



# Parliamentary Joint Select Committee on Gambling Reform

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Second report

Interactive and online gambling and  
gambling advertising

Interactive Gambling and Broadcasting Amendment  
(Online Transactions and Other Measures) Bill 2011

December 2011

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ISBN 978-1-74229-557-2

This document was printed by the Senate Printing Unit, Parliament House, Canberra.

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# Executive Summary

This report covers a reference inquiry and a related bill inquiry. The subject matter of each is intertwined under the broad heading of online gambling. However, the report is divided into parts to clarify the distinctions between the different forms of online gambling and how they are regulated.

Online gambling is a fast growing form of gambling internationally as well as in Australia. Although online gambling is a rapidly growing market, many jurisdictions, including Australia, are still considering whether or to what degree to allow it. The primary legislation covering online gambling in Australia is the *Interactive Gambling Act 2001* (Commonwealth). It mainly covers casino-type games such as online poker with exclusions for sports betting and wagering which are largely regulated by state and territory governments.

## Part 1

Part 1 is an introduction to the key issues arising from the inquiry which are addressed from an Australian perspective in later chapters. It sets the scene for Part 2. Part 1 consists of four chapters covering issues and research on: online gambling prevalence, characteristics of online gamblers and online problem gambling rates. Part 1 also introduces the major arguments for and against prohibition of online gambling and it covers forms of regulation and prohibition used in some overseas jurisdictions.

The main focus of the committee's findings in Part 1 centre on the lack of comprehensive data and research in this emerging area at a national level on which to base findings and proposed actions. Lack of research was also raised as an issue in the committee's first inquiry into the design and implementation of a mandatory pre-commitment system for electronic gaming machines.<sup>1</sup> The committee has not yet received a government response to its first report. The committee therefore reiterates its recommendation regarding the need for a national independent research institute on gambling which would also cover national research on online gambling. In the meantime, the committee recommends that the current review of the Interactive Gambling Act (IGA), being undertaken by the Department of Broadband, Communications and the Digital Economy, commission relevant research in the local online gambling environment (see chapter seven).

## Part 2

Part 2 consists of four chapters. It covers the regulatory situation in Australia with a focus on the IGA. It looks at the effectiveness of the IGA in relation to online

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<sup>1</sup> Joint Select Committee on Gambling Reform, First report: The design and implementation of a mandatory pre-commitment system for electronic gaming machines, 6 May 2011.

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gambling services and advertising covered by the Act. The committee agreed a position on advertising covered by the IGA which involves retaining and strengthening the ban on advertising to include practices which currently are not clearly covered by the IGA such as practice sites, links to gambling sites, misleading advertising and inducements to gamble.

While the committee agreed to retain the IGA and to take steps to improve its effectiveness in relation to interactive gambling services, the committee did not agree on how to address the area where the IGA was seen to be most deficient: the ability to limit or restrict Australians accessing overseas gambling websites. These views are set out in additional comments at the end of the report.

### **Part 3**

Part 3 consists of five chapters and covers online gambling in relation to sports betting and wagering. Apart from the exceptions of 'in-play' betting online,<sup>2</sup> regulation of sports betting and its associated advertising is not covered by the IGA but by state and territory governments. Evidence received confirmed the high level of growth in this form of gambling. It also confirmed the concern in the community about the proliferation of sports betting advertising. While the committee welcomes the work underway by government and industry to reduce and control the broadcasting of live odds, it believes there should be a total ban on their promotion, underpinned by legislation.

The committee heard that the level of gambling advertising is contributing to the development of gambling problems, particularly among young men. The high level of betting promotion during sport is making it difficult for some problem gamblers to recover. When they try to return to watching sports they previously enjoyed, the promotions encourage them to gamble again.

The committee was also warned of the effects that this high level of advertising can have on children who are highly influenced by gambling advertising. This is of concern for a number of reasons. Research indicates that one of the risk factors for problem gambling is early onset: the earlier one starts gambling, the more likely they are to continue gambling, and along with that the probability of developing a gambling problem increases. Recent media programs have shown young children associating their love of sport with knowledge of betting odds.<sup>3</sup> This normalisation of gambling—the 'gambification' of sport—is a major concern for the committee. To arrest this trend, the committee has recommended measures that restrict gambling advertising beyond a ban on live odds.

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2 Betting online on the outcome of an event after it has started (e.g. an online bet on the outcome of a particular tennis match after the match has started) or betting on a discrete contingency within an event after the event has started (e.g. an online bet during a tennis match as to whether the next serve will be an ace).

3 SBS TV, 'Online gambling', *Insight*, 13 September 2011.

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While the committee recognises that regulation of advertising for sports betting currently lies with the states and territories, it believes this issue is sufficiently serious to warrant consideration of Commonwealth involvement should states and territories fail to adequately address this issue.

The committee also received evidence of practices which, in its view, do not conform with responsible gambling practices, such as offering credit to online gamblers and the existence of third party commissions or finders' fees which are not adequately transparent to the consumer. Regulation of offering credit is not consistent between jurisdictions and the regulation of third party commissions appears to be non-existent. These issues highlighted the overarching issue in regulation of sports betting which is the lack of consistency, with some jurisdictions having higher harm minimisation and consumer protection standards than others. The online environment requires regulatory consistency as it is too easy for customers to move sites at the click of a mouse/button. The challenge is for jurisdictions to come together to achieve national consistency in their regulation which does not result in a lowering of current standards but achieves appropriate harm minimisation and customer protection measures.

## **Part 4**

Part 4 consists of two chapters and covers the associated bill referred to the committee. The bill covers issues discussed in Parts 1 and 2 to do with the IGA and Part 3 on sports betting and wagering. The committee's view on the need for amendments to the *Broadcasting Services Act 1992* to restrict gambling advertising is covered in this part of the report.

As with the last inquiry, again the most powerful evidence came from individuals who have experienced problems with online gambling. The committee heard from an individual who experienced serious problems when he used an overseas casino website. He accessed the website via an advertisement on a social networking site. The advertisement mentioned making extra money, not gambling. He lost money through unauthorised transactions and he has gone through serious financial and personal difficulties while attempting to resolve the issue of unauthorised transactions through a less than responsive overseas regulator. In addition, through counselling centres such as the University of Sydney Gambling Treatment Clinic, the committee heard about the recent increase in individuals with sports betting problems using legal Australian websites. As mentioned above, these people have been particularly influenced by the proliferation of sports betting advertising which has then hindered their recovery.

These inquiries have been an opportunity for the committee to learn about relatively new forms of gambling which are entering a period of growth. Now is the time for all levels of government to learn the lessons from other forms of gambling such as the liberalisation of electronic gaming machines and to address issues of concern in the online environment early to minimise the potential for harm.

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**Mr Andrew Wilkie MP**

**Chair**

## List of acronyms and abbreviations

ACMA	Australian Communications and Media Authority
AFP	Australian Federal Police
ACC	Australian Crime Commission
ACCC	Australian Competition and Consumer Commission
AGCC	Alderney Gambling Control Commission
COAG	Council of Australian Governments
COMPPS	Coalition of Major Professional and Participation Sports
DBCDE	Commonwealth Department of Broadband, Communications and the Digital Economy
DSM-IV	Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition
eCOGRA	eCommerce and Online Gaming Regulation and Assurance
EEA	European Economic Area
EGM	Electronic Gaming Machine
FaHCSIA	Commonwealth Department of Families, Housing, Community Services and Indigenous Affairs
IGA	<i>Interactive Gambling Act 2001</i>
NTRC	Northern Territory Racing Commission
PC	Productivity Commission
PGSI	Problem Gambling Severity Index
TAB	Totalisator Agency Board
UIGEA	<i>Unlawful Internet Gambling Enforcement Act 2006 (US)</i>
VCGR	Victorian Commission for Gambling Regulation
WTO	World Trade Organization



# **Recommendations**

## **Recommendation 1**

**2.109** The committee supports the need for national research on online gambling to acquire data on which to base appropriate policy responses. As recommended in its previous report, the committee reiterates its call for a national independent research institute on gambling.

## **Recommendation 2**

**2.111** The committee recommends that the review of the *Interactive Gambling Act 2001* being conducted by the Department of Broadband, Communications and the Digital Economy commission relevant research on the local online gambling environment.

## **Recommendation 3**

**7.87** The committee recommends that the *Interactive Gambling Act 2001* (IGA) be amended to address the inconsistencies and ambiguities identified to the committee regarding prohibited interactive gambling services and any others that are identified through the review being conducted by the Department of Broadband, Communications and the Digital Economy. Specifically the IGA should be amended to capture methods of avoidance such as websites which provide links to facilitate access to prohibited interactive gambling services.

## **Recommendation 4**

**7.89** The committee recommends that following the review of the *Interactive Gambling Act 2001* by the Department of Broadband, Communications and the Digital Economy, an education campaign be developed for consumers to provide clarification of online gambling regulation and highlight the risks of harm.

## **Recommendation 5**

**8.32** The committee supports the recommendation of the Productivity Commission that the COAG Select Council on Gambling Reform should review new gambling opportunities, particularly those which appear to target youth, with a view to developing a national regulatory approach.

## **Recommendation 6**

**9.50** The committee recommends that the *Interactive Gambling Act 2001* be amended to address the inconsistencies and ambiguities identified to the committee regarding the advertising of prohibited interactive gambling services, and any others that are identified through the review being conducted by the Department of Broadband, Communications and the Digital Economy. Specifically it should be amended to capture methods of avoidance such as advertisements that do not mention gambling linked to gambling websites.

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## **Recommendation 7**

**11.30** The committee recommends that the current prohibition on online 'in-play' betting should remain in place.

## **Recommendation 8**

**11.31** The committee recommends that the attractions, risks and potential harms of online 'in-play' betting be the subject of appropriate research commissioned by the current IGA review being undertaken by the Department of Broadband, Communications and the Digital Economy.

## **Recommendation 9**

**11.41** The committee recommends that through the COAG Select Council on Gambling Reform, governments, in consultation with industry, review the 90-day timeframe to verify identity when opening a betting account, with a view to reducing it to 72 hours, in order to diminish the risk of minors using the current timeframe to gamble illegally.

## **Recommendation 10**

**11.119** The committee recommends that the COAG Select Council on Gambling Reform, in consultation with the COAG Legislative and Governance Forum on Consumer Affairs, develop nationally consistent consumer protection standards for tighter controls on the practice of credit betting.

## **Recommendation 11**

**11.120** The committee recommends that the COAG Select Council on Gambling Reform, in consultation with the COAG Legislative and Governance Forum on Consumer Affairs, develop nationally consistent consumer protection standards for greater transparency around the practice of paying third party commissions by betting agencies.

## **Recommendation 12**

**12.62** The committee recommends that the COAG Select Council on Gambling Reform commission further research on the longer-term effects of gambling advertising on children, particularly in relation to the 'normalisation' of gambling during sport.

## **Recommendation 13**

**12.77** The committee recommends that the COAG Select Council on Gambling Reform work towards nationally consistent requirements for responsible gambling messages to ensure they work effectively as harm minimisation measures to counter-balance the promotion of gambling.

## **Recommendation 14**

**12.101** The committee recommends that the government legislate a total ban of the promotion of live odds both at venues and during the broadcast of a sporting event.

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## **Recommendation 15**

**12.103** The committee recommends that the work to legislate a total ban on live odds promotion also ensures that responsible gambling messages are retained as a harm minimisation measure and continue to appear as a counterpoint to other instances of gambling advertising, both in venues and during sporting broadcasts.

## **Recommendation 16**

**12.139** The committee recommends that the COAG Select Council on Gambling Reform, in consultation with Australasian Racing Ministers and the wagering industry, develop a mandatory national code of conduct for advertising by wagering providers covering:

- inducements to bet;
- credit betting and third party commissions;
- harm minimisation messages on responsible gambling; and
- other nationally consistent standards to restrict certain forms of sports betting advertising, which at a minimum, should include a ban on the display of gambling companies' logos on sporting players' uniforms and merchandise (such as children's replica sports shirts), as well as restrictions on the giveaways of free merchandise which depict betting companies' logos.

## **Recommendation 17**

**12.143** The committee recommends that, following the outcome of the Federal Court 'betbox' case, the COAG Select Council on Gambling Reform, in conjunction with regulators, investigate the potential for the growth of betting opportunities in a range of venues which have not previously offered gambling services and develop appropriate nationally consistent regulations to address it.

## **Recommendation 18**

**15.60** The committee majority recommends that consideration of the amendment to the *Interactive Gambling Act 2001* (IGA) in relation to inducements be deferred until the review of the IGA being undertaken by the Department of Broadband, Communications and the Digital Economy is completed. This would allow the amendment to be considered along with any further amendments proposed by the government arising from the review.

## **Recommendation 19**

**16.50** The committee majority recommends that the *Broadcasting Services Act 1992* be amended to prohibit gambling advertising during times when children are likely to be watching.

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**Recommendation 20**

**16.73 The committee majority recommends that the Interactive Gambling and Broadcasting Amendment (Online Transactions and Other Measures) Bill 2011 not be passed.**

# **Chapter 1**

## **Introduction and conduct of the inquiry**

### **Background to reference**

1.1 This inquiry was initially referred to the Senate Standing Committee on Community Affairs on 24 June 2010 by Senator Nick Xenophon. On 26 August 2010, the committee reported:

On 19 July 2010, the Governor-General prorogued the 42nd Parliament and dissolved the House of Representatives. After due consideration, the committee has determined that it is unable to provide a comprehensive report at this time. The committee will reconsider the issues of this inquiry in the event that it is re-referred to the committee in the new parliament.<sup>1</sup>

1.2 On 30 September 2010, the reference was revised and re-referred to the Senate Community Affairs References Committee.<sup>2</sup> On 28 October 2010, Senator Xenophon by leave moved that:

- (a) the inquiry into the prevalence of interactive and online gambling in Australia be withdrawn from the Community Affairs References Committee and be referred to the Joint Select Committee on Gambling Reform in line with the terms of reference of the committee; and
- (b) in conducting its inquiry, the Joint Select Committee on Gambling Reform have the power to consider and use the records of the Community Affairs References Committees appointed in this Parliament and in the previous Parliament relating to the inquiry.<sup>3</sup>

### **Terms of Reference**

1.3 The terms of reference directed the committee to inquire and report into:

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;

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1 Senate Community Affairs References Committee, *The prevalence of interactive and online gambling in Australia*, 26 August 2010.

2 *Journals of the Senate*, 30 September 2010, p. 111.

3 *Journals of the Senate*, 28 October 2010, p. 252. Note: The resolution of appointment for the Joint Select Committee on Gambling Reform directs the committee to inquire into and report on 'such other matters relating to gambling referred from either House', *Journals of the Senate*, 30 September 2010, pp 141–142.

- (b) the development of new technologies, including mobile phones, smart phones 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.<sup>4</sup>

1.4 Under (i) the committee also agreed to inquire into gambling advertising.

## Conduct of the inquiry

1.5 Information about the inquiry was advertised in *The Australian* newspaper and on the committee's website. The committee wrote to relevant people and organisations to notify them of the inquiry and invite submissions by 30 June 2011. The committee received 62 submissions. A list of the submissions authorised for publication by the committee is provided at Appendix 1.

## Referral of a related bill

1.6 On 20 June 2011, pursuant to the resolution of appointment of the Joint Select Committee on Gambling Reform, the Interactive Gambling and Broadcasting Amendment (Online Transactions and Other Measures) Bill 2011 was introduced in the Senate and referred to the committee for inquiry and report.<sup>5</sup>

1.7 Information about this inquiry was also advertised in *The Australian* and on the committee's website. The committee wrote to relevant people and organisations to notify them of the inquiry and to invite submissions by 15 July 2011. The committee

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4 *Journals of the Senate*, 30 September 2010, p. 111.

5 *Journals of the Senate*, 20 June 2011, p. 1037. Note: the resolution of appointment for the Joint Select Committee on Gambling Reform directs the committee to inquire into and report on 'any gambling-related legislation that has been tabled in either House, either as a first reading or exposure draft'. *Journals of the Senate*, 30 September 2010, pp 141–142.

received 16 submissions. A list of the submissions authorised for publication by the committee is provided at Appendix 2.

1.8 As the bill is related to the reference, the committee decided to consider the reference and bill together at hearings and cover both inquiries in the final report.

1.9 The committee held public hearings in Melbourne on 11 August, Canberra on 19 August and Canberra on 16 September 2011. A list of witnesses who appeared at the public hearings is at Appendix 3. Hansards from the hearings are available at: <http://www.aph.gov.au/hansard/>.

1.10 A further hearing was held on 11 October 2011 to hear from Dr Samantha Thomas and Associate Professor Colin McLeod. The hearing was conducted in-camera as the research findings had not yet been made public. The committee will release the transcript once this has occurred.

1.11 The committee also conducted a site visit to Sportsbet in order to inform committee members about the operations of online sports bookmakers.

## Acknowledgements

1.12 The committee thanks those organisations and individuals who made submissions and gave evidence at hearings. The committee also thanks Sportsbet for hosting the committee site visit on 11 August 2011.

## Terminology

### *Interactive gambling*

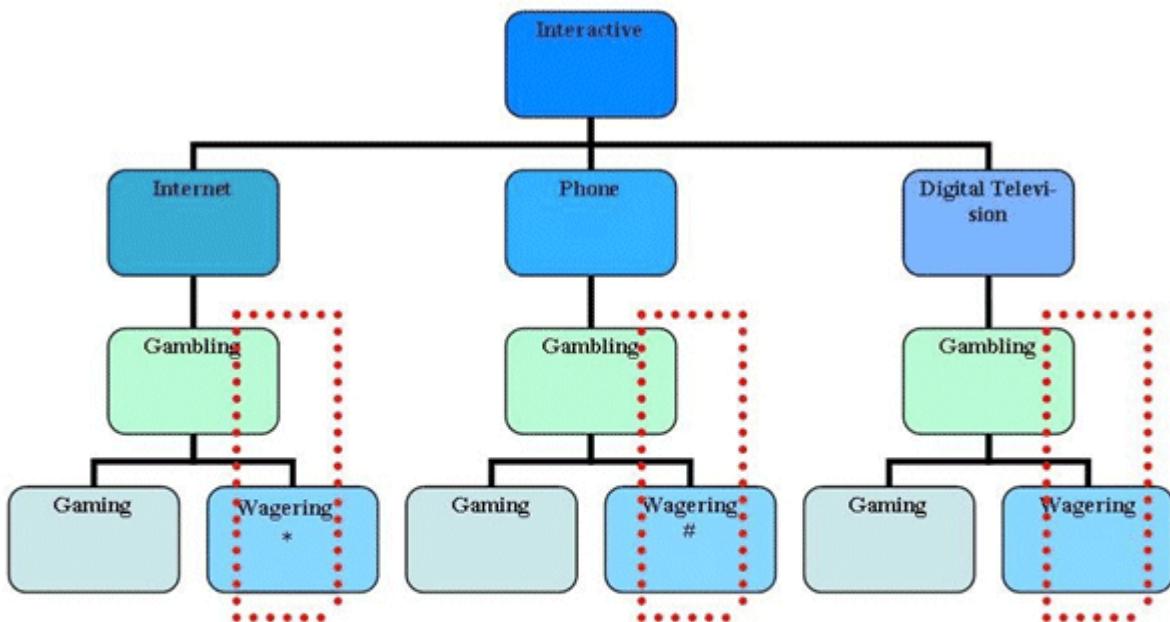
1.13 The terms online and interactive gambling are used by many interchangeably. Interactive gambling is an overarching term which can be used to refer to the collective group of communications mediums—the internet, phone and digital television—through which gambling may occur. The terminology can be confusing as the term interactive gambling can be used in this broad sense or as defined in the *Interactive Gambling Act 2001* (IGA) which covers some forms of interactive gambling but excludes others.

1.14 Under the IGA, Australian-based interactive gambling services are prohibited from being offered to individuals located in Australia. However, the IGA also provides exclusions where certain services are legally allowed to be provided in Australia. These services which are excluded, or allowed, are not defined as interactive gambling services under the IGA. They are internet wagering, phone wagering and digital television wagering. These excluded services could be considered interactive in the broader sense of the term. The figure<sup>6</sup> below attempts to

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6 Report to the Department of Families, Housing, Community Services and Indigenous Affairs by The Allen Consulting Group, *Review of current and future trends in Interactive gambling activity and regulation, Literature Review*, June 2009, p. vi.

represent the framework for defining interactive gambling (and the exemptions) under the IGA:



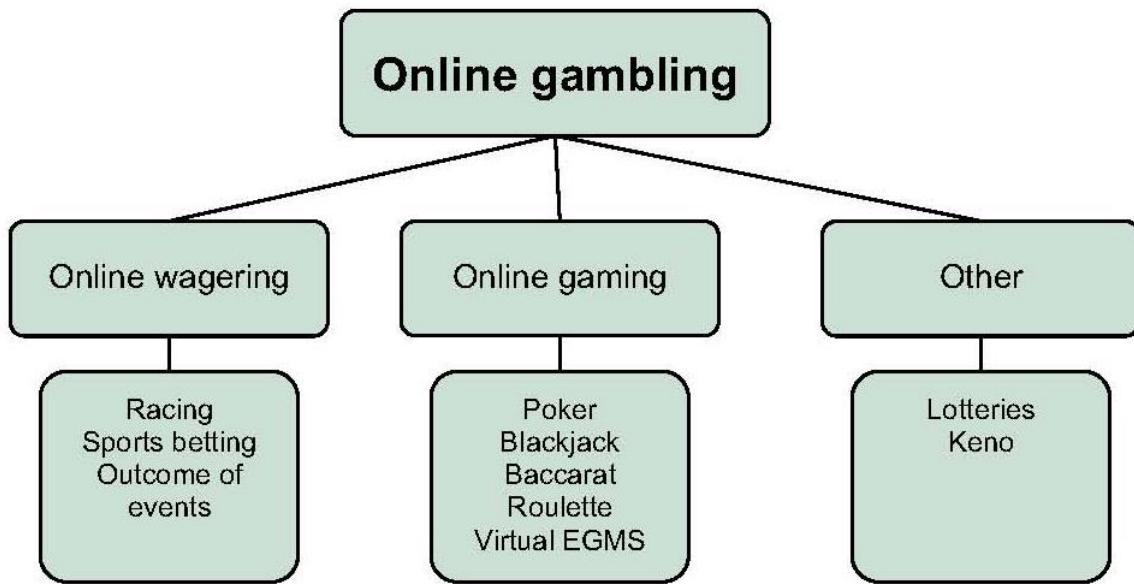
Shows services exempt under the IGA.

\* Only legal when bet has been placed before event/game has commenced.

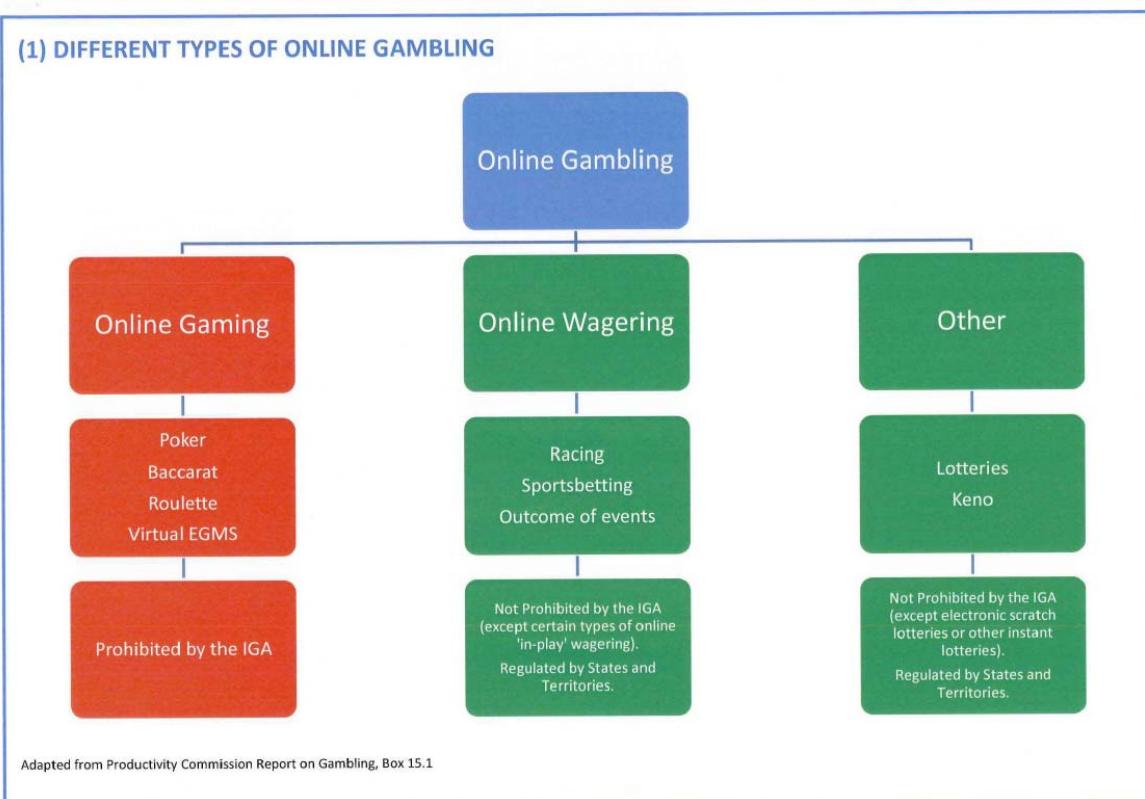
# Only legal where dealings with customers are wholly by way of voice calls made using a standard telephone service.

1.15 The Productivity Commission used online gambling as the overarching term in its 2010 report and used the following figure<sup>7</sup> to illustrate the types of online gambling:

<sup>7</sup> Productivity Commission, *Gambling*, vol. 2, Commonwealth of Australia, Canberra, 2010, p. 15.3.



1.16 The Department of Broadband, Communications and the Digital Economy adapted the Productivity Commission diagram above to clarify what is and what is not prohibited under the IGA.<sup>8</sup>



8 Department of Broadband, Communications and the Digital Economy, *Review of the Interactive Gambling Act 2001*, Discussion paper, August 2011, p. 3.

## ***Online gambling***

1.17 Online gambling refers to gambling that uses online or internet-based services. Two forms of online gambling are usually discussed, although there are others.

### ***Online wagering***

1.18 The first, online wagering, is where gamblers place a bet on an anticipated outcome via the internet. Typically bets are placed on events that include horse racing, sports matches, and election outcomes. Gamblers can bet on a variety of outcomes, for example, from picking the match winner, to picking who will kick the opening goal, to what the winning margin in an election will be. The increased availability of online wagering has also led to the emergence of new forms of wagering, such as betting exchanges.<sup>9</sup>

### ***Online gaming***

1.19 The second major form of online gambling is online gaming. This involves staking money on casino-type games that are played online, such as poker, roulette or blackjack. These types of games are interactive in nature and typically involve game play, hence the moniker online gaming, which also differentiates it from online wagering.

### ***Other***

1.20 Other forms of online gambling include keno and lotteries.<sup>10</sup> While becoming more popular, this type of online gambling has not attracted the same attention and concern as online wagering and online gaming.

### ***New technologies***

1.21 It should also be noted that while online gambling generally refers to gambling conducted over the internet via a computer, new platforms are emerging which can facilitate online gambling, such as smartphones, interactive television and even video gaming platforms. The development of these online gambling platforms is also occurring at a time when non-credit card based forms of online payment (electronic funds transfer services such as PayPal and pre-paid debit cards) are also becoming more available. The emergence of new technologies that can be used for gambling is discussed in the following chapters.

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9 A betting exchange is similar to a stock exchange except wagers/bets are traded for different prices and quantities. A betting exchange matches those who are seeking to bet that a particular outcome will occur (i.e horse X will win) with others who are seeking to place opposing wagers (i.e horse X will not win). Productivity Commission, *Gambling*, vol. 2, Commonwealth of Australia, Canberra, 2010, p. 16.6.

10 Online bingo is prohibited under the IGA.

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## Use of terminology in the report

1.22 Interactive and online gambling are used interchangeably within this report as overarching terms. More specific terminology, for example, to make a distinction between gaming (casino-type games) and wagering (sports betting and racing), is used where necessary for clarification.

### Note on references

1.23 References in this report are to individual submissions as received by the committee, not to a bound volume.

### Structure of the report

1.24 The chapters of this report are organised around the key themes which emerged during this inquiry and therefore do not directly mirror the terms of reference. Following this chapter the committee has organised its report into four parts, which contain 16 chapters.

#### *Part 1*

1.25 Part 1 (chapters two to five) is an introduction and background to the issues covered in later chapters which focus on the Australian environment. Chapter two sets the context for online gambling, the growth experienced in the industry, the attractions, the risks, and the available research on the prevalence and problem gambling rates and the need for further research. Chapter three introduces the main arguments for regulation and prohibition and chapters four and five describe the various regulatory models used in overseas jurisdictions.

#### *Part 2*

1.26 Part 2 (chapters six to nine) focuses on the current regulatory environment for online gambling in Australia under the Interactive Gambling Act (IGA). Chapter six outlines the current regulatory environment. Chapter seven considers the effectiveness of the current regulatory arrangements. Chapter eight looks at other issues raised in relation to the IGA and chapter nine considers advertising of online gambling under the IGA.

#### *Part 3*

1.27 Part 3 (chapters 10 to 14) sets out issues related to sports betting. Chapter 10 provides an overview of sports betting and wagering. Chapter 11 covers key issues in relation to sports betting and wagering online, including regulatory approaches, betting on losing outcomes, 'in-play' betting and the practice of credit betting. Chapter 12 addresses gambling advertising in relation to sports betting, including its influence on problem gambling, its growth and its regulation. Chapters 13 and 14 focus on the risk of match-fixing and corruption in Australian sport, outline the government policy response and also cover exotic betting.

***Part 4***

1.28 Part 4 (chapters 15 and 16) deals with the Interactive Gambling and Broadcasting Amendment (Online Transactions and Other Measures) Bill 2011. Chapter 15 covers the provisions related to the IGA and chapter 16 considers the provisions in relation to sports betting.

# **Part 1**

## **Introduction and background**

Part 1 is an introduction and background to the issues covered in later chapters which focus on the Australian environment. It sets the context for online gambling, the growth experienced in the industry, the attractions, the risks, and the available research on the prevalence and problem gambling rates. It introduces the key advantages and disadvantages of prohibition and it details various regulatory models used in overseas jurisdictions.



# **Chapter 2**

## **Online gambling and problem gambling research**

2.1 This chapter sets the context for online gambling, the size and growth of the industry, the attractions, the risks, and the available research on the prevalence and problem gambling rates as well as player profiles and play patterns. A common theme in submissions was the lack of research and data in this area and the need for more targeted research.

### **Global interactive gambling market**

2.2 Online gambling represents one of the fastest growing segments of the gambling industry. H2 Gambling Capital has reported that the market for global interactive gaming will grow around 42 per cent to US\$30 billion in 2012 from US\$21.2 billion in 2008: 'This is significantly faster than the 15 per cent growth that H2 forecasts for the gambling industry as a whole over the same period'.<sup>1</sup> Dr Sally Gainsbury and Professor Alex Blaszczynski noted that underlying growth is strong at around 12 per cent<sup>2</sup> and that this growth is driven by a number of factors including:

- the increased availability of cheaper and faster broadband internet access;
- increasing liberalisation of internet gambling regulations;
- marketing and promotions by providers, notably sports betting; and
- innovative product offerings and player enticements including bonuses, live betting and mobile applications.<sup>3</sup>

2.3 In June 2011, there were approximately 2,443 online casino and gambling sites and around 92 per cent of these were available to Australians.<sup>4</sup> In September 2011, 75 jurisdictions offered online gambling and 50 of those had sites that support English and accepted play from Australia.<sup>5</sup> The top ten providers are: Malta (506 sites); Netherlands Antilles (332); Gibraltar (261); Costa Rica (190); Kahnawake (Quebec) (146); UK (107); Alderney (96); Antigua and Barbuda (67); Cyprus (58); and the Isle of Man (41). The US is ranked at number 11 with 22 sites and Australia at number 15 with eight sites. Australian jurisdictions are listed separately: the Northern

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1 KPMG International, *Online Gaming: A Gamble or a Sure Bet?*, 2010, p. 2.

2 Dr Sally Gainsbury and Professor Alex Blaszczynski, *Submission 7*, p. 2.

3 Dr Sally Gainsbury and Professor Alex Blaszczynski, *Submission 7*, p. 2.

4 Dr Sally Gainsbury and Professor Alex Blaszczynski, *Submission 7*, p. 2.

5 Information available from:

<http://online.casinocity.com/jurisdictions/index.cfm?searchdata=2&sorttab=n/a&sortlist=sites&filterlist=&numperpage=25&searchall=0> (accessed 12 September 2011).

Territory is ranked at 14 with 11 sites; Victoria has six sites; New South Wales has three sites and Western Australia, the Australian Capital Territory and Tasmania each have two sites.<sup>6</sup>

### **Australian expenditure on gambling**

2.4 In 2008-09, electronic gaming machines (EGMs) in clubs and hotels accounted for \$10.5 billion or 55 per cent of gambling expenditure. Casino gaming accounted for \$3.5 billion or 18 per cent,<sup>7</sup> lotteries, pools and keno were \$2.3 billion or 12 per cent and wagering was \$2.8 billion or 15 per cent. Of the \$2.8 billion spent on wagering, \$2.6 billion or 14 per cent was spent on racing and \$0.2 billion or one per cent was spent on sports betting.<sup>8</sup> In the 'unofficial' sector, the Productivity Commission (PC) reported that expenditure could constitute around four per cent of gambling expenditure with \$790 million spent consisting of \$541 million on online casinos and \$249 million on online poker. The PC noted the difficulty of capturing online data for the 'unofficial' sector 'since these activities are illegal and therefore not captured by the tax system'.<sup>9</sup>

### **Online gambling prevalence rates**

2.5 Dr Gainsbury and Professor Blaszczynski noted that 'the empirical data supports claims that a growing minority of Australians gamble online'.<sup>10</sup> However, the exact numbers for internet gambling participation are difficult to determine as there is no national measure. Looking at rates overseas from a presentation by Dr Gainsbury in 2010, she noted prevalence rates vary from 0 to 11 per cent depending on the jurisdiction:<sup>11</sup>

- UK – 10.5 per cent;
- Norway – 6.5 per cent;
- US – 4 per cent;
- Canada – 1.6–3.6 per cent;
- Australia – 1–4 per cent;
- New Zealand – 1.3 per cent; and

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6 Information available from:  
<http://online.casinocity.com/jurisdictions/index.cfm?searchdata=2&sorttab=n/a&sortlist=sites&filterlist=&numperpage=25&searchall=0> (accessed 28 July 2011).

