



Australian Government

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

Interim Report

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).

In undertaking the review the department has prepared an interim report for the purposes of public consultation.

Submissions are invited on this draft report and should be provided to online.gambling@dbcde.gov.au by **25 June 2012**.

Unless identified as confidential, submissions received will be made available on the department's website.

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 the Act 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 Australia. 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:

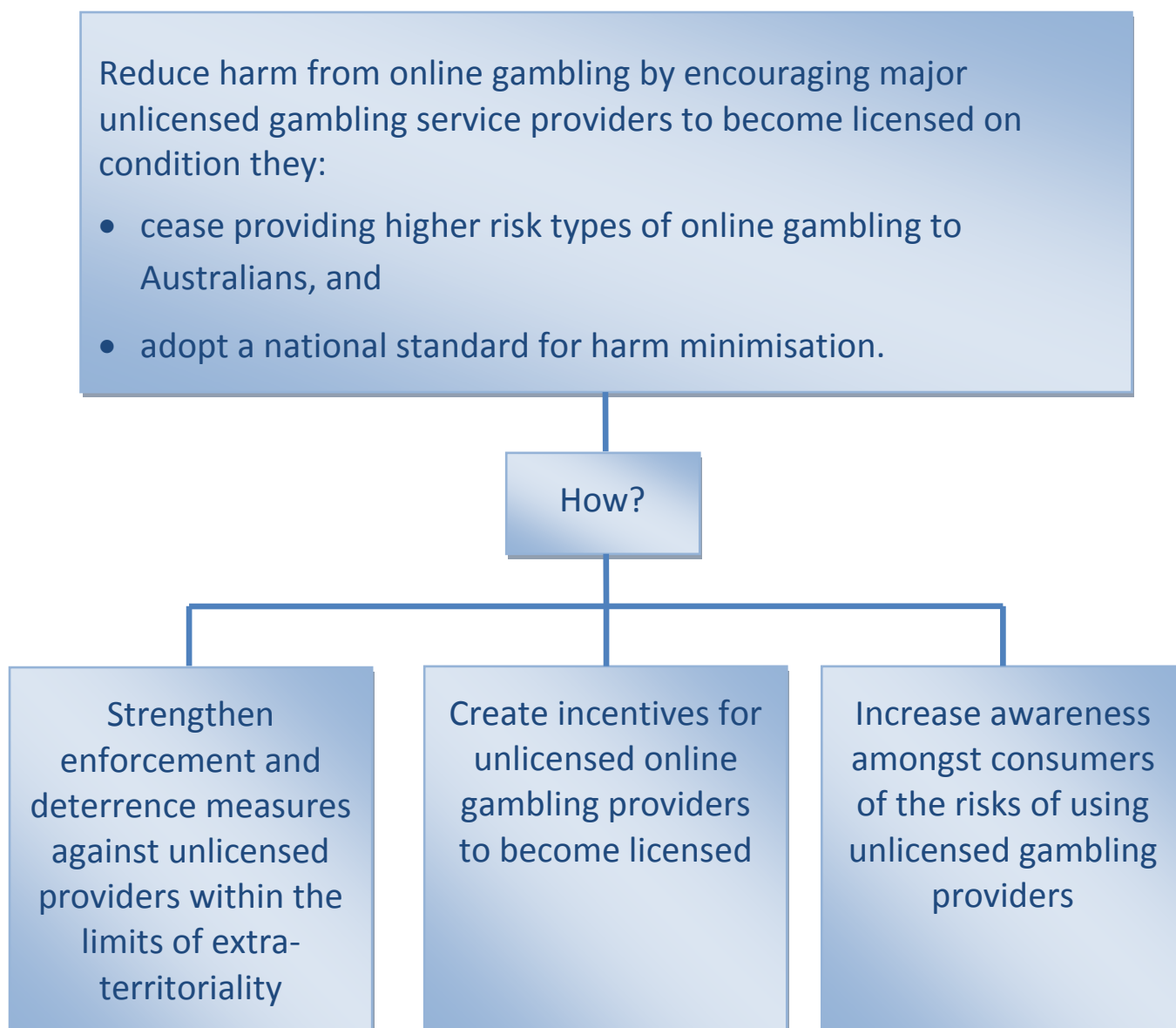
- cease offering higher risk types of online gambling (for example, online slot machines) to Australians and only offer online gambling services that are of a relatively lower risk (for example, online tournament poker), and
- agree to comply with a set of strong harm minimisation and consumer protection 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, should be prohibited under the IGA
- targeted law enforcement and prevention 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, and
- measures to increase awareness amongst Australian users about the risks of using prohibited online gambling providers.

This strategy is summarised in Diagram 1.

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, and
- 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, state/territory, industry, gambling researchers and responsible gambling bodies under the auspices of the COAG Select Council on Gambling reform.
- There should be a clear timeline established for the development and implementation of the minimum standard.
- 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 non-gamblers (that is, people with no existing online gambling account) to open an account, as well as on the payment of commissions to third parties for encouraging others to sign up—already announced
- a pre-commitment capability including in terms of total spend, total time played, number of bets placed and deposits made—already announced
- 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
- self-exclusion provisions
- 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, and
- a link on the websites of regulated gambling service providers to the state/territory gambling regulatory authorities to which a 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.

Prevention and enforcement

Prevention 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, and
- 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, ideally by the Australian Federal Police (AFP), 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, and
- of the steps they can take to comply with Australian law.

Recommendation 4: Subject to consistency with Commonwealth legal policy, the IGA be amended to include measures to hold directors or principals of prohibited gambling services liable for their company's activities.

Recommendation 5: 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 offence provisions.

Recommendation 6: 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 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 7: The ACMA should continue its investigations into the more popular online gambling service providers that have been identified on 'Online Casino City' as providing a potentially prohibited internet gambling service. 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 by the AFP. 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 8: Online gambling service providers that are confirmed by the ACMA as providing prohibited services in contravention of the IGA should be referred to the AFP for appropriate action as discussed above, including placement of the names of principals and 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).

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 circumvented. It has been suggested that such blocking would be easier to do for some financial institutions than for others.

Recommendation 9: Subject to further consultation with industry, the IGA should be amended to provide a 'safe-harbour' allowing 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 10: The department and 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 11: 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 12: The department and the ACMA should consult with major ISPs and the vendors of security software on the possibility of them voluntarily enabling a standard warning page to appear whenever an Australian consumer accesses a prohibited 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 and standard Australian consumer protections may not be available.

Recommendation 13: 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 14: 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 15: 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 16: State and territory governments, in conjunction with industry, should also take steps to increase consumer awareness about the risks associated with 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 recommended that these ambiguities be addressed.

The promotion of permitted services is being addressed via the government's initiative regarding in-program commentary on and promotion of live odds. The outcome of this should be monitored closely, noting that the ACMA completed a review of the commercial television industry code in 2010.

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

Recommendation 17: 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 18: The definition of an 'accidental or incidental' advertisement as used in section 6IED 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.

Recommendation 19: 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 20: 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 online casino-style gaming to Australians is prohibited by the IGA. 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 Australians lost around \$1 billion in online gaming in 2010. 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 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 US¹.

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 poker card playing and other forms of online gaming, the majority of the committee supported ‘a

¹ 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

cautious approach to regulation and does not support online poker being excluded from the IGA (that is, removal of the prohibition)'. 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, and
- 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, and
- Australians that currently use online gaming services switch to mainly using those that are licensed.

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
- 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, and
- the ground rules, with players competing for a pot of money to which they contribute, limit losses.

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, and
- 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 tournament may have lesser problem gambling risk characteristics than online poker ‘cash games’.

Recommendation 21: 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), and
- adopt the harm minimisation and consumer protection measures in the proposed national standard.

Recommendation 22: 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:

- a player can only participate in one tournament at a time with any one regulated provider
- the ‘return to players’ from each tournament should be transparent to players before they enter the tournament, and
- 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.

Recommendation 23: This trial should not start before the proposed national minimum standard for harm minimisation and consumer protection 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 24: The department, FaHCSIA and 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 the need for additional funding for support services to problem gamblers and for 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, and
- 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, and
- 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)				
	On the telephone				
	On the internet				
Final outcome of sports events	At physical venues (subject to State law)				
	On the telephone				
	On the internet				
Exotic bets (e.g. who scores first goal)	At physical venues (subject to State law)				
	On the telephone				
	On the internet				
Micro-bets	At physical venues (subject to State law)	N/A	N/A		
	On the telephone	N/A	N/A		
	On the internet	N/A	N/A		

Permitted

Permitted if authorised by state/territory regulatory authority and/or the relevant sports controlling body

Prohibited

* Requires the agreement of the states

Recommendation 25: 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.

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), and
- 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 be given the power to make regulations specifying whether a particular bet type is or is not a micro-bet.

Recommendation 26: State/territory governments should also prohibit ‘micro-betting’ at all physical outlets.

