



**Australian Government**

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

**Review of the *Interactive Gambling Act 2001***

**Call for submissions**

## Call for submissions—Review of the *Interactive Gambling Act 2001*

Following a meeting of the Council of Australian Government's (COAG) Select Council on Gambling Reform on 27 May 2011, it was announced that the Department of Broadband, Communications and the Digital Economy (the department) would undertake a review of the operation of the *Interactive Gambling Act 2001* (the IGA).

### Background

#### **The *Interactive Gambling Act 2001* (the IGA)**

The *Interactive Gambling Act 2001* (the IGA) was drafted with the aim of minimising the scope for problem gambling among Australians by limiting the provision of gambling services to Australians through interactive technologies such as the internet<sup>1</sup>. A Glossary of Terms related to the regulation of interactive gambling services in Australia is available at **Appendix A**.

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. 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:

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<sup>1</sup> Explanatory Memorandum—*Interactive Gambling Act 2001*. Retrieved on 17 Jul 2011 from [http://archive.dcita.gov.au/\\_\\_data/assets/pdf\\_file/0016/11536/Interactive\\_Gambling\\_Bill\\_2001\\_Revised\\_Explanatory\\_Memorandum.pdf](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 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)
- services expressly and exclusively associated with particular content, or a particular series of content, transmitted on a datacasting service (for example, promotions or games conducted over the internet that involve the purchase of a product)
- services to the extent to which they relate to the entering into of contracts that are financial products within the meaning of Chapter 7 of the *Corporations Act 2001* (for example, futures contracts that involve speculation on whether the price of a share may rise or fall)
- any service declared exempt by the Minister.

A breakdown of online gambling types and how they are regulated in Australia is outlined in Figure 1 below.



Figure 1: Online gambling types in Australia

As part of the framework established by the IGA, the Australian Communications and Media Authority (ACMA) administers a complaints scheme under which Australian residents or companies trading in Australia are able to complain to the ACMA if they believe that end users in Australia can access prohibited internet gambling content. The IGA directs the ACMA not to investigate complaints about alleged internet gambling content that is hosted in Australia; rather, if the ACMA considers the complaint warrants further action, it must refer it to an Australian police force. If the prohibited internet gambling content is hosted overseas, the ACMA may investigate. Where the ACMA identifies prohibited internet gambling content that is hosted overseas, it must notify the URL to industry-accredited internet filter providers for inclusion in family-friendly filters, in accordance with the Internet Industry Association code of practice, registered under the IGA. The ACMA may also notify the content to an Australian police force.

The advertising prohibition 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 likely to be permitted by the IGA. A prohibited interactive gambling service advertisement includes a broad range of material that gives publicity to, or otherwise promotes or is intended to promote:

- a prohibited interactive gambling service
- prohibited interactive gambling services in general
- trademarks in respect of or internet addresses or domain names that relate to a prohibited interactive gambling service, or
- any words that are closely associated with a prohibited interactive gambling service.

For example, sponsored advertising may be a prohibited interactive gambling service advertisement.

The prohibition does not extend to the publication, broadcast or datacast of prohibited interactive gambling service advertisements overseas, such as publication 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.

It is 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. In addition, 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 Australian Federal Police (AFP), and also to the ACMA if it relates to a possible breach of broadcasting licence conditions.

## **2010 Productivity Commission Inquiry Report on Gambling**

The Productivity Commission's Inquiry Report on Gambling, released in June 2010, identified a growing prevalence of Australians using online casino-style gambling services<sup>2</sup>. The report concluded that the IGA was not well designed to prevent this activity. The report noted that, while the prohibition has probably limited the growth of online gambling in Australia, it has forced consumers

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

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 services and as operators develop reputations for safety and security. As such, it concluded that regulated access to licensed providers (both in Australia and overseas), subject to a strong regime of consumer protection, could play a role in reducing harm to online gamblers and provide better outcomes for consumers by encouraging competition.

The report also acknowledged such an approach would pose risks, including an increased population of participants, which could in turn lead to a greater number of people developing problem gambling behaviours. To mitigate this risk, the Productivity Commission recommended a gradual adjustment to the treatment of online gambling, with only online poker permitted in the first instance. This would provide an opportunity to assess the performance of the regulatory framework, the effectiveness of harm minimisation interventions and, ultimately, the impact of online gambling on the community.

In response to the report, and alongside several other government commitments in relation to problem gambling, the government undertook an examination of international regulatory approaches to the regulation of online gambling<sup>3</sup>.

## **Review of the IGA**

The COAG Select Council on Gambling Reform was established to develop a national response to the findings and recommendations of the Productivity Commission Inquiry Report on Gambling. The issues and impacts associated with online gambling are considered as part of the 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 takes into account the difficulties of enforcing the existing prohibition on certain types of online gambling and the growing number of Australian consumers gambling online in an unregulated environment. It will 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.

The review of the IGA is intended to ensure that the prevalence of problem gambling in the online environment and gambling addiction in the Australian community is limited. The prevention and control of gambling fraud or cheating is a related issue, but not directly within the scope of this review. The terms of reference for the review are available at **Attachment B**.

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<sup>3</sup> Australian Government media release, 'Productivity Commission Report into Gambling', 23 June 2010, retrieved on 4 August 2011 from [www.jennymacklin.fahcsia.gov.au/mediareleases/2010/Pages/jm\\_m\\_prodcommision\\_23june2010.aspx](http://www.jennymacklin.fahcsia.gov.au/mediareleases/2010/Pages/jm_m_prodcommision_23june2010.aspx)

Having completed initial information gathering following the Productivity Commission's report, the government will use the review of the IGA as a means to work consultatively with key stakeholders and the broader community to determine appropriate regulatory arrangements for interactive gambling that best deal with problem gambling in Australia.

This paper seeks to promote discussion of the issues relevant to the regulation of interactive gambling in Australia. The department will use responses to the paper to assess the policy objectives of the IGA and the roles that government, industry and consumers play in this area.

The paper is structured to outline and briefly discuss the key issues examined in the review and includes a number of broad questions relevant to these issues. The questions are designed to guide the submitter in formulating responses and do not necessarily need to be addressed directly.

### **Joint Select Committee on Gambling Reform**

The Joint Select Committee on Gambling Reform is currently conducting an inquiry into the prevalence of interactive and online gambling and gambling advertising. The review of the IGA will consider any relevant findings from the committee.

## Discussion of issues

### Growth of online gambling services and links to problem gambling

At a global level, Global Betting & Gaming Consultants (GBGC) reports that the online gambling market was worth US\$29.3 billion in 2010, a 12 per cent increase from 2009. GBGC forecasts the market to grow by 14 per cent in 2011, driven by regulatory developments in some markets, and the continued growth in live sports wagering and mobile gambling<sup>4</sup>.

