broadcast, datacast or published if:</p> <ul style="list-style-type: none"> the advertisement is broadcast, datacast or published as an accidental or incidental accompaniment to the broadcasting, datacasting or publication of other matter no direct or indirect benefit (whether financial or not) is received for broadcasting, datacasting or publishing the advertisement (in addition to any direct or indirect benefit received for broadcasting, datacasting or publishing the other matter).
Ball-by-ball/micro-wagering	<p>Involves the placement of bets having the following characteristics and circumstances:</p> <ul style="list-style-type: none"> the placing, making, receiving or the acceptance of bets on particular events occurs during a session of a match or game the betting opportunity is repetitive and of a high frequency (for example, ball-by-ball betting in a game of cricket; point-by-point betting in tennis) a bet is placed on one of a limited number of outcomes, although the number of possible outcomes may be more than two (e.g. whether the next serve will be a fault; whether the next ball will be a no ball) the time between placing a bet and knowing the outcome is very short (usually less than five minutes, excepting appeals, intervals and interruptions).
Contingency wagering (including exotic wagering)	<p>Wagering where the bettor is able to wager that something may or may not happen in the course of an event (for example, that an outfield player will handle the ball in a soccer game).</p>
Credit betting	<p>Refers to the provision of a line of credit by a gambling provider to allow a customer to place bets and reconcile the account at a later date.</p>
Financial transaction blocking	<p>Systems used to monitor and limit financial transactions between consumers and online gambling services. For example, in the US it is illegal for a gambling business to knowingly accept payments ‘in connection with the participation of another person in unlawful internet gambling’.</p>
Free-play sites	<p>Websites that offer games of chance, mixed chance or skill (for example, slot machines or poker) to consumers without cost. Some websites offer services on an unlimited basis and some may offer the services for limited amounts of time. Consumers play to win virtual currency instead of real currency.</p>

Gaming	<p>The playing of games of chance, or mixed chance and skill (for example, card games and poker machines) for money or something else of value.</p> <p>Interactive forms of this type of gambling are generally prohibited under the IGA (see relevant definitions in ss. 5 and 6). However, gaming services provided to customers who are in a public place (for example, a bar, club or casino) are specifically excluded from the IGA definitions of interactive gambling service and prohibited internet gambling service (s. 8B).</p>
Interactive gambling	<p>Gambling conducted using any of the following:</p> <ul style="list-style-type: none"> • an internet carriage service • any other listed carriage service • a broadcasting service • a datacasting service • any other content service.
Interactive gambling service	<p>A gambling service (in the ordinary meaning of the term), where the service is provided in the course of carrying on a business and the service is provided to customers using any of the following:</p> <ul style="list-style-type: none"> • an internet carriage service • any other listed carriage service • a broadcasting service • a datacasting service • any other content service. <p>See ss.4 and 5 of the IGA.</p>
Interactive gambling service advertisement	<p>Any writing, still or moving picture, sign, symbol or other visual image, or any audible message, or any combination of two or more of those things, that gives publicity to, or otherwise promotes or is intended to promote any of the following:</p> <ul style="list-style-type: none"> • an interactive gambling service • interactive gambling services in general • trademarks in respect of or internet addresses or domain names that relate to an interactive gambling service • any words that are closely associated with an interactive gambling service.
In-play / In-the-run / live wagering	<p>A form of continuous wagering whereby the bettor is able to place bets after that event has begun (for example, betting on the outcome of a football match at half time). Interactive forms of this type of gambling are specifically prohibited under the IGA (see relevant definition in s.8A(2)(a)).</p>
ISP filtering	<p>Technologies applied at the internet service provider (ISP) level designed to allow certain types of content to be blocked from consumer access. A number of countries use ISP filtering to control access to online gambling services.</p>
Offline gambling	<p>Gambling conducted in a land-based gambling venue such as a casino.</p>
Online gambling	<p>Any gambling conducted using technology that accesses the internet.</p>