Recommendation 27: 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:

- no types of sports betting, irrespective of the electronic medium by which the bets are placed or whether they are pre-event or after the event has started, be permitted unless they have been authorised by the relevant state/territory regulatory authority and, where appropriate, the relevant sports controlling body where one exists, and
- 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 28: 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 25 and 27.

Other recommendations

Recommendation 29: Popular social media services, mobile content providers, console providers and online game developers be asked to 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.

Recommendation 30: 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 internet².

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

² 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), and
- 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 services³. 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’⁴.

COAG Select Council on Gambling Reform

The COAG Select Council on Gambling Reform (the Select Council) 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 Select Council’s forward work program.

Following a meeting of the Select Council 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 growing number of Australian

³ Productivity Commission, Inquiry Report on Gambling (2010). Retrieved on 2 August 2011 from <http://pc.gov.au/projects/inquiry/gambling-2009/report>

⁴ 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

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 completed an inquiry into the prevalence of interactive and online gambling and gambling advertising on 8 December 2011⁵.

The committee made a number of recommendations relating to issues discussed in this report⁶, 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, and
- 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

⁵ Media release, Joint Select Committee on Gambling Reform, 8 December 2011. Retrieved on 12 December 2011 from www.aph.gov.au/Senate/committee/gamblingreform_ctte/interactive_online_gambling_advertising/media/081211.pdf

⁶ *Ibid.*

- crack down on online sports betting companies offering credit and introduce stricter limits on betting inducements, and
- increase the powers of the ACMA to enforce these new rules.⁷

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
- 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), and
- 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.

⁷ 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

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

Discussion paper and 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)⁸. 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.

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 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.

⁸ 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 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 parliament⁹. 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 outlets¹⁰.

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 system (2010 Productivity Commission, p. 2.4). 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.

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 population¹¹.

The 2009 Allen Consulting Group review of online gambling, commissioned by the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA), found that the prevalence

⁹ 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)

¹⁰ Australian Racing Board, 2011 Australian Racing Fact Book: A guide to the racing industry, p. 65. Retrieved from www.australianracingboard.com.au/uploading/factbook2011.pdf

¹¹ KPMG, Estimating the Potential Size of an Online Gaming Market in Australia (2012), p. 13.

rates for Australian adults ranged from 0.2 to 2.7 per cent¹². 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. 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)¹³. Online gambling rates for other overseas jurisdictions range from 1.3 per cent in New Zealand to 6.5 per cent in Norway¹⁴. 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)¹⁵.

At a global level, Global and Betting Gaming Consultants estimate that online, mobile and telephone gambling yielded approximately AU\$30.7 billion in 2010¹⁶. In the same year, it was estimated that over \$968 million was spent by Australians on prohibited online gaming sites, in addition to the \$600 million per annum spent on online betting alone¹⁷. The total value of online gambling in Australia in 2010 was, therefore, approximately \$1.6 billion¹⁸. 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 expenditure¹⁹.

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

¹² Department of Families, Housing, Community Services and Indigenous Affairs, Review of current and future trends in interactive gambling activity and regulation (2009), p. vii.

¹³ 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

¹⁴ 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.

¹⁵ 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

¹⁶ KPMG, Estimating the Potential Size of an Online Gaming Market in Australia (2012), p. 19.

¹⁷ 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).

¹⁸ KPMG, Estimating the Potential Size of an Online Gaming Market in Australia (2012), p. 32.

¹⁹ KPMG, Estimating the Potential Size of an Online Gaming Market in Australia (2012), p. 15.

increase to 8.9 per cent by 2013²⁰. 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 years²¹. 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-friendly²².

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 operators²³.

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 Centre for Gambling Education and Research into the prevalence of interactive gambling in Australia. The executive summary of the study 'Investigation into Internet Gambling' was released in January 2012 and the full study is expected to be complete over the next 30 months²⁴. 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 Southern Cross University (SCU) found that online gamblers were more likely to be male and have a higher income than terrestrial gamblers²⁵. 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

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

²¹ Australian Racing Board, *Submission to the review of the IGA*, p. 8.

²² *Ibid.*

²³ Sportsbet Pty Ltd and Sportingbet Group Australia, *Supplementary submission to the review of the IGA, Gambling and wagering market*, p. 1.

²⁴ 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

²⁵ *Ibid.*

to the general population²⁶. The UK Gambling Commission has also found that nearly double the number of men use internet gambling in comparison to women²⁷.

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 terrestrial 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 and have children
- employed full-time in a managerial or professional occupation, and
- 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 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 week²⁸.

The average age of European sports betters 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 study²⁹ 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 education³⁰.

²⁶ 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

²⁷ *Ibid*, p. 86.

²⁸ Allen Consulting Group, *Research for the review of the Interactive Gambling Act 2001* (2012), pp 19–22.

²⁹ Jonathon Parke et al. (commissioned by eCOGRA), *An Exploratory Investigation into the Attitudes and Behaviours of Internet Casino and Poker Players* (2007).

³⁰ *Ibid* 27.

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 accessibility³¹.

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 community³².

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 pre-existing problems such as mental health issues and the stigma associated with problem gambling³³.

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 gamblers³⁴.

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 1990s³⁵. 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 gambling³⁶. Not surprisingly, this inquiry found that people who gambled

³¹ 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

³² 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

³³ 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

³⁴ Dr Sally Gainsbury and Professor Alex Blaszczynski, Submission to Joint Select Committee on Gambling Reform, p. 6.

³⁵ 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

³⁶ *Ibid.*

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 lotteries³⁷.

The low prevalence of problem gambling associated with lotteries was highlighted in the Australian Lottery Blocs 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 discernable increase in problem gambling.³⁸

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 the 2010 Productivity Commission figures) were still higher than that of countries such as Germany, Iceland, Norway, Canada New Zealand, Singapore, South Africa and Switzerland³⁹. They also concluded that, although the evidence available on the prevalence of online gambling was mixed, it remains a cause for concern⁴⁰.

Research indicates that problem gambling in Australia is likely to affect men more than women⁴¹. 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

³⁷ 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

³⁸ Australian Lottery Blocs, Submission to the review of the IGA, p. 3.

³⁹ UK Gambling Commission, 2010 British Prevalence Study. Retrieved from www.gamblingcommission.gov.uk/PDF/British%20Gambling%20Prevalence%20Survey%202010.pdf

⁴⁰ 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.

⁴¹ Associate Professor Delfabbro (commissioned by Gambling Research Australia), A Review of Australian Gambling Research (2008), pp 59–60. Retrieved from www.gamblingresearch.org.au/CA256DB1001771FB/page/GRA+Research+Reports-Analysis+of+Australian+Gambling+Research?OpenDocument&1=35-GRA+Research+Reports~&2=0-Analysis+of+Australian+Gambling+Research~&3=~

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 month⁴². 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 terrestrial 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 terrestrial gambling more than other online gamblers⁴³.

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 terrestrial gambling only. This is also acknowledged in the submission to the IGA review by Dr Sally Gainsbury and Professor Alex Blaszczynski⁴⁴. 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 terrestrial 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 gambling⁴⁵.

A 2009 international survey by Associate Professor Wood and Professor Williams⁴⁶ 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 gamblers⁴⁷. Similarly, a 2008 UK study by Griffith et al.⁴⁸ 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).

⁴² *Ibid* 24.

⁴³ 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

⁴⁴ Dr Sally Gainsbury and Professor Alex Blaszczynski, Submission to the review of the IGA, p. 4.

⁴⁵ *Ibid* 43.

⁴⁶ 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

⁴⁷ 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

⁴⁸ 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

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, they 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 indicating they would prefer to seek face-to-face counselling assistance compared to internet-based counselling⁴⁹.

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's behaviours, and risk to young people due to a lack of age verification measures and regulated advertising⁵⁰.

Problem gambling associated with online gambling may also be exacerbated by factors noted by William and Woods including convenience, the comfort of being able to play at home, the anonymity that is afforded in a 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 consumers⁵¹.

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 terrestrial gamblers online gamblers were more likely to drink alcohol⁵². Other issues such as reliance on the use of credit cards, disruptive eating and sleeping patterns were also linked to internet gambling⁵³.

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 time⁵⁴.

⁴⁹ 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

⁵⁰ Australian Christian Lobby, *Submission to the review of the IGA*, p. 2.

⁵¹ 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

⁵² Allen Consulting Group, *Research for the review of the Interactive Gambling Act 2001* (2012), p. 47 (referencing Griffiths, Wardle, Orford, Sproston & Erens (2011)).

⁵³ *Ibid* 51.

⁵⁴ *Ibid* 43.

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 monitoring⁵⁵.

⁵⁵ Dr Sally Gainsbury and Professor Alex Blaszczynski, Submission to the review of the IGA, pp. 4–5 and p. 10.

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 websites promoting or advertising gambling containing 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.⁵⁶

⁵⁶ 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.⁵⁷

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.⁵⁸

⁵⁷ 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.

