

Chapter 1

Introduction and background

Referral

1.1 The Interactive Gambling Amendment (Sports Betting Reform) Bill 2015 (the bill) was initially referred to the Senate Environment and Communications Legislation Committee (the committee) by the Senate Selection of Bills Committee on 26 November 2015 for inquiry and report by 12 May 2016.¹

1.2 On 21 March 2016, the Governor-General issued a Proclamation proroguing the Parliament from 5 pm on Friday, 15 April 2016, until 9.30 am on Monday 18 April 2016. One consequence of prorogation is that all bills on the notice papers of the Senate and House of Representatives lapse. On 19 April 2016, the bill was restored to the Senate *Notice Paper*.²

1.3 On 8 May 2016, the Governor-General issued a proclamation dissolving the Senate and the House of Representatives from 9 am on 9 May 2016 for a general election on 2 July 2016. As a result of the dissolution of the Senate, the committee ceased to exist and the inquiry lapsed.

1.4 The 45th Parliament commenced on 30 August 2016 and members of this committee were appointed on 1 September 2016. The bill was restored to the Senate *Notice Paper* on 31 August 2016.³ On 15 September 2016, the Senate, on the recommendation of the Selection of Bills Committee, referred the bill for inquiry and report by 30 November 2016.⁴ The report tabling date was subsequently extended to 6 December 2016, to 28 February 2017 and to 29 March 2017.⁵

Conduct of inquiry

1.5 In the 44th Parliament, the committee received 22 submissions, which are listed at Appendix 1. In the 45th Parliament the committee received one additional submission. This is also listed at Appendix 1. The public submissions are also available on the committee's website at www.aph.gov.au/senate_ec.

1 Senate Selection of Bills Committee, *Report No. 15 of 2015*, 26 November 2015, Appendix 1; and *Journals of the Senate*, 2013–15, No. 130, 26 November 2015, p. 3493.

2 *Journals of the Senate*, 2013–16, No. 150, 19 April 2016, p. 4141.

3 *Journals of the Senate*, 2016, No. 2, 31 August 2016, p. 79.

4 *Journals of the Senate*, 2016, No. 3, 1 September 2016, p. 92.

5 *Journals of the Senate*, 2016, No. 8, 10 October 2016, p. 259; *Journals of the Senate*, 2016, No. 20, 28 November 2016, p. 629; *Journals of the Senate*, 2016–17, No. 28, 14 February 2017, p. 945.

1.6 No hearings were held during the 44th Parliament for the inquiry. However, during the current Parliament, the committee held a hearing in Melbourne on 7 March 2017. The list of witnesses who appeared at the hearing is at Appendix 2.

1.7 The committee thanks those individuals and organisations that assisted with the inquiry.

Reports of other committees

1.8 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.

1.9 In an Alert Digest, the Scrutiny of Bills Committee noted that the Explanatory Memorandum did not provide any discussion of the level of penalty imposed for the new offences, or a justification for the civil penalty being set at the same level as the fault-based offence.⁶ The Scrutiny of Bills Committee sought further information from Senator Xenophon concerning the rationale of these matters.⁷

1.10 The Scrutiny of Bills Committee also noted that proposed subsection 61HF(1) provides that the Regulator must make a legislative instrument for a person to apply for their name to be removed from the National Self-exclusion Register (NSER).⁸ It noted that the Explanatory Memorandum indicates that the legislative instrument may require the production of a psychologist or counsellor report to satisfy that the person applying for removal from the NSER no longer exhibits signs of having a gambling problem.⁹ The Scrutiny of Bills Committee noted:

The breadth of the power, including the scope for the inclusion of significant requirements before removal from the register, indicates the potential for the legislative instrument to include matters more suitable for parliamentary enactment. The scrutiny problem is heightened because requirements for seeking removal of a person's name could change between the time a person joins the register and the time at which they seek to be removed from it.¹⁰

6 Senate Standing Committee for the Scrutiny of Bills, *Alert Digest*, No. 14 of 2015, 2 December 2015, p. 13.

7 Senate Standing Committee for the Scrutiny of Bills, *Alert Digest*, No. 14 of 2015, 2 December 2015, p. 13.

8 Senate Standing Committee for the Scrutiny of Bills, *Alert Digest*, No. 14 of 2015, 2 December 2015, p. 14.

9 Senate Standing Committee for the Scrutiny of Bills, *Alert Digest*, No. 14 of 2015, 2 December 2015, p. 14.

10 Senate Standing Committee for the Scrutiny of Bills, *Alert Digest*, No. 14 of 2015, 2 December 2015, p. 14.

1.11 Accordingly, the Scrutiny of Bills Committee sought further advice from Senator Xenophon in relation to the following matters:

- why requirements to be imposed prior to the application for removal being acceded to are appropriately contained in a legislative instrument (rather than being included in primary legislation) given that they may impose requirements that limit rights and liberties of a person;
- whether a person can insist on removal without meeting substantive requirements;
- whether a determination made under this section will be disallowable; and
- whether consideration has been given to alternative ways in which to achieve the desired outcome without inappropriate delegation of legislative power.¹¹

1.12 The committee notes that, at the date of writing this report, Senator Xenophon has not provided a response to the concerns raised by the Scrutiny of Bills Committee.