The Productivity Commission notes that some evidence suggests online gambling (including illegal online gaming) has grown significantly in Australia over the last decade, and could amount to 4 per cent of gambling expenditure; however, there is relatively little data available to measure this accurately<sup>5</sup>. Gainsbury and Blaszczynski (2011) suggest that sports betting is Australia's fastest growing form of gambling, something primarily attributed to the increased popularity of online gambling<sup>6</sup>.

In terms of permitted forms of online gambling (that is, online wagering), the Productivity Commission estimates that around 424 000 Australian online sports-wagering accounts were active in 2008—a 103 per cent increase on 2004 levels. In addition, it estimates that around \$391 million was spent on online sports wagering by Australians in 2008—a 73 per cent increase on 2004 levels. 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 providers.

The Productivity Commission notes that, as online gaming is illegal and not captured by the tax system (with the majority of online gambling services utilised by Australians operated by companies based overseas), it is difficult to gather accurate data on such activities. A discussion paper commissioned for the Responsible Gambling Advocacy Centre also identified a number of gaps in gambling research in Australia including:

- the relationship between online gambling and problem gambling
- the provision of gambling services to Australians by international operators
- the relationship between youth and online gambling.

Despite the prohibition, the Productivity Commission estimates that Australians gamble approximately \$790 million per annum on online casino-type games and online poker.

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<sup>4</sup> Global Betting & Gaming Consultants, 'E-gaming to Pass US\$30bn GGY in 2011', 8 February 2011. Retrieved 2 August 2011 from [www.gbgc.com/2011/02/e-gaming-to-pass-us30bn-ggy-in-2011/](http://www.gbgc.com/2011/02/e-gaming-to-pass-us30bn-ggy-in-2011/)

<sup>5</sup> *Ibid.* 2

<sup>6</sup> Gainsbury and Blaszczynski (2011), Submission to the Joint Select Committee on Gambling Reform: Inquiry into the prevalence of interactive and online gambling in Australia and gambling advertising. Retrieved 14 July 2011 from <https://senate.aph.gov.au/submissions/comitees/viewdocument.aspx?id=f3d82e71-0cd4-4966-b10d-0eabb7c4707f>

The Productivity Commission notes that in 2008 around 700 000 Australian online casino-type accounts were active (4.3 per cent of the adult population), although once again this measure must be viewed with caution as one person may have several accounts with different providers. These estimates are broadly similar to the prevalence rates in the United States (4 per cent) and the United Kingdom (3 per cent), but still represents a doubling in participation rates since 2004 (2.1 per cent)<sup>7</sup>. In contrast, a telephone poll conducted by Roy Morgan Research in 2010 indicated that 30 per cent of Australians over the age of 16 gamble online<sup>8</sup>.

The Productivity Commission concludes that, while the introduction of the IGA has played a part in reducing the growth of online gambling, the ban will have a diminishing impact as the accessibility of international sites increases. Greater access to such services could increase the prevalence of problem gambling and its associated harms. It appears that the most significant effect of the IGA is to prevent companies located in Australia from selling online gaming services to Australians.

The impact of online gambling on youth must also be considered. Derevensky and Gupta (2007) suggest that the increasing growth in gambling worldwide is likely to result in greater numbers of youth gambling at an earlier age. They note that, when coupled with high accessibility and a greater level of social acceptance for such activities, more youth are likely to experience problems with addictive gambling behaviour<sup>9</sup>.

The rapid growth in the use of social media websites such as Facebook and Twitter has contributed to the accessibility and uptake of online gambling services. The recent ACMA report 'The internet service market and Australians in the online environment' found that 8.4 million Australians accessed social networking sites from home during December 2010<sup>10</sup>. Poker applications such as 'Zynga Poker' are among the most popular applications available on Facebook.

Online gambling continues to evolve with changing technological and social trends, with online gambling providers using social media websites to offer or promote their services. Derevensky (2011) suggests that online gambling providers use social media as a way of attracting young people without strict adherence to age restrictions<sup>11</sup>. The Responsible Gambling Advocacy Centre notes that

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<sup>7</sup> *Ibid.* 2

<sup>8</sup> *Ibid.* 6

<sup>9</sup> Derevensky and Gupta (2007), 'Internet Gambling Amongst Adolescents: A Growing Concern', *International Journal of Mental Health and Addictions*, 5 (2), pp. 93–101.

<sup>10</sup> The Australian Communications and Media Authority (2011), The internet service market and Australians in the online environment. Retrieved 2 August 2011 from [www.acma.gov.au/webwr/\\_assets/main/lib310665/the\\_internet\\_service\\_market\\_in\\_australia.pdf](http://www.acma.gov.au/webwr/_assets/main/lib310665/the_internet_service_market_in_australia.pdf)

<sup>11</sup> Derevensky (2011), Submission to the Joint Select Committee on Gambling Reform: Inquiry into the prevalence of interactive and online gambling in Australia and gambling advertising. Retrieved 22 July 2011 from <https://senate.aph.gov.au/submissions/comittees/viewdocument.aspx?id=5a34b663-3a7a-4574-a29c-bb6f0feed905>

the gambling industry has been advised to promote their services using social media to increase the visibility of their websites.<sup>12</sup>

Gainsbury and Blaszczyński (2011) noted the development of new payment methods for use on services such as Facebook and iTunes. It was also noted that the amount spent by consumers on services offered through social networking websites is difficult to measure.<sup>13</sup>

Comment on these issues is invited.

### **Questions**

- What impact has the IGA had on the prevalence of problem gambling in Australia?
- What are the risks to the prevalence of problem gambling in Australia of maintaining, removing or modifying the current prohibition of certain online gambling services? What are the risks in moving to a strongly regulated approach? How is it best to address these risks?
- What impact have different types of online gambling had on youth in Australia?

### **The impact of platform neutrality, developing technologies and convergence on the regulation of gambling services**

Technologies relevant to the regulation of interactive gambling would include those capable both of assisting regulation and conversely those used either to promote interactive gambling or to undermine the operation of the offence provisions, including the complaints scheme of the IGA. For example, the continued evolution of online gambling platforms through smartphones and mobile devices, mobile gambling applications, social media websites and interactive television are important in this context. In addition, the ways in which the differing platforms used by the interactive gambling industry are currently subjected to regulation and the possible impacts of increasing convergence of communications technologies on this type of gambling uptake should be considered.

