

Chapter 1

Introduction

1.1 On 10 November 2016, the Senate referred the provisions of the Interactive Gambling Amendment Bill 2016 to the Senate Environment and Communications Legislation Committee for inquiry and report by 30 November 2016.¹

Overview and purpose of the bill

1.2 The bill contains proposed amendments to the *Interactive Gambling Act 2001* (IGA), the *Australian Communications and Media Authority Act 2005* (ACMA Act) and the regulations made under the IGA. The proposed amendments are designed to clarify the law regarding illegal offshore gambling and strengthen the enforcement mechanisms under the IGA and represent the first stage of the Australian government's process to implement recommendations of the 2015 *Review of the impact of illegal offshore wagering* (the Review).²

1.3 The minister's second reading speech on the bill explained that the Review found 'that the amount of money being spent on illegal wagering services could be as high as \$400 million annually with a further \$100 million in lost taxation revenue and product fees'. The minister made the following observations:

Offshore gambling has detrimental effects on the Australian wagering, racing and sporting industries, problem and at-risk gamblers, consumers and government. Offshore gambling operators do not pay Australian taxes, racing or sporting fees; they do not share information regarding suspicious betting activity with law enforcement or sporting bodies, which risks the integrity of Australian sport; they offer gambling services prohibited under Australian law; they can be used for money laundering and other criminal activities; and they provide minimal to no harm minimisation and consumer protection controls, which poses a threat to problem and at-risk gamblers.³

1.4 The IGA currently provides that providing an interactive gambling service to customers in Australia is an offence, although a range of services are excluded, such as telephone betting services.⁴ However, there is uncertainty around the legality of services under the IGA and enforcement has been minimal, with no prosecutions since the legislation was enacted in 2001 'despite a considerable number of complaints

1 *Journals of the Senate*, 10 November 2016, p. 448.

2 The Hon Alan Tudge MP, Minister for Human Services, *Proof House of Representatives Hansard*, 10 November 2016, p. 1. The review is also known as the 'O'Farrell Review', named after its lead reviewer, the Hon Barry O'Farrell.

3 The Hon Alan Tudge MP, *Proof House of Representatives Hansard*, 10 November 2016, p. 1.

4 *Interactive Gambling Act 2001*, ss. 5(3) and 15.

made by Australians in relation to illegal online gambling services'.⁵ Consequently, the minister explained that stakeholders consider 'that offshore operators ignore the provisions of the IGA'. The minister continued:

Criminal prosecution is considered likely to be unsuccessful or ineffective due to the competing priorities of the Australian Federal Police, uncertainty around the legality of services under the...[IGA], evidence requirements and the offshore location of gambling operators'.⁶

1.5 The minister further explained that the Review cited research that found interactive gamblers are more likely to be problem gamblers than other gamblers, with 2.7 per cent of interactive gamblers being problem gamblers, compared to 0.9 per cent of all gamblers.⁷

1.6 The amendments in the bill relate to the government's response to recommendations 3 and 17 of the Review. In response to those recommendations, the government agreed to 'clarify the legality of services and strengthen the enforcement of the IGA including providing greater powers to the Australian Communications and Media Authority (the ACMA)'.⁸ The bill also contains disruption and deterrent measures.

1.7 Specifically, the bill would:

- (a) clarify that it is illegal for overseas gambling companies to offer gambling products to Australians unless the person or company holds a licence issued by a state or territory;
- (b) introduce a new civil penalty and infringement notice regime to be administered by the ACMA;
- (c) prohibit 'click-to-call' in-play betting services, which are 'services where a customer can place a bet during a sporting event without speaking to a human operator' (that is, a service that enables a voice call to be made online using a recorded or synthetic voice)—the bill would require that dealings with customers to be wholly by way of spoken conversations between individuals (or an equivalent for a customer with a disability);⁹

5 The Hon Alan Tudge MP, *Proof House of Representatives Hansard*, 10 November 2016, p. 2.

6 The Hon Alan Tudge MP, *Proof House of Representatives Hansard*, 10 November 2016, p. 2.

7 The Hon Alan Tudge MP, *Proof House of Representatives Hansard*, 10 November 2016, pp. 1–2. See B O'Farrell, *Review of illegal offshore wagering: Report to the Ministers for Social Services and the Minister for Communication and the Arts*, December 2015, p. 38.