Prohibited internet gambling content	<p>Internet content that is accessed, or available for access, by an end user in the capacity of customer of a prohibited internet gambling service.</p> <p>The IGA provides that a person may make a complaint to the ACMA if the person has reason to believe that end users in Australian can access prohibited internet gambling content using an internet carriage service (s. 16).</p>
Standard telephone service	<p>A carriage service for the purpose of voice telephony (amongst other things) as outlined in the <i>Telecommunications (Consumer Protection and Service Standards) Act 1999</i> (see s. 6).</p>
Wagering or betting	<p>Gambling on the outcome of racing, sporting or other events, or on contingencies within an event. With some exceptions, the provision (and advertising) of interactive forms of this type of gambling is not prohibited by the IGA (s. 6(3)(aa), s. 8A(1)).</p>

Appendix B: Public submissions to the review

Abacus Australian Mutuals
Academicon
Australian Bookmakers Association
Australian Capital Territory Government
ACTTAB Ltd
Australian Subscription and Radio Association (ASTRA)
Australian Newsagents' Federation (ANF) and Lottery Agents' Association of Tasmania (LAAT)
Australian Bankers' Association
Australian Christian Lobby
Australian Lottery Blocs
Australian Psychological Society
Australian Racing Board
bet365
Betfair
bwin.party
Clubs Australia
Clubs Queensland
Coalition of Major Professional and Participation Sports (COMPPS)
Commercial Radio Australia
Crown Ltd
European Sports Security Association (ESSA)
Family Voice Australia
Free TV Australia
Dr Sally Gainsbury
Gaming Technologies Australia
Greyhounds Australia
Harness Racing Australia
iBus Media
Internet Industry Association (IIA)
Jumbo Interactive
Lottery Agents' Association of Victorian (LAAV) and Lottery Agents Queensland (LAQ)
Leagues Clubs Australia
Mastercard
Newsagents Association of NSW and ACT (NANA)
News Limited
New South Wales Government
Northern Territory Government

Private Submission—Individual No.1
Private Submission—Jack W
Private Submission—R Brading
Private Submission—R McIntyre
Private Submission—J Sargeant
Queensland Department of Justice and Attorney-General
Regis Controls
Responsible Gaming Networks
Responsible Gambling Advocacy Centre
Racing and Wagering Western Australia
Southern Cross University and University of Sydney (Gainsbury and Blaszczyński)
Sportsbet (and Supplementary submission on credit)
Sportsbet and Sportingbet (Joint submission)
Tabcorp (and Supplementary submission on credit betting)
Tasmania Department of Treasury and Finance
Telstra
Victorian InterChurch Gambling Taskforce
Victorian Local Governance Association
Visa
Western Australia Department of Racing, Gaming and Liquor
Senator Nick Xenophon

Appendix C: Research for the review of the IGA conducted by the Allen Consulting Group—Outline of requirements

Access to online gambling

- Current prevalence of online gambling by Australians on Australian-based sites and overseas-based sites. This should cover both online gambling that is allowed by the IGA as well as online gambling that is prohibited to be provided under the IGA (including online poker card playing).
- The relative prevalence of problem gambling amongst Australian online gamblers on both allowed and prohibited services.
- Relative frequency of different payment methods used by Australian online gamblers using both allowed and prohibited services
- Problem online gambling risk factors including demographic and other related risk factors and whether there are different risk factors associated with different types of online gambling, such as online poker games (both tournament online poker and cash games) or sports wagering.
- For those people that already gamble online, preferences to play on a regulated site if one was available rather than on an unregulated site.
- For those that do not currently gamble online, likelihood of gambling on a regulated site if a regulated site was available.
- Effectiveness of different harm minimisation measures for online gambling including those adopted overseas as well as those suggested by the Productivity Commission:
 - player identification to prevent underage play, duplicate accounts and betting by individuals involved in an event
 - communication of account activity in an easily comprehensible and meaningful format
 - pre-commitment strategies for time and money
 - education about games, statistical probabilities of winning and responsible gambling including practical strategies
 - dynamic warnings
 - feedback on player behaviour including self-tests and alert systems which identify potentially problematic play
 - self-exclusion options
 - customer support.
- Examples of best practice in other countries that have introduced regulated access to online gambling, including the architecture of regulation and taxation.
- Examples of best practice in other countries of limiting access to unregistered online gambling service providers.