⁵⁸ 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 measures.⁵⁹

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’, and
- 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 Council of 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, or
- 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.

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.

⁵⁹ Queensland Department of Justice and Attorney-General, Submission to the review of the IGA, p. 7.

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 proposed 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.

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 with states/territories, 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 a clear timeline established for the development and implementation of the minimum standard.**
- **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 the IGA does not prohibit them from providing services to Australian consumers.

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). This includes unlicensed providers offering certain types of gambling services which are prohibited to be offered to Australian customers (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: Ladbrokes.com

The screenshot shows the Ladbrokes.com website interface. At the top, there's a navigation bar with links for OPEN ACCOUNT, Customer ID, Password, LOGIN, Banking, Lost password?, and Help. Below this is a secondary navigation bar with categories: SPORTS, POKER, CASINO, GAMES, BINGO, VIRTUALS, LOTTOS, MOBILE, LIVE CASINO, and FINANCIALS. The main content area is titled 'Aussie Rules' and 'AFL Results TV Guide'. It features a table of upcoming matches with columns for Time, Event, 1, 2, and More. The matches listed are:

Time	Event	1	2	More
25 May 10:50	Western Bulldogs v Geelong	4/1	5/7	+2
26 May 05:10	Gold Coast v Port Adelaide	13/8	4/9	+1
26 May 07:40	St. Kilda v Sydney	10/11	4/5	+1
26 May 10:40	Greater Western Sydney v Essendon	15/1	1/100	
26 May 10:40	Adelaide v Collingwood	1/2	6/4	+1
27 May 04:10	North Melbourne v Brisbane Lions	1/4	11/4	+1
27 May 06:15	Carlton v Melbourne	1/25	9/1	+1
27 May 07:40	West Coast v Fremantle	4/11	2/1	+1

At the bottom of the page, there are logos for various payment methods including VISA, MASTERCARD, AMERICAN EXPRESS, and others. The right sidebar shows a 'BETSLIP - 0 SELECTIONS' section and a 'LIVE BETTING' section with options for 'Live Now' and 'Upcoming'.

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

Regardless of the approach taken, the following areas should be addressed by the national standard, noting that jurisdictions already possess regulations requiring the majority of these 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
- 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
- self-exclusion provisions
- 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, and
- a link on the website of regulated gambling service providers to the state/territory gambling regulatory authorities to which a consumer can lodge complaints.

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 details⁶⁰. In contrast, the Responsible Gambling Queensland Code of Practice states:

Where appropriate, positive responsible gambling messages are incorporated in advertising and promotion.⁶¹

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 clearly.⁶²

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 warnings⁶³.

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.'⁶⁴

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. It 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:

⁶⁰ Tasmanian Responsible Gambling Mandatory Code of Practice, clauses 10.1 and 10.4.

⁶¹ Responsible Gambling Queensland Code of Practice. Retrieved on 16 January 2012 from www.olgr.qld.gov.au/resources/responsibleGamblingDocuments/responsibleGamblingCodeOfPractice.pdf

⁶² Responsible Gambling Advocacy Centre, Submission to the Review of the IGA, p. 8.

⁶³ New South Wales, Totalizator Regulations 2005.

⁶⁴ 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.

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 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.⁶⁵

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 most customers use their credit facility responsibly.

Some stakeholders have suggested 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.⁶⁶

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

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 Council on Gambling Reform, in consultation with the COAG Legislative and Governance Forum on Consumer Affairs, should investigate nationally-consistent regulations in relation to tighter controls on credit betting⁶⁷.

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

⁶⁵ Tabcorp. Submission to the Review of the IGA. p.1.

⁶⁶ Sportsbet. Supplementary submission to the Review of the IGA. p. 4.

⁶⁷ 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.

account holders, except for professional punters⁶⁸. 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.⁶⁹

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.⁷⁰

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.

The department also received a confidential submission from the spouse of a problem gambler who implored the 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 gambling⁷¹.

⁶⁸ *Ibid* 7.

⁶⁹ Australian Christian Lobby, Submission to the Review of the IGA, p. 3.

⁷⁰ Clubs Australia, Submission to the Review of the IGA, p.6.

⁷¹ Private individual No. 1, Submission to the Review of the IGA.

In their submission to the review, Dr Gainsbury and Professor Blaszczynski 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.⁷²

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.⁷³

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.⁷⁴

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.⁷⁵

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

⁷² Gainsbury and Blaszczynski, Submission to the Review of the IGA, p. 5.

⁷³ Sportsbet, Supplementary submission to the Review of the IGA, p. 1.

⁷⁴ 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.

⁷⁵ Productivity Commission, Inquiry Report on Gambling (2010), p. 15.27.

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’⁷⁶.

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'.⁷⁷

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

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.⁷⁸

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.⁷⁹

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.⁸⁰

⁷⁶ Dr John McMullan, Submission to the Joint Select Committee on Gambling Reform, pp 10–11.

⁷⁷ *Ibid.*, p. 8.

⁷⁸ 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.

⁷⁹ Clubs Australia, Submission to the Review of the IGA, p. 8.

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 Sportsbet⁸¹. 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.⁸²

The committee was 'unconvinced that all inducements to bet should be treated as simply standard advertising practice'⁸³ and recommended that the COAG Select Council 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 bet⁸⁴. 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 agencies⁸⁵.

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.⁸⁶

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:

⁸⁰ Responsible Gambling Advocacy Centre, Submission to the Review of the IGA, p. 6.

⁸¹ Richard Willingham, 'Betting agency settles over man's \$80,000 debt', *The Age*, 26 July 2011.

⁸² 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.

⁸³ *Ibid.*, p. 249.

⁸⁴ *Ibid.*, p. 277.

⁸⁵ *Ibid.*, Recommendations 10 and 11, p. 238.

⁸⁶ Sportsbet, Submission to the Joint Select Committee on Gambling Reform, Attachment A, p. 41.

... 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.⁸⁷

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 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 inducements⁸⁸. 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, paying commissions to third parties to encourage people to open gambling accounts online.

Pre-commitment

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 gambling⁸⁹.

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. To this end, on 21 January 2012, the Commonwealth announced it will work with states and territories to make effective pre-commitment mechanisms available to account

⁸⁷ Mr Cormac Barry, Joint Select Committee Hansard, 11 August 2011, p. 5.

⁸⁸ *Ibid* 7.

⁸⁹ 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

holders on all licensed online betting services⁹⁰. Consideration should be given in this context to whether use of pre-commitment tools should be mandatory before an account holder can begin gambling.

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 in response to an online poker company inappropriately using player funds and being unable to payout funds to players⁹¹.

In Tasmania, licensed gambling providers must remit funds to consumers after a specified period of account inactivity⁹². 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 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 funds⁹³.

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.

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.

Prevention of underage gambling

A number of stakeholders noted the importance of stringent measures to limit the access of online gambling services to 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

⁹⁰ *Ibid* 7.

⁹¹ 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

⁹² Section 76ZP, *Gaming Control Act 1993* (Tas) and *Unclaimed Monies Act 1918* (Tas).

⁹³ *Ibid* 7.

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*, to register a player must provide evidence of their identity, place of residence and proof of age. The Australian Christian Lobby argues that while terrestrial 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.⁹⁴

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.⁹⁵

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:

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.⁹⁶

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.⁹⁷

⁹⁴ *Ibid* 50.

⁹⁵ Betfair, Submission to the Review, p. 9.

⁹⁶ 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.

⁹⁷ Mr Cormac Barry, Joint Select Committee Hansard, 11 August 2011, p. 9.

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 more effective than in a land-based environment⁹⁸. 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 customers⁹⁹). 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.

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 spending¹⁰⁰.

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

⁹⁸ 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

⁹⁹ Betfair, Submission to the review of the IGA, p. 28.

¹⁰⁰ 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

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.

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^{101, 102}. 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 gambling¹⁰³.

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 gambling¹⁰⁴. 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 help¹⁰⁵. 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

¹⁰¹ 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

¹⁰² 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 www.responsiblegamblings.ca/presentations/

¹⁰³ Allen Consulting Group, Research for the review of the Interactive Gambling Act 2001 (2012), p. 101.

¹⁰⁴ *Ibid.*

¹⁰⁵ 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

Capital Territory. Nationally, there is a gambling hotline (1800 858 858) and associated website, which is an initiative of the Ministerial Council on Gambling. By calling the hotline or accessing the website, gambling counselling and assistance can be sought 24 hours a day¹⁰⁶.

Licensed online providers should include links to the national gambling helpline (Gambling Help Online) 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**
- **significantly 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 non-gamblers (that is, people with no existing online gambling account) to open an**

¹⁰⁶ Gambling Help Online, www.gamblinghelponline.org.au/Home.aspx

account, as well as on the payment of commissions to third parties for encouraging others to sign up—already announced

- a pre-commitment capability including in terms of total spend, total time played, number of bets placed and deposits made—already announced
- 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
- self-exclusion provisions
- 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 blocks such warning messages)
- prominent links to the gambling helpline available on all pages of the websites of regulated online gambling service providers, and
- 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. Prevention 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^{107, 108}.