Some forms of more traditional gambling services, including services that facilitate wagering on certain racing and sporting events, are excluded from the IGA definition of 'interactive gambling service' even though they take place online. This means that the IGA does not prohibit the provision or the advertising of such services, which are still subject to state and territory law.

Telephone betting services are also excluded from the definition. A telephone betting 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 'live' betting online during a sporting event are 'interactive gambling services' and

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<sup>12</sup> Responsible Gambling Advocacy Centre (2011), Submission to the Joint Select Committee on Gambling Reform: Inquiry into the prevalence of interactive and online gambling in Australia and gambling advertising. Retrieved 2 August 2011 from <https://senate.aph.gov.au/submissions/comitees/viewdocument.aspx?id=419433d9-0732-4c83-b4b2-4eefff2d99fb>

<sup>13</sup> *Ibid.* 5

are therefore prohibited under the IGA, similar services and dealings with the customer provided by a telephone betting service do not fall under the definition. The definition of 'standard telephone service' itself is problematic given the convergence of communications technologies.

'In-the-run' or 'ball-by-ball' wagering services are prohibited under the IGA to reflect the view that such 'continuous' services could become highly addictive for consumers and are likely to be easily accessible (for example, through interactive television using a remote control). However, this definition captures a very wide range of betting, from gambling on the final outcome of an event after the event has started, through to gambling on every point or ball.

Ultimately, structuring the regulation of interactive gambling services in this way has led to a lack of platform neutrality, which may need to be reconsidered. The use of platform-neutral legislation to regulate the provision and advertising of these services may prove easier to enforce. Conversely, achieving platform neutrality would need to be done in a way that considers opening up more continuous forms of micro-betting with its associated risks for problem gambling and potentially increasing opportunities for gambling fraud through match-fixing.

The disparity in the regulation of gambling services is not limited to technological platforms. Consistency with land based gambling services also need to be considered. For example, conducting and promoting land-based poker tournaments organised by pubs and clubs are permitted in Australia, while the provision and advertisement of online poker services is prohibited.

The continued development of online gambling technologies, along with the increasing convergence of gambling technologies, will also be a significant factor in the future regulation of online gambling. Gambling Research Australia (GRA) discusses some of these issues in its 2011 report 'Gambling and the Impact of New and Emerging Technologies and Associated Products'<sup>14</sup>. The report notes that the converging capabilities of computers, mobile phones, interactive television, and other internet-enabled devices have the potential to allow consumers unlimited access to online gambling. As such, this increased accessibility could lead to increases in gambling-related problems, although research on the relationship between availability and problem gambling suggest that such risks could be mitigated if appropriate controls are utilised.

The GRA report draws the conclusion that the partial regulation of online gambling in Australia may pose a higher risk for consumers when compared to offline gambling. In addition, it is possible for consumers to readily circumvent any controls put in place to limit access (such as content filters and age-verification mechanisms) and also to access gambling services in unregulated environments. The report suggests that, as the internet is an environment where deception is readily possible and people are less likely to assist others with problems, such accessibility could be dangerous. This view is worth exploring further.

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<sup>14</sup> Gambling Research Australia (2010), 'Gambling and the impact of new and emerging technologies and associated products'. Retrieved 3 August 2011 from [www.gamblingresearch.org.au/CA256902000FE154/Lookup/New-emerging-technologies/\\$file/GRA%20Emerging%20Technologies%20Final%20Report.pdf](http://www.gamblingresearch.org.au/CA256902000FE154/Lookup/New-emerging-technologies/$file/GRA%20Emerging%20Technologies%20Final%20Report.pdf)

While new technology provides increased opportunities to gamble, the report notes there is also the potential for advertisements, inducements and warnings to individuals. For example, gambling services can easily be accompanied with advertising for various other products and services to influence consumer behaviour online. These opportunities also allow targeted consumer protection measures to be introduced, including information and advice to enable consumers to gamble responsibly.

The growth in mobile gaming that has accompanied the increased uptake of smartphones illustrates the changing landscape of gambling. The International Data Corporation forecasts the global smartphone market to increase 55 per cent year over year in 2011<sup>15</sup>. The United Kingdom Gambling Commission recently conducted a survey into the proportion of respondents gambling via different methods of remote gambling (those gambling on National Lottery products remotely are excluded)<sup>16</sup>. In the year to March 2011:

- an average of 9.8 per cent of respondents had accessed gambling via personal computer, laptop computer or handheld device in the previous four weeks, up from 5.2 per cent in 2006
- 3.1 per cent had gambled via WAP or SMS on mobile phones up from 2.2 per cent in 2006.

In addition, gambling operators Paddy Power and Betfair recently outlined the growth they have experienced in the uptake of mobile gaming and wagering services<sup>17</sup>.

The convergence of gambling and social networking has led to the development of gambling-themed games on social media websites that are aimed at adolescents. Griffiths et al (2010) suggests that such 'money free' gambling introduces adolescents to the 'principles and excitement of gambling without experiencing the consequences of losing money'. In addition, these games also often contain advertising or links to real-money gambling websites, raising issues regarding social responsibility<sup>18</sup>.

Comment is invited on these issues. It should be noted, however, that in this regard the review is to assess technological trends and capabilities broadly, and their impact on online gambling uptake. Material promoting particular technology products is not sought if it does not address or explain broader issues.

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<sup>15</sup> IDC Press Release. 'Worldwide Smartphone Market Expected to Grow 55% in 2011 and Approach Shipments of One Billion in 2015' (9 June 2011). Retrieved on 3 August 2011 from [www.idc.com/getdoc.jsp?containerId=prUS22871611](http://www.idc.com/getdoc.jsp?containerId=prUS22871611)

<sup>16</sup> UK Gambling Commission, 'Survey data on gambling participation' (April 2011). Retrieved 1 August 2011 from [www.gamblingcommission.gov.uk/pdf/Survey%20data%20on%20gambling%20participation%20-%20April%202011.pdf](http://www.gamblingcommission.gov.uk/pdf/Survey%20data%20on%20gambling%20participation%20-%20April%202011.pdf)

<sup>17</sup> Guardian.co.uk, 'Apps fuelling sharp growth for mobile gambling industry' (30 June 2011). Retrieved on 3 August from [www.guardian.co.uk/technology/appsblog/2011/jun/30/mobile-gambling-apps](http://www.guardian.co.uk/technology/appsblog/2011/jun/30/mobile-gambling-apps)

<sup>18</sup> Griffiths, Parke, King and Delfabbro (2010), 'Presentation: Adolescent gambling on the internet: a review'. Retrieved on 28 July 2011 from [www.easg.org/media/file/vienna2010/presentations/Thursday/0900/1\\_Mark\\_Griffiths.pdf](http://www.easg.org/media/file/vienna2010/presentations/Thursday/0900/1_Mark_Griffiths.pdf)

## ***Questions***

- What are the new technologies/platforms via which online gambling is offered and which of these is likely to grow most rapidly?
- Are there circumstances in which different approaches to regulation of gambling between different platforms/technologies should be retained?
- Do the practicalities of telephone wagering still limit access to highly-repetitive forms of wagering as originally designed?
- If a platform-neutral approach was adopted, what would the impacts be? How should this deal with future forms of gambling?
- Has 'in-the-run' betting and 'micro-betting' increased the prevalence of problem gambling and/or risks to the integrity of sport and/or to the probity of the gambling market? If so, how and to what degree?
- Should current rules regarding online 'in-the-run' betting and online 'micro-betting' be aligned with those in the offline world? Are there circumstances where they should not be aligned?
- If current prohibitions to online 'in-the-run' betting and online 'micro-betting' are retained, how best would these be enforced?