Background

1.13 Gambling is an established part of Australian society. The gambling industry provides some benefits to the community, by investing in the sport, entertainment and tourism sectors, and the significant taxation revenue it generates for governments. However, gambling also causes harm to individuals, families and communities in the form of financial losses, mental health problems and associated social problems, such as relationship breakdown.¹²

1.14 There continues to be public debate in Australia concerning how the gambling industry should be regulated. Advertising, particularly sponsorship of sporting events and associated advertising has been debated. More recently, 'online in-play betting'—placing live bets on sports online—has been controversial.

Reviews of gambling related issues

1.15 In recent years, matters and policies related to gambling have been subject to several reviews and inquiries. In 2010, the Productivity Commission completed its review of gambling issues.¹³ Between 2011 and 2013, the Joint Select Committee on

11 Senate Standing Committee for the Scrutiny of Bills, *Alert Digest*, No. 14 of 2015, 2 December 2015, pp. 14–15.

12 Australian Psychological Society, *Submission 4*, p. 4.

13 Productivity Commission, *Gambling*, Report No. 50, 26 February 2010.

Gambling Reform completed 11 inquiries on gambling, including on interactive and online gambling and gambling advertising.¹⁴

1.16 In 2012, the Department of Broadband, Communications and the Digital Economy (DBCDE) undertook a review of the *Interactive Gambling Act 2001* (Cth) (IGA).¹⁵ The review found that the IGA was making only a minor contribution to reducing harm to problem gamblers and to those at risk of becoming problem gamblers. The review went on to comment that 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'.¹⁶

1.17 The DBCDE review made recommendations in relation to harm minimisation and consumer protection, deterrence and enforcement, education and awareness, advertising and promotion, online gambling and online wagering, online gambling services aimed at children, and fantasy sports.

1.18 In 2015, the then Minister for Social Services announced a 'review of illegal offshore wagering to investigate methods to strengthen enforcement of the *Interactive Gambling Act 2001*...and ensure Australians are protected from illegal operators' to be undertaken by the former New South Wales premier, the Hon Barry O'Farrell.¹⁷ The O'Farrell review examined four key areas:

- the economic impacts of illegal offshore wagering and associated financial transactions on legitimate Australian wagering businesses, including size of the illegal industry, growth, organisation and interrelationships with other criminal industries and networks;
- international regulatory regimes or other measures that could work in the Australian context;
- what other technological and legislative options are available to mitigate the costs of illegal offshore wagering; and
- the efficacy of approaches to protect the consumer—including warnings, information resources, public information campaigns and

14 Parliamentary Joint Select Committee on Gambling Reform, *Interactive and Online Gambling and Gambling Advertising Interactive Gambling and Broadcasting Amendment, Second Report*, 2011.

15 Department of Broadband, Communications and the Digital Economy (DBCDE), *Review of the Interactive Gambling Act 2001, Final Report*, 2012. DBCDE is now known as the Department of Communications and the Arts.

16 DBCDE, *Review of the Interactive Gambling Act 2001, Final Report*, 2012, p. 6.

17 Department of Social Services (DSS), *Review of illegal offshore wagering* <https://engage.dss.gov.au/review-impact-of-illegal-offshore-wagering/>.

any other measures, regulatory or otherwise, that could mitigate the risk of negative social impacts on consumers.¹⁸

1.19 The consultation period for this review closed on 15 November 2015 and the report was completed and provided to government on 18 December 2015. The government's response to the O'Farrell review was released on 26 April 2016. The government accepted in full or in principle 18 of the O'Farrell review's 19 recommendations.¹⁹

Interactive Gambling Amendment Bill 2016

1.20 On 10 November 2016, the government introduced the Interactive Gambling Amendment Bill 2016 (the government bill) in the House of Representatives. The government bill aimed to implement the first stage of its response to the O'Farrell review.²⁰ On the recommendation of the Selection of Bills Committee, the government bill was referred to the committee which reported on 30 November 2016.²¹

1.21 The third reading of the government bill was agreed to by the House of Representatives on 8 February 2017 and it was introduced in the Senate the following day. Amendments to the government bill were proposed, including by the Nick Xenophon Team. These amendments replicated the provisions of the Interactive Gambling Amendment (Sports Betting Reform) Bill 2015.