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 Australians¹⁰⁹.

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 concern¹¹⁰ 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.¹¹¹

Racing and Wagering Western Australia contends:

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

¹⁰⁷ 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

¹⁰⁸ 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.

¹⁰⁹ *Ibid.*

¹¹⁰ New South Wales Government, *Submission to the Review of the IGA*, p. 8.

¹¹¹ Betfair, *Submission to the Review of the IGA*, p. 19.

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.¹¹²

The New South Wales Government notes 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.¹¹³

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
- 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, and
- taken using laws other than laws relating to online gambling.

¹¹² Racing and Wagering Western Australian, Submission to the Review of the IGA, p. 2.

¹¹³ *Ibid* 110.

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)¹¹⁴.

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 payments¹¹⁵.

Despite the charges, only those defendants present in the US (or within jurisdictional reach such as Ira Rubin in Costa Rica¹¹⁶) 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 US¹¹⁷.

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 money laundering¹¹⁸. 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,

¹¹⁴ 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

¹¹⁵ '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

¹¹⁶ 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

¹¹⁷ 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

¹¹⁸ 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

and they are believed to remain in Canada¹¹⁹. 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 Rica¹²⁰.

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, and
- restricting access to prohibited service providers.

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

¹¹⁹ 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/

¹²⁰ 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

- 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, and
- 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 or principal of 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 to the provision of prohibited gambling services to customers in Australia 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.

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, operated a gambling service in contravention of the IGA.

Another option may be to modify the offence provisions of the IGA to ensure that the defendant (for example, the provider of a prohibited service) would clearly bear the burden of proof in relation to the application of an exemption or defence to the offence provisions – these being matters clearly within his/her knowledge.

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.

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, and*
- *the profile of the service provider or content in the Australian community.*

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 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.

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.

Recommendation 4: Subject to consistency with Commonwealth legal policy, the IGA be amended to include options to hold directors or principals of prohibited gambling services liable for their company's activities.

Recommendation 5: 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 offence provisions.

Recommendation 6: 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.
- 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)¹²¹. The department, in conjunction with the ACMA, has investigated the 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. Those providers who are identified by the ACMA as providing a service in contravention of the IGA should be listed on the ACMA website. This 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 comprise:

- the specific URL investigated
- the title of the website, and
- a very brief description of why the site was prohibited (that is, what service was provided) for example: ‘Provision of prohibited online casino-style gaming services to Australians’.

Recommendation 7: The ACMA should continue its investigations into the more popular online gambling service providers that have been identified on ‘Online Casino City’ as providing a potentially prohibited internet gambling service. 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

¹²¹ Dr Sally Gainsbury and Professor Alex Blaszczyński, Submission to the review of the IGA, p. 2.

gambling service by the AFP. 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 Movement Alert List (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 concern¹²². 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. They are therefore persons who are potentially of character concern within the meaning of the *Migration Act 1958*. Given this, it would be appropriate for the AFP, drawing on the list of prohibited online gambling providers as assessed by the ACMA, to place the names and details of the principals and directors of these companies on MAL for appropriate action should these people apply for a visa for Australia.

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 the AFP 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 for consideration against the character provisions of the *Migration Act 1958* should they seek to enter Australia, and
 - 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, and

¹²² 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

- 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 services to Australians that are prohibited under the IGA.

The 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 8: Online gambling service providers that are confirmed by the ACMA as providing prohibited services in contravention of the IGA should be referred to the AFP for appropriate action as discussed above, including placement of the names of principals and directors of prohibited online gambling service providers onto the Movement Alert List, as well as being referred to relevant state/territory authorities and ASIC.

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 during discussions for the review. 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 the 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.

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, and
- 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, and
- 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. 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 system¹²³. Five payment systems are designated as covered by the UIGEA:

- automated clearing house (ACH) systems
- card systems
- check collection systems

¹²³ 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

- money transmitting businesses, and
- wire transfer systems.

All participants in designated payment systems are exempt from the requirement to have policies and procedures unless they are specified as ‘nonexempt’ under the regulations¹²⁴. In general, participants in a designated payment system are exempt unless they have direct relationships with commercial customers.

The regulations provide non-exclusive examples of acceptable policies and procedures that provide a safe harbour for nonexempt 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 blocking¹²⁵.

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.¹²⁶

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 U.S. residents, but the volume of online bets from the United States soon recovered. In 2010, online gambling revenues from U.S. bettors exceeded \$4 billion.¹²⁷

¹²⁴ 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 2010. Retrieved on 5 March 2012 from www.occ.gov/static/news-issuances/ots/exam-handbook/ots-exam-handbook-770aa.pdf

¹²⁵ *Ibid* 124.

¹²⁶ Clubs Australia, Submission to the Review of the IGA, p. 11.

¹²⁷ David Stewart, American Gaming Association White Paper—Online Gambling Five Years After UIGEA (2011). Retrieved on 6 January 2012 from www.americangaming.org/files/aga/uploads/docs/final_online_gambling_white_paper_5-18-11.pdf

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 bonuses). This compares to a peak of US\$6.0 billion in 2006, the year that UIGEA was signed into law¹²⁸.

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.¹²⁹

Box 3: Norway 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 increased¹³⁰. However, the payment ban has had less impact on the rate of gambling on offshore websites than 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 gamblers¹³¹.

¹²⁸ 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

¹²⁹ 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.

¹³⁰ Allen Consulting Group, Research for the review of the Interactive Gambling Act 2001 (2012), p. 83.

¹³¹ 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 consultation on the types of measures that could be used with key financial institutions in Australia. 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 operator¹³².

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 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 as 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 on syntax standards for transmission of financial messages over 'SWIFTNet'—including bank

¹³² Email dated 4 January 2012 from Mastercard to DBCDE regarding consultations on the review.

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.

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.¹³³

¹³³ 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 e-wallet customers). Such accounts are also accessible through mobile applications. Examples of such services include Neteller and Allied Wallet’s eWallet^{134,135}.

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 made¹³⁶.

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 money¹³⁷.

In its submission to the Joint Select Committee, iBus Media noted that consumers can also 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.¹³⁸

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.

¹³⁴ Neteller, About. Retrieved on 21 February 2012 from www.neteller.com/about/

¹³⁵ Allied Wallet, eWallet. Retrieved on 21 February 2012 from www.alliedwallet.com/ewallet

¹³⁶ *Ibid* 134.

¹³⁷ *Ibid* 134.

¹³⁸ iBus Media Limited, Submission to the Joint Select Committee, p. 15.

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 and Mastercard) and would not have to create a separate process to block card transactions internally.

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.

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).

Restrictions could also be circumvented by customers using alternative payment methods 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, etc¹³⁹.

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 outlining 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, and
- 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.¹⁴⁰

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 measures¹⁴¹.

¹³⁹ Feedback from DBCDE consultation with Mastercard in December 2011.

¹⁴⁰ Queensland Department of Justice and Attorney-General, Submission to the Review of the IGA, p. 10.

¹⁴¹ 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.

In addition, there are trade implications that must be considered. In 2003, Antigua and Barbuda (Antigua) 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's online gambling industry^{142, 143}.

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 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 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 trying to reach a mutually-agreed solution on the matter.

Noting the dispute between the US and Antigua 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 payee details (for example, business name or bank/account 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 based on the on the ACMA's list of prohibited internet gambling content which it currently provides to Family-Friendly Filter vendors. A similar approach is in place for Australian financial providers for example, the financial sanctions and terrorist asset freezing regime administered by the Department of Foreign Affairs and Trade (DFAT).

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 gambler 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

¹⁴² 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

¹⁴³ Latham & Watkins LLP, Firm Publication, 'Online Gambling: The Geolocated Road Ahead', February 16 2012. Retrieved on 19 March 2012 from www.lw.com/Resources.aspx?page=FirmPublicationDetail&publication=4599

businesses can quickly change their payments 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 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, the DFAT helpdesk associated with the sanctions list carries out these functions.

Appearing before the Joint Select Committee, Mr Steven Munchenberg (Chief Executive Officer of the Australian Bankers' Association) 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 captured¹⁴⁴.

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 numbers¹⁴⁵.

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.

¹⁴⁴ 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.

¹⁴⁵ *Ibid.*

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.¹⁴⁶

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

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.¹⁴⁷

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.

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.

¹⁴⁶ Victorian InterChurch Gambling Taskforce, Submission to the Review of the IGA, p. 2.

¹⁴⁷ 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.

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 Treasury, financial service providers and other relevant stakeholders.

Recommendation 9: Subject to further consultation with industry, 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 10: The department and 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 provisions¹⁴⁸.

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.¹⁴⁹

¹⁴⁸ Clubs Australia, Submission to the Review of the IGA, p. 12.

¹⁴⁹ Betfair, Submission to the Review of the IGA, p. 21.