## **The effectiveness of the existing provisions of the IGA**

At present, significant challenges exist in enforcing the laws regulating online gambling. Three key issues that impact the effectiveness of the framework are:

- Jurisdictional issues—the operation of online gambling services in a borderless world and the prevalence of these services based overseas pose major challenges for the enforcement of Australian laws.
- Enforcement mechanisms—the split in regulatory functions that currently exist in the complaints and enforcement regime, coupled with the lack of civil penalties for breaches of the IGA provisions, impact on the ability to effectively enforce the legislation.
- The technical details of legislation—this has caused a level of ambiguity that affects both those enforcing the laws and those operating permitted services under the IGA.

These issues are discussed in more detail below.

### ***Jurisdictional issues***

The global nature of the internet means that online gambling services can be based in any country and made accessible to Australians. In practice, there have been few allegations of Australian-based companies offering prohibited online gambling services to Australians. Most allegations of companies offering prohibited services to Australians concern overseas-based companies. While the IGA applies to providers in other countries, there is limited practical scope for Australian law enforcement agencies to pursue, with any prospect of success, foreign-based providers.

### ***Enforcement mechanisms***

There are two broad categories of offences that can be enforced under the IGA:

- provision of prohibited services to customers in Australia; and
- advertising of prohibited services in Australia.

As mentioned above, the ACMA considers complaints about prohibited internet gambling content (that is, a URL offering online gambling services in contravention of the IGA). The ACMA investigates overseas-hosted content notifying approved PC filter vendors (under the Internet industry Association code), and a police force if appropriate, of prohibited internet gambling content. The ACMA is required by the IGA not to investigate Australian-based content, but if it considers the complaint warrants further action, it must refer the matter to an Australian police force.

As the IGA does not include a complaints mechanism in relation to the advertising of prohibited gambling services, the department has undertaken responsibility for conducting a preliminary assessment of complaints about prohibited gambling service advertising. After conducting a preliminary assessment, the department refers potential breaches to the AFP. The department also refers potential breaches of broadcast licence conditions to the ACMA where it appears that a potentially-prohibited advertisement has been broadcast by a licensee of services under the *Broadcasting Services Act 1992*.

The AFP assesses referrals from the ACMA and the department against its Case Categorisation Prioritisation Model. Elements considered include:

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

In the period from **July 2010** to **June 2011**, the ACMA completed **48** investigations. Of these investigations, **38** involved overseas-hosted prohibited internet gambling content and the URLs were notified to the AFP, while **seven** involved overseas-hosted content that was found not to be in breach the IGA and were not referred on. **Three** investigations were terminated due to insufficient information. During the same period, the ACMA referred **one** Australian hosted site to the AFP for action.

During the same period, the department received **nine** complaints regarding the advertisement of prohibited interactive gambling services. Of these complaints, **seven** were referred to the AFP for further investigation. **One** complaint was not followed up due to insufficient information.

The relatively limited range of enforcement options available under the IGA, and the need for the AFP to consider referrals against its own internal case prioritisation framework, may have contributed to the apparent lack of successful enforcement activity under the IGA. Alternative enforcement options such as civil penalty provisions might offer more scope in this regard.

### ***Ambiguities and inconsistencies of the regulatory framework***

The structure and complexity of the legislation regulating online gambling may have caused some difficulties in the interpretation and application of certain provisions in the IGA, especially those relating to the advertising of prohibited interactive gambling services. A number of such issues could potentially be clarified to make the IGA more functionally robust.

As mentioned above, the IGA does not specify the process for complaints about the advertising of prohibited interactive gambling services. A complaints mechanism could be included in the IGA to ensure that such complaints are handled efficiently and effectively.

In addition, the wording and structure of certain provisions of the IGA appears to have impacted on the ability of stakeholders to confidently interpret the legislation. For example, the section of the IGA which permits the broadcast of an advertisement for a prohibited interactive gambling service in circumstances where that broadcast is an 'accidental or incidental' accompaniment to the broadcasting of another matter. This has caused some confusion, particularly for broadcasters of foreign sporting events that are sponsored by prohibited gambling services (or that involve sports teams that are sponsored by prohibited gambling services). Broadcasters have noted that, when broadcasting such events, they are becoming increasingly unsure of their compliance with legislation. As a result, broadcasters have advised that they have decided not to broadcast certain events, or have heavily edited the broadcasts, to remove all doubt of potential breaches. In addition, broadcasters believe that such sponsorship will only continue to become more prevalent, and make it even more difficult to be confident of their compliance.

Another example is the way in which Australian based companies that provide 'back-end' services (for example, financial services or customer assistance) to Australian customers on behalf of prohibited interactive gambling services are viewed under the IGA. Concerns have been raised regarding the operation of such services and whether it constitutes a breach of the IGA.

Comments are invited on the operation of the IGA and on adequacy of existing enforcement measures.

#### ***Questions***

- Are there sections of the IGA which could operate more clearly?
- Could the current sanctions regime in the IGA be improved, and if so how?
- Are the current regulatory arrangements under the IGA the most effective way in which to limit the provision of prohibited interactive gambling services to Australians?
- Given that currently prohibited online gambling services are offered predominantly by service providers based overseas, are there more effective means of enforcing the prohibition? What options might be used?
- Are there more effective means of enforcing the advertising prohibition? What role should sports bodies and broadcasters play regarding such advertising? What role should state and territory governments play?

## **International regulatory approaches to online gambling services**

Many of the challenges outlined above facing Australia regarding the regulation and control of online gambling services are also faced by other countries. There is a general trend amongst European countries towards regulated access to online gambling, including to those services prohibited under the IGA. A number of countries including the UK, France, Italy, Malta and Sweden, have legalised online gambling with gambling websites being subject to stringent regulatory requirements. Other countries such as Ireland, Germany and the Netherlands, along with several state jurisdictions in the US, are also considering regulating access to varying degrees.