In-the-run betting

- The prevalence of in-the-run betting and micro betting in Australia and overseas, whether using telephone or online betting services or other services.
- The extent to which these types of gambling raise additional risks from a problem gambling perspective, including whether there are different problem gambling risks associated with betting on the final outcome of an event after the event has started compared to micro or ball-by-ball betting.
- The issues that arise from having different rules regarding the same services delivered online and via the telephone.
- Approaches taken overseas to these types of online wagering, including regulatory measures, harm minimisation measures and measures to protect consumers and the integrity of sport.
- The extent to which permitting either of these two types of wagering online is likely to create a greater level of risk in terms of problem gambling, consumer protection and the integrity of a sports event
 - this should be considered in terms of accessing these services both online and via the telephone.
- What additional measures might be applied to in-the-run betting and micro-betting to preserve the integrity of sports events.

Appendix D: Research for the review of the IGA conducted by KPMG—Outline of requirements

Estimating the size of an Australian online gaming service industry

The department wishes to progress, to the extent possible, the development of a financial model to estimate the potential size of an Australian online gaming service industry and the potential level of net revenue which could be generated by the industry if online casino type games, including online poker were to be permitted. Details of the examination and findings would be presented in a short report.

The development of the model would first require the identification of the five leading countries (by volume of net revenue generated and/or number of players) that provide regulated (and licensed) access to online gaming services. For each of the countries identified (plus the UK and Ireland if they are not already included) the service provider should seek to establish, on the basis of available data:

- The methods used to regulate the revenue take that regulated online gaming services providers realise (for example the percentage take from each poker player's stake in a tournament, percentage of the pot from cash games, return to the player from online slot machines and other casino games). If this is not regulated by a country, identify the most common approach taken by the major regulated online gaming service providers in each country.
- The estimated net gaming revenues (actual gaming revenues if possible and estimated if actual gaming revenues are not available) of the regulated online gaming service industry in each country for the last 3 years broken down into net revenue generated from:
 - online tournament poker
 - online poker cash games
 - online slot machines
 - all other online casino type games.
- The level and method of taxation used in each country to tax the gaming revenue of the industry and the amount of tax collected (or estimated to have been collected) for each type of online gaming outlined above for the last three years.
- An assessment of the effectiveness of each country's regulation in capturing online gambling activity and the estimated outflows from each country to unregulated offshore online gaming providers.
- Drawing on the information collected above, the service provider is to develop a financial model to estimate for Australia for a period of 10 years (broken down into the different types of online gaming identified above and taking into account that some consumers may continue to use gambling services offered by unregulated service providers):
 - the estimated potential size of any Australian online gaming service market if it was to be regulated, and

- the estimated net gaming revenue of the regulated industry.

Once developed, the estimates should be peer reviewed by key gambling researchers and other stakeholders as instructed. The department would arrange for this review process to be undertaken.

Potential service providers for this project should tender a proposal for DBCDE consideration, identifying their capacities, capabilities, and knowledge and experience in this field, indicating details of any previous research conducted on gambling. Potential service providers should indicate how they would propose to undertake the project, including identification of sources of information and a methodology for the development of the model, including limitations which may need to be taken into account. An all-inclusive total cost, identifying also key personnel and the time/rates proposed for those personnel should be identified. Total cost should include any travel for discussions with DBCDE and other agencies. Potential service providers should also indicate any possible conflict of interest they have, including work previously undertaken on behalf of gambling service organisations.

Potential impact of in-play wagering reforms

The department wishes to extend, to the extent possible, the financial model for online gaming previously developed by KPMG to estimate the potential size of the Australian online wagering market for a period of ten years in relation to:

- the industry as currently operating
- the size of the industry including additional gambling revenue generated by existing Australian based online wagering providers if the proposed reforms removing the prohibition on in-play betting are implemented (while maintaining the prohibition on micro-betting)
- the size of the industry including additional revenue generated by overseas based online wagering providers becoming licensed and offering their services in Australia if the proposed reforms removing the prohibition on in-play betting are implemented (while maintaining the prohibition on micro-betting)
- the estimated number of additional providers that become licensed if the proposed reforms removing the prohibition on in-play betting are implemented (while maintaining the prohibition on micro-betting). This would be in addition to those that become licensed due to opening up of online tournament poker and the stronger enforcement action.