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.

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 11: 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 filtering 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 Department of Families, Housing, Community Services and Indigenous Affairs, website contains links to a number of counselling services and educational publications in respect of problem gambling. This includes the national gambling hotline (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 jurisdiction¹⁵⁰.

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 gambling¹⁵¹. 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 gambler¹⁵².
- 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'¹⁵³.

¹⁵⁰ Department of Families, Housing, Community Services and Indigenous Affairs, A National Snapshot of Harm Minimisation Strategies. Retrieved from www.fahcsia.gov.au/sa/gamblingdrugs/pubs/NationalSnapshotHarmMinimisation/Pages/awareness_programs.aspx#2

¹⁵¹ Department of Justice, Victoria, Gambling and Racing. Retrieved from www.justice.vic.gov.au/home/gambling+and+racing

¹⁵² ACTTAB, Submission to the review of the IGA, pp. 7–8

¹⁵³ 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 helpline¹⁵⁴.

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 adolescents¹⁵⁵.
- 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 sites¹⁵⁶. 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.¹⁵⁷

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 gamblers¹⁵⁸. The chair of the Joint Select Committee recommended that if online poker is to be regulated, an educational campaign (as suggested by Dr Gainsbury) should occur, to inform Australians about

¹⁵⁴ Betfair, Submission to the review of the IGA, p. 28.

¹⁵⁵ Australian Newsagents Federation and Lottery Agents Association of Tasmania, Submission to the review of the IGA, p. 6.

¹⁵⁶ Queensland Department of Justice and Attorney General, Submission to the review of the IGA, p. 8.

¹⁵⁷ 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.

¹⁵⁸ 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.

online gambling prohibitions and increase awareness about the difference in regulated and unregulated sites¹⁵⁹.

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 website¹⁶⁰. 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.

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

¹⁵⁹ 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.

¹⁶⁰ 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*.

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 suggested¹⁶¹ (also mentioned by the Victorian InterChurch Gambling Taskforce¹⁶²) 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.

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 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 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. Appropriate legal protection for ISPs under such a scheme would also need to be considered.

¹⁶¹ Queensland Department of Justice and Attorney-General, Submission to the Review of the IGA, p. 9.

¹⁶² Victorian InterChurch Gambling Taskforce, Submission to the Review of the IGA, p.8.

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 program¹⁶³.

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 ‘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.

¹⁶³ DBCDE, Online safety and security. Retrieved from www.dbcde.gov.au/online_safety_and_security

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, 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 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 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 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.

Recommendation 12: The department and the ACMA should consult with major ISPs and the vendors of security software on the possibility of a standard warning page appearing whenever an Australian consumer accesses a prohibited 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 and standard Australian consumer protections may not be available.

Recommendation 13: 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 14: 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 15: 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 16: State and territory governments, in conjunction with industry, should also take steps to increase consumer awareness about the risks associated with 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, or
- 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, and
- 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 Australia¹⁶⁴. 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 Act or 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 their 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 on Gambling Reform:

In isolation, when compared to other criminal activity, these referrals were categorised as low priority for investigation and consequently not investigated.¹⁶⁵

Some stakeholders suggest that a more proactive approach is required to combat the marketing of prohibited services to Australians¹⁶⁶. In their submission to the review, Dr Gainsbury and Professor

¹⁶⁴ 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

¹⁶⁵ 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

Blaszczynski suggested ‘... that further action should be taken to block advertising online and offline by offshore sites ...’¹⁶⁷.

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.¹⁶⁸

Currently, enforcement of the IGA’s advertising offences is limited by the fact that these offences are criminal offences (and 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.

Recommendation 17: 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 new express ‘injunctive relief’ provision outlined above. This would provide clarity and certainty for the ACMA in exercising its powers.

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

¹⁶⁶ Victorian InterChurch Gambling Taskforce, Submission to the Review of the IGA, p. 9.

¹⁶⁷ Dr Sally Gainsbury and Professor Alex Blaszczynski, Submission to the Review of the IGA, p. 8.

¹⁶⁸ Betfair, Submission to the Review of the IGA, p. 21.

media. Children who watch sporting events cannot avoid gambling promotions which take place both during the match and commercial breaks.¹⁶⁹

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.¹⁷⁰

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^{171,172}.

A number of stakeholders have suggested that such advertising be more tightly regulated, for example in line with cigarette and alcohol advertising¹⁷³. Other stakeholders suggest that such advertising should be banned altogether:

Clubs Australia advocates the development of a uniform, national ban on gambling advertising, implemented homogeneously across the gambling industry.¹⁷⁴

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.¹⁷⁵

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^{176,177,178}.

¹⁶⁹ Clubs Australia, Submission to the Review of the IGA, p. 7.

¹⁷⁰ Responsible Gambling Advocacy Centre, Submission to the Review of the IGA, p. 3.

¹⁷¹ FamilyVoice Australia, Submission to the Review of the IGA, pp 3-5.

¹⁷² Australian Christian Lobby, Submission to the Review of the IGA, p. 3.

¹⁷³ Victorian InterChurch Gambling Taskforce, Submission to the Review of the IGA, p. 10.

¹⁷⁴ *Ibid* 169.

¹⁷⁵ Responsible Gambling Advocacy Centre, Submission to the Review of the IGA, p. 5.

¹⁷⁶ 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.

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 advertising¹⁷⁹. 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.¹⁸⁰

The Australian Government and state and territory governments have expressed concern through the COAG Select Committee on Gambling Reform that the promotion of live odds during sports coverage can significantly influence vulnerable people, particularly young people, and normalise gambling behaviour. On 21 January 2012, the Australian Government announced that it was:

... working with sporting and betting industries to reduce and control the promotion of live odds during sports coverage through amendments to their existing codes. If satisfactory amendments have not been put in place by broadcasters by the end of June 2012, the Australian Government will introduce legislation to ban the promotion of live odds in sporting broadcasts.¹⁸¹

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 noted:

¹⁷⁷ *Ibid* 169.

¹⁷⁸ Dr Sally Gainsbury and Professor Alex Blaszczyński, Submission to the Review of the IGA, p. 2.

¹⁷⁹ 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

¹⁸⁰ 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

¹⁸¹ *Ibid* 7.

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.¹⁸²

Broadcasters suggest that provisions in the IGA need to be clarified to address these concerns:

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.¹⁸³

More specifically, it has been 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.¹⁸⁴

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 18: 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 put in place 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

¹⁸² Free TV, Submission to the Review of the IGA, p. 8.

¹⁸³ ASTRA, Submission to the Review of the IGA, p. 2.

¹⁸⁴ Free TV, Submission to the Review of the IGA, p. 10.

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.

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.¹⁸⁵

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 IGA¹⁸⁶.

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 services¹⁸⁷. 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 gambling¹⁸⁸. 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 sites¹⁸⁹.

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 money¹⁹⁰.

¹⁸⁵ Free TV Australia, Submission to the review of the IGA, p. 8.

¹⁸⁶ '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

¹⁸⁷ Dr Sally Gainsbury and Professor Alex Blaszczynski, Submission to the Review of the IGA, p. 3.

¹⁸⁸ Responsible Gambling Advocacy Centre, Discussion paper—Children and Gambling. Retrieved from www.responsiblegambling.org.au/images/pdf/rgac_discussion_paper_children_and_gambling.pdf

¹⁸⁹ Professor Alex Blaszczynski, Joint Select Committee Hansard, 16 September 2011, p. 41.

¹⁹⁰ Dr John McMullan, Submission to the Joint Select Committee, p. 3.

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 banned¹⁹¹. The issue of inducements is discussed further in Chapter 3 on harm minimisation and consumer protection.

Recommendation 19: 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.¹⁹²

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 20: 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.

¹⁹¹ 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.

¹⁹² Free TV, 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 internet¹⁹³.

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^{194,195}. 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 IGA¹⁹⁶. 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 million¹⁹⁷, with the overall online gaming market expected to continue to grow strongly. It is likely that Australians will continue

¹⁹³ Explanatory Memorandum—*Interactive Gambling Act 2001*. 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

¹⁹⁴ Productivity Commission, Inquiry Report on Gambling (2010), p. 15.18. Retrieved from www.pc.gov.au/projects/inquiry/gambling-2009/report

¹⁹⁵ 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.

¹⁹⁶ Dr Sally Gainsbury and Professor Alex Blaszczynski, Submission to the Review of the IGA, p. 2.

¹⁹⁷ Dr Sally Gainsbury submission to the IGA review, p. 7.

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 implications¹⁹⁸.

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.¹⁹⁹

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.²⁰⁰

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.²⁰¹

¹⁹⁸ *Ibid* 194.

¹⁹⁹ Australian Christian Lobby, Submission to the Review of the IGA, p. 2.

²⁰⁰ Dr Sally Gainsbury and Professor Alex Blaszczynski, Submission to the Review of the IGA, p. 3.