7 This figure can be broken down into 7 per cent or \$1.4 billion from poker machines, \$1.4 billion or 8 per cent from tables and \$0.6 billion or 3 per cent from VIPs.

8 The growth in the sports betting market is covered in chapter 10.

9 Productivity Commission, *Gambling*, vol. 1, Commonwealth of Australia, Canberra, 2010, p. 2.5.

10 Dr Sally Gainsbury and Professor Alex Blaszczynski, *Submission 7*, p. 3.

11 Note: some results outdated and not from national surveys.

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- Singapore – 1 per cent.<sup>12</sup>
- 2.6 However, Dr Gainsbury cautioned that:
- Prevalence rates gathered internationally have limited validity in Australia due to the differences in Internet gambling policy and culture. Research from jurisdictions similar to Australia, such as Canada and New Zealand are useful, but direct replication in Australia would facilitate an accurate comparison and jurisdiction-specific details. Furthermore, industry estimates may be biased as these are generally based on a limited source of data given the large number of and diversity of available sites, which limits the reliability of this information.<sup>13</sup>
- 2.7 In 2010, the PC estimated that between one and four per cent of Australians participate in interactive gambling<sup>14</sup> suggesting that internet gambling is relatively limited in the general population. However, a Roy Morgan poll conducted in 2010 found 30 per cent of individuals aged 16 and over were gambling online.<sup>15</sup> Internet gambling rates appear to be higher in samples of gamblers such as those who bet on sport:
- ...for example, 8% of individuals who bet on sports or races usually use the Internet for this purpose compared to 1.8% of the general population.<sup>16</sup>
- 2.8 Dr Gainsbury and Professor Blaszczynski pointed out that the variance in figures reflects the difficulty of obtaining precise estimates on the prevalence of online gambling, as offshore companies operate the majority of online gambling sites:
- In contrast to authorised sports betting and wagering online services and Australian terrestrial (land-based) operators, internationally based operators do not provide accurate data or report on levels of interactive participation.<sup>17</sup>
- 2.9 As a comparison, the recent British Gambling Prevalence Survey 2010, the third such national survey, found that:
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- 12 Information available from: [http://www.responsiblegambling.org/articles/Sally\\_Gainsbury.pdf](http://www.responsiblegambling.org/articles/Sally_Gainsbury.pdf) (accessed 28 July 2011).
- 13 Dr Sally Gainsbury, Response to the Productivity Commission Inquiry Report into Gambling: Online gaming and the Interactive Gambling Act, *Gambling Research* Volume 22, No 2, November 2010, p. 4.
- 14 Productivity Commission, *Gambling*, vol. 2, Commonwealth of Australia, Canberra, 2010, pp 15.15–15.16.
- 15 Dr Sally Gainsbury and Professor Alex Blaszczynski, *Submission 7*, p. 3.
- 16 Dr Sally Gainsbury, Response to the Productivity Commission Inquiry Report into Gambling: Online gaming and the Interactive Gambling Act, *Gambling Research* Volume 22, No 2, November 2010, p. 5.
- 17 Dr Sally Gainsbury and Professor Alex Blaszczynski, *Submission 7*, p. 3.

- 14 per cent of adults used the internet to gamble in the past year. This included purchasing lottery tickets online, betting online, playing casino games, bingo or other slot machines style games and playing the football pools online;
- in 2010, seven per cent of adults participated in online gambling, an increase from six per cent in 2007. The increase was greater for women;
- 17 per cent of gamblers had gambled both online and in person and only two per cent of gamblers in the past year had gambled online only; and
- the two activities which stood out as having a high proportion of online activity were casino games and betting on other sporting events. Among those who had played casino games in the past year, 39 per cent had done so online and 27 per cent of those who bet on sport reported that they had placed their bet online.<sup>18</sup>

2.10 Dr Gainsbury pointed out that some high quality research has been conducted within some states, which is informative, but 'the extent to which these can be generalised to the entire population of Australia is limited given regional differences':

Nationally representative research conducted by Roy Morgan (2010) found that 2.6% of Australians who purchase lottery tickets usually purchase these online. Subsequent analysis reveals that a higher proportion of Tasmanians (4.1%) and Victorians (5.1%) usually purchase lottery tickets online compared to individuals in New South Wales (1.5%) and Western Australia (0.5%).<sup>19</sup>

#### ***Committee view***

2.11 While exact prevalence rates for online gambling in Australia and elsewhere may be difficult to determine with precision, evidence to the committee indicated that the rates are going through a period of growth. Despite online gambling currently being less popular than other modes of gambling, these high rates of growth combined with increased advertising, particularly for sports betting, are likely to mean that online gambling will have an increasing effect in society. The committee agrees that nationally representative research is required to accurately present the prevalence rates and risks of online gambling in Australia. The need for research is further discussed below. While acknowledging the difficulties of measuring online problem gambling and the lack of definitive research in the area, major findings to date are informative and indicative and are outlined below.

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18 *British Gambling Prevalence Survey*, 2010, prepared by the National Centre for Social Research for The Gambling Commission, p. 10. See also Gambling Commission (United Kingdom) *Submission 33*, pp 8–9.

19 Dr Sally Gainsbury, Response to the Productivity Commission Inquiry Report into Gambling: Online gaming and the Interactive Gambling Act, *Gambling Research* Volume 22, No 2, November 2010, p. 4.

## Online gambling research findings

2.12 A report prepared for the Ontario Problem Gambling Research Centre in 2009 acknowledged the ambiguities and gaps in the knowledge about online gambling, including the characteristics of gamblers, the dynamics of internet gambling behaviour and the potential link between internet gambling and problem gambling. In an attempt to address these deficiencies, the report presented the results from two surveys. The first was a random digit dial telephone survey of 8,498 Canadian adults conducted from January 2006 to June 2007. The second was an online self-administered survey of 12,521 adults from 105 countries conducted from June to December 2007. The key findings are summarised below.<sup>20</sup>

### ***Demographic profile***

2.13 The major findings regarding the demographic profile of international internet gamblers were:

- they are predominantly male (78 per cent);
- the prevalence of internet gambling appears to vary significantly between countries/regions with higher rates in European countries and the Caribbean and lower rates in North America, Asia, Australia and New Zealand;
- marital and employment status tends to reflect the distributions found in the general adult population;
- most are of European ancestry (80 per cent);
- all age groups are represented and there is no age group that is overrepresented. The average age is 45.7. Nonetheless younger age was still a significant predictor of internet gambling;
- they have high past month rates of substance use (44.3 per cent for tobacco and 11.7 per cent for illicit drugs);
- the average household income is US\$60,100 and average household debt is US\$76,728;
- on average they are slightly better educated than most people with 41.2 per cent having completed college or university; and

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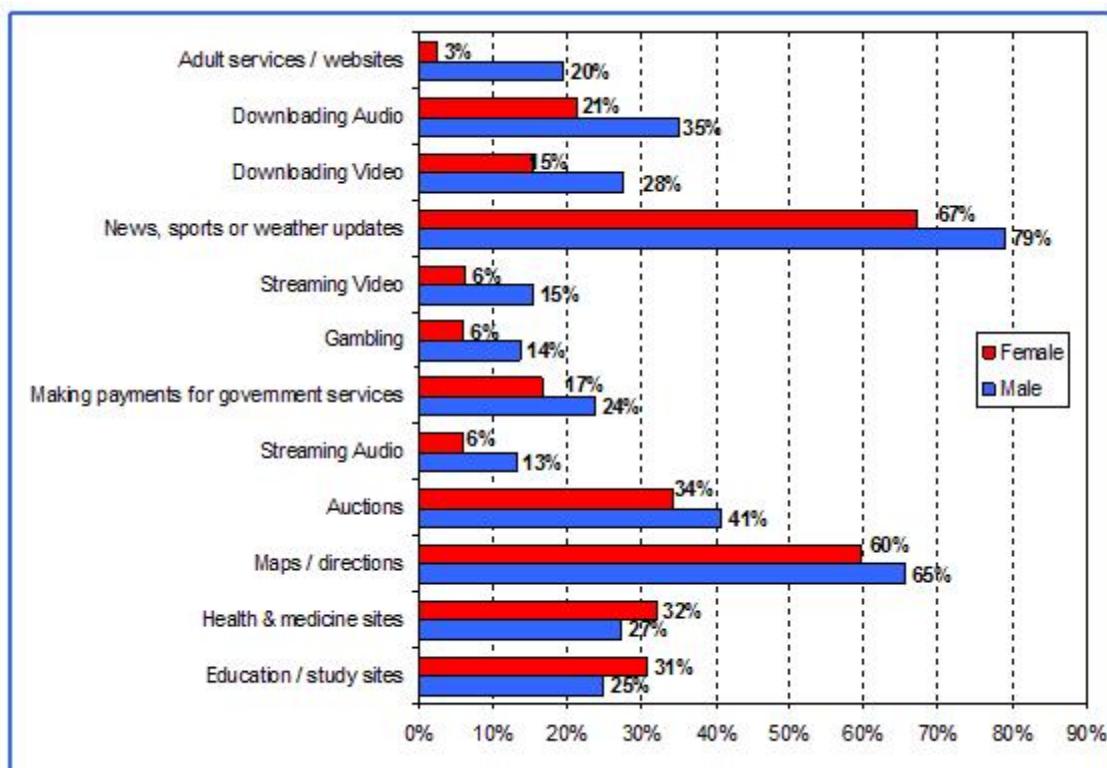
20 Wood, R.T. & Williams, R.J. (2009). *Internet Gambling: Prevalence, Patterns, Problems, and Policy Options*, Final Report prepared for the Ontario Problem Gambling Research Centre, Guelph, Ontario, Canada, 5 January 2009, p. 6.

- their reporting of physical disabilities and/or chronic health problems (14.9 per cent) and mental health problems (10.3 per cent) was not significantly different from non-internet gamblers.<sup>21</sup>

#### Australian research

2.14 An Australian Communications and Media Authority (ACMA) research report noted that using the internet for gambling is more popular among men as the figure below shows.<sup>22</sup>

**Figure 2.1: Differences between internet applications by gender, February 2008**



This information was sourced from Nielsen Online's The Australian Internet and Technology Report 2007-2008, a telephone and online survey of a random sample of Australian internet users aged over 16 years. sample=1,356, Multiple responses. Note: Excludes 'Anything else' and 'None of the above'. Chart displays activities with points of difference more than 5 per cent of use between male and female users.

2.15 Internet gambling was also found to be one of the top ten activities conducted online by all age groups as shown in the table below:

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- 21 Wood, R.T. & Williams, R.J. (2009). *Internet Gambling: Prevalence, Patterns, Problems, and Policy Options*, Final Report prepared for the Ontario Problem Gambling Research Centre, Guelph, Ontario, Canada, 5 January 2009, pp 8–9.
- 22 ACMA, Telecommunications Today: research report series, Report 6 – Internet activity and content, September 2008, p. 18. Available from: [http://www.acma.gov.au/WEB/STANDARD/pc=PC\\_9058](http://www.acma.gov.au/WEB/STANDARD/pc=PC_9058) (accessed 18 August 2011).

**Table 2.1: The top ten activities performed online by age group, February 2008**

	16-24	25-34	35-44	45-54	55-64	65+
1	Email	Email	Email	Email	Email	Email
2	Accommodation bookings	Streaming video	Streaming video	Banking	Banking	Streaming video
3	Streaming video	Banking	Banking	Streaming video	Streaming video	Banking
4	Banking	Auctions	<b>Gambling</b>	<b>Gambling</b>	Auctions	<b>Gambling</b>
5	Streaming audio	<b>Gambling</b>	Auctions	Auctions	<b>Gambling</b>	Auctions
6	<b>Gambling</b>	Chat groups	Chat groups	Chat groups	Chat groups	Chat groups
7	Auctions	Accommodation bookings	Accommodation bookings	News, sports or weather updates	Online forums	Submitting forms or information to government websites
8	Down-loading podcasts	Online forums	Online forums	Online forums	News, sports or weather updates	News, sports or weather updates
9	Buying airline tickets	Streaming audio	Buying airline tickets	Buying airline tickets	Submitting forms or information to government websites	Online forums
10	Downloading [p]odcasts	Voice over IP/internet telephony	News, sports or weather updates	Submitting forms or information to government websites	Online social networking... ..	Online social networking...

Source: Nielsen Online (2008) The Australian Internet and Technology Report, February, 16+ years old, sample=1,356, Multiple responses. Note: Excludes 'Anything else' and 'None of the above'.

2.16 Anglicare Tasmania noted that Tasmania's first Social and Economic Impact Study looked at internet gambling in 2008. While the sample size was small, it found that internet gamblers were more likely to be male, younger than 29 years old and on a higher income (above \$70,000). It also found that young people earning between \$20,000 and \$50,000 were most likely to place sports bets.<sup>23</sup>

2.17 Dr Gainsbury and Professor Blaszczynski advised that research is currently underway to examine the characteristics of internet gamblers in Australia. Launched in December 2010, an online survey was available until August 2011. Over 4,000 responses have been received to date. Preliminary research on the first 1,697 responses indicates the most popular forms of internet gambling are horse/dog race wagering, sports betting and poker. The majority of internet gambling is conducted by computer (76 per cent) with mobile phones accounting for only four per cent. However, mobile gambling accounted for seven per cent of internet sports betting. The researchers found that internet gamblers are more likely to be male and involved in multiple forms of gambling. Overall monthly expenditure was significantly higher for online gamblers than non-internet gamblers. Importantly, the research indicates that internet gamblers 'did not appear to be more involved in electronic gaming machines (EGMs), indicating that EGM play may appeal to a different type of gambler'.<sup>24</sup>

2.18 Mr Andrew Twaits, Chief Executive Officer, Betfair, told the committee that his agency had seen a shift in the younger customer demographic from betting on racing to betting on sports.<sup>25</sup>

2.19 Mr Cormac Barry, Chief Executive Officer, Sportsbet described his company's average customer as 'male, 25 to 40, middle class and holding a credit card'. He also noted that online and electronic gaming machine gamblers are a 'different social demographic'.<sup>26</sup>

### ***Committee majority view***

2.20 The committee majority notes that evidence suggests a different demographic between poker machine players and those who gamble online. This has important implications for the argument often used by the industry that the introduction of mandatory pre-commitment will force EGM players to gamble online.

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23 Anglicare Tasmania, *Submission 6*, p. 3.

24 Dr Sally Gainsbury and Professor Alex Blaszczynski, *Submission 7*, p. 10; See also Mr Christopher Hunt, *Committee Hansard*, 16 September 2011, p. 18.

25 Mr Andrew Twaits, *Committee Hansard*, 11 August 2011, p. 21.

26 Mr Cormac Barry, *Committee Hansard*, 11 August 2011, p. 11.

### **Motivations and concerns**

2.21 The report prepared for the Ontario Problem Gambling Research Centre in 2009 found that international internet gamblers overwhelmingly identified the 24 hour availability and convenience of internet gambling to be its main advantage. Other motivations included: a better game experience; being more physically comfortable; lack of crowds; anonymity; better payout rates; less smoke; being able to smoke; and that certain forms of gambling, e.g. betting against other people rather than the house, are more conducive to an online format.<sup>27</sup>

2.22 Research conducted by Jessica McBride and Dr Jeffrey Derevensky found that the most popular reasons provided for gambling online were: convenience (93.3%), not having to leave the house to play (86.1%) and 24 hour accessibility (89.1%). Other reasons included bonuses (65.1%), high-speed play (62.6%) and privacy (61.8%).<sup>28</sup>

2.23 The Responsible Gambling Advocacy Centre offered a number of factors that attract people to gamble online including: the ease of access, websites and the convergence of technology and higher speeds of web access. Others like that it is anonymous and private.<sup>29</sup>

2.24 Preliminary research conducted by Dr Gainsbury and Professor Blaszczynski on the characteristics of internet gamblers in Australia found that internet gambling was used for:

...convenience, comfort, to gamble in private without other unpleasant people and because online site[s] offered better payout rates and interesting games.<sup>30</sup>

2.25 The report prepared for the Ontario Problem Gambling Research Centre also asked about the disadvantages of online gambling. The international internet gamblers identified: difficulty verifying fairness of games; worry about monetary deposits being safe; lack of face-to-face contact; tendency to spend more money; too convenient; illegality; poorer social atmosphere; too isolating; and poor game experience.<sup>31</sup>

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27 Wood, R.T. & Williams, R.J. (2009). *Internet Gambling: Prevalence, Patterns, Problems, and Policy Options*, Final Report prepared for the Ontario Problem Gambling Research Centre, Guelph, Ontario, Canada, 5 January 2009, p. 9.

28 Jessica McBride and Dr Jeffrey Derevensky, Internet Gambling Behaviour in a Sample of Online Gamblers, *International Journal of Mental Health Addiction*, 2009, 7:149–167, p. 156.

29 Responsible Gambling Advocacy Centre, *Submission 29*, p. 10.

30 Dr Sally Gainsbury and Professor Alex Blaszczynski, *Submission 7*, p. 10.

31 Wood, R.T. & Williams, R.J. (2009). *Internet Gambling: Prevalence, Patterns, Problems, and Policy Options*, Final Report prepared for the Ontario Problem Gambling Research Centre, Guelph, Ontario, Canada, 5 January 2009, p. 9.

### **Play patterns**

2.26 The report prepared for the Ontario Problem Gambling Research Centre found that virtually all internet gamblers also gamble on several land-based gambling formats with 4.1 being the average number of total gaming formats for the international sample. It also found that:

- engage in all types of gambling more frequently than their land-based counterparts as well as having higher average gambling expenditures (\$195.09) relative to non-internet gamblers (\$19.26). It therefore appears that internet gambling is primarily used as an additional form of gambling for people already heavily involved in gambling;
- poker is the most popular online form of gambling. 64.0 per cent play skills games (mostly poker); 26.4 per cent gamble at online casinos; 23.2 per cent bet on sports; 12.7 per cent bet on horse or dog racing; 11.1 per cent play lotteries; and 7.4 per cent play online bingo;
- certain types of online gambling are preferred by one gender over another. Sports betting, horse/dog race betting and games of skill are overwhelmingly preferred by males, whereas online bingo is preferred by females;
- the internet is preferred for sports betting, poker and horse and dog race betting;
- 93–94 per cent use their home computers;
- the large majority reported that the fact they are using a credit card or electronic bank transfer rather than cash has no effect on their spending;
- 4–11 per cent report that internet gambling has disrupted either their sleeping or eating habits;
- 14 per cent report using alcohol often or always while gambling and 3.6 per cent report using illicit drugs often or always while gambling.<sup>32</sup>

### **Harms associated with online gambling**

2.27 The Royal Australian and New Zealand College of Psychiatrists (RANZCP) noted that problem/pathological gambling is highly comorbid with other diagnoses such as depression, hazardous alcohol use and smoking as well as personality disorders. It added that there is a clear link between problem/pathological gambling and mental health problems, such as depression or anxiety, particularly among vulnerable populations.<sup>33</sup>

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32 Wood, R.T. & Williams, R.J. (2009). *Internet Gambling: Prevalence, Patterns, Problems, and Policy Options*, Final Report prepared for the Ontario Problem Gambling Research Centre, Guelph, Ontario, Canada, 5 January 2009, pp 9–10.

33 The Royal Australian and New Zealand College of Psychiatrists, *Submission 10*, covering letter, p. 2.

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2.28 A study of internet gambling behaviour conducted by Jessica McBride and Dr Jeffrey Derevensky raised concern about the lack of protection for vulnerable players online such as those under the influence of alcohol or drugs. They found:

Forty-five percent of respondents reported consuming alcohol while gambling online, 33.2% reported using tobacco, 8.8% reported using marijuana or hashish, and 3.8% reported using other illicit drugs (eg. cocaine). Problem gamblers were significantly more likely than social gamblers to use alcohol.<sup>34</sup>

2.29 Relationships Australia told the committee that the negative consequences of problem gambling are the same as for other forms of gambling but have the potential to be greater:

Relationships Australia's experience in working with online gamblers indicates that the negative outcomes of excessive gambling are the same for online gamblers as for gamblers who attend a venue: there can be major financial losses, negative impacts on intimate and family relationships, friendships, employment and health, including mental health. The ease of access to online gambling and its 24-hour-a-day, at work, in a café and at home availability could even exacerbate these negative outcomes as gamblers are in a position to lose more money faster with the use of credit cards. The wide availability of gambling opportunities can add to the fantasy element of gambling, the belief that the person will win. Regular gambling may lead to problem gambling for a significant proportion of people, and the wide accessibility of gambling opportunities contributes to the development of problem gambling.

Additionally, access to gambling via mobile devices has the potential to keep gambling habits more secretive, thus not giving partners and friends the opportunity to help in resisting opportunities.<sup>35</sup>

## **Online problem gambling rates**

2.30 The report for the Ontario Problem Gambling Research Centre found that the prevalence of problem gambling is three to four times higher for internet gamblers compared to non-internet gamblers. Among the international sample, 16.6 per cent were either moderate or severe problem gamblers, whereas the rate for land-based gamblers was 5.7 per cent. It also found:

- several variables that statistically predict whether someone is an internet problem gambler in order of importance are: gambling on a greater number of gambling formats; a higher gambling expenditure (internet problem gamblers accounted for 27 per cent of all reported losses for the international data set); having mental health problems; having a family history of problem gambling; being of Asian ancestry; being single; a

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34 Jessica McBride and Dr Jeffrey Derevensky, Internet Gambling Behaviour in a Sample of Online Gamblers, *International Journal of Mental Health Addiction*, 2009, 7:149–167, p. 159.

35 Relationships Australia, *Submission 14*, p. 2.

lower household income; having a greater number of gambling fallacies; country/region; having more negative attitudes toward gambling; and having a history of other addictions;

- only around half of internet problem gamblers report there is a specific type of gambling that contributed to their problems more than others. For the international sample these were slot machines (23.8 per cent); poker (21.7 per cent); and internet gambling (11.3 per cent). So it would seem that while internet gambling is an important contributing factor to gambling problems for a portion of gamblers it does not appear to be the main cause of problem gambling for most of them. This is consistent with the finding that internet gamblers are heavy gamblers to start with who have simply added internet gambling to their repertoire.<sup>36</sup>

2.31 The study conducted by Jessica McBride and Dr Jeffrey Derevensky found rates of problem gambling consistent with Wood and Williams' research and the findings 'imply the rate of problem gambling among Internet gamblers may be higher than the rate among the general population'. The study found that, compared with social gamblers, problem gamblers:

spend more time gambling per session, are more likely to gamble alone, from school, or with a cell phone, gamble with more money, and lose more money gambling online. Problem gamblers are significantly more likely than social gamblers to choose to gamble on the Internet because it is easier to hide their gambling from others. This result makes it particularly important that online sites have measures in place to help those with gambling problems. Problem gamblers are also more likely to wager online while consuming alcohol or illicit drugs.<sup>37</sup>

2.32 In the UK, in 2005, the *Gambling Act 2005* (the Act) came into effect which covers all forms of gambling in the UK including online gambling. Comparing the findings from the 2007 and 2010 *British Gambling Prevalence Survey*, problem gambling prevalence rates were as follows:

- DSM-IV<sup>38</sup> problem gambling prevalence in 2010 was 0.9 per cent or 451,000 adults, up from 0.6 per cent in 2007. However, the report cautions that this increase is at the margins of statistical significance;<sup>39</sup>

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36 Wood, R.T. & Williams, R.J. (2009). *Internet Gambling: Prevalence, Patterns, Problems, and Policy Options*, Final Report prepared for the Ontario Problem Gambling Research Centre, Guelph, Ontario, Canada, 5 January 2009, pp 10–11.

37 Jessica McBride and Dr Jeffrey Derevensky, Internet Gambling Behaviour in a Sample of Online Gamblers, *International Journal of Mental Health Addiction*, 2009, 7:149–167, p. 162.

38 Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition.

39 *British Gambling Prevalence Survey*, 2010, prepared by the National Centre for Social Research for The Gambling Commission, p. 11. See also Gambling Commission (Great Britain) *Submission 33*, p. 9.

- problem gambling prevalence rates as measured by the Problem Gambling Severity Index did not increase significantly between 2007 and 2010;<sup>40</sup>
- problem gambling prevalence was highest among those who played poker at a pub/club (12.8%), followed by those who had played online slot machines style games (9.1%) and fixed odds betting terminals (8.8%). Online gaming activities were broken down as follows: any online betting<sup>41</sup> (3.0%), any other online gambling<sup>42</sup> (3.0%) and any online gambling (excluding the National Lottery (5.3%). The survey found that on average problem gamblers participated in over six forms of gambling;<sup>43</sup> and
- these problem gambling prevalence rates were similar to other European countries such as Germany, Norway and Switzerland but lower than rates in Australia, the US and South Africa.<sup>44</sup>

2.33 Dr Gainsbury and Professor Blaszczynski noted that there does appear to be some association between problem gambling and internet gambling.<sup>45</sup> However, they noted that it is unclear whether 'problem gamblers gamble online and exacerbate existing problems, or whether particular factors of Internet gambling, including availability, convenience, use of credit, and speed of play, lead to gambling problems'. They concluded it is highly likely that 'both are contributing factors and that the association between interactive gambling and problem gambling is multifaceted'.<sup>46</sup>

2.34 This view was echoed by Dr Jeffrey Derevensky:

What we do know, if one looks at the studies that have been done on internet wagering, is that there seems to be a disproportionately high number of problem gamblers who are gambling on the internet or gambling via the internet. But the real question is—and we do not know the answer to

40 *British Gambling Prevalence Survey*, 2010, prepared by the National Centre for Social Research for The Gambling Commission, p. 12. See also Gambling Commission (Great Britain) *Submission 33*, p. 9.

41 Including online bets on horse races, dog races, other sports or non-sports events made with a bookmaker or betting exchange.

42 Included using the internet to play the National Lottery, other lotteries, bingo, football pools, casino games, online slot machine style games.

43 Gambling Commission (Great Britain) *Submission 33*, pp 9–10.

44 *British Gambling Prevalence Survey*, 2010, prepared by the National Centre for Social Research for The Gambling Commission, p. 10. See also Gambling Commission (United Kingdom) *Submission 33*, p. 12.

45 Dr Sally Gainsbury and Professor Alex Blaszczynski, *Submission 7*, p. 6. See also Dr Sally Gainsbury, *Committee Hansard*, 16 September 2011, p. 33.

46 Dr Sally Gainsbury and Professor Alex Blaszczynski, *Submission 7*, p. 6. See also Dr Sally Gainsbury, *Committee Hansard*, 16 September 2011, p. 33.

this question yet— does internet gambling result in more problem gamblers or do problem gamblers just use the internet as one more vehicle with easy accessibility in order to gamble?<sup>47</sup>

### **Australian research**

2.35 As with prevalence rates, reliable national data on online problem gambling rates are not available. To illustrate this difficulty, a report prepared for the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) in 2009 by the Allen Consulting Group reviewed jurisdictional information available; however, the majority of the surveys the findings were based on were not recent and most did not provide an estimate of problem gambling.<sup>48</sup>

2.36 The 2010 study, *An Exploratory Investigation of Online Gambling Amongst University Students in Tasmania*, found 10.8 per cent had a gambling problem and 15.5 per cent were at moderate risk of developing a gambling problem.<sup>49</sup> However, the extent to which such findings can be generalised nationally is questionable.

2.37 Recent preliminary research conducted by Dr Gainsbury and Professor Blaszczynski on the characteristics of internet gamblers in Australia found significant differences in rates of problem gambling<sup>50</sup> between internet and non-internet gamblers:

...with non-Internet gamblers being more likely to report no problems (41% vs. 26%). However, differences in problem gambling were not as significant as found in previous national and international research and this will be investigated further in the final results. Over one-fifth (21%) of Internet gamblers reported having gambling problems, and of these, approximately one-third attributed these primarily to Internet gambling. The remaining two-thirds of Internet gamblers reported other forms of gambling as their primary problem and stated that they had existing problems before they gambled online. This indicates that Internet gambling may cause problems for some individuals, while also exacerbating and maintaining existing problems for problem gamblers. Finally, 18% of Internet gamblers reported that using electronic payment caused them to increase their gambling expenditure.<sup>51</sup>

2.38 The Tasmanian Government reported that advice from the Tasmanian Gamblers Help support services indicates only a small presentation of clients whose

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47 Dr Jeffrey Derevensky, *Committee Hansard*, 16 September 2011, p. 7.

48 *Review of current and future trends in interactive gambling activity and regulation*, Literature Review, Report to the Australian Government Department of Families, Housing, Community Services and Indigenous Affairs, by the Allen Consulting Group, June 2009, p. 19.

49 Anglicare Tasmania, *Submission 6*, p. 4.

50 As measured by the Problem Gambling Severity Index.

51 Dr Sally Gainsbury and Professor Alex Blaszczynski, *Submission 7*, p. 11.

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problem gambling originated from online gambling. However, clients are increasingly citing online gambling as part of their gambling activities. Gambling counsellors are concerned that:

- people at risk are 'hidden' because of the nature of the product with in-home/discreet access; and
- compared to venue-based gambling, it is much more difficult to provide help, information or identify and intervene with support options for online gamblers.<sup>52</sup>

2.39 The Tasmanian Government noted that online gambling could become the next growth area for problem gambling:

While the available research into online gambling prevalence rates is limited and the data is weak, it nevertheless suggests that gamblers who play online have relatively higher rates of problem gambling than other forms of gambling with the possible exception of EGMs. Further, those engaged in online gambling may often do so in addition to frequent and regular use of land-based venues; utilising online services when other gambling services are unavailable, thus circumventing regulatory approaches already in place.<sup>53</sup>

2.40 This view was supported by evidence in the community that numbers of men in their late teens to early 20s with online gambling problems is increasing.<sup>54</sup>

2.41 Major Brad Halse from the Victorian InterChurch Gambling Taskforce reported that the numbers of people seeking help for gambling addictions due to online gambling are small, but the Taskforce is concerned about the impact of online gambling over the next 10 years if it continues to grow.<sup>55</sup>

2.42 However, some organisations claimed 'there is no evidence to suggest that individuals who participate in online gambling have a higher prevalence of problem gambling than other forms of gambling'.<sup>56</sup> In doing this, Sportsbet was citing part of a literature review undertaken by the Allen Consulting Group for FaHCSIA in 2009. On closer inspection the report admits that this conclusion is partly due to the 'difficulties in measuring problem gambling prevalence across a small proportion of gambling participants'. The report then goes on to outline evidence which was omitted from the Sportsbet submission: 'Some researchers have asserted that the nature of Internet gambling (particularly Internet gaming) has higher risks for problem

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52 Tasmanian Government, *Submission 26*, p. 5.

53 Tasmanian Government, *Submission 26*, p. 7.

54 Emma Schmidt, 'Monash man's online gambling disaster', *Waverley Leader*, 16 August 2011; Angus Livingston, 'Gambling soars in Maroondah', *Maroondah Leader*, 13 September 2011; 'Online gambling strife on the rise', *Knox Leader*, 29 September 2011.

55 Major Brad Halse, *Committee Hansard*, 11 August 2011, p. 41.

56 Sportsbet, *Submission 44*, p. 18.

gambling because it can be repetitive and continuous, thereby making it more difficult for players to be aware of how much they have gambled.<sup>57</sup> The report concluded it is an area warranting further research.<sup>57</sup>

2.43 After reviewing the available international and Australian evidence,<sup>58</sup> which it cautioned should be carefully interpreted, in 2010 the PC advised that:

In general, the evidence suggests that people who have gambled online at some stage in the past tend, on average, to have a considerably higher rate of problem gambling than people who have never gambled online.<sup>59</sup>

2.44 The PC noted:

While the risks associated with online gambling are likely to be overstated, the relatively high prevalence of problem gamblers is still a cause for concern. At the very least, it indicates that the internet is very attractive to this group and, though the evidence is weak, gambling online may exacerbate already hazardous behaviour...<sup>60</sup>

2.45 The PC reported on their review of the evidence of problem gambling rates in the online environment and concluded:

...while none of the studies so far are adequate, they tend to point towards higher rates of problem gambling from people who operate in the online environment. Why that is, is not so clear. There may be a selection bias that people who have problems tend more likely to go into the online as first adopters, but we just do not know. The evidence at the moment is that there appear[s] to be some high risks in the online environment.<sup>61</sup>

### ***Concern over growth of sports betting***

2.46 Submissions indicated that the increase in online sports betting is a growing area of concern as it has led to changes in the presentation of individuals with problem gambling. The University of Sydney Gambling Treatment Clinic (the Clinic) reported that:

In the past five years, as regulation around sports betting has been loosened, there has been an increase in the number of clients presenting to the clinic with problematic sports betting. Indeed, from representing less than 5% of

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57 *Review of current and future trends in interactive gambling activity and regulation*, Literature Review, Report to the Department of Families, Housing, Community Services and Indigenous Affairs, The Allen Consulting Group, June 2009, p. vii.

58 Productivity Commission, *Gambling*, vol. 2, Commonwealth of Australia, Canberra, 2010, Table 15.1, p. 15.13.

59 Productivity Commission, *Gambling*, vol. 2, Commonwealth of Australia, Canberra, 2010, p. 15.11.

60 Productivity Commission, *Gambling*, vol. 2, Commonwealth of Australia, Canberra, 2010, p. 15.15.

61 Dr Ralph Lattimore, *Committee Hansard*, 16 September 2011, p. 52.

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our clients in the 2006-2007 financial year, problem gamblers with sports betting problems now represent 15-20% of new clients in the current financial year. Thus, whilst still representing a minority, reported problems with sports betting are rising, and rising rapidly.<sup>62</sup>

2.47 Interestingly, the Clinic emphasised that the majority of clients presenting with gambling problems are using Australian-based, legal sites:

Contrary to some of the myths surrounding online gambling, very few of our clients who utilise online forms of gambling report that they doing so via illegal or off-shore gaming sites. The vast majority of our sports betting clients are primarily gambling on Australian-based, legal sports betting operators. Whilst we would not want to dismiss the existence nor seriousness of illegal activity in either local or overseas sports betting markets, this issue does not appear to be a major contributing factor in the stories of the majority of our clients.<sup>63</sup>

2.48 The committee notes that sports betting is discussed in more detail in chapters 10 and 11.

#### *Committee view*

2.49 Although the research is not conclusive on the prevalence of online problem gambling, the available data and findings are a cause for concern and caution. Even if the committee accepts as a premise that online gambling will be no more harmful than land-based forms of gambling, such levels of harm would be alarming. The growth rates of online gambling are evident and, given the link between accessibility and frequency of play which may result in people developing a problem, a cautious approach is warranted.