In relation to the above, provide a breakdown of the additional revenue by specific tax type (both Commonwealth and state/territory) including licensing fees, company taxes, GST, payroll tax and any other gambling taxes.

Details of the examination and findings would be presented in a short report.

Once developed, the estimates should be peer reviewed by key gambling researchers and other stakeholders as instructed by the department. The department will arrange the review process to be undertaken.

The proposal for this project should identify the tenderer's capacities, capabilities, and knowledge and experience in this field, indicating details of previous research conducted on gambling. The tenderer should indicate how they would propose to undertake the project, including identification of sources of information and a methodology for the development of the model, including limitations which may need to be taken into account. An all-inclusive total cost, identifying also key personnel and the time/rates proposed for those personnel should be identified. Total cost should include any travel for discussions with DBCDE and other agencies. The tenderer should also indicate any possible conflict of interest they have, including work previously undertaken on behalf of gambling service organisations.

Appendix E: Research for the review of the IGA conducted by Enex TestLab—Outline of requirements

To provide technical advice on what is involved for an Internet Service Provider (ISP) to provide a pop-up page which provides consumers with advice (for example, for a gambling site) but still allows access to the domain name site. It would not involve blocking the domain name sites, just producing a pop-up page, which provides the consumer advice. Enex TestLab will research technologies available (both commercial and open source/community) and engage with range of ISPs and solution providers/vendors and compile information received along with analysis for consideration (pros, cons and conclusion). Project scope includes:

- Would it be complex for an ISP to do pop-ups at the domain level without blocking the site?
- What is involved?
- Explain the process for pop-ups when the sites are URL-based.

Appendix F: Comparison of harm minimisations measures currently undertaken by states and territories

(Note: due to variances in the drafting of legislation (and codes contained within) between state/territories, measures below may not apply to all forms of online gambling)

Jurisdiction	Standardised responsible gambling messages	Prohibition on online gambling service providers providing credit	Pre-commitment capability	Fund protections	Age verification required to open account	Unprompted spend-tracking facilities	Self-exclusion provisions
<p>ACT</p> <p>(Note: the ACT has an <i>Interactive Gambling Act 1988</i> that contains harm minimisation measures but the act is not currently in effect as the Commonwealth IGA prohibits forms of online gambling)</p>	√	*	*	<p>*</p> <p>Provisions under the ACT IGA not currently operating</p> <p>Sports bookmakers' internet and control systems must satisfy an independent auditor</p>	*	x	<p>*</p> <p>Provisions under the ACT IGA not currently operating</p> <p>A licensee can exclude a person if reasonable grounds for believing welfare at risk</p>

Jurisdiction	Standardised responsible gambling messages	Prohibition on online gambling service providers providing credit	Pre-commitment capability	Fund protections	Age verification required to open account	Unprompted spend-tracking facilities	Self-exclusion provisions
NSW	√ All totalizer and wagering operators must display along with helpline	* Prohibited for totalizators; bookmakers are the exception	x Tabcorp currently has pre-commitment capability available to account customers	√	√ Onus is on service providers not to accept a bet from a person aged under 18; offence provisions contained in the Unlawful Gambling Act.	* TAB website provides a variety of spend tracking and statement facilities	x Tabcorp offers self-exclusion
NT	√ In addition, service providers must maintain a responsible gambling incident register	√ There is an exception for bookmakers	√	√ NT Racing Commission requires regular reporting on the holding of client funds, and has powers to act should the need arise	√	x	√

Jurisdiction	Standardised responsible gambling messages	Prohibition on online gambling service providers providing credit	Pre-commitment capability	Fund protections	Age verification required to open account	Unprompted spend-tracking facilities	Self-exclusion provisions
Qld	x	√	* The <i>Interactive Gambling (Player Protection) Act 1998</i> requires that a player may advise a provider of a limit on the amount that the player may wager; the provider must not accept a wager that is contrary to the limit set by the player.	x		x	√
SA		√		x	x Requirement issued by authority for systems and procedures to prevent betting by children		√ The TAB, as the sole major betting licensee, can also elect to exclude a person if satisfied their welfare is at risk