²⁰¹ 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.²⁰²

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.²⁰³

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.²⁰⁴

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).²⁰⁵

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.²⁰⁶

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:

²⁰² Victorian Interchurch Gambling Taskforce, Submission to the Review of the IGA, p. 3.

²⁰³ Victorian Interchurch Gambling Taskforce, Submission to the Review of the IGA, p. 7.

²⁰⁴ FamilyVoice Australia, Submission to the Review of the IGA, p. 5.

²⁰⁵ *Ibid.*

²⁰⁶ Clubs Australia, Submission to the Review of the IGA, p. 3.

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.²⁰⁷

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.²⁰⁸

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.²⁰⁹

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.²¹⁰

A similar view is raised by Dr Gainsbury and Professor Blaszczynski in their submission to the review:

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.²¹¹

²⁰⁷ FamilyVoice Australia, Submission to the Review of the IGA, p. 4.

²⁰⁸ Victorian Interchurch Gambling Taskforce, Submission to the Review of the IGA, p. 5.

²⁰⁹ Clubs Australia, Submission to the Review of the IGA, p. 4.

²¹⁰ Betfair, Submission to the Review of the IGA, p. 20.

²¹¹ Dr Sally Gainsbury and Professor Alex Blaszczynski, Submission to the Review of the IGA, p. 7.

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.²¹²

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.²¹³

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.²¹⁴

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 greater as the proliferation of internet usage continues and the number of Australian's accessing offshore gambling websites increases.²¹⁵

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:

²¹² Dr Sally Gainsbury and Professor Alex Blaszczynski, Submission to the Review of the IGA, p. 10.

²¹³ Tabcorp, Submission to the Review of the IGA, p. 10.

²¹⁴ Sportsbet, Submission to the Review of the IGA, p. 3.

²¹⁵ Sportsbet, Submission to the Review of the IGA, p. 9.

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.²¹⁶

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.²¹⁷

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 providers²¹⁸.

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.²¹⁹

The Joint Select Committee Reform report contains extensive discussion of the merits or otherwise of:

- continuing the current prohibition on the provision of online gaming services to Australians, or
- pursuing a regulated approach to online gaming.

²¹⁶ Sportsbet, Submission to the Review of the IGA, p. 23.

²¹⁷ Dr Sally Gainsbury and Professor Alex Blaszczynski, Submission to the Review of the IGA, pp 3-4.

²¹⁸ Australian Christian Lobby, Submission to the Review of the IGA, p. 4.

²¹⁹ Betfair, Submission to the Review of the IGA, p. 21.

The committee was divided on this issue. While most committee members supported retaining the current prohibition of online gaming²²⁰, the chair 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.²²¹

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 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, and
- issuing of fines or imprisonment for contravention of provisions²²².

²²⁰ 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.

²²¹ *Ibid.*, p. 371.

²²² 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.

These measures led to a situation where around 95 per cent of French residents who play online poker 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 gambling²²³.

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) and
 - comply with a strong set of national harm minimisation and consumer protection measures
- the bulk of Australian consumers that currently use prohibited online gaming services, particularly the higher risk services, switch to using Australian regulated services, and
- 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 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, and
- education and awareness measures that better alert Australians of the risks of using unregulated service providers.

²²³ KPMG, *Estimating the Potential Size of an Online Gaming Market in Australia* (2012), p. 45-46.

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 type²²⁴

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.

The Productivity Commission²²⁵ and some submissions to the inquiry²²⁶ 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

²²⁴ Adapted from KPMG, *Estimating the Potential Size of an Online Gaming Market in Australia* (2012), Table 4.2.

²²⁵ 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

²²⁶ iBus Media, Submission to the review of the IGA, p. 34.

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, and
- the ground rules, with players competing for a pot of money to which they contribute, limit losses²²⁷.

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 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.

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, and

²²⁷ *Ibid* 225.

- 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 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 described in Chapter 3 would need to be agreed upon by states and territories before commencement of the pilot to ensure that such measures are available to consumers. Providers of the new services would need to adopt such measures as a condition of their operation.
- The enforcement and prevention 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, and
 - (despite the enforcement and prevention measures) some providers may not switch to the regulated environment because this would involve losing significant revenue.
- Player access should be limited to one tournament at a time with any one licensed provider, to ensure that suitable boundaries are in place to reduce some of the possible harms from frequent play. Limits on entry fees and prizes should also be considered as part of the design of the pilot.
- 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. 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, and
- 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 Italy²²⁸.

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^{229,230}.

²²⁸ KPMG, *Estimating the Potential Size of an Online Gaming Market in Australia* (2012), p. 24.

²²⁹ Online Gambling Regulation in Italy—Viaden Gaming. Retrieved on 21 February 2012 from www.viaden.com/products/italy_license.html

²³⁰ GamingLaw.eu, Italian Regulatory Update Q01/11. Retrieved on 21 February 2012 from www.gaminglaw.eu/news/italian-regulatory-update-%E2%80%93-q0111/

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.

Recommendation 21: 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), and
- adopt the harm minimisation and consumer protection measures in the proposed national standard.

Recommendation 22: 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:

- a player can only participate in one tournament at a time with any one regulated provider
- the ‘return to players’ from each tournament should be transparent to players before they enter the tournament, and
- 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.

Recommendation 23: This trial should not start before the proposed national minimum standard for harm minimisation and consumer protection 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 24: The department, FaHCSIA and 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 the need for additional funding for support services to problem gamblers and for more effective data collection to enable monitoring of the trial.

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 providers²³¹, 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 turnover²³².

‘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 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.

²³¹ 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

²³² Australian Racing Board, *2011 Australian Racing Fact Book—A guide to the racing industry in Australia*, p. 64.

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.²³³

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.²³⁴

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.²³⁵

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:

... 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

²³³ Betfair, Submission to the Review of the IGA, p. 19

²³⁴ Betfair, Submission to the Review of the IGA, p. 11

²³⁵ Free TV Australia, Submission to the Review of the IGA, p. 3.

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.²³⁶

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 ...²³⁷

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.²³⁸

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.²³⁹

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.

²³⁶ Betfair, Submission to the Joint Select Committee on Gambling Reform, p.11.

²³⁷ Racing and Wagering Western Australia, Submission to the Review of the IGA, p. 5.

²³⁸ Australian Internet Bookmakers Association, Submission to the Joint Select Committee, p. 24.

²³⁹ Australian Bookmakers Association, Submission to the Review of the IGA, p. 2.

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.²⁴⁰

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.”²⁴¹

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.²⁴²

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

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

²⁴⁰ Clubs Australia, Submission to the Review of the IGA, p. 10

²⁴¹ Betfair, Submission to the Review of the IGA, p. 8

²⁴² Betchoice, Submission to the Joint Select Committee on Gambling Reform, pp 14–15.

- information sharing arrangements and highly efficient networks between governments, major sports, betting operators and law enforcers
- consistent code of conduct principles for sports, and
- 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, and
- all sporting organisations which receive government funding will be required to meet integrity benchmarks as agreed under the National Policy.

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 bet²⁴³, 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 Australian system, and if the Sports Betting Act was enacted nationally, sports would have a direct relationship with all betting providers.²⁴⁴

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.²⁴⁵

²⁴³ Coalition of Major Professional and Participation Sports, Submission to the Review of the IGA, p. 9.

²⁴⁴ *Ibid.*, p. 10.

²⁴⁵ Mr Malcolm Speed (Executive Director, COMPPS), Joint Select Committee Hansard, 11 August 2011, p. 15.

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.²⁴⁶

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:

Most importantly, Australian sports do not have information sharing arrangements with foreign bookmakers, which limits their ability to monitor suspicious activity in their sport the current legislative regime is maintained, these risks will continue to exist and as online gambling becomes more prevalent, they will increase in frequency.²⁴⁷