#### **Risks of online gambling**

2.50 The section below further details the risks of online gambling brought to the attention of the committee. The Australian Christian Lobby (ACL) summarised the risks of online gambling which include:

- ease of access;
- potentially a more socially isolating environment;
- use of credit cards;
- decreased ability of providers to monitor gambling behaviour; and
- greater risk to young people.<sup>64</sup>

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62 University of Sydney Gambling Treatment Clinic, *Submission 9*, p. 2.

63 University of Sydney Gambling Treatment Clinic, *Submission 9*, p. 2.

64 Australian Christian Lobby, *Submission 21*, pp 1-2.

### ***Increased access and availability***

2.51 Online gambling and the associated advances in technology bring increased convenience and accessibility for gamblers who can potentially access any form of gambling anytime and anywhere. This increased accessibility enhances the risk of greater frequency of play. The ACL noted there is greater access in two ways: no geographical barriers beyond access to the internet and no time restraints:

This means that just about anyone in the entire country, from anywhere in the country, has access at any time of the day, every day. Even those who live close to casinos, for example, are still physically required to enter, and leave, the casino. This physical requirement does not exist in the online gambling context. This can allow for a much wider reach and greater frequency of gambling and may increase the rates of problem gambling.<sup>65</sup>

2.52 J.G. Phillips and Professor Blaszczynski advised:

The converging capabilities of computers, mobile phones, interactive television, set top boxes and games platforms potentially allows online gambling to be available on any of these devices and to be accessed by consumers any time of the day from anywhere in the world. This increased availability could lead to increases in gambling-related problems; however research on the relationship between availability and problem gambling suggest that potential increases in problem gambling could be mitigated if appropriate controls are put in place.<sup>66</sup>

2.53 Preliminary research conducted by Dr Gainsbury and Professor Blaszczynski on the characteristics of internet gamblers in Australia found that 28 per cent of the preliminary sample of internet gamblers reported that internet gambling was too convenient, 25 per cent reported that it was easier to spend more money and 13 per cent reported that it was more addictive.<sup>67</sup> They concluded that:

...it is possible that increased use of interactive gambling may result in an increase in gambling-related problems with associated social and financial burdens on society including psychological, health, legal, and welfare services.<sup>68</sup>

2.54 The PC acknowledged the risk posed by the accessibility of online gambling:

Greater access could increase the prevalence of problem gambling and its associated harms. Some Australians, for reasons of geographical isolation or disability, have no access to venues offering casino games at all. Therefore, the provision of online gaming exposes a new population group to the risks of problem gambling. Even for those who live in cities that have

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65 Australian Christian Lobby, *Submission 21*, p. 2.

66 J.G. Phillips and Prof. Alex Blaszczynski, *Gambling and the Impact of New and Emerging Technologies and Associated Products*, Final Report, August 2010, p. 9.

67 Dr Sally Gainsbury and Professor Alex Blaszczynski, *Submission 7*, p. 10.

68 Dr Sally Gainsbury and Professor Alex Blaszczynski, *Submission 7*, pp 6–7.

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casinos, the internet significantly reduces the time and transportation costs associated with gaming. As this allows a greater frequency of play, it may result in more people developing a gambling problem. Moreover, online gambling can be slotted into very small periods, increasing convenience, but also the opportunity for impulsive gambling ('morning tea' gambling).<sup>69</sup>

### ***Committee view***

2.55 The committee notes with concern the view put forward by the Productivity Commission that 'greater access could increase the prevalence of problem gambling and its associated harms'.<sup>70</sup> The experience of electronic gaming machines (EGMs), where liberalisation and increased access has resulted in increased harms despite a number of harm minimisation measures, should serve as a cautionary experience and the lessons must be learned before considering increasing access to other modes of gambling.

### ***Online gambling provides greater anonymity***

2.56 A study of internet gambling behaviour conducted by Jessica McBride and Dr Jeffrey Derevensky found that:

Significantly more problem gamblers (29.0%) than social gamblers (4.7%) selected 'easier to hide gambling from others' as a reason to gamble online.<sup>71</sup>

2.57 The Social Issues Executive (SIE), Anglican Church, Diocese of Sydney, believed that the anonymity of online betting is a particular concern as it takes wagering and betting 'out of a social context and places it in an anonymous, individual context, opening the way for problem gambling at levels unforeseen to date'.<sup>72</sup> It explained:

Interactive gaming technologies that can be accessed in the privacy of one's home establish a cultural context that normalises regular, interactive gambling without the social or relationship accountability of traditional gaming contexts. The SIE is concerned that this normalisation of and increased access to interactive gaming in private, familial and everyday contexts will make it very difficult for existing problem gamblers to break

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69 Productivity Commission, *Gambling*, vol. 2, Commonwealth of Australia, Canberra, 2010, p. 15.7.

70 Productivity Commission, *Gambling*, vol. 2, Commonwealth of Australia, Canberra, 2010, p. 15.7.

71 Jessica McBride and Dr Jeffrey Derevensky, Internet Gambling Behaviour in a Sample of Online Gamblers, *International Journal of Mental Health Addiction*, 2009, 7:149–167, p. 156.

72 Social Issues Executive, Anglican Church, Diocese of Sydney, *Submission 17*, pp 1–2.

behaviours and distance themselves from contexts that feed a desire to gamble.<sup>73</sup>

2.58 The Tasmanian Government also noted similar concerns:

Online gambling is available at any time from the privacy of a user's home, workplace, via a mobile telephone, Smartphone or portable computer. Players not wishing to associate with other clientele or who are excluded from land-based venues can gamble online, anytime and the range of harm minimisation measures specific to land-based venues such as restriction on the service of alcohol, lighting standards and staff intervention, are not present.<sup>74</sup>

2.59 Dr Gainsbury and Professor Blaszczynski noted that the anonymity offered by the internet continues to provide a challenge to detect underage gambling:

...given the anonymity and absence of interpersonal interaction characteristic of Internet gambling, it remains a challenge to limit underage gambling...<sup>75</sup>

2.60 They recommended that 'efforts be taken to implement effective public education programs to inform people of the potential risks associated with Internet gambling, including the lack of consumer protection measures on offshore sites'.<sup>76</sup>

2.61 The PC acknowledged the argument that online gambling may be more socially isolating:

Some particular gambling products — such as casino games or simulated EGMs — may be more socially isolating in an online environment than in venues. This may increase the likelihood of players of these games losing track of time and their spending. However, other forms of online gambling can have a strong social element (such as with poker and bingo).<sup>77</sup>

### ***Use of credit cards***

2.62 There were conflicting views over the use of credit cards for online gambling. The PC found that for non-problem gamblers 'the distinction between using a savings account or credit account is no different for gambling online than it is for shopping online or purchasing any other good or service from a physical location'. However, it acknowledged that for problem gamblers 'the reliance on credit cards in an online setting may magnify the financial harms from excessive gambling'. It concluded that

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73 Social Issues Executive, Anglican Church, Diocese of Sydney, *Submission 17*, p. 2.

74 Tasmanian Government, *Submission 26*, pp 7–8.

75 Dr Sally Gainsbury and Professor Alex Blaszczynski, *Submission 7*, p. 7. Note: Chapter 11 contains a discussion of the risks of underage gambling on sports betting websites.

76 Dr Sally Gainsbury and Professor Alex Blaszczynski, *Submission 7*, p. 7.

77 Productivity Commission, *Gambling*, vol. 2, Commonwealth of Australia, Canberra, 2010, p. 15.8.

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the 'potential for increased harm to problem gamblers is a legitimate policy concern'.<sup>78</sup> Nevertheless, it emphasised that there are some features of account based betting that may assist gamblers. For example, the monthly credit card statement means that gamblers are confronted with their losses.<sup>79</sup> However, it could be argued that this is well after the event and well after any excessive losses have already occurred.

2.63 While the Australian Christian Lobby agreed that the use of credit cards may help gamblers to confront their losses, it argued that this could also magnify the financial harms from excessive gambling:

Rather than merely putting the money they have through a slot machine, for example, problem gamblers may accumulate large debts on credit which they have no means of repaying. Not only can problem gamblers lose what they do have, online there is the potential to end up deeply in debt.<sup>80</sup>

2.64 Clubs Australia pointed out that credit card betting is not allowed for poker machines and expressed the concern that betting using credit cards represents a risk to online customers:

...internet gamblers can legally use credit cards to fund gambling sprees on online wagering sites. Some sites aggressively promote the use of credit card gambling by offering the promise of lucrative free bets in exchange for sign-up accounts and credit card details.<sup>81</sup>

2.65 Clubs Australia argued that it is opposed to people gambling on credit, either online or at a venue as:

Credit card gamblers are funding their habit through what is effectively a short term loan. If the initial amount is not paid off within a specified time period, interest accrues, increasing the likelihood of the gambler encountering financial difficulty or mismanaging funds.

2.66 Clubs Australia also disagreed with the PC that credit cards enable gamblers to accurately track their play:

By the time it takes for a credit card statement to arrive, the gambler has usually "done the damage"...<sup>82</sup>

2.67 However, the Australian Internet Bookmakers Association (AIBA) argued that:

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78 Productivity Commission, *Gambling*, vol. 2, Commonwealth of Australia, Canberra, 2010, p. 15.8.

79 Productivity Commission, *Gambling*, vol. 2, Commonwealth of Australia, Canberra, 2010, p. 15.9.

80 Australian Christian Lobby, *Submission 21*, p. 2.

81 Clubs Australia, *Submission 24*, p. 7.

82 Clubs Australia, *Submission 24*, p. 7.

Any ban on credit card usage would impact disproportionately on the benefits to recreational gamblers who constitute by far the vast bulk of online gamblers. It is also too late for such a proposition to have any effect. Technology has overtaken the capacity to restrict the use of credit cards even if that was desirable.

It must also be remembered that while credit cards pose an acknowledged risk for problem gamblers, they also provide important fraud, anti-money-laundering and other controls.<sup>83</sup>

### *Credit betting*

2.68 The AIBA did, however, acknowledge that 'credit betting' is a more problematic practice and concluded:

This Association considers it sensible to maintain the benefits to clients of credit betting, but look to the development of appropriate controls to mitigate the risks. It is proposed the Committee recommend the immediate issue of a reference to a national research body to consider appropriate parameters governing the issue of credit.<sup>84</sup>

2.69 The issue of providing credit in relation to sports betting is further discussed in chapter 11.

### *Committee view*

2.70 While the committee accepts that a monthly credit card statement may assist some people to confront the amount of money they spend gambling online, the ability to repay only a minimum amount, increase limits and obtain multiple cards does not make this a feature to be relied upon to assist problem gamblers. In addition, by the time the statement has arrived, significant losses may already have occurred. The committee notes the case of a 21 year old man in Victoria who lost \$10,000 in one month on his credit card from playing online poker.<sup>85</sup>

### *Online gambling creates new gambling markets*

2.71 There are community concerns that online gambling is attractive to and will be accessed by younger and underage groups. Technology in this area is evolving with new types of games<sup>86</sup> and wagering methods being offered by providers to gain a competitive advantage. Gambling applications on iPhones appeal to the tech-savvy youth market and make it easy to lose money.<sup>87</sup> The Responsible Gambling Advocacy

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83 Australian Internet Bookmakers Association, *Submission 53*, p. 4, 25–26.

84 Australian Internet Bookmakers Association, *Submission 53*, p. 5.

85 Emma Schmidt, 'Monash man's online gambling disaster' *Waverley Leader*, 16 August 2011.

86 Covered in chapter eight.

87 Anne Wright, 'Explosion in smartphone gambling, Apps luring youth punt', *Herald Sun*, 6 June 2011, p. 13.

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Centre noted that the increased use of mobile phones means greater accessibility and therefore use of interactive online gambling.<sup>88</sup>

#### *Youth market*

2.72 The Royal Australian and New Zealand College of Psychiatrists highlighted that within the Australian population having gambling problems, the younger age group (18-24) has the highest figures and requires a particular focus.<sup>89</sup>

2.73 The ACL noted its concern that online gambling may pose a greater risk to young people:

Particularly with a growing trend of pervasive online gambling advertising, both online and offline gambling is an increasingly visible part of the culture, which will naturally heighten the curiosity of children.<sup>90</sup>

2.74 It emphasised that 'the protection of children online is of paramount importance, so it is essential that age verification is effective, stringent, and enforced.'<sup>91</sup>

2.75 Relationships Australia expressed serious concerns about the growth of online gambling and gambling advertising on young people:

Young people are highly technologically savvy and the group most likely to adopt new ways of doing things. Mobile devices make gambling instantly available wherever a person is, at any time of the day or night. As Sally Gainsbury points out, both Australian and International studies show that internet gamblers are more likely to be young.

Young people have witnessed the normalisation of sports betting, and, for some, the innocent stakeless wager with a parent over which team will win,<sup>92</sup> will have turned into a regular online bet, albeit starting with small stakes.

2.76 Dr Gainsbury and Professor Blaszczynski also noted the participation of youth and young adults as an area of concern:

Youth are familiar and comfortable with interactive and anonymous electronic media and use the Internet for a multitude of social, entertainment, educational, and business interactions. Australian studies have found that a substantial proportion of school students gamble online (Delfabbro et al., 2005; Jackson et al., 2008). Furthermore, international studies indicate that Internet gamblers are more likely to be younger adults

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88 Responsible Gambling Advocacy Centre, *Submission 29*, p. 3.

89 The Royal Australian and New Zealand College of Psychiatrists, *Submission 10*, covering letter, p. 2.

90 Australian Christian Lobby, *Submission 21*, pp 2–3.

91 Australian Christian Lobby, *Submission 21*, p. 3.

92 Relationships Australia, *Submission 14*, pp 2–3.

(Wood & Williams, 2009). As young adults have been identified as being at greatest risk for gambling-related problems compared to any other age cohort (Delfabbro, 2008), this highlights the [particular vulnerability] of youth to potential harmful consequences. This concern is supported by several research studies that have found relatively high rates of Internet and associated problem gambling amongst young adult populations (Griffiths & Barnes, 2008; McBride & Derevensky, 2009; Olason et al., 2011)...<sup>93</sup>

2.77 They emphasised that these findings highlight the need for further research on this population to understand the effect of interactive gambling on youth and young adults. In addition, they noted that youth are highly influenced by gambling advertising.<sup>94</sup>

2.78 J.G Phillips and Professor Blaszczynski found:

There are relationships between age and technology use, but it is primarily interest in technology rather than age that predicts the use of online interactive services. Indeed, whilst younger age may predict the use of internet for sports betting, older age may predict the use of premium SMS services.<sup>95</sup>

2.79 They noted that four factors could explain the use of interactive gambling services: a tendency to respond impulsively; an interest in gambling; a preoccupation with technology to entertain; and an interest in competitions: 'These factors were to some extent correlated'.<sup>96</sup>

2.80 Dr Gainsbury noted that Australian research has found adolescents may gamble online at higher rates than the general population and international research has also found that internet gamblers are more likely to be young adults.<sup>97</sup>

2.81 The Tasmanian Government recognised the risks created by the growth of interactive and online gambling and particularly its access by young and vulnerable people. It added that a strong regulatory framework is required to address these risks.<sup>98</sup>

Existing research clearly identifies adolescents as at increased risk of developing gambling problems. The online gaming environment uses

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93 Dr Sally Gainsbury and Professor Alex Blaszczynski, *Submission 7*, p. 6.

94 Dr Sally Gainsbury and Professor Alex Blaszczynski, *Submission 7*, p. 6.

95 J.G. Phillips and Prof. Alex Blaszczynski, *Gambling and the Impact of New and Emerging Technologies and Associated Products*, Final Report, August 2010, p. 14.

96 J.G. Phillips and Prof. Alex Blaszczynski, *Gambling and the Impact of New and Emerging Technologies and Associated Products*, Final Report, August 2010, p. 14.

97 Dr Sally Gainsbury, Response to the Productivity Commission Inquiry Report into Gambling: Online gaming and the Interactive Gambling Act, *Gambling Research Volume 22*, No 2, November 2010, p. 5.

98 Tasmanian Government, *Submission 26*, p. 4.

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communication technologies and systems with which this group is familiar and provided in a similar manner as social networking and other interactive forms of entertainment. The instance of a young or underage person engaging with these sites thus poses additional risk of harm.

Due to their familiarity and general perception of 'try it and see' around accessing online networks generally, online gambling may attract and entrap young people who are not experienced or aware of the risk and potential harms from these products.<sup>99</sup>

2.82 The committee notes that FaHCSIA has recognised the potential for children and youth to become exposed to gambling products through the promotion of live odds. It added that:

The proliferation of interactive gambling through the internet and mobile phones may also be an issue for children and youth and other vulnerable people who may experience increased exposure to online gambling in their home environments. Younger people may also arguably be more likely to adopt and be more susceptible to the harm from new and emerging gambling technologies.

The Department acknowledges the need for further work in these areas.<sup>100</sup>

2.83 The Responsible Gambling Advocacy Centre stated that the access to online gambling by children and adolescents is of growing concern, citing work undertaken by Dr Jeffrey Derevensky. Dr Derevensky's research, prevention and clinical work has focused on youth gambling and problem gambling issues over two decades. He told the committee that one of the risk factors for problem gambling is early onset. 'The earlier one starts gambling the more likely they are to continue gambling. And the more they continue gambling, the probability increases that they may have gambling problems'.<sup>101</sup> He advised that 80 per cent of adolescents (depending on accessibility and availability of types of gambling) gamble or have gambled during the past 12 months but only around four per cent have a serious gambling problem.<sup>102</sup> He noted there is a growing body of research indicating that many young people are gambling on dot net or practice sites which may lead to gambling on sites for money. In addition, a number of gambling providers are using social media as a way of attracting young people without strict adherence to age restrictions.<sup>103</sup>

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99 Tasmanian Government, *Submission 26*, p. 8.

100 FaHCSIA, *Submission 25*, p. 3.

101 Responsible Gambling Advocacy Centre, *Submission 29*, p. 4.

102 Dr Jeffrey Derevensky, *Committee Hansard*, 16 September 2011, p. 4. See also Sally Monaghan, Jeffrey Derevensky & Alyssa Sklar, Impact of gambling advertisements and marketing on children and adolescents: Policy recommendations to minimise harm, *Journal of Gambling Issues*: Issue 22, December 2008, p. 253.

103 Dr Jeffrey Derevensky, *Submission 3*, p. 1.

2.84 Dr Derevensky mentioned that many of the Centre's<sup>104</sup> prevention programs are designed as school based programs. He explained that adolescents do see the risks associated with gambling as well as the benefits but that they do not attribute the risks to themselves and they view them as occurring later in life. Dr Derevensky advised that most parents are concerned with issues other than gambling for their children so they have included public service announcements in an effort to educate parents and raise awareness that some adolescents will become problem gamblers.<sup>105</sup>

2.85 Professor Blaszczynski made the following suggestion in relation to ensuring young people are aware of the risks of online gambling:

**Mr NEUMANN:** Finally, are you aware of any steps being taken by school authorities or departments of education around the country to address these problems of online gambling amongst students?

**Prof. Blaszczynski:** I am not aware of any formal programs. I have certainly not researched that particular area of school based education. My view is that it should be integrated within the health and personal development courses within school alongside alcohol, smoking, unprotected sex et cetera. Gambling should form part and parcel of that health and personal development approach.<sup>106</sup>

#### ***Committee view***

2.86 The committee notes with concern research indicating that the development of attitudes and behaviour toward internet gambling among adolescents has implications for longer-term involvement in gambling into adulthood and increasing the severity of problems. The committee sees the value of further research in this area.

#### ***Normalisation of gambling***

2.87 Submissions raised concern that the spread of gambling into new areas has the effect of normalising it which:

...has the strong possibility of creating gambling patterns in young people, especially males, who follow a sport. Males are three times more likely to gamble than females, so the link with sports betting cannot be ignored. It has already had the impact of removing the fun and exuberance of following a team on some people whose concern has shifted to betting and winning on multiple occasions during a game.<sup>107</sup>

2.88 This normalisation of gambling is a particular concern in the area of sport which is further discussed in chapter 12 on advertising.

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104 The International Centre for Youth Gambling Problems. See [www.youthgambling.com](http://www.youthgambling.com).

105 Dr Jeffrey Derevensky, *Committee Hansard*, 16 September 2011, p. 4.

106 Mr Shayne Neumann MP and Professor Alex Blaszczynski, *Committee Hansard*, 16 September 2011, p. 41.

107 Relationships Australia, *Submission 14*, p. 2.

## Support and education

### *Treatment options*

2.89 The issue of seeking appropriate treatment was canvassed by the report prepared for the Ontario Problem Gambling Research Centre which found that of the international gamblers:

- 9 per cent had sought help from the following sources: Gamblers Anonymous (21%); counselling service (18%); friends (11%); psychologists (11%); family doctor (7%); family (7%); pastor/minister/priest (7%); telephone help/hot line (7%); and
- the majority would be more comfortable seeking help from a face-to-face counselling service rather than an internet counselling service. These results suggest that while online services serve as a useful adjunct to land-based treatment, it is not likely to be a solution for this population.<sup>108</sup>

2.90 The need for more support and education for gamblers in the online environment was emphasised to the committee. For example, Relationships Australia stated:

Education about the dangers of online gambling comes with the danger that it might draw attention to its attractions, but support is essential for those whose gambling leads them into financial and personal trouble. There is evidence that online therapy for gambling can be helpful to some, and there is agreement amongst Relationships Australia gambling support practitioners that they are only seeing a small number of those who need help. It is important to promote services to on-line gamblers and that more resources are directed into support programs. It needs to be remembered that those close to the problem gambler - partners, parents and children - need to be supported as well. These people may have been hurt by the problem gambler and suffered financial loss, but are the same people who will be vital to the person's recovery.<sup>109</sup>

2.91 The committee notes and commends the first Australian advertising campaign focusing on the risks and consequences of online gambling launched by the Victorian Government in September 2011. The campaign was timed to coincide with the AFL football finals and upcoming racing carnivals. It includes television, press, online, radio, train and tram advertising to convey the message 'Online gambling: It's easy to bet, too easy to lose'.<sup>110</sup>

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108 Wood, R.T. & Williams, R.J. (2009). *Internet Gambling: Prevalence, Patterns, Problems, and Policy Options*, Final Report prepared for the Ontario Problem Gambling Research Centre, Guelph, Ontario, Canada, 5 January 2009, pp 10–11.

109 Relationships Australia, *Submission 14*, pp 2–3.

110 The Hon Michael O'Brien MP, Minister for Gaming, 'Vic Coalition Govt launches Australia's first campaign on online gambling dangers', *Media release*, 15 September 2011.

2.92 The committee addresses the need for further public education in chapter seven.

### The need for more research

2.93 The need for more research into online gambling was a common theme in submissions. The Productivity Commission noted that to properly analyse the effect of the IGA on online gambling, reliable data on demand is necessary. It found that 'the existing data are far from reliable, which limits statistical analysis'.<sup>111</sup>

2.94 Dr Gainsbury and Professor Blaszczynski further detailed the difficulties of conducting research in this area:

The interactive gambling literature is characterised by few, small-scale studies that often have methodological issues such as the use of non-representative, self-selected samples, which limit the validity of results. Furthermore, the findings of these become rapidly outdated as result of constant changes in technology and the market. In addition, very little research has directly examined interactive gambling in Australia. Consequently, there is little information about the demographics of users, extent of use and/or impact of online gambling in Australia making it difficult to develop appropriate policy responses or predict market trends.<sup>112</sup>

2.95 J.G. Phillips and Professor Blaszczynski noted the differences between population samples online and offline:

Issues when recruiting an online sample include who has access to the technology (sample demographics of interest) and how widespread is it use[d] (what proportion of the population use the technology). In addition, characteristics of online samples are important given that early research into technological use has suggested psychological differences, with people who were more withdrawn likely to have higher rates of technology use.<sup>113</sup>

2.96 They noted that differences in data collection online and offline are important in terms of identifying problem gamblers.<sup>114</sup> To address the lack of empirical data they recommended that the government ensure that research funding is provided to independent researchers to investigate the effect of online gambling at the individual, family and community level. They also recommended that collaborative research funded by the government be encouraged between academic researchers, industry

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111 Productivity Commission, *Gambling*, vol. 2, Commonwealth of Australia, Canberra, 2010, p. 15.18.

112 Dr Sally Gainsbury and Professor Alex Blaszczynski, *Submission 7*, p. 5.

113 J.G. Phillips and Prof. Alex Blaszczynski, *Gambling and the Impact of New and Emerging Technologies and Associated Products*, Final Report, August 2010, p. 10.

114 J.G. Phillips and Prof. Alex Blaszczynski, *Gambling and the Impact of New and Emerging Technologies and Associated Products*, Final Report, August 2010, p. 11.

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operators, state and federal governments and regulatory bodies in order to gain a greater understanding.<sup>115</sup>

2.97 The Royal Australian and New Zealand College of Psychiatrists emphasised that Australia 'must increase its research in the area of problem gambling in order to improve the response to the growing online betting market'.<sup>116</sup>

2.98 Relationships Australia also called attention to the need for 'significantly more research and data collection about online gambling and gambling advertising'. It added:

Relationships Australia supports research in this area, including research as to how best to regulate the gambling industry and ongoing research into how to best support those with a gambling problem. Other research could consider the co-morbidities that can exist with gambling – use of alcohol and prevalence of domestic violence for example. It is known that use of online gambling is increasing, but more needs to be known about the habits and demographics of its users, including whether online gambling is in addition to other forms of gambling, or is becoming a dominant form of gambling for some. Relationships Australia sees it as a responsibility of the gambling and sporting industries to fund research and to adopt the recommendations arising from such research.<sup>117</sup>

2.99 The Victorian InterChurch Gambling Taskforce highlighted that there is a 'severe lack of knowledge about this population [of Australians who access online gaming sites] and the proportion of people gambling [with] gambling problems related to their use of this form of gambling'.<sup>118</sup>

2.100 The Social Issues Executive, Anglican Church, Diocese of Sydney suggested more research on:

...the extent to which online gaming and other forms of wagering and betting are related to problem gambling and the development of behaviours that may lead to problem gambling.<sup>119</sup>

2.101 Telstra indicated that further research is required to:

...acquire the evidence needed to test recently expressed concerns and to identify any specific harms that may be created as a result of various forms of online advertising of internet wagering services.<sup>120</sup>

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115 Dr Sally Gainsbury and Professor Alex Blaszczynski, *Submission 7*, p. 5.

116 The Royal Australian and New Zealand College of Psychiatrists, *Submission 10*, p. 3.

117 Relationships Australia, *Submission 14*, p. 3.

118 Victorian InterChurch Gambling Taskforce, *Submission 31*, p. 2.

119 Social Issues Executive, Anglican Church, Diocese of Sydney, *Submission 17*, p. 5.

120 Telstra, *Submission 23*, p. 3.

2.102 Dr Derevensky supported the call for additional research. He told the committee that research on online gambling is probably at the point where alcohol research was 15 to 20 years ago. However, he noted that there are a number of researchers in Australia who are actively involved in this area. He particularly supported the Productivity Commission taking the leadership role that it has in this area.<sup>121</sup>

2.103 Dr Gainsbury and Professor Blaszczynski concluded:

Given the dearth of empirical evidence informing and guiding policies and decision-makers, it is strongly recommended that a systematic approach be directed toward funding research into the demographics, characteristics and social and economic impacts of Internet gambling in Australia. To this end, the concept of a research institute to provide a systematic program of research should be given serious consideration.<sup>122</sup>

2.104 Professor Blaszczynski emphasised:

My view is that there ought to be some funding allocated to appropriate bodies—possibly to gambling research institutes that will independently evaluate many of these aspects about responsible gambling to be able, with the cooperation of the government and the industry, to carry out appropriate research that provides valid and reliable outcomes rather than people relying on first year university subjects using laptop computer simulated games with non-problem-gamblers and non-gambling-type tasks. I think that what we really need to do is to start looking at an appropriate, sensible approach to trialling certain initiatives which are costly and may not provide the benefit that is intended.<sup>123</sup>

2.105 As an example of an area requiring research, the committee asked about research covering adolescents:

**Mr NEUMANN:** I want to take an entirely different tack and talk about the effects of gambling on young people and also your reference to research relating to a substantial portion of Australian students gambling online. The studies you refer to are a little old, from 2005 and 2008. I was wondering if you had any research that showed whether the problem with Australian students gambling online is worse now than it was a few years ago.

**Dr Gainsbury:** As far as I am aware, there have not been any subsequent studies done in schools. There was some work done recently in Victoria, but they did not specifically look at problem gambling or internet gambling. We are currently doing a study at university student level and a national prevalence study, but there is not a lot of research looking at youth and schoolchildren right now that I am aware of.

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121 Dr Jeffrey Derevensky, *Committee Hansard*, 16 September 2011, p. 7.

122 Dr Sally Gainsbury and Professor Alex Blaszczynski, *Submission 7*, p. 12.

123 Professor Alex Blaszczynski, *Committee Hansard*, 16 September 2011, p. 39.

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**Prof. Blaszczynski:** I think it highlights the lack of research evidence pertinent to the Australian context.<sup>124</sup>

2.106 The Productivity Commission also supported the call for more research as highlighted in its 2010 report:<sup>125</sup>

We found in both those inquiries that we really struggled—and I am sure you have, too—to find out what evidence we can believe, what statistics we can believe, what methodologies we can believe and what people you can believe...

...In our report, some of the recommendations that have not had a lot of profile are our recommendations in relation to research: to create a far better national basis for research to be done and to be done well, and to be addressing policy questions that are important—questions that we have been talking about today.

...We had a recommendation towards the end about that. We have experimented with a kind of federalist approach to research, with a loose kind of oversight arrangement and so on. Our experience after two years was that it had not really delivered. It had not really provided the strong evidence base we were looking for, in a whole lot of ways. At some point this committee might turn its mind to thinking about the evidence base and perhaps looking at that recommendation, or others, about how we could do better in Australia to have a robust basis of information, addressing the important policy questions on a more or less ongoing basis. I think that would help all of us. I am not just being selfish, hoping that in 10 years time or whenever we do our next review we will have more evidence to use!<sup>126</sup>

#### *Committee view*

2.107 One of the very clear messages to the committee is the need for greater research into online gambling to formulate appropriate policy and other responses such as harm minimisation. Despite the lack of conclusive research, the committee notes there appears to be a growing body of literature about the link between internet gambling and problem gambling. The committee commends the recent foundation announced by the Victorian Government to be created under legislation which will commission research into problem gambling.<sup>127</sup> However, the committee believes national research is required to provide a better understanding of the online environment, to better understand the risks and benefits for society and to ensure that responses are timely, targeted and effective. Drawing together the suggestions provided to the committee, more research is required on areas such as:

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124 Dr Sally Gainsbury and Professor Alex Blaszczynski, *Committee Hansard*, 16 September 2011, p. 40.

125 Productivity Commission, *Gambling*, vol. 2, Commonwealth of Australia, Canberra, 2010, p. 15.30.

126 Mr Gary Banks, *Committee Hansard*, 16 September 2011, p. 54.

127 Jason Dowling, 'Baillieu targets gambling harm', *The Age*, 12 October 2011.

- prevalence rates and rates of online problem gambling;
- the potential for growth in the online market;
- demographics of online gamblers and whether they differ significantly from poker machine players;
- the potential risks and harms, particularly for youth;
- the behaviour of online gamblers, including those who start to develop problems;
- the risks that could increase online problem gambling and measures to mitigate them;
- effectiveness of harm minimisation measures;
- the characteristics and vulnerabilities of those people attracted to online gambling in a less regulated environment;
- the risks associated with the development of new technologies that could be used for gambling;
- appropriate regulatory models to mitigate against increases of problem gambling; and
- the effects of online gambling advertising.

2.108 The committee will be particularly interested to see the outcomes of the research currently underway by Dr Gainsbury and Professor Blaszczynski and supports such research being funded by governments. In its previous report on the design and implementation of a mandatory pre-commitment system for electronic gaming machines, the committee noted the gaps in research around problem gambling and recommended the establishment of a national, independent research institute on gambling.<sup>128</sup> The committee reiterates its call for a national independent research institute on gambling which would be the appropriate body to conduct research into online gambling.

### **Recommendation 1**

**2.109 The committee supports the need for national research on online gambling to acquire data on which to base appropriate policy responses. As recommended in its previous report, the committee reiterates its call for a national independent research institute on gambling.**

2.110 In the meantime, the committee also considers that the current DBCDE review of the IGA must be able to commission research in areas such as those outlined above to better understand the risks and benefits of the local online environment.

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128 Joint Select Committee on Gambling Reform, *First Report, The design and implementation of a mandatory pre-commitment system for electronic gaming machines*, May 2011, p. 92.

**Recommendation 2**

**2.111** The committee recommends that the review of the *Interactive Gambling Act 2001* being conducted by the Department of Broadband, Communications and the Digital Economy commission relevant research on the local online gambling environment.



# Chapter 3

## Regulation versus prohibition of online gambling

3.1 The key question of the effectiveness of the Interactive Gambling Act (IGA) inevitably raises the broader policy question of whether regulation or prohibition is the most effective policy response to online gambling. Before detailing the committee's assessment of the effectiveness of the IGA, this chapter introduces the general arguments for and against prohibition of online gambling.

### Background

3.2 As part of its 2010 report into gambling, the Productivity Commission (PC) recommended a 'managed liberalisation' of online gaming, starting with online poker games. It argued that the effects of this change should then be evaluated before further liberalisation is considered.<sup>1</sup>

3.3 On 23 June 2010, the government responded to the PC's recommendation to amend the IGA to allow for a liberalisation of online gaming, starting with allowing the provision of online poker games to Australians. The media release stated:

The Australian Government does not support the liberalisation of online gaming, including online poker, as recommended by the Productivity Commission...It is not convinced that liberalising online gaming would have benefits for the Australian community which would outweigh the risks of an increased incidence of problem gambling, particularly with the rapid changes in technology...