Jurisdiction	Standardised responsible gambling messages	Prohibition on online gambling service providers providing credit	Pre-commitment capability	Fund protections	Age verification required to open account	Unprompted spend-tracking facilities	Self-exclusion provisions
Tas	x	√	√	√	√	√	√
Vic	√	√	* Only for interactive gaming Tabcorp indicated in 2010 it would look to introduce	√	√	x	√
WA (only for racing and wagering—no specific scheme for online gaming and wagering)	√	√ Except for telephone wagering	√	√	√	x	√

Jurisdiction	Pop-up provisions for behaviour that may be problem gambling	Prominent links to gambling helpline on provider web pages	Links on website to state/territory regulator for complaints	Gambling prevalence surveys/research	Adequate funds in account prior to wager accepted	A licensed provider requires authorisation from minister/authority to conduct interactive games	Gambling licence can be refused an interactive gambling licence on grounds of character and business reputation
<p>ACT</p> <p>(Note: the ACT has an <i>Interactive Gambling Act 1988</i> that contains harm minimisation measures but the act is not currently in effect as the Commonwealth IGA prohibits forms of online gambling)</p>	x	√	x	x	<p>*</p> <p>Provisions under the ACT IGA not currently operating</p> <p>A licensee must not encourage a person to gamble beyond their means</p>	<p>*</p> <p>Provisions under the ACT IGA not currently operating</p> <p>Sports bookmakers must be licensed</p>	<p>*</p> <p>Provisions under the ACT IGA not currently operating</p>

Jurisdiction	Pop-up provisions for behaviour that may be problem gambling	Prominent links to gambling helpline on provider web pages	Links on website to state/territory regulator for complaints	Gambling prevalence surveys/research	Adequate funds in account prior to wager accepted	A licensed provider requires authorisation from minister/authority to conduct interactive games	Gambling licence can be refused an interactive gambling licence on grounds of character and business reputation
NSW	x	√	X Disputes information contained in TAB betting rules.	√	√ Totalizers are the exception	√	√ Issues of character and integrity are assessed by the controlling bodies, which are responsible for the registration of bookmakers, and must support applications to the minister for an electronic betting authority. For lotteries, minister may cancel or suspend licence on grounds that licensee is no longer a suitable person

Jurisdiction	Pop-up provisions for behaviour that may be problem gambling	Prominent links to gambling helpline on provider web pages	Links on website to state/territory regulator for complaints	Gambling prevalence surveys/research	Adequate funds in account prior to wager accepted	A licensed provider requires authorisation from minister/authority to conduct interactive games	Gambling licence can be refused an interactive gambling licence on grounds of character and business reputation
NT	x	* Internet and phone bookmakers must offer support to customers seeking exclusion and the assistance of gambling providers	x	X	√	√	√
Qld	x	*	x Complaints made to licensees must be investigated		√	√	√
SA	x		x	x	x	x Except for the holder of a major betting operations licence	x

Jurisdiction	Pop-up provisions for behaviour that may be problem gambling	Prominent links to gambling helpline on provider web pages	Links on website to state/territory regulator for complaints	Gambling prevalence surveys/research	Adequate funds in account prior to wager accepted	A licensed provider requires authorisation from minister/authority to conduct interactive games	Gambling licence can be refused an interactive gambling licence on grounds of character and business reputation
Tas	√	x	√	√ Tasmania is required to conduct gambling impact/prevalence studies every three years	√	√	√
Vic	x	√	x	x	√	√	√
WA (only for racing and wagering—no specific scheme for online gaming and wagering)	x	√	√	x	√	√	√

Appendix G: International approaches to harm minimisation and consumer protection

Strong harm minimisation and consumer protection measures are an important element in overseas jurisdictions with regulated access to online gambling, harm minimisation and consumer protection measures have been implemented in different ways. Table 2 below outlines the approaches used in Italy, Belgium, France, Denmark, Norway, the UK and Spain, along with an assessment of the effectiveness of these measures (where available).

As with the state and territory regulatory frameworks outlined earlier, the requirements placed on licensed providers differ between jurisdictions in scope and focus, although the measures used are on the whole broadly similar. For example, most jurisdictions have requirements for the registration of consumers with gambling licensees when gambling accounts are established to ensure minors are not able to access gambling services, with some countries requiring the presentation of physical identification documents to complete this process.