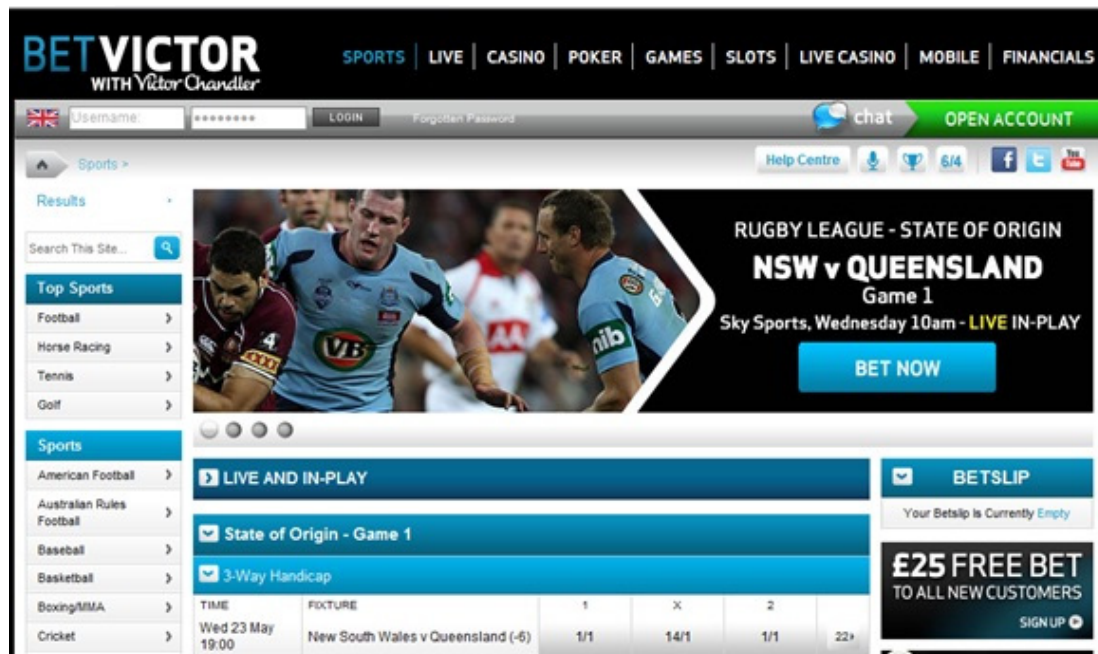
Concerns have also been raised about the potential for Australian wagering providers to transfer their operations offshore to avoid tax obligations and the payment of product fees to sports administrations, particularly if current rules are to be tightened.

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 2 below).

²⁴⁶ Coalition of Major Professional and Participation Sports, Submission to the Review of the IGA, p. 3.

²⁴⁷ *Ibid.*, p. 5.

Figure 2: Betvictor.com



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.

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’ betting²⁴⁸.

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 betting²⁴⁹.

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.

²⁴⁸ 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.

²⁴⁹ *Ibid.*

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

Recommendation 25: 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.

For the purpose of this recommendation, and in consultation with gambling providers and sporting organisations, the following definition for ‘micro-betting’ is proposed:

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), and
- the time between placing a bet and knowing the outcome is very short (usually less than five minutes, excepting appeals, intervals and interruptions).

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

Recommendation 26: State/territory governments should also prohibit ‘micro-betting’ at all physical outlets.

Recommendation 27: 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:

- No types of sports betting, irrespective of the electronic medium by which the bets are placed or whether they are pre-event or after the event has started, be permitted unless they have been authorised by the state/territory regulatory authority and, where appropriate, the relevant sports controlling body where one exists.
- 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 28: 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 25 and 27.

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 youth²⁵⁰. 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, and
- the potential 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.

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 excludes the offering of paid online gambling services including wagering and gaming. For example, Facebook's Platform Policies expressly prohibit 'online gambling, games of skill or lotteries, including online casinos, sports books, bingo or poker'²⁵¹. Casino-style gambling simulations such as 'Zynga Poker' or 'Slotomania' are allowed under these policies.

²⁵⁰ Richard Willingham, 'Pokies app under fire for aiming at children', *The Age*, 18 January 2012.

²⁵¹ <https://developers.facebook.com/policy/>

There is growing evidence that the lower the age that people are exposed to gambling the more likely they are to gamble as adults²⁵². 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 youth²⁵³.

Recent research indicates that exposure to gambling-style games at a young age is a predictor for the later development of problem gambling behaviour^{254, 255, 256, 257}. 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 player²⁵⁸. Professor Blaszczynski noted that this then encouraged people to play on paid gambling sites where the odds are different and players end up losing²⁵⁹. Such sites may also result in dissociation between players' actions and the results if they are not losing real money²⁶⁰.

²⁵² Delfabbro et al. (2009), referenced by the Productivity Commission Report on Gambling (2010), p. 9.6.

²⁵³ 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.

²⁵⁴ 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.

²⁵⁵ Department of Justice, Victoria, Australian Teens and Poker: Gambling prevalence, influences and implications, October 2011. Retrieved from www.justice.vic.gov.au/resources/7/d/7d89478048d0c5c4bbbf7b53436337/report_for_web_austrian_teen_and_poker.pdf

²⁵⁶ 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

²⁵⁷ 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

²⁵⁸ 'Internet Gambling: Strategies to Recruit and Retain Gamblers,' Dr Jamie Wiebe, October 2008, p. 16, www.gamblingresearch.org/applydownload.php?docid=10999

²⁵⁹ 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.

²⁶⁰ 'Review of current and future trends in interactive gambling activity and regulation', FaHCSIA, June 2009, p. 21.

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 articles²⁶¹. 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 checks²⁶². 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 currency²⁶³.

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 necessary²⁶⁴.

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 ...²⁶⁵

On the other hand, Facebook advises that the biggest market for Zynga's games is not children, but mums, citing the Crikey article 'Game On: why your mum is now playing video games'²⁶⁶.

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!'²⁶⁷

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

²⁶¹ Joe Hildebrand, 'Online Betting Aiming at Kids', *The Daily Telegraph*, 21 July 2011.

²⁶² *Ibid.*, 253 and 256.

²⁶³ Anne Wright, 'Explosion in smartphone gambling; Apps luring youth punt', *The Herald Sun*, 6 June 2011.

²⁶⁴ www.classification.gov.au/Usingclassification/Findaclassification/Pages/Classification-search-result.aspx?sid=Rf3OBGGLhGo20DazaELbKA%253d%253d&ncdctx=duintrbZU8WexoaGCYJR8GA3quYuaxiqHhkQMsudSHpRMgTbRDc3HOcF6QEYu2%2bZ

²⁶⁵ Dr Sally Gainsbury, Joint Select Committee on Gambling Reform Hansard, 16 September 2011, p. 41.

²⁶⁶ Daniel Golding, 'Game On: why your mum is now playing video games', *Crikey*, 25 January 2012.

²⁶⁷ As found on Facebook on 30 January 2012: www.facebook.com/pages/Zynga-Poker/141094772576049?sk=info

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.²⁶⁸

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 games²⁶⁹.

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 game development. We intend to drive meaningful value from this rapidly growing distribution platform that reaches a new, but complementary, demographic of gamers²⁷⁰

Gaming analysts have associated the purchase by IGT as a means to potentially attract new customers to terrestrial machines by offering the same games online. Terrestrial 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 future²⁷¹. 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.

²⁶⁸ Zynga Poker, <http://company.zynga.com/games/zynga-poker>

²⁶⁹ Clubs Australia, Submission to the review of the IGA, pp 4–5.

²⁷⁰ 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

²⁷¹ 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

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 it²⁷².

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 2011²⁷³. 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’²⁷⁴.

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:

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.”²⁷⁵

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

²⁷² 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/

²⁷³ Playtika, About: <http://playtika.com/about.html>

²⁷⁴ Tali Tsipori, ‘Caesars seeks more Israeli acquisitions’, *Globes*, 22 December 2011. Retrieved from <http://www.globes.co.il/serveen/globes/docview.asp?did=1000709145>

²⁷⁵ Matt Silverman, ‘The Influence of Social Gaming on Consoles’, *Mashable*, <http://mashable.com/2011/02/22/consoles-social-gaming/>

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.*²⁷⁶

'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 market²⁷⁷ and its Recommendation 5 is directed towards addressing this emerging trend of gambling directed at youth. It recommends that the COAG Select Council 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.

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

²⁷⁶ As found on 30 January 2012 at <http://playtika.com/slotomania.html>

²⁷⁷ 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.

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 game²⁷⁸.

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'²⁷⁹.

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 interactive gambling services, specifically to capture methods of avoidance such as advertisements that do not mention gambling linked to gambling websites²⁸⁰.

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:

²⁷⁸ 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.

²⁷⁹ Witness A, Joint Select Committee on Gambling Reform Hansard, 16 September 2011, p. 55.

²⁸⁰ 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.

... the advertising prohibitions contained within the IGA are entirely appropriate and applicable to social media sites.²⁸¹

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 paid gaming services via social media and content providers

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, and
- games played with real money and cash winnings.

Some gambling applications available via social media and other interactive platforms 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 Casino'²⁸²).

The issue of gambling simulation services utilising virtual credits was highlighted by Senator Nick Xenophon with respect to 'DoubleDown Casino', which requires consumers to pay to continue to play once a certain amount of credit is used. The service's terms and conditions contain a clause to advise consumers that 'virtual currency' is not redeemable for real currency. Presently, these games are not prohibited under the IGA as they do not satisfy the definition of a 'gambling service' under the IGA. This is because the 'virtual' currency is not redeemable for real money or anything else of value.

As outlined above, many social media services and other providers have guidelines and policies that prohibit the facilitation of paid online gambling including wagering and gaming, including through applications. Recently, however, there have been reports that some overseas-based social media services may be considering changing their policies with respect to allowing traditional online casino-type games that are played for money²⁸³. This would likely be a contravention of the IGA if these could be accessed by Australians. It should be noted that the range of jurisdictional and enforcement issues discussed in Chapter 4 would be relevant if this was to occur.