8 Explanatory Memorandum (EM), p. 1.

9 EM, pp. 4, 6. In his second reading speech, the minister stated that Australian licensed wagering operators began offering 'click to call' in-play betting services in 2015. Although the ACMA assessed that these services are 'potentially a prohibited interactive gambling service', the Australian Federal Police 'declined to investigate due to competing priorities and ambiguity around the legality of these services under the...[IGA]'. The Hon Alan Tudge MP, *Proof House of Representatives Hansard*, 10 November 2016, p. 2.

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- (d) amend the complaint handling process by providing that the ACMA is responsible for all stages of the complaint handling process, with the current mandatory requirements for the ACMA to refer matters to an Australian police force to be removed;
 - (e) enable the minister to determine by legislative instrument that, for the purposes of the IGA, a specific thing is, or is not, a 'sporting event';
 - (f) require the ACMA to maintain a register of eligible regulated interactive gambling services to 'to raise awareness among Australian customers of interactive gambling services that should be avoided, as evidenced by their non-inclusion on the register';¹⁰
 - (g) introduce measures relating to illegal offshore gambling activity that would allow the ACMA to disclose information obtained through the exercise of its powers under Parts 3, 4 and 5 of the IGA to the Department of Immigration and Border Protection¹¹ and foreign regulators; and
 - (h) remove the requirement for a report to be prepared and tabled in Parliament each calendar year on contraventions of Part 7A of the IGA—the EM advised that 'this information will be included in the ACMA's annual report, which is also tabled in Parliament'.¹²

1.8 To clarify that the provision of regulated interactive gambling services by unlicensed operators is prohibited (see paragraph 1.7(a) above), the bill proposes that two types of interactive gambling services would be recognised in the IGA:

- 'prohibited interactive gambling services', which would replace the term 'interactive gambling service' that is currently used in the IGA; and
- 'regulated interactive gambling services'.¹³

1.9 Following these amendments, the IGA would stipulate that a person is prohibited from providing regulated interactive gambling services to Australians unless the person holds a licence under the law of an Australian state or territory. An offence and civil penalty would exist for contraventions of this provision.

1.10 It is proposed that the amendments in the bill would commence 28 days after Royal Assent.

10 EM, p. 5.

11 The EM noted that these proposed amendments will allow the ACMA to disclose 'the names of directors or principals of offending gambling services so they may be able to be placed on the Movement Alert List, and also so any travel to Australia may be able to be disrupted'. EM, p. 2; schedule 1, items 1, 3 and 5.

12 EM, p. 73.

13 Together, these terms are referred to as 'designated interactive gambling services'.

Conduct of the inquiry

1.11 In accordance with its usual practice, the committee advertised the inquiry on its website and wrote to relevant individuals and organisations inviting submissions. The date for receipt of submissions was 21 November 2016.

1.12 The committee received 27 submissions, which are listed at Appendix 1. Form letters from 13 individuals were also received. The public submissions are available on the committee's website at www.aph.gov.au/senate_ec.

1.13 The committee also conducted a public hearing in Canberra on 28 November 2016. A list of the witnesses who gave evidence at that hearing is at Appendix 2.

1.14 The committee thanks all of the individuals and organisations that contributed to the inquiry.

Reports of other committees

1.15 When examining a bill or draft bill, the committee takes into account any relevant comments published by the Senate Standing Committee for the Scrutiny of Bills. The Scrutiny of Bills Committee assesses legislative proposals against a set of accountability standards that focus on the effect of proposed legislation on individual rights, liberties and obligations, and on parliamentary propriety.

1.16 In its *Alert Digest No. 9 of 2016*, the Scrutiny of Bills Committee stated that it had no comment on the bill.¹⁴

Scope and structure of the report

1.17 This report comprises two chapters. The next chapter outlines the principal issues raised in submissions and provides the committee's findings.

1.18 As noted above, the committee conducted a public hearing on 28 November 2016. The public hearing enabled committee members to seek clarification of aspects of the arguments made by stakeholders and otherwise informed the committee's deliberations. However, the reporting deadline limited the extent to which the evidence taken during the public hearing can be directly cited in this report. Accordingly, the report focuses on the evidence received in submissions.

14 Senate Standing Committee for the Scrutiny of Bills, *Alert digest*, no. 9 of 2016, November 2016, p. 4.