Despite this movement towards regulated access, various countries still maintain prohibitions in relation to some types of online gambling including the United States (at the federal level), Germany, the Netherlands, New Zealand, China, Japan and Thailand.

A number of measures are utilised by countries both to enforce prohibitions on online gambling and to support their regulated access frameworks. These measures are enforced at various points in regulatory systems—for example, by a legislated gambling regulator or third party service providers such as financial institutions. The operation and effectiveness of some of these key measures is discussed below.

### ***Financial restrictions***

The blocking of financial transactions to online gambling providers is seen as a possible mechanism for enforcing restrictions on online gambling. In recent years, several countries have introduced legislation to do so. Such measures are currently used by the United States, France and Norway, and may be introduced by Denmark this year.

In the United States, banks and credit card companies are restricted from processing transactions for internet gambling sites. It is illegal for internet gambling providers to accept money from potential gamblers in the United States.

In France, the gambling regulator can order the freezing of transactions relating to bank accounts identified as belonging to unlicensed operators.

In Norway, payments from Norwegian cards to unlicensed online gambling operators are blocked. The Norwegian Gaming Authority may also order the refusal of transactions to and from particular bank accounts.

The effectiveness of these measures is yet to be properly established<sup>19</sup>. In some cases such measures have been found to be expensive and resource intensive, with a number of methods to bypass the controls reducing their effectiveness. Online gambling transactions are often difficult to

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<sup>19</sup> Gambling Compliance, 'Scrutiny Shows Mixed Results For Norway's Payments Ban' (18 February 2011). Retrieved on 3 August 2011 from [www.gamblingcompliance.com/node/45943](http://www.gamblingcompliance.com/node/45943)

identify, with gambling providers deliberately disguising payments to avoid detection. Consumers can also utilise offshore payment processors to avoid detection.

### ***Blocking access to sites***

Blocking of online gambling websites by internet service providers (ISPs) is another option that is used by some countries. Such measures are currently utilised to support prohibition in China and Thailand, and to support regulated access in France, Italy, and Denmark (to be introduced in 2011).

In France, courts can direct ISPs to block unlicensed online gambling operators and fine those that do not comply. French ISPs have publically noted their dissatisfaction with these laws. In Italy, ISPs are required to block unlicensed gambling websites. ISPs can be fined if they fail to block unlicensed sites. In Thailand, ISPs are required to block all gambling websites. Failure to block the list of gambling websites can lead to termination of an ISP's operating licence.

### ***Criminal Sanctions***

A number of countries (including Australia) impose criminal sanctions for the provision of certain online gambling services, and in some countries (for example, China) it is illegal for their citizens to access such services. However, due to jurisdictional issues and difficulties monitoring online gambling offences and gathering evidence, such laws are often difficult to enforce.

### ***Licensing Agreements***

Countries also use licensing frameworks to regulate access to online gambling services. In some instances, only domestic services are licensed and able to offer services to citizens, while other countries allow overseas-based services to offer licensed services. Two examples are outlined in Box 1.

## **United Kingdom**

Commercial gambling in the United Kingdom is regulated under the Gambling Act 2005 and the operation of gambling services is subject to certain licence conditions and codes of practice.

The Gambling Commission was established under the Act and is an independent non-departmental public body responsible for issuing operating licences to organisations and individuals who are providing facilities for gambling.

The United Kingdom government recently announced plans to alter its licensing framework so that all gambling operators selling into the British market—whether based in the United Kingdom or abroad—will have to obtain a licence from the Gambling Commission and adhere to the same regulatory standards as United Kingdom-based operators. The changes will mean that ‘remote gambling’ (that is, gambling via the internet, telephone or any other kind of electronic or other technology for facilitating communication) will be regulated onshore rather than in another country. Transitional licences will be available to operators already licensed in trusted jurisdictions so that disruption is minimised.

Licence holders who are not compliant risk regulatory action by the Gambling Commission. The commission has a range of powers that it may exercise following a review of the performance of licence holders against the terms of their licence including:

- issuing a warning to a licence holder
- attaching an additional condition to a licence
- removing or amending a condition to a licence
- suspending a licence at the outset, or following a review
- revoking a licence
- imposing a financial penalty following breach of a licence condition.

## **Malta**

Following the enactment of the *Lotteries and Other Games Act 2001*, the Lotteries and Gaming Authority (LGA) was established to govern all gaming activities in Malta, including remote gaming. The LGA seeks to ‘regulate competently the various sectors of the lotteries and gaming industry that fall under the Authority by ensuring gaming is fair and transparent to the players, preventing crime, corruption and money laundering and by protecting minor and vulnerable players.’

The Remote Gaming Regulations outline requirements for the granting of licences for remote gambling, while a series of technical specifications outline the detailed requirements of the procedures, technical systems and application of every specific method of carrying a game.

Licensees are expected to operate in compliance with the Act and the Remote Gaming Regulations, as well as anti-money laundering, electronic commerce and other relevant legislation. In order to gain a licence, the core part of an online gambling service must be located in Malta. Licences are granted for a period of five years and may be renewed thereafter for periods of five years.

Box 1. Overview of licensing arrangements in the United Kingdom and Malta<sup>20, 21, 22, 23</sup>

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<sup>20</sup> Department for Culture, Media and Sport, Gambling Act 2005. Retrieved on 4 August 2011 from [www.culture.gov.uk/what\\_we\\_do/gambling\\_and\\_racing/3305.aspx](http://www.culture.gov.uk/what_we_do/gambling_and_racing/3305.aspx)

## ***International agreements***

Some countries that regulate access to online gambling are exploring the possibility of entering into agreements to assist with this regulation. For example, the respective regulators in France and Italy have signed a memorandum of understanding to formalise information sharing and discuss common issues. The regulators will seek to work together on regulatory issues, the control of legal operators and illegal sites, as well as fraud and consumer safety.

The increasing number of countries permitting regulated access to licensed online gambling providers continues to diminish the prospects of international cooperation between countries that prohibit online gambling to enforce their laws at a global level. Agreements between countries that allow regulated access may be more viable.

### ***Questions:***

- What international approaches to online gambling are most effective?
- What (if any) international approaches to online gambling would most suit an Australian context?