The Government will examine the regulatory approach taken by other countries with similar regulatory regimes in relation to online gaming, such as the United States.

In particular, we will seek to work with other countries to investigate the possibility of a more effective multilateral regulatory regime to address this form of gambling, its social impacts and its impact on the Australian gambling industry.<sup>2</sup>

3.4 The committee is unaware of progress made with examining regulatory approaches taken by other countries or investigating a multilateral regulatory regime. The committee notes that the IGA is currently under review by the Department of

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1 Productivity Commission, *Gambling*, vol. 2, Commonwealth of Australia, Canberra, 2010, pp 15.34–15.35.

2 Senator the Hon Nick Sherry, Assistant Treasurer; The Hon Jenny Macklin MP, Minister for Families, Housing, Community Services and Indigenous Affairs; Senator the Hon Stephen Conroy, Minister for Broadband, Communications and the Digital Economy, 'Productivity Commission Report into Gambling', Joint Press Release, Canberra, 23 June 2010.

Broadband, Communications and the Digital Economy (DBCDE). The review is not due to be completed until the first half of 2012.<sup>3</sup> DBCDE confirmed that this broader issue would form part of the review.<sup>4</sup>

3.5 The larger question of prohibition versus regulation of online gambling is currently under consideration by other jurisdictions which prohibit online gambling, such as the US. While there appears to be a trend towards increased regulation, there is substantial variability in the regulatory requirements of jurisdictions. The committee also heard evidence that the regulatory path undertaken by some jurisdictions has led to new issues to be addressed such as tax evasion and constant pressure to further liberalise online gambling.<sup>5</sup> The regulatory situations in key overseas jurisdictions are dealt with in chapters four and five. The major advantages and disadvantages of liberalisation and prohibition are discussed below.

### **A summary of the case for liberalisation<sup>6</sup>**

3.6 A summary of the main arguments put forward for the liberalisation of online gambling follow. Some of these are discussed in more detail further below:

- given the nature of internet technology, it is impossible to effectively prohibit online gambling (currently Australians can access over 2,000 overseas gambling websites and the Australian market is approaching \$800m);
- if online gambling is impossible to prohibit, rather than have Australian customers access potentially dangerous overseas websites, it would be better to offer a regulated environment (well defined laws and legal bodies to enforce them) which includes consumer protection measures;
- currently problem gamblers are being channelled to overseas websites where there is likely to be minimum protection and consumers are at risk of being exposed to unscrupulous overseas operators;
- regulation provides the capacity to offer harm minimisation/consumer protection measures, capacity for age verification as well as corporation probity;
- domestic operators entering the market would increase competition which would result in better outcomes for consumers;
- it is more difficult for sporting bodies and authorities to monitor for and detect match-fixing when bets are placed with unregulated offshore gambling service providers;

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3 Department of Broadband, Communications and the Digital Economy, *Submission 28*, p. 1.

4 Mr Richard Windeyer, *Committee Hansard*, 19 August 2011, p. 35.

5 Victorian InterChurch Gambling Taskforce, *Supplementary submission 31*, p. 2.

6 Liberalisation means opening the market and putting appropriate regulations in place. This can also be referred to as regulation.

- a regulated environment could include economic benefits in the form of tax revenue (although the amount is uncertain) which could be used to contribute to racing and sporting bodies and for harm minimisation measures;
- internationally there has been a growing trend towards regulation; and
- it is very resource-intensive to enforce prohibitions in this area, as unlike land-based gambling, providers can relaunch another website within minutes.

### ***Online gambling cannot be effectively prohibited***

3.7 Despite the IGA prohibiting certain forms of online gambling, it is estimated that Australians can access over 2,000 overseas gambling websites,<sup>7</sup> and that the illegal online gambling market is approaching \$800 million.<sup>8</sup>

3.8 The most frequently heard argument for liberalisation is that it is nearly impossible to effectively prohibit internet gambling. A number of organisations agreed with this position. The Gaming Technologies Association (GTA) submitted that online gambling is here to stay, prohibition has proved to be a failure and a better approach would be to regulate the market with high social responsibility standards:

Attempts to prohibit or limit online gambling domestically have failed and would continue to fail. The Internet is a global, transnational reality and is not subject to domestic controls; a better approach to online gambling is appropriate legislation and regulation.<sup>9</sup>

3.9 Sportsbet agreed that prohibition is not working:

Gambling is an established industry, and the internet is a modern conduit to facilitate this activity, as was the telephone before it. There is a long history of initial attempts at prohibition, followed by legalisation and regulation of gambling both domestically and internationally, to prevent the issues associated with black market and illegal gambling.<sup>10</sup>

3.10 Betfair supported this view:

You made the point that our submission said that prohibition had failed. It absolutely has. The Productivity Commission's finding was that online poker and casino, which is an illegal product in Australia, is three times bigger than the regulated sports betting market here. So if you are looking at online gambling as a whole I think you need to separate out the focus on the regulated part of it here in Australia with the unregulated illegal part of

7 Information available from: <http://online.casinocity.com/> (accessed 16 August 2011).

8 Productivity Commission, *Gambling*, vol.1, Commonwealth of Australia, Canberra, 2010, p. 2.5.

9 Gaming Technologies Association, *Submission 19*, p. 1.

10 Sportsbet, *Submission 44*, p. 3.

it which, as I said, is much, much bigger than the regulated component here.<sup>11</sup>

3.11 The Australian Internet Bookmakers Association submitted that:

Prohibition, even with added controls, is not a realistic option. Serious consideration must therefore be given to a local licensing scheme. This is the outcome that delivers the most benefits in terms of controlling problem gambling.<sup>12</sup>

3.12 While not supporting legalisation and regulation at this time, Wesley Mission also acknowledged that:

Australians will gamble increasingly online and interactive; whether or not the government repeals the Interactive Gambling Act.<sup>13</sup>

3.13 Relationships Australia emphasised that 'nothing is to be gained by driving gambling underground'. It therefore supported consistent national regulation of the gaming industry.<sup>14</sup>

3.14 While acknowledging that it was an unusual position for a consumer organisation to take, Ms Penny Wilson, Chief Executive Officer of the Responsible Gambling Advocacy Centre, said it favoured liberalisation and regulation:

We have noted that it is an unusual position for a consumer organisation, to say that whilst it is more regulation it is opening up a market, but we feel that then at least some of the inadequacies of what is being offered by online gambling could be addressed. For instance, you can have compulsory pop-ups, or you can make it a requirement of the regulations that access to self-limiting mechanisms such as limits on the amount of money or time spent is available from the first screen, not buried somewhere in the back of the website or not available at all. It gives you some scope for that...<sup>15</sup>

3.15 A recent report from the South African Gambling Review Commission noted that:

Our own experience has shown that prohibition does not extinguish demand, but simply creates the platform for illegal operators to thrive and establish themselves and their brands.<sup>16</sup>

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11 Mr Andrew Twaits, *Committee Hansard*, 11 August 2011, p. 31.

12 Australian Internet Bookmakers Association, *Submission 54*, p. 9.

13 Wesley Mission, *Submission 2*, p. 8.

14 Relationships Australia, *Submission 14*, p. 3.

15 Ms Penny Wilson, *Committee Hansard*, 11 August 2011, p. 37.

16 Republic of South Africa, Department of Trade and Industry, Gambling Review Commission, Gambling Review Report, 29 June 2011, p. 182, available from:  
[http://www.thedti.gov.za/news2011/Gambling\\_review.pdf](http://www.thedti.gov.za/news2011/Gambling_review.pdf) (accessed 12 July 2011).

3.16 However, it also cautioned that uncontrolled legalisation also has the potential for stimulating latent demand on a large scale.<sup>17</sup>

3.17 In a summary of arguments for and against legalisation, Associate Professor Robert T Wood and Professor Robert J Williams pointed out that if online gambling cannot be effectively prohibited it would be better for it to come under legal regulatory control 'so as to accrue economic benefits, and to better ensure player protection'.<sup>18</sup>

3.18 Regarding the question of prohibition or regulation of online gambling, the PC noted the views of researchers working in this area:

It is noteworthy that while the literature on online gambling pays close attention to the higher rate of problem gambling, no academics working in this area find prohibition to be the appropriate policy response. Wood and Williams (2009) come the closest to advocating prohibition, but are equivocal in their findings and state that there is considerable merit in alternative approaches. The vast majority of other researchers in this field suggest that regulation of the industry, which incorporates strict harm minimisation principles, is preferable to prohibition (McMillen 2003, Nelson et al. 2008, Griffith et al. 2008, Broda et al. 2008, Cotte and Latour 2009).<sup>19</sup>

### ***Trend towards increased liberalisation***

3.19 Dr Sally Gainsbury and Professor Alex Blaszczynski noted the trend in international jurisdictions for increased liberalisation:

The increased liberalisation of Internet gambling regulation is likely to continue given difficulties in enforcing prohibition, restricti[ng] loss of revenue to offshore operators, requirement[s] to control sites to minimize exploitation of players and to promote responsible gambling codes of conduct and player protection.<sup>20</sup>

3.20 This trend was also noted by others such as Sportsbet<sup>21</sup> and iBus Media.<sup>22</sup>

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17 Republic of South Africa, Department of Trade and Industry, Gambling Review Commission, Gambling Review Report, 29 June 2011, p. 182, available from: [http://www.thedti.gov.za/news2011/Gambling\\_review.pdf](http://www.thedti.gov.za/news2011/Gambling_review.pdf) (accessed 12 July 2011).

18 Wood, R.T. & Williams, R.J. (2009). *Internet Gambling: Prevalence, Patterns, Problems, and Policy Options*, Final Report prepared for the Ontario Problem Gambling Research Centre, Guelph, Ontario, Canada, 5 January 2009, p. 11.

19 Productivity Commission, *Gambling*, vol. 2, Commonwealth of Australia, Canberra, 2010, p. 15.20.

20 Dr Sally Gainsbury and Professor Alex Blaszczynski, *Submission 7*, p. 2.

21 Sportsbet, *Submission 44*, p. 3.

22 iBus Media, *Submission 42*, p. 51.

## Advantages of liberalisation

### *Potential for greater player protection*

3.21 The PC noted that regulated access to domestic or licensed overseas online providers could divert consumers away from unsafe sites to ones that meet probity and consumer safety standards.<sup>23</sup> The Australian Internet Bookmakers Association advised that the online gambling environment:

...provides responsible gambling features that exceed in both scope and effectiveness those offered by land based gambling providers. These include pre-commitment facilities and, in the context of gambling and the integrity of sporting events, the identification of all clients.<sup>24</sup>

3.22 The Responsible Gambling Advocacy Centre also raised concerns about the safety of consumers and submitted that they would 'be happier and feel safer to participate in online gambling via Australian websites if it was legal. This would enable regulation as well as dispute resolution programs if disputes were to arise'.<sup>25</sup>

3.23 Ms Penny Wilson, Chief Executive Officer, Responsible Gambling Advocacy Centre, also spoke about the potential for customer protection measures in the online environment:

If you are regulating Australian based providers, it at least enables some protection mechanisms, some harm minimisation mechanisms, to be put in place. People are increasingly choosing to gamble online, obviously using sites that are not offered by Australian providers.<sup>26</sup>

3.24 Anglicare Tasmania was of the view that effective consumer protection mechanisms should be in place regardless of whether a person gambles at a venue or online. It argued that these measures should be implemented nationally and should be consistent for all types of gambling. They should include:

- a pre-commitment scheme;
- activity information to the account holder;
- effective self-exclusion measures;
- pop up messages at least every 30 minutes that state the amount of time played and the money lost in that session;

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23 Productivity Commission, *Gambling*, vol. 1, Commonwealth of Australia, Canberra, 2010, p. 35.

24 Australian Internet Bookmakers Association, *Submission 54*, p. 4.

25 Responsible Gambling Advocacy Centre, *Submission 29*, p. 4. See also Responsible Gaming Networks, *Submission 62*, p. 2.

26 Ms Penny Wilson, *Committee Hansard*, 11 August 2011, p. 37.

- pop up messages within the first 15 minutes of logging on to a site that provide information about how to seek help for gambling problems;
- links to problem gambling tests;
- links to Australian-based counselling services;
- forced breaks in play at least once every hour;
- effective measures to prevent underage access; and
- information to parents and guardians who wish to install a filter to restrict access on their home computer.<sup>27</sup>

3.25 In addition, the government should provide appropriate levels of advertising and education to explain the risks of gambling online and how to seek assistance.<sup>28</sup>

3.26 The Responsible Gambling Advocacy Centre said that in its view Australia should move towards regulation of online gambling subject to a number of conditions to protect consumers. These include:

- the use of compulsory mechanisms to enable a player to access help and harm minimisation support in addition to optional mechanisms such as setting a financial or time limit on play;
- practice games or bets should be required to more accurately reflect the real game;
- financial inducements to play being banned or mandatory low limits on 'free trial bets' offered to new members;
- the development of appropriate regulatory mechanisms to ensure providers comply with codes of conduct requirements; and
- advertising during family viewing times and advertising that could be misinterpreted by children being limited.<sup>29</sup>

3.27 Clubs Australia argued that online harm minimisation measures should mirror current land-based requirements which would include:

- voluntary pre-commitment;
- guidance for accessing problem gambler counselling services;
- restrictions on access to prevent play by minors;
- a ban on credit betting;
- a ban on inducements to gamble; and

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27 Anglicare Tasmania, *Submission 6*, p. 4.

28 Anglicare Tasmania, *Submission 6*, p. 4.

29 Responsible Gambling Advocacy Centre, *Submission 29*, p. 5.

- a ban on advertising, other than people who sign up to receive correspondence within gaming venues (that is, excluding newsagents and other retail outlets for lottery products).<sup>30</sup>

3.28 Clubs Australia emphasised a need to provide effective harm minimisation measures for all forms of gambling and added:

...the Federal Government has both the power and responsibility to legislate mandatory harm minimisation measures for internet gambling. Consistency in regulation would ensure that gamblers are not penalised for their gambling preferences. It also has the added advantage of avoiding giving one form of gambling a competitive advantage over the other.

The structure and nature of the online gaming environment affords great potential for cost-effective regulation. Online harm minimisation features are far less costly than land-based measures and can be built into sites with relative ease and without delay. Online operators have the technical ability to monitor play and offer interactive communication services.<sup>31</sup>

3.29 Mr Paul Aalto submitted that '...the new technologies may actually provide problem gamblers with more tools to control their punting than if they were betting with cash'.<sup>32</sup>

3.30 The Australian Christian Lobby also noted the potential benefits that can be accessed by online technology. For example, providers may be able to monitor spending patterns due to the use of account based betting. It submitted that:

A regulatory framework should include provisions to allow and encourage online providers to maximise the potential benefits that online technology can bring. Monitoring and tracking accounts and identifying patterns in habits for signs of a developing problem could alleviate some of the risks inherent in online gambling and protect those at risk.<sup>33</sup>

3.31 It recommended that strategies be put in place to allow and encourage the electronic monitoring of accounts and spending patterns in order to identify problem gamblers.<sup>34</sup>

3.32 Dr Gainsbury and Professor Blaszczynski advised that the internet offers a unique medium to offer responsible gambling strategies. Gambling behaviour on the internet could be monitored to identify problematic or risky behavioural patterns.<sup>35</sup>

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30 Clubs Australia, *Submission 24*, p. 11.

31 Clubs Australia, *Submission 24*, p. [p. 10].

32 Mr Paul Aalto, *Submission 53*, p. 1.

33 Australian Christian Lobby, *Submission 21*, p. 2.

34 Australian Christian Lobby, *Submission 21*, p. 3.

35 Professor Alex Blaszczynski, *Committee Hansard*, 16 September 2011, p. 34. See also Dr Sally Gainsbury and Professor Alex Blaszczynski, *Submission 7*, p. 6.

Providers could then provide practical information to assist players, information on problem and responsible gambling and encourage the completion of self assessment tests. Dr Gainsbury and Professor Blaszczynski are currently working with an Australian online wagering operator to develop such a system. The results of this research could be used for other online gambling sites to enhance the player protection measures offered.<sup>36</sup>

3.33 Professor Blaszczynski expressed his concern regarding the growth of online gambling and the risk to consumers of playing on unregulated sites:

...I think, in the future, online gambling is going to increase, irrespective of whether or not the government legalises online gambling. Basically, in an environment where there are going to be increasing internet opportunities to gamble, what we need to do is act quickly and put in place appropriate regulatory systems to minimise risk; otherwise, in my view, there will be strong market competition from overseas sites and they will attract Australians and revenue will go offshore, exposing Australian players to potential exploitation in an unregulated market. That is my concern.<sup>37</sup>

My view essentially is that with technological advances and interactive television there is going to be a climate in which people can gamble on both national and international sites and there will be global marketing. Whether we want to be caught on the outside or whether we want to impose a proper regulatory body is a question the government needs to determine at the moment.<sup>38</sup>

### ***Committee view***

3.34 The committee acknowledges the potential for harm minimisation measures to be applied relatively easily in the online environment and that some are already being offered. However, harm minimisation measures currently vary from jurisdiction to jurisdiction as does the requirement to offer them and so cannot currently be relied upon to mitigate harms. To be truly effective, harm minimisation measures such as those outlined above should be uniform and required in all jurisdictions. In any consideration of regulation in Australia, this should be a basic starting point.

### ***Competition and economic benefits***

3.35 Submitters pointed out that tax revenue is a potential benefit from regulation. For example, Clubs Australia noted:

Gaming expenditure and the consequential tax, employment and other benefits would also remain in, rather than flow purely out of, the Australian economy.<sup>39</sup>

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36 Dr Sally Gainsbury and Professor Alex Blaszczynski, *Submission 7*, pp 7–8.

37 Professor Alex Blaszczynski, *Committee Hansard*, 16 September 2011, p. 37.

38 Professor Alex Blaszczynski, *Committee Hansard*, 16 September 2011, p. 38.

39 Clubs Australia, *Submission 24*, pp 9–10.

3.36 It argued that online gambling should be regulated 'as far as possible on parity with land based gaming to ensure equal standards of harm minimisation and to ensure competitive neutrality as the costs of regulatory compliance are burdensome'.<sup>40</sup> It concluded:

The funneling of gambling revenue from Australian clubs and other local operators to unknown international companies represents millions of dollars in lost taxation revenue, jobs and community benefits. Clubs Australia believes the level of taxation paid by internet and interactive gambling services should be significantly raised, or that club tax rates be lowered to allow competition.<sup>41</sup>

3.37 Betfair also highlighted taxation currently going overseas:

All revenues are flowing directly offshore without any taxes being paid in Australia. Of greater concern is that players are gambling in an environment that does not accord with Australian regulations.<sup>42</sup>

An important additional benefit of a regulated environment is that responsible gambling initiatives could be enforced on Australian based operators, as well as a requirement for licence fees and taxes to be paid.<sup>43</sup>

3.38 However, not all agreed that liberalisation and regulation would result in greatly increased tax revenue. Dr Mark Zirnsak of the Victorian InterChurch Gambling Taskforce pointed out that:

...normally where gambling has been regulated or authorised within a jurisdiction the state looks at a cost-benefit analysis where there are the costs of the problem gambling and the harm is being caused, and that is seen to be balanced in some way by the benefit of collecting tax. But the problem with the online environment appears to be that often that tax revenue does not flow, so the benefit side is much reduced in an online environment compared to a land based gambling provider if you are doing that kind of analysis.<sup>44</sup>

3.39 While the PC considered that regulation would increase competition which would result in better outcomes for Australian consumers and would provide Australian business with more commercial opportunities,<sup>45</sup> it emphasised that this would not be an area where significant tax revenue would be assured:

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40 Clubs Australia, *Submission 24*, pp 9–10.

41 Clubs Australia, *Submission 24*, p. 10.

42 Betfair, *Submission 12*, p. 13.

43 Betfair, *Submission 12*, p. 13.

44 Dr Mark Zirnsak, *Committee Hansard*, 11 August 2011, p. 42.

45 Productivity Commission, *Gambling*, vol. 1, Commonwealth of Australia, Canberra, 2010, p. 36.

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On the tax side, though, our view was that this is not an area where you would be seeking significant tax revenue. You could not, precisely because of the capacity to move across borders—unlike physical poker machines, for example, where that capacity does not genuinely exist. The tax rates that you could achieve would be lower and we have also warned generally of the allure of tax revenue in this area.<sup>46</sup>

### ***Committee comment***

3.40 Issues around taxation are discussed further below. For example, ensuring providers are subject to a local taxation regime is problematic in the online environment as the UK has found. Currently most interactive gambling service providers are based in 'tax havens' so there would be little incentive for them to move. The potential for tax revenue remains uncertain. The PC acknowledged that the amount of additional tax revenue would probably be limited.

### **Risks of liberalisation**

3.41 Evidence also highlighted the potential risks of liberalisation. The PC acknowledged there would be risks with managed liberalisation:

Given the legitimacy domestic supply would provide, it would also probably see a much larger group of people participating. If those players developed difficulties controlling their gambling in the domestic market, there is a risk that they would continue to play abroad on unsafe sites, notwithstanding strong harm minimisation regulations applied to Australian-licensed operators.<sup>47</sup>

3.42 The PC explained that 'greater access could increase the prevalence of problem gambling and its associated harms'. Greater access would also expose 'a new population group to the risks of problem gambling'. The greater frequency of play 'may result in more people developing a gambling problem'. In addition, online gambling 'can be slotted into very small periods, increasing convenience, but also the opportunity for impulsive gambling ('morning tea gambling')'.<sup>48</sup>

3.43 The PC emphasised that the experience of liberalising poker machines should be heeded and recommended a cautious approach involving managed liberalisation of online poker, which is seen by some to be a less risky form of online gambling:

The experiences of rapid liberalisation of gaming machines in the 1990s provides a lesson about too rapid a change in the gambling environment. A more tempered approach — involving the staged release of less intense gaming machines would have acted as the 'canary in the cage', warning of

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46 Dr Ralph Lattimore, *Committee Hansard*, 16 September 2011, p. 44.

47 Productivity Commission, *Gambling*, vol. 1, Commonwealth of Australia, Canberra, 2010, p. 36.

48 Productivity Commission, *Gambling*, vol. 2, Commonwealth of Australia, Canberra, 2010, p. 15.7.

the wider potential risks. Given that lesson, a precautionary approach to managed liberalisation would also be advisable.<sup>49</sup>

3.44 The Victorian InterChurch Gambling Taskforce noted some features of online gambling listed by the PC as lessening the risks. One was that online gamblers are more likely to gamble at home and therefore be observed by their families.<sup>50</sup> The Taskforce argued that:

...we do not have accurate data on how many online gamblers are living in situations where this is likely to be the outcome. The Commission also made the assumption that gamblers who gamble online and get a record of their transactions would be more likely to remain in control of their gambling, but without any research that backed up this assumption.<sup>51</sup>

3.45 The Victorian InterChurch Gambling Taskforce concluded:

Significantly greater research is required into who would gamble on online gaming sites and the likely prevalence of problem gambling amongst this population before it could be known with any confidence if a liberalised approach to online gaming would result in a net increase or reduction in online gambling related harm.<sup>52</sup>

3.46 Wesley Mission noted that if the government repeals the IGA it would have to take on the responsibility of providing consumer protection and responding to growing consumer concerns:

A government that repeals the prohibition on internet gaming will take on the responsibility of ensuring that the legalised product is safe for consumers. This will be a considerable challenge due to the jurisdictional difficulties. Consumers in Australia who lawfully gambl[e] online will expect the same level of consumer protection as is now provided in similar high-risk activities.<sup>53</sup>

### ***Potential for aggressive advertising and marketing***

3.47 The committee heard that liberalisation and regulation would be likely to bring with it aggressive marketing campaigns to attract new customers and compete with overseas sites. The Victorian InterChurch Gambling Taskforce told the committee:

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49 Productivity Commission, *Gambling*, vol. 2, Commonwealth of Australia, Canberra, 2010, pp 15.29–15.30.

50 Productivity Commission, *Gambling*, vol. 2, Commonwealth of Australia, Canberra, 2010, p. 15.9.

51 Victorian InterChurch Gambling Taskforce, *Submission 31*, p. 5.

52 Victorian InterChurch Gambling Taskforce, *Submission 31*, p. 5.

53 Wesley Mission, *Submission 2*, p. 7.

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Liberalising online gambling may open Australia up to aggressive marketing by offshore providers that out-compete any Australian businesses. These providers may then leave in their wake substantial numbers of new people with gambling problems and the associated harms in Australia, while the revenue moves offshore almost tax free. This in turn will leave Australian Governments to pick up the costs of the harms caused without additional tax revenue from the gambling activity.<sup>54</sup>

3.48 Dr Zirnsak also pointed out that currently online interactive gambling service providers cannot advertise in Australia and even though that is imperfect at least it is contained. However, a regulated market would be likely to result in a significant increase in advertising for these services.<sup>55</sup>

### ***Committee view***

3.49 The committee recognises the possible risks of liberalisation and regulation. There are clearly a number of areas where more research is required in order to better understand the effects and outcomes of this option as discussed in the previous chapter. The potential for aggressive advertising to occur with liberalisation is of great concern to the committee. There is already community concern about the level of sports betting advertising and action is now being considered to reduce it. Given the experience of the rapid liberalisation of poker machines and the more recent growth in the amount of sports betting advertising, the committee agrees that a cautious approach is warranted which takes these experiences into consideration and learns from them.

3.50 Importantly, even in a regulated environment with required harm minimisation measures, gambling would not be problem-free. Given the legitimacy that allowing domestic supply would provide, it would be likely to open the market further to more customers which would put a larger group at risk of developing gambling problems. There would then be the potential for problem gamblers to continue to gamble on unregulated overseas sites when confronted with domestic harm minimisation measures.

## **Issues**

### ***Overseas websites would remain a risk***

3.51 Even with domestic regulation, overseas websites would remain a risk for Australians unless measures were taken to block or deter them from being able to access them. It is likely that a problem gambler who is confronted with domestic consumer protection measures could still access unregulated overseas sites and would seek to do so.

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54 Victorian InterChurch Gambling Taskforce, *Submission 31*, p. 5

55 Dr Mark Zirnsak, *Committee Hansard*, 11 August 2011, p. 42.

3.52 The Victorian InterChurch Gambling Taskforce emphasised this point:

Further, it will be impossible to regulate offshore online gaming sites. Thus, such sites will not have to offer the harm minimisation measures that might be required of sites based in Australia. It is not known if gamblers using online gaming sites within Australia, might not then migrate to use sites located offshore without the same consumer protection measures with an increased risk of developing a gambling problem as a result.<sup>56</sup>

### ***Would Australians prefer to gamble on Australian websites?***

3.53 Mr Andrew Twaits, Chief Executive Officer, Betfair, highlighted the increased willingness of customers to engage in transactions online. He added that this is not just true of wagering but also with retail and other forms of purchasing products and services.<sup>57</sup> He added that Betfair has gone to the effort and expense of becoming licensed in Australia because it gives the company a competitive advantage: 'we think that ultimately customers will gravitate towards well-regulated, creditable businesses'. He added:

So I think a strong regulatory environment in Australia, whilst it inevitably comes with a bit of pain at the operator level while you get used to certain things, ultimately means that it enables us to provide a better product to the consumer.<sup>58</sup>

3.54 Mr Cormac Barry, Chief Executive Officer, Sportsbet, expressed the view that customers would prefer regulated sites:

A lot of people who use offshore sites would be nervous about using those sites but they have no alternative. I think what would be required is some level of public awareness that there are now online gaming sites that are regulated within Australia and have a stamp of approval so it is easy for the customer to identify what sites are regulated and what sites are not regulated. I also think people would prefer to use regulated sites. They would be much happier because they know the protections are there. They would also be happy to know that government taxation is derived from that, so there is an economic and a social benefit to the country of that activity. Whereas the status quo is it happens offshore, customers are at risk and they do it anyway—possibly they are a little naive to do it, but they do do it and that is human nature. I think we need to give them a viable alternative.<sup>59</sup>

3.55 However, Wesley Mission was not confident that an Australian-based industry would be preferred by Australians and emphasised:

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56 Victorian InterChurch Gambling Taskforce, *Submission 31*, p. 4.

57 Mr Andrew Twaits, *Committee Hansard*, 11 August 2011, p. 21.

58 Mr Andrew Twaits, *Committee Hansard*, 11 August 2011, p. 24, 32.

59 Mr Cormac Barry, *Committee Hansard*, 11 August 2011, p. 11.

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Clearly the Productivity Commission missed the key points, which are (1) that online gaming is already available to Australian citizens; (2) that legalising online gaming will probably not result in a significant growth of an Australian online gaming industry, but rather growth in Australians gambling on offshore websites; and (3) that legalising online gaming will result in widespread advertising of gaming products.<sup>60</sup>

3.56 Ms Penny Wilson of the Responsible Gambling Advocacy Centre also discussed the likelihood of consumers choosing Australian sites if they were available:

In the past, it was shown that Australian consumers would prefer Australian websites because of issues of safety and consumer protection. That is not necessarily the case anymore. But our underdeveloped e-commerce sector does mean that people choose Australian based websites because they feel more secure and comfortable; however, they still look at the global market for more choice. So they will find another outlet for that gambling.<sup>61</sup>

3.57 The PC said the evidence is not clear whether Australians, particularly young Australians, would choose to use a better regulated Australian site over an unregulated overseas site but concluded that at least some would:

...we do not actually know, because we do not have the alternatives. There would certainly be a percentage of young people who would want to gamble on an Australian site, and that would influence their decision, but I am not sure whether that is a large or small percentage given that the product would be the same. Obviously, if the product changes then there may be a difference. But, if we are saying we have the same product but are delivering one on a secure site and one on a less secure site, I do not know what the evidence would be in relation to that particular target group. What we would assume is that, as they grow older, they probably become more risk averse and, at least for that group, that they are more likely to use a regulated Australian site than another site.

The other issue that is raised is if you could educate young people to use these particular Australian regulated sites in preference to others at an earlier age. Does that have an effect or not? I do not know the answer to that, but at the moment they do not have that option. They only have one option, and that is to use variously regulated international sites. As you rightly say, that is exactly what they will do. So, if we were able to offer a more secure Australian based site, would some of those young people move to that site? Probably—but I do not know if there is any evidence that would indicate how many would do that.<sup>62</sup>

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60 Wesley Mission, *Submission 2*, p. 3.

61 Ms Penny Wilson, *Committee Hansard*, 11 August 2011, p. 37.

62 Mr Robert Fitzgerald, *Committee Hansard*, 16 September 2011, pp 49–50.

### *Relevant research*

3.58 The committee notes there is research available to support the view that Australians may prefer Australian sites but also evidence to indicate this is not a certainty. The report prepared for the Ontario Problem Gambling Research Centre found that for the international internet gamblers, the main issues that influenced which internet site to use included: general reputation of the site; recommendation from friends; better game experience/interface; monetary deposits being safe and wins paid out in the timely manner; and familiarity, i.e. many do not 'shop around' after they find a site to gamble on.<sup>63</sup>

3.59 Melbourne University online researcher Dr Brent Coker found that people form relationships with websites and if they are satisfied they will return.<sup>64</sup> Applying this to the online gambling environment, this may mean that those gamblers already using overseas websites would be less likely to change to Australian-based gambling websites.

3.60 Research released by PricewaterhouseCoopers in July 2011 on online shopping behaviour called into question the view that Australians prefer to use Australian websites. It showed that Australians are making more purchases online with total purchases expected to reach \$13.6 billion in 2011, a rise of 13 per cent from 2010, and almost double over the next four years. The report estimated that just under half of the amount spent is paid to overseas stores. Consumers reported that they continue to look for value for money. The main drivers for shopping online are price, range of product and convenience. The report added that consumers feel more at ease buying online and are more comfortable with the payment methods.<sup>65</sup>

3.61 Research released by the Australian Communications and Media Authority (ACMA) in November 2010 showed that in relation to making purchases online, 68 per cent reported using Australian sites despite having the option to shop overseas. The reasons cited were to support local industry (24 per cent) and that they did not trust overseas sites (23 per cent). The most common reason for shopping online was convenience, followed by price.<sup>66</sup>

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63 Wood, R.T. & Williams, R.J. (2009). *Internet Gambling: Prevalence, Patterns, Problems, and Policy Options*, Final Report prepared for the Ontario Problem Gambling Research Centre, Guelph, Ontario, Canada, 5 January 2009, p. 9.

64 Jason Murphy, 'You can fall head over heels for a sexy website', *Australian Financial Review*, 13 July 2011, p. 5.

65 ABC News, 'More Aussies embrace online shopping', 26 July 2011, <http://www.abc.net.au/news/2011-07-26/australian-online-shopping-research-report/2810044> (accessed 26 July 2011).

66 ACMA, *Australia in the digital economy: Consumer engagement in e-commerce*, November 2010, p.4.

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3.62 In its draft report, *Economic Structure and Performance of the Australian Retail Industry*, the PC acknowledged conflicting results regarding the preference for Australian websites and mentioned a survey of 5,000 people by the *Sydney Morning Herald* in October 2010 which showed 70 per cent shopped mostly on overseas websites, 19 per cent shopped with Australian online sites and 11 per cent did not shop online. The PC concluded:

This information reveals that caution should be exercised in interpreting the results of surveys of consumers' preferences for purchasing from domestic or foreign websites. For example, there is a possibility of self selection bias for respondents to the Sydney Morning Herald survey whereas the results of the ACMA survey are likely to be more representative and not subject to self selection.<sup>67</sup>

3.63 The PC drew on the evidence from its inquiry on retailing at the hearing and reported:

Groups like eBay and others are very keen on enhancing their reputation for security, ensuring that they go over and above the law to make these safe sites. The evidence is that they are very popular. I do not know whether we have figures, but it seems that people are choosing to purchase through these protected and regulated sites. I am sure there are a lot of transactions going directly outside of those, but the history in Australia seems to be that people do want to use secure sites for making transactions—for obvious reasons—and there are overarching consumer protection laws in place. None of that exists in the unregulated gambling sites that they currently access. The consumer protection laws do not seem to be capturing them, and obviously there is no secure way of using those sites other than picking the best in the world.<sup>68</sup>

3.64 A report by KPMG noted that:

Prospective online gaming customers remain sensitive to any perception that a provider cannot in some way be trusted, while existing customers may be fickle and easily switch to a provider they perceive as more trustworthy. The constituents of trust are broad and range from the potential for fraud or players using software to beat the system, to security issues that cause players to be concerned for their online information.<sup>69</sup>

3.65 The KPMG report also noted that:

In addition to reputation and security concerns, online gamers must be assured that they have a fair chance to win, and that operators are conducting themselves properly. Unlike 'land-based' casinos, where players

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67 Productivity Commission, *Economic Structure and Performance of the Australian Retail Industry*, Draft Report, July 2011, p. 94.