Jurisdictions have put in place a range of self-exclusion options for consumers, with some countries having established a national register or list of excluded persons to prevent access to gambling services if they choose to do so. Some countries require operators to provide facilities for spend limits and time limits, either set by the consumer or mandated by the regulator. Jurisdictions also place restrictions on advertising, including on who the advertising can target (for example, minors). Some jurisdictions have also put in place bans on the provision of credit and advances from gambling providers, while others have established central management systems for the processing of gambling transactions and funds.

The majority of these measures are made available to Australian consumers, but not in a uniform way.

Table 2: International comparison of harm minimisation measures³⁹⁹

Country	Harm minimisation measures	Regulator interview on effectiveness
Italy	<ul style="list-style-type: none"> • Licensee certification process covering 60 pages of technical standards, that range from the fairness of the game, the security of the IT systems, to the proper management of the gaming accounts. • Dedicated bank account for gaming activities where funds are protected through a bank guarantee. • Real-time controls and processing via a central control system managed by the Italian authority for every single gaming transaction. • Mandatory self-limitation. • Self-exclusion program. • Underage gambling prohibited. • Licensees must provide contact details of helpline dedicated to problem gamblers. • Other measures being considered include real-time alerting system that would warn a single player about a possible compulsive gaming behaviour. 	<ul style="list-style-type: none"> • Most of the harm minimisation measures have been introduced recently, and it is too early to verify their effectiveness. • The first feedback seems to be quite positive.
Belgium	<ul style="list-style-type: none"> • Limit on hourly losses. • Limit on the number of bonuses or gifts, which can be awarded to players. • National exclusion list must be applied to online players. • Ban of any form of credit or advances with the same rules imposed on land-based casinos and gaming halls. • Pan-European discussion group put in place on player protection, which includes regulators from seven countries. 	<ul style="list-style-type: none"> • Not available.
Norway	<ul style="list-style-type: none"> • Players are limited to NOK 10 000 kroner (Euros 1250) per day for all gaming on Norsk Tipping's products via the internet. • All players have to be registered. • The possibility of self-exclusion is also in place. 	<ul style="list-style-type: none"> • Surveys prove that there are few problems connected to gaming licensed in Norway. Most problem gambling is related to remote gaming without a Norwegian licence offered from servers outside Norway.

³⁹⁹ Allen Consulting Group, Research for the review of the Interactive Gambling Act 2001 (2012), Table 5.2.

Country	Harm minimisation measures	Regulator interview on effectiveness
Denmark	<ul style="list-style-type: none"> • The Danish Gambling Authority has created a register of self-excluded persons, which any Dane can join and subsequently will be unable to create and/or use gambling accounts with licensed operators. • To participate in online gaming, a player must be registered as a customer of the licensee. • Registration requires the provision of player identification information, which is kept for five years after the end of the customer relationship. • Customer verification must be continuously monitored. • Licensee must meet the following requirements: <ul style="list-style-type: none"> – prohibit underage gaming – provide information on responsible gaming – facilitate access to self-administered test for gaming addiction – provide information on treatment centre – ability to set limits on deposits – temporary or permanent exclusions program – bonuses must be explained in a 'clear, lucid manner within the immediate context of the offer'. 	<ul style="list-style-type: none"> • Unable to comment since the new legislation has not yet been implemented.
Spain	<ul style="list-style-type: none"> • Operators must create a responsible gaming policy which adheres to a set of responsible gaming principles. • Operators need to meet the following requirements: <ul style="list-style-type: none"> – provide the public with information to make informed and conscious decisions regarding gaming activities and to promote moderate and responsible gaming attitudes – publicise rules regarding the nature of each game – prohibit participation of minors and people on national exclusion lists – ban on providing credit to participants, and – ban gaming activities to those under the age of 18. 	<ul style="list-style-type: none"> • Not available.