## **The possible impacts of regulated access to services currently prohibited under the IGA**

The overall aim of the IGA is to limit potential problem gambling in Australia associated with interactive gambling services.<sup>24</sup> However, Australian consumers are currently able to access and are accessing a wide range of overseas-based interactive gambling services that are not regulated under Australian laws and may not possess appropriate harm minimisation measures to limit problem gambling. In addition to options to better enforce the restrictions on access to certain interactive gambling services, the review will also consider the social, tax, jurisdictional and enforcement aspects of removing certain prohibitions in the IGA and allowing Australian consumers strongly regulated access to interactive gambling services operated by licensed providers (both in Australia and overseas), including options for strong harm minimisation and probity measures.

Comment is invited on the relevant impacts of regulated access to interactive gambling services, which may include matters such as the demand for welfare and other support services.

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<sup>21</sup> The Minister for Tourism and Heritage (John Penrose), Written Ministerial Statement on Remote Gambling Policy Proposals. Retrieved on 4 August 2011 from [www.culture.gov.uk/news/ministers\\_speeches/8293.aspx](http://www.culture.gov.uk/news/ministers_speeches/8293.aspx)

<sup>22</sup> Lotteries and Gaming Authority, About Us. Retrieved on 4 August 2011 from [www.lga.org.mt/lga/content.aspx?id=85487](http://www.lga.org.mt/lga/content.aspx?id=85487)

<sup>23</sup> Lotteries and Gaming Authority, Remote Gaming. Retrieved on 4 August 2011 from [www.lga.org.mt/lga/content.aspx?id=86949](http://www.lga.org.mt/lga/content.aspx?id=86949)

<sup>24</sup> *Ibid.* 1

### ***The social impact of online gambling arising from a regulated approach***

At present there is little solid data on the impact of online gambling in Australia, although there have been small-scale research projects of note.

An exploratory study conducted by the Gambling Support Program (GSP) in Tasmania's Department of Health and Human Services sought to investigate online gambling and observe indications of problem gambling amongst students at the University of Tasmania<sup>25</sup>. The study found that the number of students participating in online gambling was at least more than double the estimate made in 2008. Approximately 25 per cent of this sample was defined as problem gamblers or at moderate-risk of having gambling problems. Being both a regular online and venue gambler appears to be a risk factor. Following the study, the GSP made a number of policy recommendations, including:

- increasing community education around online gambling
- incorporating education about online gambling in programs for adolescents
- raising awareness amongst university services
- monitoring participation of online gambling
- screening for online gambling problems at gambling service providers.

In addition, the GSP also made recommendations regarding future research on the issue, including:

- conducting an updated prevalence study on both students and the general population
- careful definition of 'online gamblers' to distinguish between recreational gamblers and regular gamblers.

Research projects are also currently being undertaken by Dr Sally Gainsbury and Professor Alex Blaszczynski to gain an understanding of the online gambling behaviour of Australians<sup>26</sup>. One study is using an online survey to investigate gambling involvement, knowledge and attitudes about gambling, problem gambling and specific use of internet gambling and related problems. A separate, large-scale national research study will use a range of information gathering methods to examine interactive gambling behaviour, preferences, and motivations; how people transition from land based to interactive gambling; demographic profiles of interactive gamblers; the current prevalence of interactive gambling in Australia; and the extent to which interactive gambling contributes to problem gambling and help-seeking behaviours of interactive gamblers.

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<sup>25</sup> Gambling Support Program—Tasmanian Department of Health and Human Services (2010), 'An Exploratory Investigation of Online Gambling Amongst University Students in Tasmania'. Retrieved on 3 August 2011 from [www.dhhs.tas.gov.au/\\_\\_data/assets/pdf\\_file/0010/75961/Attachment\\_1\\_online\\_gambling\\_study\\_FullReport.pdf](http://www.dhhs.tas.gov.au/__data/assets/pdf_file/0010/75961/Attachment_1_online_gambling_study_FullReport.pdf)

<sup>26</sup> *Ibid.* 6

The 2010 British Gambling Prevalence Survey aimed to provide data on participation in all forms of gambling in Great Britain, the prevalence of problem gambling, attitudes to gambling and to explore a range of associations with gambling behaviour<sup>27</sup>. The survey found that:

- 14 per cent of adults had used the internet to gamble in the past year (including buying lottery tickets online, betting online, playing casino games, bingo or other slot machines style games and playing the football pools online)
- among those who had gambled in the past year, problem gambling prevalence was highest among those who had played poker at a pub/club (12.8 per cent) followed by those who had played online slot machine style games (9.1 per cent);
- 5.3 per cent of past year gamblers identified as problem gamblers had participated in online gambling activities (including online bets on horse races, dog races, other sports or non-sports events made with a bookmaker or betting exchange and using the internet to play lotteries—excluding the National Lottery— as well as bingo, football pools, casino games and online slot machine style games).

Wood and Williams (2009) suggest that, even if the rate of problem gambling initially increases following the removal of prohibitions on online gambling, there is evidence from land-based gambling indicating that rates will eventually stabilise and/or decrease over time<sup>28</sup>.

### **Questions**

- What are the key risks and harms of online gambling? What are the key attractions and benefits?
- If a strongly regulated approach to online gambling services is taken, what will be the social impacts? How could this be assessed?

### **Best practice probity and harm minimisation measures**

As mentioned above, GRA notes that potential increases in problem gambling caused by the introduction of regulated access could be mitigated using appropriate harm minimisation measures. The fact that online gambling services are accessed through technology and require some degree of registration by the player, means it is arguably relatively easy to build in certain harm minimisation measures. This is already the case with major providers of online wagering services which provide some forms of harm minimisation. Some measures, such as self-exclusion, precommitment and age-verification, are already utilised by Australian-based providers of permitted online sports wagering services. In addition, as GRA notes technologies also exist to monitor consumers and advise them online regarding the status of their account, the amount of time they have spent, and to assist them in maintaining control of their gambling behaviours.

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<sup>27</sup> UK Gambling Commission, British Gambling Prevalence Survey 2010. Retrieved on 3 August 2011 from [www.gamblingcommission.gov.uk/PDF/British%20Gambling%20Prevalence%20Survey%202010.pdf](http://www.gamblingcommission.gov.uk/PDF/British%20Gambling%20Prevalence%20Survey%202010.pdf)

<sup>28</sup> Wood and Williams (2009), 'Internet Gambling: Prevalence, Patterns, Problems, and Policy Options', final report prepared for the Ontario Problem Gambling Research Centre. Retrieved on 3 August 2011 from [www.uleth.ca/dspace/bitstream/handle/10133/693/2009-InternetPPPP-OPGRC.pdf?sequence=4](http://www.uleth.ca/dspace/bitstream/handle/10133/693/2009-InternetPPPP-OPGRC.pdf?sequence=4)

Research by the Ontario Problem Gambling Research Centre suggests that a treatment involving a self-administered questionnaire on a consumer's gambling behaviour can reduce the amount of money spent on gambling when compared to no-treatment.<sup>29</sup>

The United Kingdom Gambling Commission's codes of practice contain social responsibility code provisions for the protection of children and other vulnerable persons, self-exclusion and other harm minimisation measures that form part of general licence conditions.