68 Mr Robert Fitzgerald, *Committee Hansard*, 16 September 2011, p. 50.

69 KPMG International, *Online Gaming A Gamble or a Sure Bet?*, 2010, p. 7.

can physically see the way the games operate or cards are dealt, online and digital forms of these games require greater faith.<sup>70</sup>

3.66 Preliminary research conducted by Dr Sally Gainsbury and Professor Alex Blaszczynski on the characteristics of internet gamblers in Australia found that players were primarily concerned with safety and security of online gambling sites and 'chose sites based on their ability to protect and return their money, their reputation, payouts and bonuses'. Secondary considerations included 'legality and the country that the site was based in'.<sup>71</sup>

### ***Committee view***

3.67 As there is no direct evidence to show that Australians would prefer Australian-based online gambling websites for casino-type games, the committee considers that caution is needed when attempting to extrapolate online retail preferences to the online gaming environment. The committee acknowledges that not all overseas gambling websites are dangerous and unregulated. There are overseas websites with good reputations and it is in their interests to operate well to capture repeat custom. The research mentioned above indicates if a customer is satisfied with a website they are more likely to return. This could result in customers maintaining relationships with their existing overseas online gambling websites and, in a regulated environment, adding Australian-based ones to their options rather than swapping one for the other. With customers looking for value for money, it is also questionable whether well-regulated Australian websites, likely with higher costs, could match offers from overseas websites. It is important to note that the inducements to gamble and competitive pricing also drive customers to websites rather than the fact that they are regulated and/or Australian-based. If the ability to advertise and offer inducements in a regulated Australian environment was limited, this could make people more likely to use overseas websites if they are susceptible to such advertising and offers.

### ***Can Australian-based gambling sites be competitive?***

3.68 One of the questions that was raised in this area was whether an Australian-based gambling provider could realistically compete with unregulated overseas providers. Dr Gainsbury and Professor Blaszczynski noted a disparity where some sites that abide by regulatory requirements have to compete with offshore sites 'that offer better odds, more products and have fewer personal identification requirements'.<sup>72</sup> Dr Gainsbury added:

I would certainly say that it is a very competitive market and liberalising and regulating some sites in Australia will not necessarily reduce the number of offshore competitors. Evidence from other jurisdictions that have liberalised and implemented their own sites suggests that they do capture, in

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70 KPMG International, *Online Gaming A Gamble or a Sure Bet?*, 2010, p. 8.

71 Dr Sally Gainsbury and Professor Alex Blaszczynski, *Submission 7*, p. 10.

72 Dr Sally Gainsbury and Professor Alex Blaszczynski, *Submission 7*, p. 3.

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some cases, a minority. Sweden, for example, has only 30 per cent of the poker market on its state-based site. So sites have to be competitive, which is going to have implications for how much you can tax sites so they can offer attractive rates to players and the various advertising rights that they have. So certainly the regulatory model would have to ensure that any liberalised and legalised site would be competitive in an international market. Absolutely, if it is going to be a model where there is a liberalisation, there will have to be efforts to reduce the attractiveness of competitor sites. That might be by restricting advertising or providing incentives for sites. So there would have to be a dual approach to protect the licensees.<sup>73</sup>

3.69 Mr Cormac Barry, Chief Executive Officer, Sportsbet, also highlighted the competitive environment:

It is important that a balance is struck and people are conscious that it is very, very easy for the customer to go elsewhere. So we need to create a regulatory environment that satisfies customer needs and does not create too many barriers to entry for those customers to use regulated services.<sup>74</sup>

3.70 Ensuring Australian-based providers could compete with those overseas was also emphasised by Mr Barry:

I accept your point that an offshore site that provides inducements may draw or attract consumers. I think that only reinforces the point I made earlier that you need to ensure that the industry in Australia can compete on terms with those offshore operators. That said, we do need to enforce high standards in order to protect consumers.<sup>75</sup>

3.71 Wesley Mission highlighted the experience of the now defunct Lasseter's Online where an Australian regulated product was not able to compete with offshore competitors because it could not offer the same level of inducements to gamble as the competitors.<sup>76</sup>

#### *Tax issues*

3.72 Wesley Mission noted that online gambling providers would be attracted to countries where they pay less tax:

As the gambling market becomes truly transnational, there will be a growing currency flow overseas as online and interactive gambling operations are established in low cost and low regulation jurisdictions.<sup>77</sup>

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73 Dr Sally Gainsbury, *Committee Hansard*, 16 September 2011, pp 37–38.

74 Mr Cormac Barry, *Committee Hansard*, 11 August 2011, p. 5.

75 Mr Cormac Barry, *Committee Hansard*, 11 August 2011, p. 10.

76 Wesley Mission, *Submission 2*, p. 3.

77 Wesley Mission, *Submission 2*, p. 8.

3.73 The Victorian InterChurch Gambling Taskforce raised concerns about the numbers of providers located in 'tax havens' and the associated issues of probity and tax avoidance. They told the committee about reports that Betfair in the UK is seeking to move offshore to be licensed out of Gibraltar to avoid paying the 15 per cent UK tax. In addition, the Taskforce mentioned that Betfair have put in a complaint to the European Commission seeking to oppose the Greek laws on online gambling, which include a requirement for gambling providers to pay a 30 per cent tax.<sup>78</sup>

3.74 The Victorian InterChurch Gambling Taskforce told the committee that European jurisdictions that have attempted to liberalise online gambling and then regulate it are 'really struggling to make that work' as:

They are constantly having to try to update their regulation to try to keep up with what is going on. They get pressure to continually liberalise, because arguments are made that any restrictions they put on are anticompetitive and in breach of either European Commission trade rules or WTO rules—and that therefore they need to open up their markets further.

Their experience is that they are getting harm from problem gambling and yet the tax revenue is being lost to offshore gambling providers and attempts to try to regulate or shut that down are then met with problems around whether that is providing restrictions on trade. The route of a regulated liberalised market is not a simple solution and does not appear to address both that serious issue of harm being caused within a jurisdiction and, at the same time, tax revenue being lost to offshore providers operating out of secrecy jurisdictions.<sup>79</sup>

3.75 Dr Mark Zirnsak told the committee that Australian-based sites would have difficulty competing with overseas sites. He explained the reasons:

Lasseter[s] previously found that they had trouble competing. That is hardly surprising. If you have an offshore operator that is operating out of a jurisdiction that requires very low levels of regulation and that pays very low fees and little or no tax at all while an Australian provider is regulated and paying tax, then competition is going to be difficult. They are going to have much higher costs.<sup>80</sup>

Further, the tax arrangements in these secrecy jurisdictions will allow providers in these jurisdictions a financial advantage over a provider based in Australia, and actively encourage tax avoidance.<sup>81</sup>

3.76 The Australian Crime Commission listed a number of risks associated with online gambling including tax avoidance and fraud:

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78 Dr Mark Zirnsak, *Committee Hansard*, 11 August 2011, p. 40.

79 Dr Mark Zirnsak, *Committee Hansard*, 11 August 2011, p. 40.

80 Dr Mark Zirnsak, *Committee Hansard*, 11 August 2011, pp. 42–43.

81 Victorian InterChurch Gambling Taskforce, *Submission 31*, p. 5.

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Online gambling is an identified money laundering risk and increasingly is also acknowledged as a risk for revenue and taxation fraud. This is because of the difficulties associated with identifying the source of income and the actual geographic location where the gambling activity takes place.<sup>82</sup>

*Portability of the online business model*

3.77 Dr Zirnsak also told the committee of the following disturbing possibility, where providers could establish themselves in Australia and then move overseas to avoid or minimise tax, taking customers with them to a less regulated environment:

Potentially, the offshore provider is going to be able to offer much better deals to gamblers to, once they are gambling in the Australian environment, attract them into the offshore environment. So you have built the market through funnelling people into firms regulated in the Australian market and then having the offshore providers picking them off and shifting them over. And you may even have Australian companies do that. Tatts currently operate an online gambling facility out of Malta, so you could imagine Tatts setting up an Australian business that gets people in to play on a regulated Australian provider and then moves them to the Malta one. I do not want to cast aspersions on that particular company, but you could imagine a situation in which a company has an operation running out of Australia and an operation running out of somewhere else that markets from that operation to their offshore operation, which would be operating in a secrecy jurisdiction in which they do not pay any tax.<sup>83</sup>

3.78 However, the committee heard that legislation and regulations could be drafted to address this scenario:

**Prof. Blaszczynski:** This is where I think the government has a place in terms of monitoring, auditing and regulating that particular industry. I am not sure whether or not that occurs in Alderney or other areas where it is legalised. But, again, I do not think it is a question of whether or not to legalise it; it is a matter of putting in the appropriate systems and procedures to prevent that from happening.

**Dr Gainsbury:** That is true. There are different regulatory systems that can be set up. For example, in Italy, operators have to have their servers and a business headquartered within the country. So, if that is something that is of concern, it can be written into the regulation and made a requirement of licensees.<sup>84</sup>

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82 Australian Crime Commission, *Submission 8*, p. 3.

83 Dr Mark Zirnsak, *Committee Hansard*, 11 August 2011, p. 43.

84 Dr Sally Gainsbury and Professor Alex Blaszczynski, *Committee Hansard*, 16 September 2011, p. 37.

### ***Committee majority view***

3.79 It is unclear to what extent regulated Australian online gaming websites providing casino-type games could compete with easily accessible offshore websites. A more regulated environment with higher costs is likely to have difficulty competing with less regulated sites from overseas which would increase pressure to decrease standards and taxation. It is likely that Australian-based businesses would have to advertise and market aggressively and would wish to provide strong incentives to firstly try to draw people from overseas-based websites and secondly to find new customers. This increased marketing could end up being very dangerous to those who are vulnerable, such as children or those who already have a gambling problem.

3.80 The committee majority questions whether Australia could achieve an industry that could effectively compete with unregulated overseas sites while enforcing high standards of consumer protection and harm minimisation.

### **A summary of the case for prohibition**

3.81 Liberalisation is not without risks and the main arguments put forward to retain the prohibition of online gambling are summarised below:

- legalisation increases legitimacy and availability which is likely to increase participation and therefore problem gambling;
- a regulatory approach would serve as a stimulus to online gambling;
- marketing would reach new groups of people who may be vulnerable to the medium;
- it would create new challenges for achieving effective probity;
- there are no venue staff observing and assisting people as with land-based venues;
- there may be the capacity to offer more safeguards but the reality is that there are fewer safeguards in the online environment;
- there is no guarantee that gamblers would choose regulated Australian sites over unregulated overseas sites, particularly if they were cheaper/offered better odds and inducements;
- despite liberalisation, problem gamblers would be more likely to continue to choose unregulated sites with fewer consumer protection measures;
- in Australia it would create a new domestic market which would compete with others and advertise to bring in customers; and
- if Australia had a regulated market the arguments against consumers gambling on unregulated offshore sites would lose force.

3.82 Associate Professor Robert T Wood and Professor Robert J Williams noted that there are many compelling arguments for the prohibition of internet gambling including:

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- the purpose of the law is to help shape behaviour as well as codify societal values;
  - a significant number of online gambling sites have unsatisfactory business and responsible gambling practices;
  - legally-sanctioned domestic sites (with better business and responsible gambling practices) are only patronised to the extent that they offer a competitive advantage to the consumer which is difficult to achieve;
  - a significant portion of online gambling revenue comes from problem gamblers (27 per cent) and it is ethically problematic for revenue generation to be disproportionately derived from a vulnerable segment of the population;
  - legalisation increases legitimacy and availability which strongly increases both gambling and problem gambling in the general population. In general the prevalence of internet gambling and internet problem gambling in each country roughly parallels its legal availability/sanctioning;
  - the nature of online gambling makes it inherently more problematic than most other forms of gambling and it is common policy to restrict access to forms of a product perceived to be more harmful than others; and
  - legalising online gambling and putting some of the new revenue into treatment does not offset the harm that would be caused by legalisation.<sup>85</sup>

### **Do the difficulties with prohibition add up to a case for liberalisation?**

3.83 While the difficulties of prohibition are clear, many submitters and witnesses argued that the deficiencies of the IGA do not mean it should be abandoned for legalisation and regulation. Wesley Mission concluded that the inadequacies of prohibition 'do not necessarily add up to a case for legalisation.' It used cannabis as an analogy stating that 'the failure of governments to prevent the widespread use of cannabis by younger Australian adults does not mean that cannabis production and use should be legalised'. Instead it suggested that an appropriate range of sanctions and warnings based on a public health approach should be applied.<sup>86</sup> Wesley Mission also pointed out that by legalising online gaming in Australia, the ability to argue against consumers gambling with unregulated offshore casinos would be lost.<sup>87</sup>

3.84 Over the longer term, Wesley Mission suggested that the Australian Government should work with the international community to develop a safe international online gambling framework. It concluded that Australia should not 'open

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85 Wood, R.T. & Williams, R.J. (2009). *Internet Gambling: Prevalence, Patterns, Problems, and Policy Options*, Final Report prepared for the Ontario Problem Gambling Research Centre, Guelph, Ontario, Canada, 5 January 2009, p. 12.

86 Wesley Mission, *Submission 2*, p. 5.

87 Wesley Mission, *Submission 2*, p. 5.

the door to offshore online gambling until there are means to control the activities of offshore gambling providers'.<sup>88</sup>

3.85 The Social Issues Executive (SIE), Anglican Church, Diocese of Sydney, said that while there is insufficient research on the manner and extent to which online gambling contributes to problem gambling:

...it should not be presumed that liberalisation of domestic laws is sufficiently justified by perceived increased consumer protection and tax revenue advantages.<sup>89</sup>

3.86 While agreeing about the risks posed by overseas operators, the SIE stated:

...there is neither an evidence-based case nor a compelling normative basis for liberalising current Australian regulatory and legislative frameworks pertaining to online gaming. Liberalisation of these frameworks, as proposed by the Productivity Commission would send the wrong message to the Australian community—it would be perceived as a public endorsement of online gaming. There is also no guarantee that it would prevent fraudulent activity by domestic online gaming sites or dissuade consumers from accessing foreign-operated sites.

Most importantly though, the SIE is concerned that liberalisation would have the effect of legalising greater integration of online gaming with other forms of betting and wagering..<sup>90</sup>

3.87 The SIE argued that 'it should not be presumed that liberalisation of domestic laws is sufficiently justified by perceived increased consumer protection and tax revenue advantages' and concluded:

The possible tax revenue forgone by not pursuing liberalisation is an acceptable cost to bear to protect Australians' social welfare from accelerated development of further avenues for gaming.<sup>91</sup>

3.88 The SIE urged the committee to pursue a cautious and careful approach:

Liberalisation of the Interactive Gambling Act risks creating a new and hidden underclass of problem gamblers. At worst, it may entrench a widespread gambling culture that robs us of our capacity to see events as meaningful in themselves, apart from the winnings they accrue.<sup>92</sup>

3.89 The PC also acknowledged that the shortcomings of the IGA do not indicate a policy failure:

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88 Wesley Mission, *Submission 2*, p. 5.

89 Social Issues Executive, Anglican Church, Diocese of Sydney, *Submission 17*, p. 5.

90 Social Issues Executive, Anglican Church, Diocese of Sydney, *Submission 17*, pp 2–3.

91 Social Issues Executive, Anglican Church, Diocese of Sydney, *Submission 17*, p. 3.

92 Social Issues Executive, Anglican Church, Diocese of Sydney, *Submission 17*, p. 6.

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The evidence reveals that Australians continue to access online gaming services (through non-Australian based sites) that are prohibited under the IGA. However, this does not necessarily indicate policy failure. Very few prohibitions completely prevent the consumption of a product, yet they may still be considered to be justified if they can reduce the consumption of a harmful product (below what it would have been without the prohibition).<sup>93</sup>

### ***Support for the IGA***

3.90 Submissions acknowledged the difficulty of legislating in an area involving the internet and a worldwide market, but many were supportive of the IGA and urged the committee to retain and strengthen it rather than support liberalisation. The Victorian Interchurch Gambling Taskforce expressed support for the intent of the IGA:

In terms of the actual banning of online gambling full stop, we support that position in the Interactive Gambling Act as a general position. We note that the level of problem gambling among people who do gamble online is very high in comparison to other forms of gambling, but, fortunately, the current participation in online gambling by Australians is very low. All the research we could find suggests it is at most one per cent, but it is a growing market. There is therefore an opportunity for parliament to nip this in the bud before it grows into being an industry. Once it achieves that status, it then claims that it provides a whole lot of jobs and revenue and therefore you cannot possibly regulate it now because that will cost jobs. This is an opportunity to get in early and provide decent protection against these kinds of activities, activities which are causing significant levels of harm among those who do gamble online.<sup>94</sup>

3.91 Dr Mark Zirnsak of the Victorian InterChurch Gambling Taskforce outlined their position:

Our view would be that, if you liberalise and legalise it, you are indeed normalising it. We suspect that would then mean you grow the customer base of people actually using this form of gambling.<sup>95</sup>

3.92 Dr Zirnsak added that although enforcement of the IGA is problematic, the message it sends is important:

Nevertheless, the signal being sent to people is that this is not an activity for people to be involved with. Even the Productivity Commission admitted that the current Interactive Gambling Act, with its prohibition on online casino gambling and things outside of wagering, kept the size of the market down. So you have actually reduced harm by keeping the market small. As soon as you liberalise, unless you are going to regulate very heavily, you

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93 Productivity Commission, *Gambling*, vol. 2, Commonwealth of Australia, Canberra, 2010, p. 15.15.

94 Dr Mark Zirnsak, *Committee Hansard*, 11 August 2011, p. 39.

95 Dr Mark Zirnsak, *Committee Hansard*, 11 August 2011, p. 40.

will open up a whole lot of marketing opportunities for the online gambling providers and they will grow their market. So you will have a much larger base of people gambling. Even if you put in place protection measures, the probability in our view will be you will end up with a larger pool of people with gambling problems because there will be more people gambling. Even if you provide some level of protection, the fact that you have so many more people gambling means you will still end up with more people with gambling problems.<sup>96</sup>

3.93 Because of the difficulty of liberalising the market and then trying to regulate it, Dr Zirnsak advocated doing what is possible to minimise the market. He acknowledged that this would be an imperfect solution but that it would result in a limited market and limited accessibility.<sup>97</sup> He said the existing prohibition appears to be the best way to minimise access to online gambling and that it should be further strengthened. Acknowledging that it is an imperfect ban, he added that the public health approach of informing consumers about the risks of an activity and ensuring there are support services should still apply.<sup>98</sup>

3.94 The Australian Racing Board also supported the intent of the IGA:

The IGA is a valuable attempt to address important social issues. We believe that it should not be watered down. In particular, we do not believe that the ban on on-line poker should be relaxed.<sup>99</sup>

## **Views of states and territories**

3.95 While the committee did not receive submissions from all state and territory governments, those that did submit were not in agreement on this issue.

### **New South Wales**

3.96 The NSW Government stated that it did not support the PC's recommendation to liberalise the regulation of online gambling. Instead it supports measures to 'tighten the regulatory framework' provided for by the IGA and pointed out regulatory approaches overseas.<sup>100</sup>

### **Tasmania**

3.97 The Tasmanian Government submitted that a strong regulatory framework is required to address the risks presented by the growth of interactive and online

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96 Dr Mark Zirnsak, *Committee Hansard*, 11 August 2011, p. 40.

97 Dr Mark Zirnsak, *Committee Hansard*, 11 August 2011, p. 42.

98 Dr Mark Zirnsak, *Committee Hansard*, 11 August 2011, p. 42.

99 Australian Racing Board Limited, *Submission 27*, p. 3.

100 NSW Government, *Submission 56*, p. 8.

gambling.<sup>101</sup> This would include 'pre-commitment and other consumer-protection oriented safeguards. This could extend to game design in a similar way the national EGM reforms address the probably harms of 'high intensity' play'.<sup>102</sup> It suggested that a sound regulatory framework requires a combination of the following initiatives:

- good models for consumer protection/harm minimisation;
- mandated consumer protection and harm minimisation for Australian sites and the means of bringing pressure to bear on offshore sites for these standards;
- restrictions on advertising, inducements and loyalty schemes that promote high risk online gambling products;
- online counselling in addition to face to face and telephone counselling; and
- the promotion of player education and information to meet the growing interest in online options – onshore or offshore.<sup>103</sup>

### ***Western Australia***

3.98 The position of the Western Australian Government is that more should be done to support the intent of the IGA 'by exploring ways to improve its effectiveness in relation to controlling the access of offshore gaming operators to Australian customers'. It then added that if no practical way to improve the effectiveness of the IGA was found, provided individual jurisdictions such as Western Australia could 'opt out', it would 'support consideration of a model for regulating online gaming to Australians subject to strict conditions about probity and integrity; advertising; bet types; and harm prevention and minimisation'.<sup>104</sup>

### ***Committee view***

3.99 The committee understands that people will take different views on this issue depending on their definition of success in this area, just as the committee members have done later in the report. Committee members' views on the liberalisation or prohibition of online interactive gambling services are contained in chapter seven and in additional comments which follow this report.

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101 Tasmanian Government, *Submission 26*, p. 4.

102 Tasmanian Government, *Submission 26*, p. 5.

103 Tasmanian Government, *Submission 26*, pp 5–6.

104 Government of Western Australia, Department of Racing, Gaming and Liquor, *Submission 15*, p. 3.



# **Chapter 4**

## **International regulatory environment—forms of liberalisation**

4.1 International jurisdictions use a variety of regulatory responses to online gambling, from prohibition to a liberalised and regulated market. This chapter will outline some of the approaches taken by jurisdictions which operate a liberalised model of online gambling regulation. It is important to note that online gambling regulation is a changing area and some countries are currently reviewing their legislation. Therefore some of the details contained in this chapter may have changed by the time the report is published.

### **The trend towards liberalisation**

4.2 Submitters suggested that there is a trend internationally towards increasing liberalisation, with many countries, particularly within Europe, moving towards a liberalised form of online gambling with stringent regulations. The Department of Broadband, Communications and the Digital Economy (DBCDE) outlined this trend in its discussion paper which is part of the government review of the *Interactive Gambling Act 2001* (IGA):

There is a general trend amongst European countries towards regulated access to online gambling including to 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.<sup>1</sup>

4.3 Sportsbet said that regulation had been 'particularly successful in Europe'.<sup>2</sup>

4.4 Countries that have a form of liberalised online gambling include, but are not limited to, the United Kingdom (UK), Alderney and France. These regulatory approaches are detailed below.

### **United Kingdom**

4.5 In 2005, the UK introduced the *Gambling Act 2005* (the Act) which covers all forms of gambling in the UK including online gambling (called remote gambling).

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1 Department of Broadband, Communications and the Digital Economy, *Review of the Interactive Gambling Act 2001*, Discussion paper, August 2011, p. 14.

2 Sportsbet Pty Ltd, *Submission 44*, p. 3.

4.6 The Act provides for the legal licensing of 'remote gambling' where individuals participate in gambling via remote communication including internet, telephone, television, radio and other electronic or communication technology.<sup>3</sup>

4.7 Forms of remote gambling that are permitted under the Act include gaming and games of chance, casino gambling, equal chance gaming,<sup>4</sup> betting (including spread bets<sup>5</sup> and competition prizes), pool betting and lotteries. iBus Media Limited outlined the all-encompassing nature of the Act:

The *Gambling Act 2005 (UK Act)* is a comprehensive piece of legislation dealing with all forms of gambling. It is both technology neutral and product neutral in that it provides licences for all types of gambling products (betting, casino, bingo, poker etc.).<sup>6</sup>

4.8 The Act established an independent regulatory authority, the UK Gambling Commission (the Commission), which is responsible for the regulation and licensing of all commercial gambling in the UK except spread betting and the National Lottery.<sup>7</sup> The Commission provided a submission to the inquiry<sup>8</sup> and most of the information below is drawn from this.

### ***The roles and functions of the Commission***

4.9 Formally established in October 2005, the Commission is responsible for regulating all commercial gambling, including remote gambling, offered in the UK.<sup>9</sup> It licenses all remote gambling providers with equipment based in the UK and its licensing objectives are:

- preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime;
- ensuring that gambling is conducted in a fair and open way; and

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3 Gambling Commission (Great Britain), *Submission 33*, p. 5.

4 Equal chance gaming includes games such as poker or bingo, where the chances are equally favourable to all participants and players are not competing against a bank. See [http://www.gamblingcommission.gov.uk/gf-faqs/casinos/can\\_i\\_hold\\_a\\_casino\\_night/non-commercial\\_equal\\_chance.aspx](http://www.gamblingcommission.gov.uk/gf-faqs/casinos/can_i_hold_a_casino_night/non-commercial_equal_chance.aspx) (accessed 25 August 2011).

5 Spread betting is defined as betting on sporting results, movements in the stock exchange, etc., in which the bookmaker predicts an estimated outcome as a spread, and the bettor predicts a result higher or lower than the spread, *Macquarie Dictionary*. See also Australian Racing Board Limited, *Submission 27*, p. 9: '...the returns or losses from a bet are calculated in proportion to the degree to which a bettor's prediction is right or wrong relative to the bookmaker's spread.'

6 iBus Media Limited, *Submission 42*, p. 37.

7 Gambling Commission (Great Britain), *Submission 33*, p. 3.

8 Gambling Commission (Great Britain), *Submission 33*.

9 Gambling Commission (Great Britain), *Submission 33*, p. 3.

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- protecting children and other vulnerable persons from being harmed or exploited by gambling.<sup>10</sup>

4.10 The Act provides the Commission with the power to grant and determine the conditions for operating and personal gambling licences, assess applications and current licence holders' compliance with conditions and codes of practice, and take regulatory action against an operating or personal licence holder who breaches these conditions. The Commission also possesses the power to void bets and investigate and prosecute offences committed under the Act.<sup>11</sup>

### ***The white list***

4.11 Online gambling operators regulated in the European Economic Area (EEA) are permitted by the Act to provide online gambling services and advertise within the UK without a licence, provided they meet regulation requirements specified by the Commission. The Act also establishes provisions for a white list of operators based outside the EEA, extending the same rights and responsibilities to them that are provided to operators within the EEA. While the Commission does not formally license or regulate operators within these areas, good practice agreements have been established with regulators.<sup>12</sup> This practice has been used by major online poker operators worldwide:

Despite the availability of a licence, no major poker site has sought a licence in the UK. One of the reasons for this is that the British legislation is fully EU compatible, to the extent that an operator having a licence in the European Union or in a white listed territory (which includes Tasmania), is allowed to advertise its services in the UK as if it had a local licence.<sup>13</sup>

### ***Review of the white list***

4.12 In July 2011, the UK Government announced a policy proposal to regulate gambling at the 'point of consumption', requiring all remote gambling operators providing services to the UK market to obtain a licence from the Gambling Commission. This would effectively phase out the current white list and EEA State arrangements. The proposed policy would provide a 'level playing field' and ensure stronger protections for consumers:

These proposals are an important measure to help address concerns about problem gambling and to bridge a regulatory gap, by ensuring that British

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10 Gambling Commission (Great Britain), *Submission 33*, p. 4.

11 Gambling Commission (Great Britain), *Submission 33*, p. 4.

12 Gambling Commission (Great Britain), *Submission 33*, pp 4–5.

13 iBus Media Limited, *Submission 42*, p. 37.

consumers will enjoy consistent standards of protection, no matter which online gambling site they visit.<sup>14</sup>

4.13 The proposal followed a review of the white list and a consultation process which began in April 2009. It would require all offshore operators wishing to provide services to the UK market to gain a licence from the Commission, pay 15 per cent tax on gross profits and to inform the Commission of suspicious betting patterns.<sup>15</sup>

4.14 The proposed policy has been questioned by some who believe that the tax may negatively affect UK-based providers and deter offshore providers from seeking a licence in the UK:

In itself, a 15% tax on gross profits, while high, remains workable (and even seems generous when compared to a number of the turnover taxes proposed in the recent spate of EU market openings). Problems principally arise when it is coupled with the UK's main corporation tax rate of 28%, substantial application and annual licence fees, and the typically high business costs of a UK location. As a result, while some have opted into this system due to the overriding convenience of a UK licence, a number of licensees have relocated offshore, while a greater number of would-be licensees have elected to licence elsewhere.<sup>16</sup>

4.15 Others argue that the new system would not achieve its consumer protection goal:

In the absence of any sanctions, it is reasonable to assume that unscrupulous operators will advertise their services to the UK market with impunity. As a result, the burden of any national licensing system will fall exclusively on the operators that play by the rules, while industry 'cowboys' will remain free of any requirement to offer fair gambling and to protect the vulnerable.<sup>17</sup>

4.16 While there is no specific timeline in place for the implementation of the proposed policy, the UK Government will be working with the Commission and other stakeholders on the details of the new licensing system which will require amendments to the Gambling Act.<sup>18</sup>

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14 Mr John Penrose MP, Minister for Tourism and Heritage, *Written Ministerial Statement on Remote Gambling Policy Proposals*, Ministerial Speech, 14 July 2011, [http://www.culture.gov.uk/news/ministers\\_speeches/8293.aspx](http://www.culture.gov.uk/news/ministers_speeches/8293.aspx) (accessed 24 August 2011).

15 Mr John Penrose MP, British Minister for Tourism and Heritage, *Britain consumers will be better protected by planned changes to gambling laws*, Media Release 069/11, 14 July 2011, [http://www.culture.gov.uk/news/media\\_releases/8299.aspx](http://www.culture.gov.uk/news/media_releases/8299.aspx) (accessed 24 August 2011).

16 Tom Lippiett, 'The UK: 2010 and beyond', *iGaming Business*, Issue 61, March/April 2010, p. 9.

17 Steve Donoughue and Fabian Adams-Sandiford, 'The Great White Hope', *iGaming Business*, Issue 69, July/August 2011, p. 57.

18 Mr John Penrose MP, British Minister for Tourism and Heritage, *Written Ministerial Statement on Remote Gambling Policy Proposals*, 14 July 2011, [http://www.culture.gov.uk/news/ministers\\_speeches/8293.aspx](http://www.culture.gov.uk/news/ministers_speeches/8293.aspx) (accessed 24 August 2011).

### ***Providing remote gambling to other countries***

4.17 The Act prohibits gambling operators based in the UK from offering remote gambling services to countries where online gambling is prohibited:

- (1) A person commits an offence if he does anything in Great Britain, or uses remote gambling equipment situated in Great Britain, for the purpose of inviting or enabling a person in a prohibited territory to participate in remote gambling.
- (2) In subsection (1) "prohibited territory" means a country or place designated for the purpose of this section by order made by the Secretary of State.<sup>19</sup>

### ***Harm minimisation measures***

4.18 Harm minimisation measures are set out under section two of the Licence Conditions and Codes of Practice (the codes and conditions). These outline the Commission's principle codes of practice which are established under section 24 of the Gambling Act 2005.

4.19 iBus Media summarised the Codes of Practice:

The Codes of Practice are either:

- ordinary code provisions, which generally describe best practice measures and, whilst compliance is not mandatory, failure to take these provisions into account may be used as evidence in civil or criminal proceedings; or
- social responsibility code provisions, with which a licence holder must comply and which have the same status as licence conditions...<sup>20</sup>

4.20 The ordinary and social responsibility code provisions cover matters including harm minimisation and responsible gambling measures and player protection. These include access to minors, responsible gambling information, customer interaction and self-exclusion procedures.<sup>21</sup>

### ***Access by minors***

4.21 Online gambling operators are required to have in place and to monitor the effectiveness of procedures designed to prevent access and use by underage players. iBus Media outlined specific requirements under the social responsibility code provisions which include, but are not limited to, the following:

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19 *Gambling Act 2005*, s. 44.

20 iBus Media Limited, *Submission 42 Attachment 2*, p. 13.

21 iBus Media Limited, *Submission 42 Attachment 2*, pp 13–15.

- operators must provide customers with warnings that underage gambling is an offence and require all customers to affirm they are old enough to legally gamble;
- operators must regularly review age verification systems and implement all reasonable improvements resulting from technological advancements and increases in information;
- operators must ensure all relevant staff have appropriate age verification training;
- websites must allow adults to use filtering software to restrict access (by parents and schools etc.); and
- operators must follow specific age verification strategies depending on the country the player resides in.<sup>22</sup>

4.22 In the event that a customer's age is not verified within 72 hours, the account will be frozen and further gambling will not be available until age verification is complete. If the user is found to be underage, the operator is required to return any money paid by the player for the use of the gambling facilities and no winnings are to be paid to the player.<sup>23</sup>

#### *Responsible gambling information*

4.23 All operators must provide information to customers on responsible gambling and avenues to gain help for problem gambling. This information must cover any features offered to players that enable them to control their gambling, including: the ability to limit their playing time or spend; warning messages that are available on the site; self-exclusion options; and the availability of help and advice.<sup>24</sup> This information must be provided to all customers, regardless of whether an operator offers specific

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22 iBus Media Limited, *Submission 42 Attachment 2*, p. 14. See also UK Gambling Commission, *Licence Conditions and Codes of Practice*, Consolidated version, March 2011 <http://www.gamblingcommission.gov.uk/pdf/Licence%20conditions%20and%20codes%20of%20practice%20-%20consolidated%20March%202011.pdf> (accessed 25 July 2011).

23 UK Gambling Commission, *Licence Conditions and Codes of Practice*, Consolidated version, March 2011, <http://www.gamblingcommission.gov.uk/pdf/Licence%20conditions%20and%20codes%20of%20practice%20-%20consolidated%20March%202011.pdf> (accessed 25 July 2011). See also iBus Media Limited, *Submission 42 Attachment 2*, p. 14.