²⁸¹ Email comments from Yahoo! regarding discussions of the Consultative Working Group on Cybersafety, 15 March 2012.

²⁸² Retrieved from <http://www.facebook.com/pages/Virtual-City-Casino/321716184506468>

²⁸³ Keith Gladdis, 'Fear over plan for Facebook 'casinos' that could lure children into online gambling', *The Daily Mail*, 5 December 2011. Retrieved from www.dailymail.co.uk/news/article-2069361/Fear-plan-Facebook-casinos-lure-children-online-gambling.html

The recent change in position by the US Department of Justice with respect to its interpretation of US Federal gambling legislation may 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.²⁸⁴

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.). 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 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 also signs of major global paid gambling companies acquiring these free or virtual games, which may signal an eventual move to offer paid gambling games on social networking sites or through mobile devices.

These developments should be closely monitored, including by the CWG in respect of risks to children.

Recommendation 29: Popular social media services, mobile content providers, console providers and online game developers be asked to 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.

²⁸⁴ 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

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 the US (at the federal level) 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 gambling²⁸⁵. Several US states have introduced legislation to regulate online gambling within their own jurisdictions²⁸⁶.

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 lotteries²⁸⁷. 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 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

²⁸⁵ Nathan Vardi, 'Department of Justice flip-flops on internet gambling', *Forbes*, 23 December 2011. Retrieved from www.forbes.com/sites/nathanvardi/2011/12/23/departments-of-justice-flip-flops-on-internet-gambling/

²⁸⁶ 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.

²⁸⁷ *Ibid.*, p. 74.

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 publication²⁸⁸.

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 Ireland²⁸⁹) 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 country²⁹⁰.

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 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 sites²⁹¹.

²⁸⁸ 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.

²⁸⁹ Companies House, List of European Economic Area Countries. Retrieved from www.companieshouse.gov.uk/about/miscellaneous/listeeaCountries.shtml

²⁹⁰ Amministrazione autonoma dei monopoli di Stato: www.aams.gov.it/

²⁹¹ 'French and Italian regulators sign co-operation agreement', Public Gaming Research Institute. Retrieved from www.publicgaming.com/index.php?option=com_content&view=article&id=8360:french-and-italian-regulators-sign-co-operation-agreement&catid=40:regulatory&Itemid=89

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 measures²⁹².

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 gambling²⁹³.

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 co-ordinated regulatory approach to online gambling.²⁹⁴

The Joint Select Committee also supported further examination of international regulatory approaches and opportunities for international collaboration that may be applicable to Australians²⁹⁵.

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 Blaszczyński 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 effect²⁹⁶.

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

²⁹² 'Alderney signs cooperation agreement with Ontario regulator', *Gaming Intelligence*, 1 February 2012. Retrieved from www.gamingintelligence.com/legal/14779-alderney-signs-cooperation-agreement-with-ontario-regulator

²⁹³ Allen Consulting Group, Research for the review of the Interactive Gambling Act 2001 (2012), pp. 72–73.

²⁹⁴ Betfair, Submission to the review of the IGA, p. 33.

²⁹⁵ 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.

²⁹⁶ *Ibid.*

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 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’²⁹⁷.

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 2012²⁹⁸, 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 ‘keno’ lottery and 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)²⁹⁹.

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 years³⁰⁰. 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 cent³⁰¹. 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,

²⁹⁷ Macquarie Dictionary, definition of ‘lottery’. Retrieved on 25 January 2012 from www.macquariedictionary.com.au/203.9.200.7@929F73527265/-/p/thes/article_display.html?type=title&first=1&mid=4&last=4¤t=1&result=1&DatabaseList=dictbigmac&query=lott ery&searchType=findrank

²⁹⁸ ‘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

²⁹⁹ Australian Lottery Blocs, Submission to the review of the IGA, p. 2 and p. 5.

³⁰⁰ Australian Newsagents Federation and Lottery Agents Association of Tasmania, Submission to the review of the IGA, p. 4.

³⁰¹ 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 casinos³⁰².

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 providers³⁰³. In addition, it suggested that the availability of other gambling products alongside lottery products could have an impact on problem gambling³⁰⁴.

The LAAV and LAQ raised the same concern and cited a report by Dr James Phillips and Professor Alex Blaszczyński that stated that internet lottery purchases were infrequent, but problem gamblers were six times more likely to purchase a ticket online³⁰⁵.

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 criminalised³⁰⁶. 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 territories³⁰⁷. 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 wagering³⁰⁸.

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 limits³⁰⁹.

³⁰² Lottery Agents' Association of Victoria and Lottery Agents Queensland, Submission to the review of the IGA, p. 6.

³⁰³ Australian Newsagents Federation and Lottery Agents Association of Tasmania, Submission to the review of the IGA, p. 6.

³⁰⁴ Australian Newsagents Federation and Lottery Agents Association of Tasmania, Submission to the review of the IGA, p. 4.

³⁰⁵ Lottery Agents' Association of Victoria and Lottery Agents Queensland, Submission to the review of the IGA, pp 8–9.

³⁰⁶ Newsagents Association of NSW and ACT, Submission to the review of the IGA, p. 7.

³⁰⁷ *Ibid* 299.

³⁰⁸ Productivity Commission, Inquiry Report on Gambling (2010). Retrieved from www.pc.gov.au/projects/inquiry/gambling-2009/report

³⁰⁹ 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^{310, 311}. In addition, the NANA suggested that player registration for online lotteries should occur through trusted land-based retailers to authenticate identification³¹².

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 minimisation³¹³.

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 games³¹⁴.

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 online keno-style products and instant 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. From the submissions received, there does not appear to be a strong demand for such services. 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

³¹⁰ Lottery Agents’ Association of Victoria and Lottery Agents Queensland, Submission to the review of the IGA, p. 12.

³¹¹ *Ibid* 306.

³¹² *Ibid* 306.

³¹³ *Ibid* 304.

³¹⁴ Australian Lottery Blocs, Submission to the review of the IGA, pp 9–10.

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 turnover³¹⁵. 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.

³¹⁵ 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 Australia³¹⁶. 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.³¹⁷

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 sports³¹⁸.

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.

³¹⁶ 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

³¹⁷ *Ibid.*

³¹⁸ 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 games³¹⁹.

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 participants³²⁰.

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 price³²¹.

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 30: 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.

³¹⁹ News Limited, Submission to the review of the IGA.

³²⁰ '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

³²¹ *Ibid* 319.

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> <p>(a) the advertisement is broadcast, datacast or published as an accidental or incidental accompaniment to the broadcasting, datacasting or publication of other matter, and</p> <p>(b) 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).</p>
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), and 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:</p> <ul style="list-style-type: none"> • an interactive gambling service, or • interactive gambling services in general, or • trademarks in respect of or internet addresses or domain names that relate to an interactive gambling service, or • 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 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 Australia 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 (par. 6(3)(aa), subs. 8A(1)).</p>

Appendix B: Public submissions to the review

Australian Bookmakers Association

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 Racing Board

Betfair

Clubs Australia

Clubs Queensland

Coalition of Major Professional and Participation Sports (COMPPS)

Queensland Department of Justice and Attorney-General

Western Australia Department of Racing, Gaming and Liquor

Family Voice Australia

Free TV Australia

Greyhounds Australia

Harness Racing Australia

iBus Media

Internet Industry Association (IIA)

Lottery Agents' Association of Victorian (LAAV) and Lottery Agents Queensland (LAQ)

Leagues Clubs Australia

Newsagents Association of NSW and ACT (NANA)

News Limited

New South Wales Government

Private Submission—Individual No.1

Private Submission—Jack W

Private Submission—R Brading

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)

Tabcorp Submission (and Supplementary submission on credit betting)

Tasmania Department of Treasury and Finance

Victorian InterChurch Gambling Taskforce

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.

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
ACT (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)	✓	* Provisions under the ACT IGA not currently operating	* Provisions under the ACT IGA not currently operating	* Provisions under the ACT IGA not currently operating Sports bookmakers' internet and control systems must satisfy an independent auditor	* Provisions under the ACT IGA not currently operating	x	* Provisions under the ACT IGA not currently operating A licensee can exclude a person if reasonable grounds for believing welfare 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
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	√	x	√	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	√	<p>*</p> <p>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.</p>	x		x	√
SA		√		x	<p>x</p> <p>Requirement issued by authority for systems and procedures to prevent betting by children</p>		<p>√</p> <p>The TAB, as the sole major betting licensee, can also elect to exclude a person if satisfied their welfare is 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
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
ACT (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)	x	√	x	x	* Provisions under the ACT IGA not currently operating A licensee must not encourage a person to gamble beyond their means	* Provisions under the ACT IGA not currently operating Sports bookmakers must be licensed	* Provisions under the ACT IGA not currently operating

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	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	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
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	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	√	√ 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 measures³²²

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.

³²² 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 gambling³²³

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.

³²³Allen 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.