Similarly, measures to protect consumer privacy and ensure the probity of online gambling interactions are used by gambling operators. Such measures are used to demonstrate that consumers can trust the online gambling operators to provide services in a fair and reasonable manner, and that their personal and financial information is used responsibly. Such measures can be guided by relevant operating standards, and monitored by government authorities or independent bodies such as eCOGRA.

### **Questions**

- What harm minimisation measures are currently used for online gambling in Australia and overseas, and how effective are they in limiting problem gambling and supporting problem gamblers?
- Does industry have a responsibility to support harm minimisation measures, including education and counselling services?
- What probity measures are available in relation to online gambling, and how effective are they in protecting consumers?
- If a strongly regulated approach to online gambling services is taken, what consumer protection measures should be put in place? Should measures be used to monitor for problem-gambling behaviour and referral to support services?
- Do Australian gamblers value gambling services licensed in Australia more than those based overseas?

### **Governance and administration**

Traditionally, the regulation of gambling has been the responsibility of state and territory governments and, therefore, interactive gambling services that are not prohibited under the IGA are governed at the state and territory level. Under current arrangements, the ACMA considers complaints about prohibited internet gambling content, while the department considers complaints regarding the advertisement of prohibited interactive gambling services. Potential breaches are referred to the AFP and assessed against its Case Categorisation Prioritisation Model.

If certain prohibitions in the IGA were to be removed and strongly regulated access to interactive gambling services was introduced, several approaches to alter the regulatory framework would be available, including options for Commonwealth, state or shared regulation. The undertaking of

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<sup>29</sup> Cunningham et. al. (2008), 'Pilot study of a personalized feedback intervention for problem gamblers'. Retrieved on 3 August 2011 from [www.gamblingresearch.org/download.php?docid=9051](http://www.gamblingresearch.org/download.php?docid=9051)

regulatory functions such as stipulating licensing requirements, monitoring compliance, investigating complaints and enforcing breaches would need to be addressed.

As noted in the examples above, the licensing of interactive gambling providers operating in Australia would also need to be considered. For example, only Australian-based operators could offer services, or overseas-based operators could operate if they held an Australian licence. Historically, Australian licensed online gambling (that is, sports wagering) providers have been licensed by the states and territories and have been highly compliant with the provisions of the IGA, with the majority of breaches made by operators located overseas.

### ***Questions***

- What should be the governance arrangements for the interactive gambling services currently prohibited by the IGA?
- How can we work better with other countries and overseas based providers to improve regulation, enforcement and probity and harm minimisation measures?
- If a strongly-regulated approach is adopted, what form of regulation should this take?
- If a strongly-regulated approach is taken, overseas service providers that do not come within such regulation will still be capable of providing gambling services to Australians given the nature of the internet? What measures are appropriate to discouraging this?

### **Taxation**

As noted above, the revenue generated by online gambling services based overseas is currently not captured by the tax system. If regulated access was to be introduced, a significant amount of revenue could be levied from licensed operators. Careful consideration would need to be given to how this taxation would be levied (and the tax-rate used to ensure the operation of such services in Australia was attractive to business), the authority responsible for collecting the funds (for example, the Commonwealth or the states and territories) and how the revenue would be used—including to fund support services for problem gamblers and research into online gambling.

As reported early this year, Germany's proposed 16.7 per cent levy on the turnover of wagering operators was met with harsh criticism from the gambling industry<sup>30</sup>. It was suggested that the high tax rate would mean there would be little tax collected as companies would not be able to offer competitive products and would choose not to operate in the country. Similarly, the online gambling market in France has encountered challenges in attracting operators due to the business environment<sup>31</sup>.

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<sup>30</sup> Guardian.co.uk, 'Newly merged Bwin.party rocked by German betting tax proposals' (6 April 2011). Retrieved on 3 August 2011 from [www.guardian.co.uk/business/2011/apr/06/bwin-party-rocked-by-german-betting-tax](http://www.guardian.co.uk/business/2011/apr/06/bwin-party-rocked-by-german-betting-tax)

<sup>31</sup> eGaming Review, 'Online sports betting in France drops 26.5%' (12 April 2011). Retrieved on 3 August 2011 from [www.egrmagazine.com/news/1658042/online-sports-betting-in-france-drops-265.html](http://www.egrmagazine.com/news/1658042/online-sports-betting-in-france-drops-265.html)

## ***Questions***

- If a strongly-regulated approach is taken, how should licensed online gambling operators be taxed?
- Should a portion of revenue be used to fund problem-gambling support services and research?
- Should a portion of revenue be used to fund other programs?

## **Joint Select Committee on Gambling Reform**

The Joint Select Committee on Gambling Reform is currently conducting an inquiry into the prevalence of interactive and online gambling and gambling advertising.

The inquiry was initially referred to the Senate References Committee on Community Affairs on 24 June 2010. On 30 September 2010 the matter was re-referred to the Senate References Committee following the formation of the new parliament. On 28 October 2010 the Senate referred the matter to the Select Committee on Gambling Reform for consideration. The terms of reference for the committee are available at **Appendix C**.

The committee accepted submissions for the inquiry up to 30 June 2011. It is anticipated that the committee will report on its findings by November 2011.

The review of the IGA will consider any relevant findings of the committee.

## **Other issues**

The issues of match-fixing and integrity in sport are linked to the operation of the IGA, but lie outside the scope of this review. Separate work is currently being undertaken by the Office of Sport (and sporting bodies themselves) on these issues, and as such it will not be considered in the review of the IGA.

The proposed restrictions on the promotion of live odds during sports broadcasts announced at the meeting of the COAG Select Council on Gambling Reform on 27 May 2011 is similarly related, but is being addressed separately. This issue lies outside the scope of the review and will not be considered.

Submitters may wish to comment on other issues they feel relevant to the review of IGA, but not mentioned in this paper.

## Submissions

Submissions are invited from interested parties on the matters covered in this paper. Submissions are also invited to address any other relevant issues not specifically addressed in this paper.