24 iBus Media Limited, *Submission 42 Attachment 2*, pp 14–15. See also UK Gambling Commission, *Licence Conditions and Codes of Practice*, Consolidated version, March 2011, <http://www.gamblingcommission.gov.uk/pdf/Licence%20conditions%20and%20codes%20of%20practice%20-%20consolidated%20March%202011.pdf> (accessed 25 July 2011).

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information targeted at customers who may demonstrate problem gambling behaviour.<sup>25</sup>

4.24 The ordinary code provisions or 'best practice provisions' also state operators should make this information available in any foreign language in which they market their services.<sup>26</sup>

#### *Customer interaction*

4.25 All operators must have in place procedures and policies for interaction with players who may be demonstrating behaviour indicating problem gambling. These procedures must identify the appropriate level of management to initiate interaction with customers regarding problem gambling and training of staff so that they are aware of the procedures and who is designated to implement them.<sup>27</sup> In addition to these measures, policies must identify what behaviours constitute problem gambling and will result in customer interaction, and under what circumstances refusal of service to customers should be considered.<sup>28</sup>

#### *Self-exclusion procedures*

4.26 All operators are required to implement specific self-exclusion procedures, which include:

- preventing any marketing material being sent to a customer who has self-excluded. Operators must take steps to remove contact details from any marketing databases within two days of receiving the self-exclusion application;
- customer accounts must be closed and any funds contained in those accounts must be returned to the customer. The provisions specify that 'it is not sufficient to merely prevent an individual from withdrawing funds from their customer account while still accepting wagers from them'; and
- procedures must be put in place to prevent self-excluded individuals participating in gambling, including maintaining a register of details and

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25 UK Gambling Commission, *Licence Conditions and Codes of Practice*, Consolidated version, March 2011, p. 24,  
<http://www.gamblingcommission.gov.uk/pdf/Licence%20conditions%20and%20codes%20of%20practice%20-%20consolidated%20March%202011.pdf> (accessed 25 July 2011).

26 iBus Media Limited, *Submission 41 Attachment 2*, p. 15.

27 UK Gambling Commission, *Licence Conditions and Codes of Practice*, Consolidated version, March 2011, p. 25,  
<http://www.gamblingcommission.gov.uk/pdf/Licence%20conditions%20and%20codes%20of%20practice%20-%20consolidated%20March%202011.pdf> (accessed 25 July 2011).

28 iBus Media Limited, *Submission 42 Attachment 2*, p. 15.

card numbers of individual who are excluded and training staff to ensure they are able to operate and enforce the systems.<sup>29</sup>

4.27 A minimum self-exclusion period of six months is specified in the ordinary code provision which states that operators should take reasonable steps to provide customers with the option to extend to a total of five years. These provisions also specify methods by which customers may apply for self-exclusion and a cooling off period of one day after players actively select to begin gambling again.<sup>30</sup> As compliance with these measures is not mandatory in order to gain a licence, they remain best practice and are not enforced.<sup>31</sup>

#### ***Accreditation of online gambling providers - eCOGRA***

4.28 Submitters pointed out that there are organisations overseas which accredit online gambling websites such as eCOGRA (E-commerce and Online Gaming Regulation and Assurance). Its website reports:

eCOGRA is an independent London-based player protection and standards organisation that provides an international framework for best operational practice requirements, with particular emphasis on fair and responsible gambling.<sup>32</sup>

4.29 Clubs Australia reported that eCOGRA 'provides certification to sites that offer responsible and honest gambling practices such as prompt payment, random games, accurate advertising claims, fair trading practices and privacy protections'. However, it added:

...the list of "safe and fair" approved sites contains the names of only thirty casinos. The online industry is unwilling to self-regulate.<sup>33</sup>

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29 UK Gambling Commission, *Licence Conditions and Codes of Practice*, Consolidated version, March 2011, p. 27,  
<http://www.gamblingcommission.gov.uk/pdf/Licence%20conditions%20and%20codes%20of%20practice%20-%20consolidated%20March%202011.pdf> (accessed 25 July 2011). See also iBus Media Limited, *Submission 42 Attachment 2*, p. 15.

30 UK Gambling Commission, *Licence Conditions and Codes of Practice*, Consolidated version, March 2011, p. 28,  
<http://www.gamblingcommission.gov.uk/pdf/Licence%20conditions%20and%20codes%20of%20practice%20-%20consolidated%20March%202011.pdf> (accessed 25 July 2011).

31 *Licence Conditions and Codes of Practice*, Consolidated version, March 2011, p. 24,  
<http://www.gamblingcommission.gov.uk/pdf/Licence%20conditions%20and%20codes%20of%20practice%20-%20consolidated%20March%202011.pdf> (accessed 25 July 2011).

32 Information available from: <http://www.ecogra.org/Home.aspx> (accessed 8 September 2011).

33 Clubs Australia, *Submission 24*, p. 6.

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4.30 Wesley Mission argued that self regulation by organisations such as eCOGRA is 'dubious, as their standards are pretty low and they lack an effective independent audit process'.<sup>34</sup> It emphasised:

Our concern with all of these certification programs is that they are businesses that rely on being paid by the companies they certify as "responsible". The concept of 'responsible gambling' is often described as an oxymoron, and responsible gambling programs vary from worthless tokenism to programs that genuinely endeavour to restrict the incidence of problem gambling.<sup>35</sup>

### ***Committee view***

4.31 The committee notes that while accrediting organisations such as eCOGRA support self-regulation, compliance is voluntary. However, these measures would provide some encouragement for online gambling providers to offer harm minimisation measures.

### ***Advertising***

4.32 In addition to adopting a managed approach to online gambling regulation, the UK permits advertising by remote gambling operators licensed under the Act or those that are on the white list, provided they meet the UK's advertising regulatory requirements.<sup>36</sup> Advertisements to the UK market must comply with three codes of practice:

- The British Code of Advertising, Sales Promotion and Direct Marketing<sup>37</sup>;
- The UK Code of Broadcast Advertising<sup>38</sup>; and
- Gambling Industry Code for Socially Responsible Advertising.<sup>39</sup>

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34 Wesley Mission, *Submission 2*, p. 7.

35 Wesley Mission, *Submission 2*, p. 6.

36 *Review of current and future trends in interactive gambling activity and regulation*, Literature Review, Report to the Australian Government Department of Families, Housing, Community Services and Indigenous Affairs, by the Allen Consulting Group, June 2009, p. 35.

37 The Committee of Advertising Practice is responsible for writing and maintaining the British Code of Advertising, Sales Promotion and Direct Marketing which relates to non-broadcast advertising such as print media. See <http://www.cap.org.uk/About-Us/Regulatory-system-at-a-glance.aspx> (accessed 26 August 2011).

38 The Broadcast Committee of Advertising Practice is responsible for writing and maintaining the UK Code of Broadcast Advertising. This code relates to broadcast advertising including advertising online. See <http://www.cap.org.uk/About-Us/Regulatory-system-at-a-glance.aspx> (accessed 26 August 2011).

39 *Review of current and future trends in interactive gambling activity and regulation*, Literature Review, Report to the Australian Government Department of Families, Housing, Community Services and Indigenous Affairs, by the Allen Consulting Group, June 2009, p. 35.

4.33 The codes of conduct outline responsible advertising processes including not targeting minors, exploiting vulnerable people in relation to gambling activity or being misleading.<sup>40</sup>

### ***Effect of the Act on online gambling participation and problem gambling***

4.34 Comparison of the 2007 British Gambling Prevalence Survey (the 2007 survey) conducted before the Act came into full effect, and the 2010 British Gambling Prevalence Survey (the 2010 survey), shows a small increase in online gambling. The 2007 survey showed the prevalence of online gambling was six per cent. This is significantly lower than the 2010 figure of 14 per cent. However, the difference between the 2007 and 2010 figures can be explained by the inclusion of the National Lottery in the 2010 survey results:

The 2007 survey used a more conservative definition of online gambling, which only included those who bet online, used a betting exchange or gambled online on poker, bingo, slot machine style games or casino games as internet gamblers. Using this comparable definition, in 2010, 7% of adults (10% of men and 5% of women) gambled online on these activities...<sup>41</sup>

4.35 Using the same definition of gambling online for the 2007 and 2010 surveys, there was a one per cent increase in the level of participation in online gambling following the introduction of the Act.<sup>42</sup>

4.36 The Commission noted that the problem gambling prevalence rates observed in the UK showed a slight increase in 2010 when compared to the statistics in the 2007 survey. Using DSM-IV<sup>43</sup> and PGSI<sup>44</sup> measurements, the prevalence of problem

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40 *Review of current and future trends in interactive gambling activity and regulation*, Literature Review, Report to the Australian Government Department of Families, Housing, Community Services and Indigenous Affairs, by the Allen Consulting Group, June 2009, p. 36.

41 *British Gambling Prevalence Survey*, 2010, prepared by the National Centre for Social Research for The Gambling Commission, p. 22.

42 *British Gambling Prevalence Survey*, 2010, prepared by the National Centre for Social Research for The Gambling Commission, p. 25.

43 The DSM-IV is the 4<sup>th</sup> edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association. It provides common language and standard criteria for the classification of mental disorders. The ten diagnostic criteria constitute a tool created for diagnosis of pathological gambling by clinicians. *British Gambling Prevalence Survey*, 2010, prepared by the National Centre for Social Research for The Gambling Commission, p. 73.

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gambling for all forms of gambling increased in 2010 by approximately 0.3% (DSM-IV) and 0.2% (PSGI).<sup>45</sup>

4.37 The Commission noted that problem gambling prevalence rates in the UK were similar to other European countries, and 'lower than countries like the USA, Australia and South Africa' and lower than in Northern Ireland where remote gambling is prohibited.<sup>46</sup>

## France

4.38 France has a different approach to online gambling regulation than that of the UK, regulating domestic providers and blocking unlicensed international providers. The Department of Broadband, Communications and the Digital Economy (DBCDE) outlined the French approach:

France has a slightly more complicated model, which allows the licensing of some domestic services and then attempts to block. In a sense, they work both sides: to block the overseas based services but provide for regulation of domestic French provision of the services to French consumers.<sup>47</sup>

4.39 France liberalised online gambling laws in May 2010 with the introduction of Law No. 2010-476 and Decree No. 2010-482 and 2010-518. The laws permit the provision of online poker, sports betting and wagering on horse racing; however, all other forms of online gambling are prohibited.<sup>48</sup> Licences are provided to online gambling operators who meet licensing and harm minimisation requirements established in the French laws and decrees. iBus Media indicated that provision of other 'greater risk' online games such as casino games may be permitted in the future.<sup>49</sup>

4.40 The Australian Racing Board stated that the aim of the French legislation was to open their market to regulated online gambling consistent with State policy of:

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44 The Problem Gambling Severity Index (PGSI) consists of nine items ranging from chasing losses to gambling causing health problems to feeling guilty about gambling. Each item is assessed on a four-point scale: never, sometimes, most of the time, almost always. Responses to each item are given the following scores: never = zero; sometimes = one; most of the time = two; almost always = three. When scores to each item are summed, a total score ranging from zero to 27 is possible. A PGSI score of eight or more represents a problem gambler. National Centre for Social Research, *British Gambling Prevalence Survey 2010*, prepared for the Gambling Commission, p. 74.

45 Gambling Commission (Great Britain), *Submission 33*, p. 9.

46 Gambling Commission (Great Britain), *Submission 33*, p. 10.

47 Mr Richard Windeyer, First Assistant Secretary, Digital Economy Strategy Division, Department of Broadband, Communications and the Digital Economy, *Committee Hansard*, 19 August 2011, p. 37.

48 iBus Media Limited, *Submission 42*, pp 41–42.

49 iBus Media Limited, *Submission 42*, p. 42.

- Preventing gambling addiction and protecting minors;
- Ensuring the integrity, reliability and transparency of gambling activities;
- Preventing fraudulent or criminal activities undermining the ethics of sports competitions and preventing money laundering;
- Ensuring equitable and balanced development of different types of gambling to avoid destabilization of the economic sectors concerned.<sup>50</sup>

4.41 Online gambling service operators are licensed and regulated in France by the Online Gaming Regulatory Authority (ARJEL) which was established in 2010.<sup>51</sup> The ARJEL is responsible for regulating and licensing online poker, sports betting and horse racing in France.

4.42 Operators applying for a licence must meet stringent harm minimisation requirements and measures to ensure integrity in sport:

To obtain a licence, applicants must satisfy a number of criteria, including a requirement that they have sophisticated systems for identifying players at risk of addiction and protecting them. Operators wishing to conduct sports betting must also sign trade agreements with the organizers of sporting events...<sup>52</sup>

### ***Harm minimisation requirements***

4.43 Licensed operators are required by the legislation and decrees to provide a number of harm minimisation measures in an effort to prevent and combat problem gambling. To gain a licence, all operators are required to provide:

- mandatory pre-commitment;
- self-exclusion;
- rigorous age and identity verification checks; and
- play tracking and statements of wins, losses, promotions and financial transactions.<sup>53</sup>

#### *Pre-commitment*

4.44 Players must set an individual deposit and playing limit. The limit may be changed at any time; however, increases will not come into effect for two days. No transactions or play can take place until a limit has been set.<sup>54</sup>

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50 Australian Racing Board Limited, *Submission 27*, p. 28.

51 iBus Media Limited, *Submission 42*, p. 42.

52 Australian Racing Board Limited, *Submission 27*, p. 28.

53 iBus Media Limited, *Submission 42*, pp 41–42.

54 iBus Media Limited, *Submission 42*, pp 41–42.

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### *Self-exclusion*

4.45 Players must be provided with the ability to self-exclude at any time. Players may determine the length of exclusion; however, the minimum period must not be less than seven days. In addition, players can apply to the ARJEL to add their name to the blacklist. Service operators cannot offer online gambling services to individuals on the blacklist and are required to check each new account against the list.<sup>55</sup>

### *Player identification and age verification*

4.46 When opening an account, players are provided with a temporary account until identity and age have been verified. This requires the provision of identification documentation and supporting bank account information.<sup>56</sup> Temporary accounts cannot be withdrawn from and are closed after one month if a player has not provided the required documentation.<sup>57</sup>

### *Bets resulting in debit*

4.47 Licensed online poker operators must not accept any bet that would put the player into debit. Prior to games or tournaments, information must be accessible to players which outlines the amount of money required to place bets. Operators are also required to provide players with a system capable of notifying them of total wins or losses at any time as well as a 12 month play history outlining all wins, losses, bets, financial transactions and promotional offers.<sup>58</sup>

### *Advertising*

4.48 Advertising of online gambling in France is regulated under Decree No. 2010-624 of 8 June 2010. The decree concerns the regulation of commercial communications for operators of gambling and for the information of the players about the risks associated with gambling. All commercial communications for a gambling operator must be accompanied by warning messages and phone numbers for responsible gambling help lines. The decree sets out specific locations and wording for such warnings depending on the medium of communication.<sup>59</sup>

4.49 The decree also prohibits online gambling operators advertising in publications for youth, which are defined in Act No. 49-956. The decree further

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55 iBus Media Limited, *Submission 42*, pp 41–42.

56 iBus Media Limited, *Submission 42*, p. 41.

57 iBus Media Limited, *Submission 42*, pp 41–42.

58 iBus Media Limited, *Submission 42*, pp 41–42.

59 Article 7, Decree No. 2010-624, English Google translation,  
<http://legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000022320894> (accessed on 18 July 2011).

prohibits advertisements online 'which by their nature, their presentation or object, appear as primarily intended for minors'.<sup>60</sup>

### ***ISP blocking***

4.50 French legislation provides the ARJEL with a number of disciplinary sanctions which it may utilise when dealing with non-compliance by licensed and unlicensed online gambling providers. The Australian Racing Board outlined these options in its submission:

The legislation also provides ARJEL with a set of measures to deal with operators that operate without a French licence. The organisation of unlicensed internet gambling will be punished by three years of imprisonment and a €45,000 fine for each individual offence. The connection to these sites, as well as financial transactions between the illegal operators and players, will be blocked.<sup>61</sup>

4.51 The application of ISP blocking was explained by the Victorian InterChurch Gambling Taskforce in its submission:

In August 2010, the French Tribunal de Grande Instance de Paris ordered ISPs to block ready access to unlicensed online gambling sites or face a daily fine of €10,000.<sup>62</sup>

### ***Other***

4.52 However, French legislation has received criticism from some in the online gambling industry for the low rate of return to player set within the legislation and the limited number of authorised gambling activities:<sup>63</sup>

The problem is the cap rate of return to players imposed by French law. Today, we cannot distribute more than 85% of money [to players]. Everywhere in Europe, but also in France if you did not license, you redistribute 96%. We did not imagine how disappointing this would be for French players, who know that [on other non-licensed sites] distribution rates are much higher.<sup>64</sup>

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60 Article 7, Decree No. 2010-624, English Google translation, <http://legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000022320894> (accessed on 18 July 2011).

61 Australian Racing Board Limited, *Submission 27*, p. 29.

62 Victorian InterChurch Gambling Taskforce, *Submission 31*, p. 7.

63 Stéphane Courbit, Chairman, BetClic Everest Group, *BetClic chairman slams French gaming laws*, EGaming Review, <http://www.egrmagazine.com/news/607892/betclic-chairman-slams-french-gaming-laws-.thtml> (accessed 11 August 2011).

64 Stéphane Courbit, Chairman, BetClic Everest Group, *BetClic chairman slams French gaming laws*, EGaming Review, <http://www.egrmagazine.com/news/607892/betclic-chairman-slams-french-gaming-laws-.thtml> (accessed 11 August 2011).

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4.53 Revised rates of return to player are under consideration.<sup>65</sup>

## Alderney

4.54 Online gambling regulation in Alderney was presented to the committee as an example of one of the more successful regulatory approaches.<sup>66</sup>

4.55 eGambling is regulated in Alderney by three pieces of legislation: the Gambling Law (Alderney) 1999, the Alderney eGambling Ordinance 2009, and the Alderney eGambling Regulations 2009. The Alderney Gambling Control Commission (AGCC) was established in 2000 and is responsible for regulating and licensing eGambling in Alderney.<sup>67</sup> The AGCC provided a submission to the inquiry.<sup>68</sup>

4.56 While the AGCC was established under Alderney law, the majority of organisations licensed in Alderney are located in Guernsey. The AGCC attributes this to the 'world-class telecommunication infrastructure' and the Alderney eGambling (Operations in Guernsey) Ordinance 2006.<sup>69</sup>

4.57 At the end of 2010, there were 51 organisations licensed to operate in Alderney 'holding approximately 80 different licences'.<sup>70</sup> Licensing operations in Alderney generated an estimated AUD\$5.8 million in 2010.<sup>71</sup>

### *AGCC objectives*

4.58 The AGCC aims to provide a regulatory environment which offers 'robust, enlightened, active regulation while also being responsive to the needs of a changing industry':<sup>72</sup>

- The objectives of the Commission are to protect the reputation of Alderney as a first tier eGambling jurisdiction by seeking to ensure that:
- all electronic gambling on Alderney is conducted honestly and fairly;

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65 Mr Jack Smith, *Online Gambling: a new tax program in France*, 6 September 2011, <http://www.poker777.com/20110906/online-gambling-a-new-tax-project-in-france.php> (accessed 7 September 2011).

66 Dr Sally Gainsbury and Professor Alex Blaszczynski, *Submission 7*, p. 4.

67 Alderney Gambling Control Commission, <http://www.gamblingcontrol.org/> (accessed 11 August 2011).

68 Alderney Gambling Control Commission, *Submission 47*.

69 Alderney Gambling Control Commission, *Submission 47 Attachment 1*, p. 2. See also <http://www.gamblingcontrol.org/legislation.php> (accessed 11 August 2011).

70 Alderney Gambling Control Commission, *Submission 47 Attachment 1*, p. 2.

71 Dr Sally Gainsbury and Professor Alex Blaszczynski, *Submission 7*, p. 4.

72 Alderney Gambling Control Commission, *Submission 47, Attachment 1*, p. 2.

- the funding, management and operation of electronic gambling on Alderney remains free from criminal influence; and
- electronic gambling is regulated and monitored so as to protect the interests of licensees', customers as well as the young and vulnerable.<sup>73</sup>

### **Licensing**

4.59 The Alderney eGambling Regulations provide for three types of gambling licences:

- Category 1 eGambling licences permit licensees to 'contract with customers to organise and prepare the customer for gambling'. This includes entering into agreements, registering and verifying customers' identity, managing customers' funds and promoting and offering services to customers. A Category 1 eGambling licence can only be held by an Alderney company.<sup>74</sup>
- Category 2 eGambling licences permit licensees to 'effect gambling transactions'. This includes striking a bet, operating software or hardware which is used to conduct a gambling transaction and recording the outcome of gambling transactions. A Category 2 eGambling licence can only be held by an Alderney company.<sup>75</sup>
- Temporary eGambling licences permit a foreign company to act as both a Category 1 and Category 2 eGambling licensee for a limited period of time. Temporary licences are 'primarily designed for temporary use by foreign company licensees whilst their usual gambling operations are interrupted'. A Temporary eGambling licence cannot be held by an Alderney Company.<sup>76</sup>

4.60 Before an eGambling licence is approved, all applicants are 'carefully and rigorously scrutinised to confirm that the individual or organisation applying for

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73 Alderney Gambling Control Commission, [http://www.gamblingcontrol.org/about\\_us.php](http://www.gamblingcontrol.org/about_us.php) (accessed 11 August 2011).

74 Alderney eGambling Regulations 2009, pp 15–27, [http://www.gamblingcontrol.org/userfiles/file/2009\\_regs\\_consolidated\\_with\\_2010%20%201%20%202%20and%202011%20amendments.pdf](http://www.gamblingcontrol.org/userfiles/file/2009_regs_consolidated_with_2010%20%201%20%202%20and%202011%20amendments.pdf) (accessed 11 August 2011).

75 Alderney eGambling Regulations 2009, pp 15–27, [http://www.gamblingcontrol.org/userfiles/file/2009\\_regs\\_consolidated\\_with\\_2010%20%201%20%202%20and%202011%20amendments.pdf](http://www.gamblingcontrol.org/userfiles/file/2009_regs_consolidated_with_2010%20%201%20%202%20and%202011%20amendments.pdf) (accessed 11 August 2011).

76 Alderney eGambling Regulations 2009, pp 15–27, [http://www.gamblingcontrol.org/userfiles/file/2009\\_regs\\_consolidated\\_with\\_2010%20%201%20%202%20and%202011%20amendments.pdf](http://www.gamblingcontrol.org/userfiles/file/2009_regs_consolidated_with_2010%20%201%20%202%20and%202011%20amendments.pdf) (accessed 11 August 2011).

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approval is likely to run a highly regulated business within both the spirit and the letter of the Commission's regulations'.<sup>77</sup>

4.61 While each licence type has specific general conditions, all licences are required to adhere to a set of operational requirements. These include control systems and equipment standards, requirements surrounding financial accounts and reporting, monitoring and investigation of gambling activity, and strong harm minimisation and player protection measures.

### ***Harm minimisation and player protection***

4.62 All operators licensed in Alderney are required to adhere to stringent harm minimisation and consumer protection measures as a requirement of licence. These measures focus on registration of customers, marketing, identification of problem gambling, availability of responsible gambling information for customers and the ability for customers to place limits on their gambling.<sup>78</sup> The AGCC regulations also:

...provide extensively for rigorous customer verification; the protection of customer funds; customer complaints; the identification of problem gambling activity and self exclusion mechanisms.<sup>79</sup>

4.63 All Category 1 eGambling licensees are required to register customers prior to accepting bets. Registration must include a risk assessment of the player and stringent age and identity verification checks.<sup>80</sup> A regular review of any risk assessments must be carried out by licensees to ensure they are up to date.<sup>81</sup> No licensees are permitted to set up anonymous accounts and are required to provide players with information about the rules and requirements of each game being wagered on, including the expected return to player for each game.<sup>82</sup>

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77 Alderney Gambling Control Commission, *Annual Report 2010*, p. 13, [http://www.gamblingcontrol.org/userfiles/file/annual\\_report\\_2010.pdf](http://www.gamblingcontrol.org/userfiles/file/annual_report_2010.pdf) (accessed 2 September 2011).

78 Alderney eGambling Regulations 2009, pp 161–175, [http://www.gamblingcontrol.org/userfiles/file/2009\\_regs\\_consolidated\\_with\\_2010%20%201%20%202and%202011%20amendments.pdf](http://www.gamblingcontrol.org/userfiles/file/2009_regs_consolidated_with_2010%20%201%20%202and%202011%20amendments.pdf) (accessed 11 August 2011).

79 Alderney Gambling Control Commission, *Submission 47 Attachment 1*, p. 3.

80 Alderney eGambling Regulations 2009, pp 161–162, [http://www.gamblingcontrol.org/userfiles/file/2009\\_regs\\_consolidated\\_with\\_2010%20%201%20%202and%202011%20amendments.pdf](http://www.gamblingcontrol.org/userfiles/file/2009_regs_consolidated_with_2010%20%201%20%202and%202011%20amendments.pdf) (accessed 11 August 2011).

81 Alderney eGambling Regulations 2009, p. 163, [http://www.gamblingcontrol.org/userfiles/file/2009\\_regs\\_consolidated\\_with\\_2010%20%201%20%202and%202011%20amendments.pdf](http://www.gamblingcontrol.org/userfiles/file/2009_regs_consolidated_with_2010%20%201%20%202and%202011%20amendments.pdf) (accessed 11 August 2011).

82 Alderney eGambling Regulations 2009, p. 166, [http://www.gamblingcontrol.org/userfiles/file/2009\\_regs\\_consolidated\\_with\\_2010%20%201%20%202and%202011%20amendments.pdf](http://www.gamblingcontrol.org/userfiles/file/2009_regs_consolidated_with_2010%20%201%20%202and%202011%20amendments.pdf) (accessed 11 August 2011).

4.64 All licensees are required to 'establish and maintain procedures...to identify customers who are, or appear to be at risk of becoming, problem gamblers'.<sup>83</sup> The regulations require licensees to provide information to players exhibiting problem gambling behaviours and if necessary prevent customers from continuing to gamble.<sup>84</sup>

4.65 In addition to providing responsible gambling information, licensees are required to offer customers the ability to impose limits on their gambling.<sup>85</sup> A customer may apply in writing to the licensee to place specific limitations on their gambling activity. These may include limits on:

- total spend;
- total time played;
- the number of wagers made; and
- deposits made.<sup>86</sup>

4.66 Each limitation may apply to a single transaction or extended period of time.<sup>87</sup> Players may elect to set a limit of zero, effectively self-excluding themselves from the activity.<sup>88</sup>

4.67 Upon receiving written notification from a player of their requested limit, a licensee must not encourage a player to increase or remove their limit. Where a customer has set a limit of zero, a licensee is prohibited from 'directly marketing or otherwise publicising its gambling services to that customer whilst the customer's limit continues at zero'.<sup>89</sup> A customer may, by written notice to the licensee, increase

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83 Alderney eGambling Regulations 2009, p. 166,  
[http://www.gamblingcontrol.org/userfiles/file/2009\\_regs\\_consolidated\\_with\\_2010%20%201%20%202%20and%202011%20amendments.pdf](http://www.gamblingcontrol.org/userfiles/file/2009_regs_consolidated_with_2010%20%201%20%202%20and%202011%20amendments.pdf) (accessed 11 August 2011).

84 Alderney eGambling Regulations 2009, pp 166–167,  
[http://www.gamblingcontrol.org/userfiles/file/2009\\_regs\\_consolidated\\_with\\_2010%20%201%20%202%20and%202011%20amendments.pdf](http://www.gamblingcontrol.org/userfiles/file/2009_regs_consolidated_with_2010%20%201%20%202%20and%202011%20amendments.pdf) (accessed 11 August 2011).

85 Alderney eGambling Regulations 2009, p. 167,  
[http://www.gamblingcontrol.org/userfiles/file/2009\\_regs\\_consolidated\\_with\\_2010%20%201%20%202%20and%202011%20amendments.pdf](http://www.gamblingcontrol.org/userfiles/file/2009_regs_consolidated_with_2010%20%201%20%202%20and%202011%20amendments.pdf) (accessed 11 August 2011).

86 Alderney eGambling Regulations 2009, pp 167–168,  
[http://www.gamblingcontrol.org/userfiles/file/2009\\_regs\\_consolidated\\_with\\_2010%20%201%20%202%20and%202011%20amendments.pdf](http://www.gamblingcontrol.org/userfiles/file/2009_regs_consolidated_with_2010%20%201%20%202%20and%202011%20amendments.pdf) (accessed 11 August 2011).

87 Alderney eGambling Regulations 2009, p. 167,  
[http://www.gamblingcontrol.org/userfiles/file/2009\\_regs\\_consolidated\\_with\\_2010%20%201%20%202%20and%202011%20amendments.pdf](http://www.gamblingcontrol.org/userfiles/file/2009_regs_consolidated_with_2010%20%201%20%202%20and%202011%20amendments.pdf) (accessed 11 August 2011).

88 Alderney eGambling Regulations 2009, p. 167,  
[http://www.gamblingcontrol.org/userfiles/file/2009\\_regs\\_consolidated\\_with\\_2010%20%201%20%202%20and%202011%20amendments.pdf](http://www.gamblingcontrol.org/userfiles/file/2009_regs_consolidated_with_2010%20%201%20%202%20and%202011%20amendments.pdf) (accessed 11 August 2011).

89 Alderney eGambling Regulations 2009, p. 168,  
[http://www.gamblingcontrol.org/userfiles/file/2009\\_regs\\_consolidated\\_with\\_2010%20%201%20%202%20and%202011%20amendments.pdf](http://www.gamblingcontrol.org/userfiles/file/2009_regs_consolidated_with_2010%20%201%20%202%20and%202011%20amendments.pdf) (accessed 11 August 2011).

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or remove their limit; however, this will not take effect for 24 hours. Any notification from a player to reduce their limit will come into effect immediately.<sup>90</sup>

### ***Advertising requirements***

4.68 In addition to player protection measures, providers licensed in Alderney are required to adhere to various advertising requirements when promoting services to customers. Advertisements must be truthful, not be distasteful and must not promote gambling to persons under 18 years of age. In addition, advertisements must not link gambling success to personal status, should not encourage or 'dare' individuals to gamble and must not bring into disrepute the island of Alderney or the AGCC. All advertisements must also comply with any regulations in the jurisdiction in which they appear.<sup>91</sup>

### ***Non-compliance***

4.69 The AGCC has a number of disciplinary sanctions which may be enforced if licensees do not adhere to licensing regulations and requirements.<sup>92</sup> These sanctions were outlined by the AGCC in its 2010 Annual Report:

The AGCC has a range of sanctions at its disposal, including financial penalties and, for the most serious regulatory breach, suspension or revocation of a licence or certificate. The Commission can also issue a "direction to rectify" – in other words, instructions that the regulatory breach must be rectified within a specified time.<sup>93</sup>

### ***Taxation***

4.70 In contrast to many other jurisdictions, Alderney does not require eGambling providers to pay tax on gambling-related activities if they are licensed in reputable overseas jurisdictions. This enables operators licensed and paying tax in other jurisdictions to avoid paying tax for the same activity twice:

Alderney's unique approach allows the services of platforms, on which all manner of approved and certified games are deployed, to be offered to operators licensed in other reputable jurisdictions without the need for them

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90 Alderney eGambling Regulations 2009, p. 168,  
[http://www.gamblingcontrol.org/userfiles/file/2009\\_regs\\_consolidated\\_with\\_2010%20%201%20%202%20and%202011%20amendments.pdf](http://www.gamblingcontrol.org/userfiles/file/2009_regs_consolidated_with_2010%20%201%20%202%20and%202011%20amendments.pdf) (accessed 11 August 2011).

91 Alderney eGambling Regulations 2009, pp 17–18, 22–23 & 27,  
[http://www.gamblingcontrol.org/userfiles/file/2009\\_regs\\_consolidated\\_with\\_2010%20%201%20%202%20and%202011%20amendments.pdf](http://www.gamblingcontrol.org/userfiles/file/2009_regs_consolidated_with_2010%20%201%20%202%20and%202011%20amendments.pdf) (accessed 11 August 2011).

92 Dr Sally Gainsbury and Professor Alex Blaszczynski, *Submission 7*, p. 4.

93 Alderney Gambling Control Commission, *Annual report 2010*,  
[http://www.gamblingcontrol.org/userfiles/file/annual\\_report\\_2010.pdf](http://www.gamblingcontrol.org/userfiles/file/annual_report_2010.pdf) (accessed 2 September 2011), p. 16.

to acquire a local license and thereby avoid double taxation and/or double license fees.<sup>94</sup>

4.71 As only Alderney companies can be licensed by the AGCC, companies established by eGambling providers who are licensed overseas for the sole purpose of gaining an eGambling licence in Alderney may qualify for an exemption where they are not required to pay income tax, instead paying a fixed annual fee.<sup>95</sup>

4.72 In a 2008 study, the European Parliament observed that 'European offshore' jurisdictions or 'rock jurisdictions' offer tax advantages such as the zero per cent gambling tax in Alderney as an attempt to attract and retain online gambling operators and compete with other jurisdictions such as the UK.<sup>96</sup>

### ***Effectiveness of regulation in Alderney***

4.73 Regulation in Alderney has been regarded as quite successful in providing high quality regulation of eGambling combined with strong harm minimisation and consumer protection measures. Dr Gainsbury and Professor Blaszczynski argued that the AGCC provides an example of a 'successful regulatory framework for Internet gambling and has a 'highly regard[ed] reputation within the Internet casino industry'.<sup>97</sup>

4.74 The AGCC stated that regulation in some offshore jurisdictions such as Alderney is of a similar standard to other reputable online gambling jurisdictions and that the purpose of regulation was not to increase profits, but to provide a safe online gambling environment:

...there is no evidence to suggest that the standards applicable in these offshore jurisdictions are any lower than those applicable in the UK or in some of the new remote gambling jurisdictions in the EEA. It could be argued that the recent flurry of remote gambling laws in Europe and elsewhere in the world has often been motivated by revenue generation rather than attempts to improve player protection. In Alderney, the intention was never to maximise revenue at the cost of regulation but rather to provide a regulatory environment which offers robust, enlightened and active regulation while being responsive to the needs of the industry.<sup>98</sup>

4.75 Success of regulation in Alderney has been attributed to the rigorous testing of online gambling licence applicants' business processes, equipment and overall product

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94 Mr Robin Le Prevost, Director of ecommerce Development, Alderney eGambling, 'Alderney: Setting the Standards in Online Gaming, *iGaming Business*, issue 69 July/August 2011, p. 82.