1.22 On 20 March 2017, the Senate agreed to seven amendments to the government bill proposed by the Nick Xenophon Team related to the banning of the provision or offering of credit by 'restricted wagering services' (proposed sections 61G and 61GA).²² No further amendments were agreed to. On 21 March 2017, the government bill was agreed to by the Senate.²³ The government bill, with amendments, has been returned to the House of Representatives for its agreement.

18 DSS, *Impact of illegal offshore wagering* <https://engage.dss.gov.au/review-impact-of-illegal-offshore-wagering/>

19 *Government Response to the 2015 Review of the Impact of Illegal Offshore Wagering*, April 2016
https://www.dss.gov.au/sites/default/files/documents/04_2016/government_response_review_illegal_offshore_wagering.pdf (accessed 28 February 2017).

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

21 Environment and Communications Legislation Committee, *Interactive Gambling Amendment Bill 2016 [Provisions]*, November 2016.

22 *Journals of the Senate*, 2016–17, No. 31, 20 March 2017, pp. 1062–64.

23 *Journals of the Senate*, 2016–17, No. 32, 21 March 2017, p. 1092.

Purpose and overview of the bill

1.23 The purpose of the bill is to amend the IGA to implement 'harm minimisation measures to help individuals who are engaged in online sports betting [to] better control their gambling'.²⁴

1.24 The bill includes three components that provide for additional regulation of online sports gambling. These include restrictions on some wagering services such as those that involve inducements to gamble, establishing an Interactive Gambling Regulator, and the introduction of a NSER to allow individuals to bar themselves from accessing online sports betting.²⁵

1.25 The bill would introduce a new key term, 'restricted wagering service', which encompasses websites, datacasting, or any other content service through which individuals can place bets on sporting events (proposed amendment to section 3). It requires restricted wagering services to:

- provide prescribed training to employees who, in the course of their duties, have direct contact with individuals who use the service (proposed subsection 14A(1));
- set an annual and monthly maximum betting limit for any individual who creates an account with that service (proposed section 61GG);
- provide to individuals who use that service a statement containing the transaction history of that individual (proposed section 61GL); and
- include on their website a clear and prominent link to the NSER (proposed section 61GN).

1.26 New offences and civil penalties would apply to restricted wagering services that contravene the above provisions.

1.27 The bill would also prohibit restricted wagering services from:

- providing or offering credit to individuals that use that service (proposed section 61GA);
- inducing or attempting to induce an individual to use that service (proposed section 61GB);
- offering or accepting micro betting (proposed section 61GC);
- creating an account unless the individual is seeking to set up the account provides their personal details (proposed section 61GD);

24 Explanatory Memorandum (EM), p. 1.

25 EM, p. 15.

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- creating an account or facilitating the placing of bets for an individual if the restricted wagering service has not verified that individual's identity (proposed section 61GE);
 - opening an account or facilitating the placing of bets for an individual if the service has not submitted the individual's personal details into the NSER (proposed section 61GF);
 - creating accounts for individuals on the NSER (proposed section 61GH);
 - increasing or causing to increase an individual's betting limit unless certain criteria are met (proposed section 61GI);
 - inducing, or attempting to induce, an individual to increase their monthly or annual betting limit (proposed section 61GJ);
 - accepting a bet from an individual if that bet exceeds the monthly or annual betting limit (proposed section 61GK); and
 - disclosing the personal information of an individual who uses that service to another person for marketing of goods or services (proposed section 61GM).

1.28 The bill contains new offences and civil penalties where the above provisions have been contravened by a restricted wagering service.

1.29 Additionally, the bill would prohibit a person from broadcasting, or authorising or causing the broadcast of, a restricted wagering service advertisement in Australia during a G classified television program or during a television program that consists of coverage of a sporting event (proposed section 61GO).

1.30 The bill proposes to establish a NSER and an Interactive Gambling Regulator and provides functions and powers to the Regulator, which include:

- maintaining a register of the NSER and making changes to the register;
- monitoring, promoting, investigating and enforcing compliance of the new offences and civil penalties;
- providing advice to the Minister on the new sections of the Act; and
- developing a Code of Practice.²⁶

1.31 Lastly, the bill provides for the issuing of injunctions by the Federal Court to block transactions in relation to a prohibited internet gambling service (proposed subsection 31A).

26 Interactive Gambling Amendment (Sports Betting Reform) Bill 2015, proposed Part 7C and Part 7D.

Structure of this report

1.32 Chapter 2 discusses the prevalence of online sports betting, as well as the impact of online sports betting and the effectiveness of current harm minimisation measures.

1.33 Chapter 3 outlines current and proposed harm minimisation measures. It also outlines the key issues and concerns in relation to the Bill as raised by submitters.

1.34 Chapter 4 provides the committee's view and recommendation.