Please provide submissions by **21 October 2011** and address them to:

Director  
Online Gambling & Regulatory Section  
Digital Economy Services Division  
Department of Broadband, Communications and the Digital Economy  
GPO Box 2154  
CANBERRA ACT 2601

Submissions may be provided via the online form available on the department's website at [www.dbcde.gov.au/igareview](http://www.dbcde.gov.au/igareview). Alternatively, please send submissions via email to [online.gambling@dbcde.gov.au](mailto:online.gambling@dbcde.gov.au). If you decide to submit by email, please include your name, organisation (if relevant) and contact details. Note that the maximum size for any email (including all attachments) is 3 MB. Please attach only files in a standard document format (such as .doc, .odt, .pdf, .rtf, .txt), or a standard image format (such as .jpg, .gif, .tif).

Further information on this review is at [www.dbcde.gov.au/igareview](http://www.dbcde.gov.au/igareview).

### **Publication of submissions**

Unless a contributor specifies otherwise, the department will publish each submission on the department's website after the public submissions period has closed. The department will not acknowledge receipt of submissions. Please note the possibility for delay in publishing submissions if a large number is received.

The department will not publish submissions that breach applicable laws, promote a product or a service, contain offensive language, or express sentiments that are likely to offend or vilify sections of the community.

Please note that the department reserves the right not to publish submissions it deems inappropriate for reasons other than those outlined above. For example, the department may choose to only publish one of a series of duplicate, identical or near-identical 'campaign-type' responses.

### **Future consultations**

Following the completion of the submissions process, the department may conduct consultations relevant to the review with submitters to clarify aspects of their submissions or to gather further information. Submitters should make clear in their submissions their preference for participating in these consultations.

## **Confidential information**

Please clearly indicate that a submission is confidential or sensitive to ensure that it is not published. However, you may choose to provide an additional version of that submission for public release.

Submitters of material marked as confidential or sensitive must understand that submissions may be released where authorised or required by law or for the purpose of parliamentary processes. The department will strive to consult submitters of confidential information before that information is provided to another body or agency. However, the department cannot guarantee that it will not release confidential information through these or other legal means.

## **Privacy**

The department is subject to the *Privacy Act 1988*. Any personal information you provide to the department through your response to this paper is used only for the purposes of the Australian Government's consultation on the IGA.

## Appendix A

### Glossary of 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	Broadly, the IGA permits an interactive gambling service advertisement to be broadcast, datacast or published if:  (a) the advertisement is broadcast, datacast or published as an accidental or incidental accompaniment to the broadcasting, datacasting or publication of other matter, and  (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).
Ball-by-ball/micro wagering	A form of continuous wagering whereby the bettor is able to wager on a contingency or contingencies that may or may not happen within a sporting event (for example, whether or not the next serve in a tennis match will be an ace). Interactive forms of this type of gambling are specifically prohibited under the IGA (par. 8A(2)(b)).
Contingency wagering (including exotic wagering)	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).
Continuous wagering	Describes forms of wagering which enable bets to be placed repeatedly after the commencement of an event.
Financial transaction blocking	Systems used to monitor and limit financial transactions between consumers and online gambling services. For example, in the United States it is illegal for a gambling business to 'knowingly accept' payments 'in connection with the participation of another person in unlawful internet gambling'.
Gaming	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.  Interactive forms of this type of gambling are generally prohibited under the IGA (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).

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"> <li>• an internet carriage service;</li> <li>• any other listed carriage service,</li> <li>• a broadcasting service;</li> <li>• a datacasting service;</li> <li>• any other content service.</li> </ul> <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"> <li>• an interactive gambling service, or</li> <li>• interactive gambling services in general, or</li> <li>• trademarks in respect of or internet addresses or domain names that relate to an interactive gambling service, or</li> <li>• any words that are closely associated with an interactive gambling service.</li> </ul>
In-the-run / in-play/ live wagering	<p>A form of continuous wagering whereby the bettor is able to place bets after that event has begun (e.g. betting on the outcome of a football match at half time). Interactive forms of this type of gambling are specifically prohibited under the IGA (par. 8A(2)(a)).</p>
ISP filtering	<p>Technologies applied at the internet service provider 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. While the provision of some types of online gambling are prohibited by the IGA (for example, online gaming), the provision of other types are permitted (for example, online wagering prior to the start of an event).</p>

Prohibited internet gambling content	<p>Internet content that is accessed, or available for access, by an end user in the capacity of customer of a prohibited internet gambling service.</p> <p>The IGA provides that a person may make a complaint to the ACMA if the person has reason to believe that end users in Australian can access prohibited internet gambling content using an internet carriage service (s. 16).</p>
Standard telephone service	<p>A carriage service for the purpose of voice telephony (amongst other things) as outlined in the <i>Telecommunications (Consumer Protection and Service Standards) Act 1999</i> (see s. 6).</p>
Wagering	<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

### Review of the *Interactive Gambling Act 2001*—Terms of reference

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 on 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.

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 on Gambling Reform reporting by the end of 2011.

## Appendix C

### Joint Select Committee on Gambling Reform—Inquiry into interactive and online gambling and gambling advertising

#### Terms of Reference<sup>32</sup>

The prevalence of interactive and online gambling in Australia and the adequacy of the Interactive Gambling Act 2001 to effectively deal with its social and economic impacts, with particular reference to:

- (a) the recent growth in interactive sports betting and the changes in online wagering due to new technologies;
- (b) the development of new technologies, including mobile phones, smartphones and interactive television, that increase the risk and incidence of problem gambling;
- (c) the relative regulatory frameworks of online and non-online gambling;
- (d) inducements to bet on sporting events online;
- (e) the risk of match-fixing in sports as a result of the types of bets available online, and whether certain types of bets should be prohibited, such as spot-betting in sports which may expose sports to corruption;
- (f) the impact of betting exchanges, including the ability to bet on losing outcomes;
- (g) the implications of betting on political events, particularly election outcomes;
- (h) appropriate regulation, including codes of disclosure, for persons betting on events over which they have some participation or special knowledge, including match-fixing of sporting events;  
and
- (i) any other related matters.

Under terms of reference (a), (b), (d) and (i) the committee has decided to include gambling advertising as a specific area of inquiry. The committee is interested in views on: the level of gambling advertising; the display of betting odds at venues and during match broadcasts; commentators referring to the odds; and the general impact of gambling advertising on sport.

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<sup>32</sup> Joint Select Committee on Gambling Reform, Inquiry into interactive and online gambling and gambling advertising—Terms of Reference. Retrieved on 4 August 2011 from [www.aph.gov.au/Senate/committee/gamblingreform\\_ctte/interactive\\_online\\_gambling\\_advertising/tor.htm](http://www.aph.gov.au/Senate/committee/gamblingreform_ctte/interactive_online_gambling_advertising/tor.htm)