95 States of Alderney Channel Island, <http://www.alderney.gov.gg/Online-Gambling> (accessed 2 September 2011).

96 European Parliament, Policy Department Economic and Scientific Policy, *Online gambling focusing on integrity and a code of conduct for gambling*, November 2008, p. 60.

97 Dr Sally Gainsbury and Professor Alex Blaszczynski. *Submission 7*, p. 4.

98 Alderney Gambling Control Commission, *Submission 47 Attachment 1*, p. 3.

prior to approval and ongoing compliance checks following licensing. Dr Gainsbury and Professor Blaszczynski offered Alderney as an example that could be used to guide the creation of an Australian online gambling regulatory framework which could be refined through consultation with stakeholders and researchers.<sup>99</sup>

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99 Dr Sally Gainsbury and Professor Alex Blaszczynski, *Submission 7*, pp 4–5.



# **Chapter 5**

## **International regulatory environment—forms of prohibition**

5.1 This chapter will examine some approaches taken by jurisdictions that attempt to prohibit online gambling. As noted in the previous chapter, regulation of online gambling is an area of change. Therefore some details within this chapter may have changed by the time the report is published.

### **The prohibition model**

5.2 Despite a growing number of countries adopting a managed regulatory approach toward online gambling, many jurisdictions have adopted forms of prohibition on interactive and online gambling, including the United States (US), Germany and Canada. These approaches are outlined below.

#### **United States of America**

5.3 Despite online gambling being prohibited in the US, the US online gambling market amounts to approximately US\$92.27 billion per year in revenue<sup>1</sup> and has around seven million online gamblers.<sup>2</sup> Online gambling regulation in the US is a two tier system where online gambling is regulated by a combination of state and federal legislation:

In the US, the States have powers to regulate gambling within their own borders, with the Federal government able to regulate gambling activity that occurs across State borders.<sup>3</sup>

5.4 While the federal government has sought to clarify legislation prohibiting online gambling, some states and districts, including Nevada, California and Washington D.C., have introduced legislation liberalising online poker.<sup>4</sup>

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1 iBus Media Limited, *Submission 42*, p. 44. See also Richard K, Miller & Associates which estimates that 'Americans bet over \$100 billion on all types of online gaming in 2010'. *Casinos, Gaming Wagering 2011*, May 2011, p. 15, <http://www.rkma.com/2011casinosSAMPLE.pdf> (accessed 14 November 2011).

2 Regis Controls Pty Ltd, *Submission 35*, p. 5.

3 *Review of current and future trends in interactive gambling activity and regulation*, Literature Review, Report to the Australian Government Department of Families, Housing, Community Services and Indigenous Affairs, by the Allen Consulting Group, June 2009, p. 36.

4 iBus Media Limited, *Submission 42*, p. 46.

## Federal legislation

5.5 Online gambling in the US is prohibited under two pieces of federal legislation; the *Wire Act 1961* (Wire Act) and the *Unlawful Internet Gambling Enforcement Act 2006* (UIGEA). These work in conjunction with state legislation to prohibit the provision of online gambling across state borders.

### **Wire Act 1961**

5.6 The Wire Act prohibits a person from being engaged in or betting or wagering on any sporting events or contests over wire communication facilities:

Whoever being engaged in the business of betting or wagering knowingly uses a wire communication facility for the transmission in interstate or foreign commerce of bets or wagers or information assisting in the placing of bets or wagers in any sporting event or contest, or for the transmission of a wire communication which entitles the recipient to receive money or credit as a result of bets or wagers, or for information assisting in the placing of bets or wagers, shall be fined under this title or imprisoned not more than two years, or both.<sup>5</sup>

5.7 In 2002, the US Fifth Circuit Court of Appeals ruled that the Wire Act only applied to sporting events and contests.<sup>6</sup> Despite this ruling, the US Department of Justice has continued to interpret the Wire Act to mean that all forms of gambling over the internet are illegal.<sup>7</sup>

### **Unlawful Internet Gambling Enforcement Act 2006**

5.8 The UIGEA works in combination with the Wire Act to impose financial restrictions on online gambling providers and companies who attempt to offer services to US consumers.

5.9 The UIGEA came into effect on 13 October 2006.<sup>8</sup> The UIGEA 'makes it a felony for a person engaged in the business of betting or wagering to knowingly accept money in connection with unlawful gambling'.<sup>9</sup> It achieves this by prohibiting banks and credit card companies from processing and settling payments for unlawful internet gambling sites.<sup>10</sup>

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5 *Interstate Wire Act 1961*, Chapter 50: Gambling, s. 1084, <http://uscode.house.gov/download/pls/18C50.txt> (accessed 13 October 2011).

6 *Review of current and future trends in interactive gambling activity and regulation*, Literature Review, Report to the Australian Government Department of Families, Housing, Community Services and Indigenous Affairs, by the Allen Consulting Group, June 2009, p. 36.

7 iBus Media Limited, *Submission 42*, p. 44.

8 iBus Media Limited, *Submission 42*, p. 44.

9 Australian Racing Board Limited, *Submission 27*, p. 23.

10 iBus Media Limited, *Submission 42*, p. 45.

5.10 The UIGEA does not define unlawful online gambling. Rather it establishes financial restrictions on transactions made for any form of gambling defined as unlawful under state or federal law, working in combination with the Wire Act and various state laws. Responsibility for interpreting the legislation and determining which online gambling services are unlawful rests with financial institutions, which may commit an offence if they process a payment for a bet or wager in relation to an unlawful internet gambling transaction.<sup>11</sup>

5.11 iBus Media stated that the US Treasury has estimated a compliance cost of US\$88.5 million in staff costs associated with the application of the UIGEA, an amount iBus Media argued represents an 'excessive compliance burden' on financial institutions.<sup>12</sup>

#### *Effectiveness in preventing online gambling*

5.12 Despite the compliance cost associated with the introduction of the UIGEA, the Australian Racing Board stated that there was an initial withdrawal of some online gambling providers from the US market, which resulted in significant drops in profits by gambling providers:

Evidence suggests that prior to the introduction of the UIGEA, US patrons comprised a significant proportion of global interactive gambling participation. An example in the literature is of the Gibraltar-based online company PartyGaming PLC, which reported a reduction in daily revenues from \$3.6 million to around \$872,000 after it decided to terminate customer relationships with US patrons.<sup>13</sup>

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

The UIGEA is not directed at individual bettors, and there have only been rare cases of prosecution of US citizens for placing an Internet bet...Anecdotal information suggests that many US players are circumventing the UIGEA by depositing money into non-US financial transaction intermediaries to place bets...Furthermore, many online gambling sites ensure that credit card and/or banking statements do not indicate that the transaction was for gambling.<sup>14</sup>

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11 iBus Media Limited, *Submission 42*, p. 45.

12 iBus Media Limited, *Submission 42*, p. 45.

13 Australian Racing Board Limited, *Submission 27*, p. 23.

14 Robert Williams and Robert Wood, *Internet Gambling: A Comprehensive Review and Synthesis of the Literature*, Report prepared for the Ontario Problem Gambling Research Centre, Guelph, Ontario, Canada, 2007, p. 11.

5.14 iBus Media also reported that rather than transferring funds to gambling operators through their financial institution, consumers are depositing funds into electronic accounts or 'e-wallets' as a means of circumventing restrictions imposed by the UIGEA:

Electronic accounts or e-wallets are online accounts which draw on a consumer's bank account or credit or debit card and then route the consumer's funds to the online operator, many of which are offshore and therefore not regulated in the US. This model makes it difficult for US financial institutions to distinguish between a gambling transaction and other transactions.<sup>15</sup>

5.15 The committee was interested to hear more about the US experience with online gambling financial controls and requested to speak with the relevant US agency but unfortunately they declined to respond. The committee notes that the government's review of the Interactive Gambling Act (IGA) will be looking into 'international regulatory approaches to online gambling services including consideration of their effectiveness and cost'.<sup>16</sup>

### ***Effectiveness of US legislation***

5.16 The Australian Racing Board argued that while some online providers have managed to avoid financial restrictions under the UIGEA, US legislation has been relatively successful in reducing online gambling:

The financial transactions controls that are in place there have been there for some years now and they are demonstrably effective...The business of the companies that were providing illegal gambling to American citizens dried up. There is some level of it—it is not being suggested that it is going to be 100 per cent efficacious—but it dropped like a stone in the US...The US has done it and is doing it, and it is working.<sup>17</sup>

5.17 iBus Media argued that as a result of US legislation, reputable regulated companies have withdrawn from the US market, resulting in customers accessing unregulated and potentially dangerous sites:

US-based consumers are still able to access offshore sites, many of which are unregulated and many do not have harm minimisation measures in place...

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15 iBus Media Limited, *Submission 13, Inquiry into the Interactive Gambling and Broadcasting Amendment (Online Transactions and Other Measures) Bill 2011*, p. 15.

16 Department of Broadband, Communications and the Digital Economy, *Review of the Interactive Gambling Act 2001*, Discussion paper, August 2011, p. 27.

17 Mr Andrew Harding, *Committee Hansard*, 19 August 2011, p. 5.

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Critics have also noted that the UIGEA has resulted in publicly-listed, transparent and heavily regulated United Kingdom-based online gambling companies no longer accepting funds from US-based customers....<sup>18</sup>

5.18 The main criticism levelled at online gambling legislation in the US is that there is a level of uncertainty surrounding the application of legislation and what constitutes unlawful online gambling. Congress outlined this uncertainty in Section 2 of the *Internet Gambling Prohibition, Poker Consumer Protection, and Strengthening UIGEA Act of 2011*:

- (2) The Unlawful Internet Gambling Enforcement Act of 2006 (title VIII of Public Law 109-347; 120 Stat. 1952) was intended to aid enforcement efforts against unlawful Internet operators and to limit unlawful Internet gaming involving United States persons. However, that Act has only been partially successful in doing so.
- (3) There is uncertainty about the laws of the United States governing Internet gambling and Internet poker, though not about laws governing Internet sports betting. The Department of Justice has maintained that a broad range of activity is illegal, including activity that Congress intended to legalize under the Interstate Horseracing Act of 1978. Certain court decisions have used logic not consistent with aspects of the position of the Department of Justice. Enforcement efforts would be aided by bringing greater clarity to this area.<sup>19</sup>

5.19 However, despite this uncertainty, US authorities have undertaken legal action against individuals and online gambling providers located outside the US in an attempt to prevent circumvention of the UIGEA and the Wire Act which is described below.

### ***Current US enforcement action***

5.20 The committee received evidence on the current legal proceedings occurring in the US regarding alleged illegal gambling activities by a number of online poker sites:

In April 2011, operators of three online poker sites became the subject of a civil complaint filed by US authorities and certain individuals associated with these sites were indicted for, among other matters, accepting funds from US-based players. All charges are being strenuously defended. The civil complaint and indictments do not relate to the UIGEA directly and

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18 iBus Media Limited, *Submission 13, Inquiry into the Interactive Gambling and Broadcasting Amendment (Online Transactions and Other Measures) Bill 2011*, p. 14.

19 Internet Gambling Prohibition, *Poker Consumer Protection, and Strengthening UIGEA Act of 2011*, [www.house.gov](http://www.house.gov), (accessed 19 July 2011).

instead concern allegations of conspiracy to commit bank and wire fraud and money laundering activities.<sup>20</sup>

5.21 The Australian Racing Board noted that the legal action represents a recent development in the application of the UIGEA:

A notable recent development here has been the FBI's use of information supplied by Australian internet entrepreneur, Daniel Tzvetkoff, to lay charges of bank fraud, money laundering and illegal gambling against the founders of the 3 largest US online poker companies. A scheme to deceive banks about the true nature of transaction[s] with them, and so evade the financial transactions controls of the UIGEA, is at the heart of these prosecutions...<sup>21</sup>

5.22 iBus Media argued that the charges do not directly relate to the UIGEA:

The civil complaint and indictments do not relate to the UIGEA directly and instead concern allegations of conspiracy to commit bank and wire fraud and money laundering activities.<sup>22</sup>

5.23 US Attorney, Mr Preet Bharara, outlined the case in a recent media release the day after 'Black Friday'<sup>23</sup>:

As charged, these defendants concocted an elaborate criminal fraud scheme, alternatively tricking some US Banks and effectively bribing others to assure the continued flow of billions in illegal gambling profits. Moreover, we allege, in their zeal to circumvent the gambling laws, the defendants also engaged in massive money laundering and bank fraud.<sup>24</sup>

#### *Committee view*

5.24 The committee notes that while enforcement of online gambling prohibition in the online environment is difficult and uncertainty surrounds the application of some

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20 iBus Media Limited, *Submission 13*, Inquiry into the *Interactive Gambling and Broadcasting Amendment (Online Transactions and Other Measures) Bill 2011*, p. 17.

21 Australian Racing Board Limited, *Submission 5*, Inquiry into the *Interactive Gambling and Broadcasting Amendment (Online Transactions and Other Measures) Bill 2011*, p. 3.

22 iBus Media Limited, *Submission 13*, Inquiry into the *Interactive Gambling and Broadcasting Amendment (Online Transactions and Other Measures) Bill 2011*, p. 17.

23 Black Friday is the name used by some in the gambling industry to refer to 14 April 2011 when three poker sites were shut down and members of their executive indicted by US authorities. See Dunbar, M. 'State of Emergency?', *iGaming Business*, issue 69, July/August 2011, pp 72–74.

24 Mr Preet Bharara, US Attorney, Media Release, *Manhattan US Attorney charges principals of three largest internet poker companies with bank fraud, illegal gambling offences and laundering billions in illegal gambling proceeds*, 15 April 2011, <http://www.justice.gov/usao/nys/pressreleases/April11/scheinbergetalindictmentpr.pdf> (accessed 30 August 2011).

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pieces of US legislation, the current legal action in the US demonstrates that enforcement action is possible.

### ***Other enforcement challenges***

5.25 Despite recent enforcement action referred to above, the US has experienced difficulties applying legislation to operators located outside the US. Such attempts by US authorities resulted in action being taken by the World Trade Organization (WTO).

#### *Antigua V United States online gambling dispute*

5.26 In 2003, Antigua initiated the WTO dispute resolution process challenging the US prohibition of offshore online gambling.<sup>25</sup> Antigua argued that prohibition breached the commitment made by the US to free trade in online gambling services in the General Agreement on Trade in Services (GATS).<sup>26</sup> In 2004, the dispute resolution panel ruled in favour of Antigua, and following an unsuccessful appeal by the US in 2005, the WTO Arbitrator set April 2006 as the deadline by which US legislation should be amended to comply with the commitments under the GATS.<sup>27</sup>

5.27 Rather than changing its legislation, the US decided to modify its commitments in the GATS under Article XXI, specifically removing online gambling:

The US, instead of bringing its laws in line with the WTO rules, announced in May 2007 that it would withdraw gambling from the services it opened up under a 1994 world trade deal. Under WTO rules it then had to offer comparable access in other sectors to interested countries.<sup>28</sup>

5.28 In response to this, in 2007 Antigua requested from the WTO the ability to suspend \$3.2 billion worth of US intellectual property rights which it argued amounted to 'the value of Antigua-US online gambling services trade that would have

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25 Isaac Whol, 'The Antigua-United States Online Gambling Dispute', *Journal of International Commerce and Economics*, web version July 2009, p. 6, [http://www.usitc.gov/publications/332/journals/online\\_gambling\\_dispute.pdf](http://www.usitc.gov/publications/332/journals/online_gambling_dispute.pdf) (accessed 19 September 2011). See also Victorian InterChurch Gambling Taskforce, *Submission 31*, p. 6.

26 Isaac Whol, 'The Antigua-United States Online Gambling Dispute', *Journal of International Commerce and Economics*, web version July 2009, p. 6, [http://www.usitc.gov/publications/332/journals/online\\_gambling\\_dispute.pdf](http://www.usitc.gov/publications/332/journals/online_gambling_dispute.pdf) (accessed 19 September 2011).

27 Isaac Whol, 'The Antigua-United States Online Gambling Dispute', *Journal of International Commerce and Economics*, web version July 2009, p. 7, [http://www.usitc.gov/publications/332/journals/online\\_gambling\\_dispute.pdf](http://www.usitc.gov/publications/332/journals/online_gambling_dispute.pdf) (accessed 19 September 2011).

28 Victorian InterChurch Gambling Taskforce, *Submission 31*, p. 6.

taken place had the US complied with the initial WTO ruling'.<sup>29</sup> The WTO authorised the suspension of \$21 million worth of US intellectual property rights annually, which may include copyrights, patents and trademarks.<sup>30</sup> A *New York Times* article explained the effects of the ruling:

...the ruling is significant in that it grants a rare form of compensation: the right of one country, in this case, Antigua, to violate intellectual property laws of another - the United States - by allowing them to distribute copies of American music, movie and software products, among other items.<sup>31</sup>

5.29 At the time of publication of Isaac Whol's article, domestic legislation needed to allow this to occur had not been introduced.<sup>32</sup>

### ***Future regulation for the US?***

5.30 While online gambling is currently prohibited, there has been a move at both the state and federal level towards a liberalised, regulated approach to online poker.<sup>33</sup>

5.31 On 24 June 2011, the *Internet Gambling Prohibition, Poker Consumer Protection, and Strengthening UIGEA Act of 2011* (the bill) was introduced into the House of Representatives by Texas Republican Joe Barton. The bill was co-sponsored by both Democrat and Republican representatives, suggesting bi-partisan support for the reforms.

5.32 The bill would legalise online poker across the US, allowing states who wish to prohibit online poker to opt out. The following arguments for the bill's passage were outlined:

- (5) Poker is distinct from the class of games of chance traditionally defined as gambling in that, players compete against each other, and not the person or entity hosting the game (sometimes called 'the

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29 Isaac Whol, 'The Antigua-United States Online Gambling Dispute', *Journal of International Commerce and Economics*, web version July 2009, p. 8,  
[http://www.usitc.gov/publications/332/journals/online\\_gambling\\_dispute.pdf](http://www.usitc.gov/publications/332/journals/online_gambling_dispute.pdf) (accessed 19 September 2011).

30 Isaac Whol, 'The Antigua-United States Online Gambling Dispute', *Journal of International Commerce and Economics*, web version July 2009, p. 7,  
[http://www.usitc.gov/publications/332/journals/online\\_gambling\\_dispute.pdf](http://www.usitc.gov/publications/332/journals/online_gambling_dispute.pdf) (accessed 19 September 2011).

31 James Kanter and Gary Rivlin, 'WTO gives Antigua right to violate U.S. copyrights in gambling dispute', *The New York Times*, 21 December 2007,  
<http://www.nytimes.com/2007/12/21/business/worldbusiness/21iht-wto.html> (accessed 13 October 2011).

32 Issac Whol, 'The Antigua-United States Online Gambling Dispute', *Journal of International Commerce and Economics*, web version July 2009, p. 8,  
[http://www.usitc.gov/publications/332/journals/online\\_gambling\\_dispute.pdf](http://www.usitc.gov/publications/332/journals/online_gambling_dispute.pdf) (accessed 19 September 2011).

33 iBus Media Limited, *Submission 42*, pp 45–46.

- house'), and that over any significant interval, the outcome of a poker game is predominantly determined by the skill of the participants.
- (6) United States consumers would benefit from a program of Internet poker regulation which recognizes the interstate nature of the Internet, but nevertheless preserves the prerogatives of States. Such a system would require strict licensing of Internet poker providers and would require licensee operators to:
- (A) have effective means to prevent minors from playing poker on-line;
  - (B) identify and help treat problem gamblers; to ensure that games are fair;
  - (C) allow players to self-exclude and limit losses; and
  - (D) prevent money laundering.
- (7) Such a program would create a new industry within the United States creating thousands of jobs and substantial tax revenue for Federal and State governments.<sup>34</sup>

#### *Provisions of the bill*

5.33 The bill provides for the establishment of state agencies responsible for licensing online poker providers based in the US. The bill would require license holders to meet strict standards for advertising and prevent services being offered to individuals physically located in states which have opted out.

5.34 Licence holders would also be required to provide harm minimisation measures to consumers including:

- information in plain language about responsible gambling and self exclusion options;
- individualised responsible gaming options including the ability to self-limit access to credit and direct marketing; and
- providers to ensure to a 'reasonable degree of certainty' that self-excluded consumers are prevented from making bets or wagers during a period of self-exclusion.<sup>35</sup>

5.35 The bill was referred to the Subcommittee on Crime, Terrorism and Homeland Security on 25 August 2011.<sup>36</sup>

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34 *Internet Gambling Prohibition, Poker Consumer Protection and Strengthening UIGEA Act of 2011*, s. 2, via <http://thomas.loc.gov/cgi-bin/query/F?c112:1:/temp/~c112yU7Tci:e3030:#> (accessed on 18 July 2011).

35 *Internet Gambling Prohibition, Poker Consumer Protection and Strengthening UIGEA Act of 2011*, s. 106, via <http://thomas.loc.gov/cgi-bin/query/F?c112:1:/temp/~c112p8hDgr:e74459:#>, (accessed on 29 September 2011).

5.36 Other gambling related legislation introduced into Congress includes the proposed Internet Gambling Regulation, Consumer Protection and Enforcement Act (HR 1174) which would establish administrative and licensing requirements for Internet betting, including background check requirements and suitability standards for licence applicants.<sup>37</sup> HR 1174 was referred to the Subcommittee on Crime, Terrorism and Homeland Security on 1 June 2011.

## **Germany**

5.37 Online gambling regulation in Germany is currently changing, with the current *Interstate Gambling Treaty* due to expire on 31 December 2011.<sup>38</sup>

5.38 Online gambling is currently prohibited in Germany under the *Staatsvertrag zum Glücksspielwesen (Interstate Gambling Treaty)*, which came into force on 1 January 2008. The Treaty applies a blanket ban on all forms of online gambling, regardless of whether an operator is 'foreign, domestic, state-run or private'.<sup>39</sup> Section 4.4 of the Treaty states:

The organising and arranging of public games of chance on the Internet is prohibited.<sup>40</sup>

5.39 Advertising of online gambling via internet, television or telecommunications is also prohibited by the Treaty.

5.40 The Treaty was effective across all 16 German states, resulting in uniform legislation across the country, and establishes a maximum penalty of five years imprisonment.<sup>41</sup> All states can order service providers to block websites that offer illegal gambling and require banks to prevent money transfers to these operators.

5.41 The aims of the Treaty are:

- (1) To prevent the development of addiction to games of chance and gambling and to establish the preconditions for combating this addiction in an effective manner,

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36 *Internet Gambling Prohibition, Poker Consumer Protection and Strengthening UIGEA Act of 2011*, via <http://thomas.loc.gov/cgi-bin/bdquery/z?d112:h.r.02366:#>, (accessed on 29 September 2011).

37 iBus Media Limited, *Submission 13*, Inquiry into the *Interactive Gambling and Broadcasting Amendment (Online Transactions and Other Measures) Bill 2011*, p. 15.

38 iBus Media Limited, *Submission 42*, p. 49.

39 iBus Media Limited, *Submission 42*, p. 49.

40 European Parliament, Policy Department Economic and Scientific Policy, *Online gambling focusing on integrity and a code of conduct for gambling*, November 2008, p. 25.

41 iBus Media Limited, *Submission 42*, p. 49.

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- (2) To restrict the games of chance on offer and to steer the natural gaming urges of the population along well-ordered and supervised paths, in particular, to prevent a switch to illegal games of chance,
  - (3) To guarantee protection for young people and gamblers,
  - (4) To ensure that games of chance are conducted in accordance with regulations, that gamblers are protected against fraudulent wheelings and dealings, and that the criminal aspect which follows and accompanies games of chance is averted.<sup>42</sup>

5.42 The Treaty, which applies a blanket ban on all online gambling, has been criticised for being excessively restrictive and failing to prevent players from participating in online gambling:

In implementing a blanket ban, it is arguable that the States have gone further than what is necessary in order to achieve the stated objective; namely, to protect the players.<sup>43</sup>

5.43 Regis Controls pointed to the large level of online gambling participation in Germany which has 'the second highest number of regular online gamblers in Europe' as a failure of the German prohibition model.<sup>44</sup>

### ***Review of legislation***

5.44 In addition to concerns over the restrictive nature of the Treaty and the apparent failure to prevent German citizens participating in online gambling, the Court of Justice of the European Union (EU) ruled on 8 September 2010 that the Treaty breaches EU competition law.<sup>45</sup> In response, a new draft Interstate Gambling Treaty has been developed jointly by 15 of the 16 federal German states.<sup>46</sup> A second piece of legislation, the draft *Gambling Bill*, has been developed independently by the remaining federal German state of Schleswig-Holstein and was passed through the state's parliament on 14 September 2011.<sup>47</sup>

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42 European Parliament, Policy Department Economic and Scientific Policy, *Online gambling focusing on integrity and a code of conduct for gambling*, November 2008, p. 25.

43 iBus Media Limited, *Submission 42 Attachment 1*, p. 33.

44 Regis Controls Pty Ltd, *Submission 35*, p. 5.

45 World Online Gambling Law Report, *Germany: The EU responds to Germany's draft legislation*, Vol. 10, Issue 7, July 2011, p. 1, <http://www.e-comlaw.com/woglr/print.asp?ID=1647> (accessed 6 September 2011).

46 World Online Gambling Law Report, *Schleswig-Holstein's draft Bill given go ahead by EU*, vol. 10, issue 5, May 2011, p. 1, <http://www.e-comlaw.com/woglr/print.asp?ID=1621> (accessed 6 September 2011).

47 Tom Victor, *Breaking news: Schleswig-Holstein passes egaming treaty*, 14 September 2011, p. 1 of 1, <http://www.egrmagazine.com/news/1694557/breaking-news-schleswigholstein-passes-egaming-treaty-.htm> (accessed 22 September 2011).

*Joint draft Interstate Gambling Treaty*

5.45 15 of the 16 federal German States developed a new draft Interstate Gambling Treaty (IGT) following the European Union Commission ruling in September 2010 that the current Treaty breaches EU competition law. The new IGT proposes opening up the German sports betting market and limiting the number of federal licences for private operators of sports betting to seven.<sup>48</sup> The draft would also implement a '16.67% tax on all stakes',<sup>49</sup> which some have argued is overly restrictive.<sup>50</sup>

5.46 The draft IGT would implement limits on live-betting options and a limit on online sports stakes.<sup>51</sup> It would also require operators wishing to offer casino-style online games to gain a 'bricks-and-mortar' physical casino licence:

In regard to online casino games, the Prime Minister further announced that a German licence for a bricks-and-mortar casino will be required and that such games will only be permissible 'as offered in the gambling hall of a state-licensed casino'. This means that real gambling in the gambling hall of bricks-and-mortar casino has to be transmitted to the player, for example, by filming a roulette wheel.<sup>52</sup>

5.47 On 18 July 2011, the European Union Commission released a detailed Opinion rejecting the draft IGT and requested further reasoning and justification behind some measures. The draft IGT is expected to be amended in line with the European Commission's Opinion.<sup>53</sup>

*Draft Gambling Bill from Schleswig-Holstein*

5.48 On 9 May 2011, the European Union Commission approved the draft Gambling Bill developed by the state of Schleswig-Holstein which proposes to

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48 World Online Gambling Law Report, *Germany: What kind of future for German gambling regulation*, vol. 10, issue 4, April 2011, p. 2.

49 Victorian InterChurch Gambling Taskforce, *Supplementary Submission 31a*, p. 3.

50 iBus Media Limited, *Submission 42*, p. 49.

51 World Online Gambling Law Report, *Germany: What kind of future for German gambling regulation*, vol. 10, issue 4, April 2011, <http://www.e-comlaw.com/woglr/print.asp?ID=1619> (accessed 6 September 2011).

52 World Online Gambling Law Report, *Germany: What kind of future for German gambling regulation*, vol. 10, issue 4, April 2011, <http://www.e-comlaw.com/woglr/print.asp?ID=1619> (accessed 6 September 2011).

53 World Online Gambling Law Report, *Germany: The EU responds to Germany's draft legislation*, Vol. 10, Issue 7, July 2011, <http://www.e-comlaw.com/woglr/print.asp?ID=1647> (accessed 6 September 2011).

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liberalise online gambling in Germany.<sup>54</sup> On 14 September 2011, the Schleswig-Holstein parliament passed the bill by a vote of 46 to 45.<sup>55</sup>

5.49 The new online gambling law will allow companies to offer 'exchange and sports betting, as well as poker and casino games'<sup>56</sup> excluding blackjack, baccarat and roulette, provided they are established in the EU.<sup>57</sup> Companies may apply for an unlimited number of licences which will be valid from March 2012.<sup>58</sup>

5.50 A key component of the legislation which differs from the other German states' draft is the establishment of a 20 per cent tax on gross profits:

Companies will pay a 20 per cent tax on gross profits, rather than the 16.67 per cent tax on individual stakes proposed elsewhere, a levy which betting companies have argued would make it impossible for them to compete against state-run operators.<sup>59</sup>

5.51 The legislation was well-received by some in the industry and resulted in increases in the share prices of some major industry players:<sup>60</sup>

The resolution passed today is an important and groundbreaking step on the way to an open and regulated gambling market in Germany.<sup>61</sup>

5.52 The legislation is expected to come into force on 1 January 2012.<sup>62</sup>

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54 World Online Gambling Law Report, *Schleswig-Holstein's draft Bill given go ahead by EU*, Vol. 10, Issue 5, May 2011, p. 1, <http://www.e-comlaw.com/woglr/print.asp?ID=1621> (accessed 6 September 2011).

55 Tom Victor, *Breaking news: Schleswig-Holstein passes egaming treaty*, 14 September 2011, p. 1 of 1, <http://www.egrmagazine.com/news/1694557/breaking-news-schleswigholstein-passes-egaming-treaty-.thtml> (accessed 22 September 2011).

56 Reuters, *Bwin.party, Betfair boosted by new German state law*, 14 September 2011, p. 1 of 1, <http://www.reuters.com/article/2011/09/14/bwin-betfair-idUSL5E7KE1TY20110914> (accessed 22 September 2011).

57 Elissa Harwood, *Inside Gaming: Germany's Online Gaming Strides, Caesars' Loveman Gets Political, & More*, 21 September 2011, p. 1 of 2, <http://www.pokernews.com/news/2011/09/inside-gaming-germany-making-online-gaming-strides-caesars-l-11063.htm> (accessed 22 September 2011).

58 Tom Victor, *Breaking news: Schleswig-Holstein passes egaming treaty*, 14 September 2011, p. 1 of 1, <http://www.egrmagazine.com/news/1694557/breaking-news-schleswigholstein-passes-egaming-treaty-.thtml> (accessed 22 September 2011).

59 Reuters, *Bwin.party, Betfair boosted by new German state law*, 14 September 2011, p. 1 of 1, <http://www.reuters.com/article/2011/09/14/bwin-betfair-idUSL5E7KE1TY20110914> (accessed 22 September 2011).

60 Reuters, *Bwin.party, Betfair boosted by new German state law*, 14 September 2011, p. 1 of 1, <http://www.reuters.com/article/2011/09/14/bwin-betfair-idUSL5E7KE1TY20110914> (accessed 22 September 2011).

61 Reuters, *Bwin.party, Betfair boosted by new German state law*, 14 September 2011, p. 1 of 1, <http://www.reuters.com/article/2011/09/14/bwin-betfair-idUSL5E7KE1TY20110914> (accessed 22 September 2011).

## Canada

5.53 Regulation of interactive gambling in Canada occurs through a mix of federal and provincial legislation. While federal legislation prohibits the provision of online gambling under the Criminal Code of Canada, provinces have the power to regulate interactive gambling within their province.<sup>63</sup>

Canadian federal law has been interpreted by provincial governments as allowing them to legally operate an Internet gambling website as long as patronage is restricted to residents within that province.<sup>64</sup>

5.54 While federal law 'may prohibit Canadians from participating in gambling on a website located in another country, there is no mechanism to effectively enforce the prohibition'.<sup>65</sup> The Ontario Lottery and Gaming Corporation highlighted the services available despite prohibition:

Under section 207.1(a) of the Criminal Code of Canada, only a Province or its designated agency may legally conduct any gambling activities that involve electronic devices. Internet gaming operators are unable to conduct operations in Canada, or to advertise their "play-for-money" sites. However, they continue to advertise "play-for-free" sites extensively, and Canadians spend an estimated \$1 billion annually at a range of unregulated gaming sites.<sup>66</sup>

### ***Provincial online gambling regulation***

5.55 Currently, online gambling is legal in British Columbia and the Atlantic provinces and some 'First Nations'<sup>67</sup> including the Quebec-based Kahnawake Mohawk

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62 Tom Victor, *Breaking news: Schleswig-Holstein passes egaming treaty*, 14 September 2011, p. 1 of 1, <http://www.egrmagazine.com/news/1694557/breaking-news-schleswigholstein-passes-egaming-treaty-.thtml> (accessed 22 September 2011).

63 *Review of current and future trends in interactive gambling activity and regulation*, Literature Review, Report to the Australian Government Department of Families, Housing, Community Services and Indigenous Affairs, by the Allen Consulting Group, June 2009, p. 38.

64 Williams, R.J. & Wood, R.T., *Internet Gambling: A Comprehensive Review and Synthesis of the Literature*, Report prepared for the Ontario Problem Gambling Research Centre, Guelph, Ontario, Canada, 2007, p. 38.

65 *Review of current and future trends in interactive gambling activity and regulation*, Literature Review, Report to the Australian Government Department of Families, Housing, Community Services and Indigenous Affairs, by the Allen Consulting Group, June 2009, p. 38.

66 Ontario Lottery and Gaming Corporation, *Backgrounder: Internet Gaming*, 10 August 2011, p. 2 of 4, [http://media.olg.ca/?p=nmm\\_news\\_detail&i=f1fd53a8-49bc-4442-80ed-4998ee7e318b](http://media.olg.ca/?p=nmm_news_detail&i=f1fd53a8-49bc-4442-80ed-4998ee7e318b) (accessed 6 September 2011).