Country	Harm minimisation measures	Regulator interview on effectiveness
United Kingdom	<ul style="list-style-type: none"> • Player identification to prevent underage gambling, duplicate accounts and betting by individuals involved in an event. • Communication of account activity in an easily comprehensible manner. • Pre-commitment measures. • Feedback on player behaviour; e.g. self test, alert systems. • Self-exclusion options. • Customer support. 	<ul style="list-style-type: none"> • The effectiveness issue is complicated as most of the research we do is on high level information such as participation and may not specifically look at our controls for remote gambling; in addition, most of the operators are not bound by our requirements as they are not licensed by us. • In addition, the white listed jurisdictions and the other European remote jurisdictions have similar measures in place and while some of these are enforced to a lesser extent they are quite similar. • We do have limited research on these issues; however, what we can go off is our recording of complaints by customers. • If self-exclusion is not enforced by a jurisdiction, customers may be left dealing with the operator, which is a lower level of protection. Self-exclusion is quite powerful but the borderless nature of the internet means that it may not be a water tight solution.

Appendix H: International approaches to regulation and taxation of online gambling⁴⁰⁰

Features	Italy	France	Belgium
Permitted games	<ul style="list-style-type: none"> Pool betting and fixed odds on sports and horse racing. Lotteries. Roulette. Poker (cash and tournament). Baccarat. Blackjack. Bingo. 	<ul style="list-style-type: none"> Online poker. International liquidity is forbidden hence poker players can only play with players registered on a site licensed by ARJEL and only on a .fr site. Sports betting. Horse race betting. Monopoly operator Francaise des Jeux also offers online the games that it is authorised to offer land-based such as bingo and instant scratch cards. 	<ul style="list-style-type: none"> All games that are allowed in casino can be played online. This includes poker, blackjack, roulette (French, English and American), reel slots, baccarat, chemin de fer, craps, punto banco, sic bo, bingo, keno and wheel of fortune. Online sports and horse race betting are also allowed.
In-play/micro-betting allowed?	<ul style="list-style-type: none"> Yes. 	<ul style="list-style-type: none"> In-play or 'live' betting is allowed but not micro-betting. 	<ul style="list-style-type: none"> Not decided yet if live betting will be allowed, but micro-betting has been ruled out.
Taxation	<ul style="list-style-type: none"> Depends on the type of gambling. Sports betting based on turnover over determined period. Applicable tax rate depends on amount collected. Skill games with cash prize: 3 per cent of collections (entry fees). Fixed offs with case prizes (cash poker and casino games mainly): 20 per cent of gross gaming revenue. 	<ul style="list-style-type: none"> Sports betting: 8.5 per cent. Horse betting: 14.4 per cent. Online poker: 2 per cent. Additional 1 per cent level across all sectors of gambling to cover additional social costs of problem gambling. 	<ul style="list-style-type: none"> 11 per cent of gross gambling revenue (GGR) in the Walloon regions. The other two regions have different rates (13 per cent in Brussels and Flanders). According to Gaming Commission president Marique, tax breaks in these regions mean that the rate is 11% or very near all across the country. Corporate tax rates are also applied to operators, currently at 33.99%.
Licensing costs	<ul style="list-style-type: none"> Bank guarantee of €1.5m. Licence cost €300 000. 	<ul style="list-style-type: none"> €5000 for a first licence, €8000 for two licences or €10 000 for three licences. Due to compliance cost associated with the data protection vault, the cost of operating in France is said to be over €1m. 	<ul style="list-style-type: none"> Online Casino (A+): €17 840 per annum. Online VLT games (B+): €8920 per annum. Online betting: (F1+): €10 180 per annum.

⁴⁰⁰Allen Consulting Group, Research for the review of the Interactive Gambling Act 2001 (2012), Table 4.2 and 4.3.

Features	Italy	France	Belgium
Blocking measures	<ul style="list-style-type: none"> • ISP blocking. • Payments blocking. 	<ul style="list-style-type: none"> • ISP blocking. 	<ul style="list-style-type: none"> • ISP blocking. • Payments blocking.
Advertising restrictions	<ul style="list-style-type: none"> • Use of only an '.it'. No '.com' and '.net' website suffixes. • Advertising of unlawful gaming activities is prohibited by general rules of advertising rather than gaming regulation. 	<ul style="list-style-type: none"> • Advertising bans. • Penalties on unlawful operators such as a maximum prison term of 7 years and a fine of up to €200 000. Advertising by an unlicensed operator can be subject to a €100 000 fine. 	<ul style="list-style-type: none"> • Advertising bans on unlicensed gambling. • Prosecution of gaming authorities in Alderney and Gibraltar if they facilitate unlawful gambling by allowing their licensees to continue their operations in Belgium.

Features	Denmark	Spain
Permitted games	<ul style="list-style-type: none"> Wagering, apart from horse and dog race wagering. Casino games including roulette, prize paying gambling machines, baccarat, punto banco, blackjack, 'gaming on gaming machines' as well as poker. Lotteries (monopoly of Danske Spil). 	<ul style="list-style-type: none"> Pool betting, fixed odds and betting exchanges on sports and horse racing. Any other form of betting different to sporting events or horse racing. Raffles. Lotteries. Other games (casino games mainly but this is a wide category which can, in theory, incorporate any type of gambling activity). Contests. Awaiting final approval for roulette, poker (cash and tournament), baccarat, blackjack and bingo.
In-play/micro-betting allowed?	<ul style="list-style-type: none"> Yes. 	<ul style="list-style-type: none"> To date, draft regulations for fixed odds sport betting allow in-play betting and micro-betting. However, the detail of how this activity will be regulated is not yet available.
Taxation	<ul style="list-style-type: none"> Wager licence holders must pay a tax of 20 per cent of the GGR. Online casino licence holders must also pay a tax of 20 per cent of GGR. 	<ul style="list-style-type: none"> Pool betting on sports: 22 per cent turnover. Fixed odds sports betting: 25 per cent GGR. Betting exchanges on sport: 25 per cent GGR. Pool betting horse racing: 15 per cent turnover. Fixed odds horse racing: 25 per cent GGR. Other forms of pool betting: 15 per cent turnover. Other forms of fixed odd betting: 15 per cent GGR. Other forms of betting exchanges: 25 per cent GGR. Raffles: 20 per cent GGR. Contest: 20 per cent turnover. Other games: 25 per cent GGR. Random Combination numbers: 10 per cent paid prizes.

Features	Denmark	Spain
Licensing costs	<ul style="list-style-type: none"> • Wager licence or an online casino licence application fee—DKK 250 000. If applying for both, it will cost 350 000. • Annual fee based on annual taxable gaming revenue: <ul style="list-style-type: none"> – Not exceeding DKK 5m—DKK 50 000. – Equal to or greater than DKK 5m, but not exceeding DKK 10m—DKK 250 000. – Equal to or greater than DKK 10m, but not exceeding DKK 25m—DKK 450 000. – Equal to or greater than DKK 25m, but not exceeding DKK 50m—DKK 650 000. – Equal to or greater than DKK 50m, but not exceeding DKK 100m—DKK 850 000. – Equal to or greater than DKK 100m—DKK 1 500 000. 	<ul style="list-style-type: none"> • Technical reports assessing compliance of technical standards: €38 000. • Registration Services: €2500. • Licence and authorisation application: €10 000 for each licence and €100 for each authorisation. • Auditing inspections: €5000. • Administrative fee to cover the operations of the regulator: 0.1 per cent of turnover. • Gaming operators will be required to set up financial guarantees for each gaming licence. Two different types of licences are required to operate in Spain: a general licence and a singular licence. <ul style="list-style-type: none"> – General licences will require a guarantee for up to €2.2m. This amount will change after the first year of operation based on GGR results but will be of a minimum value of €1. – For the first year, the guarantee for a singular licence will be based on a percentage of the forecasted turnover or GGR, depending on the type of gaming operation. After the first year, the guarantee will be based on turnover or GGR from the previous year.
Server locations	<ul style="list-style-type: none"> • To be located in Denmark with possibility for the Danish Gambling Authority to give its approval for the server to be based in another country. 	<ul style="list-style-type: none"> • Servers may be located anywhere as the long as the regulator is able to access the information contained therein. • The main regulatory framework for online gambling in Spain, however, has granted jurisdiction to the regulator to establish secondary servers on Spanish soil.
Blocking measures	<ul style="list-style-type: none"> • ISP blocking. • Payments blocking. 	<ul style="list-style-type: none"> • ISP blocking. • Payments blocking.
Advertising restrictions	<ul style="list-style-type: none"> • Advertising ban where the promotion of participation in games without a licence is an offence and is liable to a fine. 	<ul style="list-style-type: none"> • Advertising agencies are bound to check whether a gaming operator has the legal right to operate and advertise in the country.