67 First Nations are defined as Inuit communities recognised by the Canadian Government. First Nations governments are 'entities which can issue gambling licences (including licences for online gambling).' See Department of Families, Housing, Community Services and Indigenous Affairs, *Review of current and future trends in interactive gambling activity and regulation*, Commonwealth of Australia, Canberra, 2008, p. 39.

First Nation, which has established the Kahnawake Gaming Commission (KGC) to 'license and regulate some 30 gambling websites operated through Internet servers physically located on their tribal lands'.<sup>68</sup>

5.56 The Ontario Lottery and Gaming Corporation recently announced its intention to offer internet gaming, which will be regulated by the Alcohol and Gaming Commission of Ontario.<sup>69</sup> Dr Sally Gainsbury and Professor Alex Blaszczynski discussed the internet gambling platform proposed for launch in 2012:

The site will not be launched until extensive consultation with stakeholders has been completed and a strict responsible gambling platform will be introduced based on empirical evidence and consultation with stakeholders. This includes mandatory pre-commitment limits for time and money, pop-up messages to communicate with players and responsible gambling tools such as self-help tests and information about games.<sup>70</sup>

### **An international regulatory standard?**

5.57 During the inquiry, many submitters raised the idea of a cohesive international approach toward online gambling regulations. In the 2007 report prepared for Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA), the Allen Consulting Group stated that international regulatory frameworks were important to the application of Australian legislation for two reasons:

- The effectiveness of these models directly impacts on the accessibility of interactive gambling services for Australians.
- The models provide useful examples for Australian regulators to consider as potential inclusions to the Australian regulatory model (or, conversely, provide cautionary tales of approaches which are not effective).<sup>71</sup>

5.58 In its 2010 report, the Productivity Commission (PC) supported international collaboration on online gambling regulation, stating that 'where possible, regulation should be aligned with that of similarly liberalised countries'.<sup>72</sup>

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68 *Review of current and future trends in interactive gambling activity and regulation*, Literature Review, Report to the Australian Government Department of Families, Housing, Community Services and Indigenous Affairs, by the Allen Consulting Group, June 2009, p. 39.

69 Ontario Lottery and Gaming Corporation, 'OLG to launch Internet gaming', *Media Release*, 10 August 2010.

70 Dr Sally Gainsbury and Professor Alex Blaszczynski, *Submission 7*, p. 4.

71 *Review of current and future trends in interactive gambling activity and regulation*, Literature Review, Report to the Australian Government Department of Families, Housing, Community Services and Indigenous Affairs, by the Allen Consulting Group, June 2009, p. 39.

72 Productivity Commission, *Gambling*, vol. 2, Commonwealth of Australia, Canberra, p. 15.32.

5.59 Dr Gainsbury and Professor Blaszczynski supported the position of the PC in their evidence to the committee:

This is an extremely sensible approach as it would allow policy measures such as filters and blocking software to be shared and Internet sites to be regulated and evaluated based on international guidelines...<sup>73</sup>

5.60 The Gaming Technologies Association (GTA) attributed the need for transnational regulation to the global nature of online gambling and argued that transnational cooperation is necessary to effectively regulate online gambling:

Internet gambling is unimpeded by physical borders. The increasing incidence of mobile devices which are routinely connected to the Internet has resulted in an uncontrolled proliferation of gambling opportunities available in Australia with no restriction, despite attempted local prohibition...

...Online gambling is here to stay and defies local prohibition. Its appropriate operation through legislation and regulation requires transnational thinking and international cooperation.<sup>74</sup>

5.61 The interest in international cooperation is evident in many jurisdictions, particularly in Europe where, in March 2011, the European Commission published a Green Paper on online gambling:

...to launch an extensive public consultation on all relevant public policy challenges and possible Internal Market issues resulting from the rapid development of both illicit and unauthorised on-line gambling offers directed at citizens located in the EU.<sup>75</sup>

5.62 GTA stated that the Green Paper would act as a 'precursor to a White Paper and quite likely, draft online gambling legislation in the form of a directive'.<sup>76</sup>

5.63 The Green Paper addresses the issue of different national regulatory frameworks in an international gambling environment:

Enforcement of national rules is facing many challenges, raising the issue of a possible need for enhanced administrative co-operation between competent national authorities, or for other types of action.<sup>77</sup>

5.64 While acknowledging that working towards international agreements with similar jurisdictions would be beneficial, Dr Gainsbury and Professor Blaszczynski

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73 Dr Sally Gainsbury and Professor Alex Blaszczynski, *Submission 7*, p. 9.

74 Gaming Technologies Association Limited, *Submission 19*, pp 2–3.

75 European Commission, *Green Paper on on-line gambling in the Internal Market*, March 2011, p. 3.

76 Gaming Technologies Association, *Submission 19*, p. 2.

77 European Commission, *Green Paper on on-line gambling in the Internal Market*, March 2011, p. 3.

noted that the global nature of online gambling makes the creation of an international online gambling policy problematic as 'policy must reflect the needs of a local population'.<sup>78</sup>

5.65 While recognising the difficulties in creating an international standard that jurisdictions will sign up to, the PC noted that international cooperation may provide consumers with stronger protections:

It is likely that multilateral government and commercial action could secure a much better set of consumer protection standards for each country. Like all commercial activities, some countries/providers may not wish to adopt the global standards, but that very fact could be expected to make consumers cautious of using their facilities, given the risks of fraud and poor service.<sup>79</sup>

### ***Committee view***

5.66 The committee heard that international approaches to regulation could serve as examples for Australian policy makers. Dr Gainsbury and Professor Blaszczynski argued that there is no 'gold standard' style of regulation currently in existence due in part to the global nature of internet gambling and the local nature of internet gambling policy. Despite this, they argued that international policies present a variety of ideas which can serve as a guide for the creation of a unique internet gambling policy in Australia:

Nevertheless, internationally jurisdictions are increasingly enacting more sophisticated regulatory approaches in acknowledgment of the reality and permanence of Internet gambling. *Although Australian policy makers must formulate a unique response to Internet gambling, international legislation can be used to guide policies.*<sup>80</sup>

5.67 The committee notes that the government review of the *Interactive Gambling Act 2001* will examine international regulatory approaches:

...and their potential applicability in the Australian context and also the extent to which there are options to improve or look at harm minimisation measures with respect to online gambling services.<sup>81</sup>

### **Conclusion**

5.68 The committee supports the further examination of international regulatory approaches and potential application to the Australian environment. It also supports investigation of international collaboration on online gambling regulation. However,

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78 Dr Sally Gainsbury and Prof Alex Blaszczynski, *Submission 7*, p. 9.

79 Productivity Commission, *Gambling*, vol. 2, Commonwealth of Australia, Canberra, p. 15.32.

80 Dr Sally Gainsbury and Professor Alex Blaszczynksi, *Submission 7*, p. 9.

81 Mr Richard Windeyer, *Committee Hansard*, 19 August 2011, p. 30.

the committee considers the process of establishing transnational agreements or legislation will require extensive coordination and consultation. It will be a lengthy process and is useful only as a long term goal, not a short term policy. An additional danger is that in order to achieve international agreement, the regulatory standards may be so low as to be of limited usefulness.

## **Part 2**

### **The Interactive Gambling Act**

In this part of the report, the committee provides the background and detail necessary to understand the current regulation of interactive gambling services in Australia by the *Interactive Gambling Act 2001* (IGA). It covers the issues raised with the committee regarding the effectiveness of the IGA and advertising covered by the IGA.



# Chapter 6

## The current regulatory framework

6.1 This chapter describes the development of the primary legislation in Australia for interactive gambling, the *Interactive Gambling Act 2001* (IGA), and provides a brief explanation of how it works, what is prohibited by the IGA and what is allowed.

### The power of the Commonwealth to regulate

6.2 Historically, the regulation of gambling has been the responsibility of state and territory governments. However, the Commonwealth regulates interactive gambling as it uses communications services which, under the Australian Constitution, are a Commonwealth responsibility.<sup>1</sup> Currently, offline gambling is primarily a state and territory responsibility. However, state and territory legislation regulates the way in which legal forms of interactive services can be provided, for example, by licensing providers and setting requirements to protect players.<sup>2</sup>

### Working towards the Interactive Gambling Act

6.3 The IGA regulates interactive gambling services to Australians. It is the end result of work undertaken over a number of years to respond to concerns about the extent of problem gambling and its social costs, the increased availability and accessibility of gambling services in Australia and the threats posed by new technologies which have the potential to significantly worsen the problem. Thus it seeks to address a multiplicity of issues posed by the various forms of and platforms for interactive gambling. The key question then as now is whether prohibition or liberalisation is a more effective approach to address these issues. This will be the key issue discussed in the next chapter but it is useful to firstly provide a brief overview of the work undertaken to develop the government's current position on interactive gambling which resulted in the IGA.

### Working with states and territories

6.4 In the late 1990s, when regulatory models for online gambling were in their infancy, a cooperative approach by all state and territory governments was pursued

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1 Section 51(v) of the Australian Constitution gives the Commonwealth responsibility for 'postal, telegraphic, telephonic, and other like services'.

2 *Review of current and future trends in interactive gambling activity and regulation*, Literature Review, Report to the Australian Government Department of Families, Housing, Community Services and Indigenous Affairs, by the Allen Consulting Group, June 2009, p. vi.

and a draft regulatory model was developed.<sup>3</sup> However, agreement on this uniform regulatory model for online gaming was not able to be reached.

### **1999 Productivity Commission Report**

6.5 As a result of the growing community concern over problem gambling, the Productivity Commission (PC) conducted an investigation and in 1999 it produced a report on Australia's Gambling Industries. In relation to online gambling, the PC found that 'online gambling and interactive TV potentially represent a quantum leap in accessibility to gambling, and will also involve new groups of people'.<sup>4</sup> While noting some features of internet gambling which may moderate problem gambling, the PC concluded:

Overall, however, the Commission considers it likely that (without harm minimisation measures and appropriate regulation) online gambling will pose significant new risks for problem gambling.<sup>5</sup>

6.6 While recognising the potential harms of online gambling for consumers, the PC recommended 'managed liberalisation':

Internet gambling offers the potential for consumer benefits, as well as new risks for problem gambling. Managed liberalisation — with licensing of sites for probity, consumer protection and taxation — could meet most concerns, although its effectiveness would require the assistance of the Commonwealth Government.<sup>6</sup>

### **Senate select committee**

6.7 The PC report was followed in March 2000 by the report of the Senate Select Committee on Information Technologies, *Netbets: A review of online gambling in Australia*.<sup>7</sup> The committee also favoured managed liberalisation. It concluded that prohibition would be difficult and expensive to implement and would not prevent an increase in problem gambling. It believed that prohibition would steer gamblers to overseas gambling sites and the committee favoured improved regulation and the implementation of harm minimisation policies.<sup>8</sup>

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3 See Senate Select Committee on Information Technologies, *Netbets: A review of online gambling in Australia*, March 2000, p. 26.

4 Productivity Commission, *Gambling*, vol. 1, Commonwealth of Australia, Canberra, 2010, p. 50.

5 Productivity Commission, *Gambling*, vol. 2, Commonwealth of Australia, Canberra, 2010, p. 18.21.

6 Productivity Commission, *Australia's Gambling Industries*, vol.1, Commonwealth of Australia, Canberra, 1999, p. 4.

7 Senate Select Committee on Information Technologies, *Netbets: A review of online gambling in Australia*, March 2000.

8 Senate Select Committee on Information Technologies, *Netbets: A review of online gambling in Australia*, March 2000, p. 77.

### ***The moratorium***

6.8 In the meantime, the government announced the establishment of a Ministerial Council on Gambling and its intention to examine the feasibility and consequences of banning interactive gambling.<sup>9</sup>

6.9 In April 2000, at the first meeting of the Ministerial Council on Gambling, the Commonwealth called on the states and territories to join a voluntary 12-month moratorium on new interactive gambling services while the feasibility and consequences of a permanent ban were examined. This was rejected by the majority of states and territories.<sup>10</sup>

6.10 The response was the Interactive Gambling (Moratorium) Bill 2000 which applied a 12-month moratorium on new interactive gambling services from 19 May 2000 to 18 May 2001 until further research was conducted into the industry. The Senate Environment, Communications, Information Technology and the Arts Legislation Committee conducted an inquiry into the bill and reported in September 2000.<sup>11</sup> An amended moratorium bill was passed which excluded certain forms of wagering. The legislation was passed in both Houses in December 2000.<sup>12</sup>

6.11 During the moratorium period, the National Office for the Information Economy (NOIE) conducted an investigation into the feasibility and consequences of banning interactive gambling.<sup>13</sup> It concluded that no method would be 100 per cent effective in preventing Australians accessing interactive gambling services. However, the report also found that a ban would be consistent with the Commonwealth's e-commerce strategy which called for appropriate legal and regulatory measures to protect consumers.<sup>14</sup>

6.12 The committee notes that the 2010 PC report found several flaws in the underlying cost/benefit analysis that it believed limited the usefulness of the NOIE report findings. These were:

9 National Office for the Information Economy, *Report of the investigation into the feasibility and consequences of banning interactive gambling*, 27 March 2001, p. 11.

10 National Office for the Information Economy, *Report of the investigation into the feasibility and consequences of banning interactive gambling*, 27 March 2001, p. 26.

11 Senate Environment, Communications, Information Technology and the Arts Legislation Committee, Interactive Gambling (Moratorium) Bill 2000, September 2000.

12 National Office for the Information Economy, *Report of the investigation into the feasibility and consequences of banning interactive gambling*, 27 March 2001, p. 26.

13 National Office for the Information Economy, *Report of the investigation into the feasibility and consequences of banning interactive gambling*, 27 March 2001.

14 National Office for the Information Economy, *Report of the investigation into the feasibility and consequences of banning interactive gambling*, 27 March 2001, p. 6.

- the report considered the ban in isolation from any other potential regulatory solutions that may have been able to minimise harms;
- the analysis assumed the ban would be effective at stemming demand for online gaming and would have zero implementation and enforcement costs; and
- the model used many questionable assumptions.<sup>15</sup>

6.13 The PC suggested that these concerns, combined with new evidence since the report was published, warranted a re-evaluation of online gaming policy.<sup>16</sup> The PC findings and conclusions are discussed in the following chapters.

## **Interactive Gambling Act**

6.14 In April 2001, the Interactive Gambling Bill 2001 was introduced into the Senate. It was referred to the Senate Environment, Communications, Information Technology and the Arts Legislation Committee for inquiry and report.<sup>17</sup>

6.15 The purpose of the IGA is to limit the availability of and discourage the provision of interactive gambling services to Australians. There are two key elements to the IGA. First, the provision of an Australian-based interactive gambling service is prohibited.<sup>18</sup> It is important to note that the offence provision applies to the providers of interactive gambling services and not the users. In addition, Australian companies can offer the banned services to overseas-based gamblers. However, the minister has the capacity to declare 'designated countries' where it is an offence to provide services to them.

6.16 The second element of the IGA is to establish a complaints scheme administered by Australian Communications and Media Authority (ACMA) which enables Australians to make complaints about interactive gambling services on the internet available to Australians.

### ***What is prohibited?***

6.17 Australian-based online gaming websites (e.g. casino-type games such as poker and roulette, and virtual electronic gaming machines) are prohibited by the IGA. Online wagering is not prohibited by the IGA but there are two exceptions:

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15 Productivity Commission, *Gambling*, vol. 1, Commonwealth of Australia, Canberra, 2010, pp 15.5–15.6.

16 Productivity Commission, *Gambling*, vol. 1, Commonwealth of Australia, Canberra, 2010, p. 15.6.

17 Report of the Senate Environment, Communications, Information Technology and the Arts Legislation Committee, *Interactive Gambling Bill 2001*, May 2001.

18 Report of the Senate Environment, Communications, Information Technology and the Arts Legislation Committee, *Interactive Gambling Bill 2001*, May 2001, p. 2. See also *Interactive Gambling Act 2001*, Part 2, section 15.

- online wagering services before an event/match commences are permitted. However, 'in-play' wagering on the outcome of an event, i.e. betting on the outcome of an event online, after the event has started, is prohibited but customers can use the TAB or phone for such bets; and
- 'ball-by-ball' betting is permitted via the telephone or in person (e.g. TAB) during the event/match. However, this wagering (e.g. who will score the first try) in the online format is not permitted during the event.

6.18 These 'in-play' exclusions were considered to be the most harmful forms of online wagering as the internet can facilitate rapid and continuous betting.<sup>19</sup> The IGA also contains provisions for the Minister to exclude any service from the prohibition at their discretion.

6.19 The offence created by the IGA to intentionally provide a prohibited interactive gambling service, as defined by the IGA, to customers in Australia extends to offshore providers of interactive gambling services to customers in Australia.<sup>20</sup> Australian residents are able to make complaints about interactive gambling services. If the complaint is upheld by ACMA, internet service providers (ISPs) are notified of the prohibited service.<sup>21</sup> ISPs must then provide customers with an approved filter.<sup>22</sup>

### **What is allowed?**

6.20 The IGA allows certain wagering and gaming services to be provided in Australia. Traditional wagering services, where the internet is used to facilitate an established form of wagering activity, were excluded from the IGA or allowed. Therefore it is legal to offer a traditional betting or wagering service on events before they commence over the internet or other communications device.

6.21 The following table provided by Betfair illustrates what is permitted under the IGA.<sup>23</sup>

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19 See [http://www.dbede.gov.au/broadband/online\\_gambling/interactive\\_gambling\\_industry\\_code/frequently\\_asked\\_questions](http://www.dbede.gov.au/broadband/online_gambling/interactive_gambling_industry_code/frequently_asked_questions) (accessed 14 June 2011).

20 Clause 15 A. Code is available from: <http://www.acma.gov.au/webwr/aba/contentreg/codes/internet/documents/gamblingcode.pdf> (accessed 14 July 2011).

21 In accordance with the requirements of the Interactive Gambling Industry Code.

22 Available from: <http://www.acma.gov.au/webwr/aba/contentreg/codes/internet/documents/gamblingcode.pdf> (accessed 14 July 2011).

23 Betfair, *Submission 12*, p. 11.

	<b>Pre-play</b>	<b>In-play</b>
<b>Telephone betting - sport</b>	<b>yes</b>	<b>yes</b>
<b>Telephone betting - racing</b>	<b>yes</b>	<b>yes</b>
<b>Online betting - sport</b>	<b>yes</b>	<b>no</b>
<b>Online betting - racing</b>	<b>yes</b>	<b>yes</b>

6.22 Online wagering on non-sporting events is not prohibited by the IGA. Most forms of traditional lotteries offered over the internet are exempt from the prohibition as they are unlikely to pose a risk to problem gamblers. Only rapid or player-initiated online lotteries such as online scratchies are banned as they have been judged to present a greater risk to problem gamblers. The IGA also provides for the minister to prohibit 'highly repetitive or frequently drawn forms of keno-type lotteries or similar lotteries,' should these become a problem.<sup>24</sup>

6.23 The Department of Broadband, Communications and the Digital Economy noted that the current regulation of interactive gambling services '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.' However, it recognised that achieving platform neutrality would involve consideration of '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'.<sup>25</sup>

### **Advertising of prohibited interactive services**

6.24 A third element of the IGA is the prohibition on the advertising of prohibited interactive gambling services to Australians on the internet, in print, broadcasting or datacasting media.<sup>26</sup> It is prohibited to advertise prohibited interactive gambling services on broadcast media such as free-to-air television and radio, in print media such as magazines and newspapers, and on billboards. Advertising on internet services aimed at an Australian audience is also banned. This means that websites designed for

24 See [http://www.dbcde.gov.au/broadband/online\\_gambling/interactive\\_gambling\\_industry\\_code/frequently\\_asked\\_questions](http://www.dbcde.gov.au/broadband/online_gambling/interactive_gambling_industry_code/frequently_asked_questions) (accessed 14 June 2011).

25 Department of Broadband, Communications and the Digital Economy, *Review of the Interactive Gambling Act 2001*, Discussion paper, August 2011, p. 9.

26 Note: datacasting is the broadcasting of data using radio waves as a means of delivery. For the most part, it refers to supplementary information sent by TV stations to accompany digital TV, e.g. news, weather, traffic but it can also be interactive, e.g. gaming and shopping.

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a specifically Australian audience will not be able to carry interactive gambling advertisements.<sup>27</sup>

6.25 However, there are various exceptions including political advertising, incidental or accidental advertising, and advertising in imported print publications or websites that are not aimed specifically at an Australian audience. ISPs are generally protected by the Criminal Code from liability for third party content that is innocently transmitted over their networks. In other words, an ISP or other third party can only be guilty of the offence if it knowingly or recklessly transmits the advertisement.<sup>28</sup>

## **Agency roles**

6.26 The following agencies are involved in administering and enforcing the IGA.

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

6.27 The Department of Broadband, Communications and the Digital Economy (DBCDE) has policy responsibility for online gambling and administers the IGA. It advised that as the IGA does not specify who considers complaints about advertising of prohibited online gambling services, it conducts a preliminary assessment and refers potential breaches to the Australian Federal Police (AFP). Potential breaches of licence conditions are referred to the Australian Communications and Media Authority (ACMA).

### ***The Australian Communications and Media Authority***

6.28 ACMA considers complaints about prohibited content itself, notifying approved PC filter vendors (and a police force if appropriate) of prohibited content. ACMA refers Australian based content to the AFP. Ms Jennifer McNeill, Acting General Manager, Content, Consumer and Citizen Division, Australian Communications and Media Authority, informed the committee:

In general terms, the Australian Communications and Media Authority has two main roles to play in this gambling space. The first is the role that it is given under the Interactive Gambling Act whereby the authority receives complaints about prohibited internet gambling content. It also has a role registering industry codes of practice dealing with interactive gambling matters. It also has a role investigating particular advertising of prohibited gambling services in a broadcasting context. So that is the suite of responsibilities that it has under the Interactive Gambling Act itself. Sitting

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27 See [http://www.dbcde.gov.au/broadband/online\\_gambling/interactive\\_gambling\\_industry\\_code/frequently\\_asked\\_questions](http://www.dbcde.gov.au/broadband/online_gambling/interactive_gambling_industry_code/frequently_asked_questions) (accessed 14 June 2011). Note: The regulation of gambling advertising at sporting venues is a matter for state and territory governments.

28 See [http://www.dbcde.gov.au/broadband/online\\_gambling/interactive\\_gambling\\_industry\\_code/frequently\\_asked\\_questions](http://www.dbcde.gov.au/broadband/online_gambling/interactive_gambling_industry_code/frequently_asked_questions) (accessed 14 June 2011).

slightly separate from that is a role that it has in the coregulatory broadcasting space where the Commercial Television Industry Code of Practice contains rules that the commercial television industry members have agreed to abide by. That restricts the sort of advertising and the timing of advertising that can be run on commercial television programs...<sup>29</sup>

### **Australian Federal Police**

6.29 The IGA requires ACMA and DBCDE to refer alleged criminal activity to an Australian police force. The AFP assesses referrals from ACMA (prohibited internet gambling content) and DBCDE (advertising of prohibited services) against its Case Categorisation and Prioritisation Model.<sup>30</sup> Enforcement of the IGA is discussed in the next chapter.

### **Related work**

#### ***Review of the Interactive Gambling Act***

6.30 On 27 May 2011, the Council of Australian Governments (COAG) Select Council on Gambling Reform announced that the Department of Broadband, Communications and the Digital Economy (DBCDE) would undertake a review of the IGA. The review is due for completion in the first half of 2012.<sup>31</sup> The department's website provided some further detail:

The review will include an examination of the operation of the IGA and the effectiveness of the current provisions. It will also include further consideration of international regulatory approaches to online gambling and their potential applicability to the Australian context. It will also examine the ability to improve harm minimisation measures for online gambling services.

The review will look at the enforcement of existing prohibitions on certain types of online gambling, the way the Act applies to different technological platforms, and the growing number of Australian consumers gambling online in an unregulated environment.

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29 Ms Jennifer McNeill, *Committee Hansard*, 19 August 2011, p. 31.

30 In determining which matters to prioritise, the AFP uses the Case Categorisation and Prioritisation Model (CCPM) to consider major elements of an operation. These 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; and the resources required by the AFP to undertake the matter. Information available from: <http://www.afp.gov.au/about-the-afp/operational-priorities/how-the-ccpm-is-applied.aspx> (accessed 29 June 2011).

31 Department of Broadband, Communications and the Digital Economy, *Submission 28a*, p. 1. See also COAG Communiqué, 27 May 2011, available from: [http://www.jennymacklin.fahcsia.gov.au/statements/Pages/jm\\_comm\\_gamblingreform\\_27may2011.aspx](http://www.jennymacklin.fahcsia.gov.au/statements/Pages/jm_comm_gamblingreform_27may2011.aspx) (accessed 5 July 2011).

The Australian Government will consult widely with key stakeholders, states and territories, and the broader community in undertaking the review.<sup>32</sup>

6.31 On 19 August 2011, the Terms of Reference for the review were released:

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 smart-phones, 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

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32 Information available from:

[http://www.dbcde.gov.au/broadband/online\\_gambling/2011\\_review\\_of\\_the\\_interactive\\_gambling\\_act\\_2001](http://www.dbcde.gov.au/broadband/online_gambling/2011_review_of_the_interactive_gambling_act_2001) (accessed 6 July 2011).

2012, subject to the Joint Select Committee on Gambling Reform reporting by the end of 2011.<sup>33</sup>

6.32 On 24 August 2011, DBCDE released a discussion paper which outlines the key issues for the review and includes a number of broad questions designed to assist those wishing to make a submission to the review.<sup>34</sup>

### ***COAG Select Council on Gambling Reform***

6.33 The Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) told the committee that the department 'has a strong interest in policy aimed at minimising harm from problem gambling in all its forms' and:

The Department shares the growing community concerns over the potential impacts of interactive and online gambling and gambling advertising, particularly the impact on vulnerable Australians.<sup>35</sup>

6.34 FaHCSIA is supporting the COAG Select Council on Gambling Reform as it progresses 'the development of a national response to the Productivity Commission's 2010 report on gambling by the end of 2011. This national response will include consideration of issues related to the regulation of online gambling'.<sup>36</sup>

### ***Committee comment***

6.35 The amount of work being undertaken by various organisations in this area at the current time and the potential for duplication was raised by Betchoice.<sup>37</sup> Given the committee's Terms of Reference are quite broad and cover issues other than the IGA, the committee considers that this inquiry will gather and provide valuable information which can be taken into consideration during other processes, including the DBCDE IGA review process.

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33 Information available from:  
[http://www.dbcde.gov.au/broadband/online\\_gambling/2011\\_review\\_of\\_the\\_interactive\\_gambling\\_act\\_2001](http://www.dbcde.gov.au/broadband/online_gambling/2011_review_of_the_interactive_gambling_act_2001) (accessed 25 August 2011).

34 Information available from:  
[http://www.dbcde.gov.au/broadband/online\\_gambling/2011\\_review\\_of\\_the\\_interactive\\_gambling\\_act\\_2001](http://www.dbcde.gov.au/broadband/online_gambling/2011_review_of_the_interactive_gambling_act_2001) (accessed 25 August 2011).

35 FaHCSIA, *Submission 25*, p. 2.

36 FaHCSIA, *Submission 25*, p. 2.

37 Betchoice, *Submission 43*, pp 19–20.

# Chapter 7

## Effectiveness of the current regulatory framework

7.1 This chapter considers the effectiveness of the *Interactive Gambling Act 2001* (IGA). It details where the IGA appears to be successful and where there are deficiencies. Rather than comment on aspects of the IGA throughout this chapter, the committee will consolidate its views at the end of the chapter.

### Clarifying the purpose of the IGA

7.2 To assess the effectiveness of the IGA, it is important to be clear about its purpose. The Explanatory Memorandum for the Interactive Gambling Bill 2001 detailed the concern to be addressed by the IGA regarding the link between greater accessibility and availability of gambling opportunities leading to an increase in the prevalence of problem gambling:

The Government is concerned that new interactive communication services will give interactive gambling service providers (IGSPs) new opportunities to increase the size and accessibility of the gambling industry in Australia. The Productivity Commission has found a strong link between the accessibility of gambling services and the prevalence of problem gambling in the community. In its report, Australia's Gambling Industries (1999), it states that 'there is sufficient evidence from many different sources to suggest a significant connection between greater accessibility...and the greater prevalence of problem gambling.'

The concern is thus that the growth in availability of interactive gambling services to the Australian community will lead to an increase in problem gambling.<sup>1</sup>

7.3 The IGA aims to minimise the harmful effects of gambling on the Australian community by limiting the provision of interactive gambling services to Australians.<sup>2</sup> It is against this aim that the committee will consider its effectiveness.

### Reviews

7.4 The IGA was last reviewed in 2004 and this review concluded that:

The IGA had curtailed the development of the Australian interactive gambling industry and was associated with the minimal use of internet gaming services by Australians. It found that the IGA has proven largely successful in meeting its policy objectives of minimising the potential expansion of interactive gambling that may exacerbate problem gambling

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1 Interactive Gambling Bill 2001, *Explanatory Memorandum*, pp 6–7.

2 Interactive Gambling Bill 2001, *Explanatory Memorandum*, p. 7.

in Australia. The review found no substantive evidence to support amendment or repeal of the IGA on the basis that the legislative framework is ineffective in preventing access to interactive gambling services.<sup>3</sup>

7.5 The committee notes that the Department of Broadband, Communications and the Digital Economy (DBCDE) is currently conducting a review into the IGA which:

...is intended to ensure that the prevalence of problem gambling in the online environment and gambling addiction in the Australian community is limited.<sup>4</sup>

### *Committee view*

7.6 The committee agrees that it is time to review the rationale and effectiveness of the IGA which has been in effect since 2001 and was last reviewed in 2004. It is particularly relevant given the growth in online gambling and technology developments in this area.

## **Limiting the provision of interactive gambling services**

7.7 To limit the provision of interactive gambling services to Australians, the IGA makes it an offence to intentionally provide a prohibited interactive gambling service, as defined by the IGA, to customers in Australia.<sup>5</sup> This offence provision extends to offshore providers of interactive gambling services to customers in Australia.<sup>6</sup> This means that any interactive gambling service provider, either within or outside Australia, would be committing an offence if it had customers in Australia. In addition, it is also an offence to provide an Australian-based interactive gambling service to customers overseas in designated countries.

### *Limiting Australian-based services being provided to customers overseas*

7.8 Regarding Australian-based interactive gambling services being provided to customers in overseas countries, the committee notes that currently there are no countries designated under section 15A of the IGA where it is prohibited for Australian gambling operators to provide interactive gambling services. In order to be designated, a foreign government must:

- make a request to the minister for such a declaration, and

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3 Information available from:  
[http://www.dbcde.gov.au/broadband/online\\_gambling/interactive\\_gambling\\_act\\_2001](http://www.dbcde.gov.au/broadband/online_gambling/interactive_gambling_act_2001)  
(accessed 29 June 2011).

4 Department of Broadband, Communications and the Digital Economy, *Review of the Interactive Gambling Act 2001*, Discussion paper, August 2011.

5 *Interactive Gambling Act 2001*, Part 2, section 15.

6 *Interactive Gambling Act 2001*, Part 2A, section 15A.

- have legislation that mirrors the provisions of section 15 of the IGA, that is, that prohibits the provision of interactive gambling services.<sup>7</sup>

### ***Limiting Australian-based interactive gambling services***

7.9 Regarding the provision of a prohibited Australian-based interactive gambling service to customers in Australia, the Productivity Commission (PC) concluded that 'the IGA has clearly prevented any Australian-based company from providing online gaming to Australian residents' and indicated that the real effect of the IGA had been to prevent companies located in Australia from providing online gaming services to Australians.<sup>8</sup>

7.10 In its IGA review discussion paper, DBCDE confirmed:

It appears that the most significant effect of the IGA has been to prevent companies located in Australia from selling online gaming services to Australians.<sup>9</sup>

### ***Limiting overseas-based interactive gambling services accessible to Australians***

7.11 The IGA does not prevent Australians from accessing overseas interactive gambling services. Indeed, submissions indicated that the IGA has the practical effect of restricting customer choice to overseas websites for interactive gambling services prohibited by the IGA. This may expose customers to unscrupulous operators where they have little or no recourse if they experience problems and lose their money.

7.12 Australians currently have easy access to overseas internet gambling sites, subject to the effectiveness of the complaints regime and any subsequent investigations. Dr Sally Gainsbury and Professor Alex Blaszczynski noted that despite the restrictions of the IGA, Australians have access to over 2,000 online gambling sites and in 2010 spent over \$968 million.<sup>10</sup>

7.13 Customers wishing to take advantage of bets that are prohibited from being provided to Australian customers online are able to access overseas websites to place those bets. Betchoice highlighted that the prohibition of 'in-play' betting only forces customers to look outside Australia where operators may not have the same standards of probity and which are out of reach of Australian authorities.<sup>11</sup>

7 See *Interactive Gambling Act 2001*, Part 1, section 9A; See also [http://www.dbcde.gov.au/broadband/online\\_gambling/interactive\\_gambling\\_industry\\_code/frequently\\_asked\\_questions#faq21](http://www.dbcde.gov.au/broadband/online_gambling/interactive_gambling_industry_code/frequently_asked_questions#faq21) (accessed 11 July 2011).

8 Productivity Commission, *Gambling*, vol. 2, Commonwealth of Australia, Canberra, 2010, p. 15.18.

9 Department of Broadband, Communications and the Digital Economy, *Review of the Interactive Gambling Act 2001*, Discussion paper, August 2011, p. 8.

10 Dr Sally Gainsbury and Professor Alex Blaszczynski, *Submission 7*, p. 2.

11 Betchoice, *Submission 43*, p. 15.

7.14 In 2010, the PC concluded that one of the key effects of the IGA had been to drive consumers to use overseas sites, 'some with poor harm minimisation features and unscrupulous business practices'.<sup>12</sup> It indicated that 'the legislation attempts to dissuade people from gambling online by making it more dangerous'. The PC argued that this deterrent would have the greatest effect on responsible gamblers who would be likely to avoid online gambling altogether. It proposed that the prohibitions would have the least effect on problem gamblers 'whose behaviour means they may not respond appropriately to the riskier online gaming environment the IGA facilitates'.<sup>13</sup> The PC also argued:

Whilst the IGA also nominally prohibits the provision of gaming services by overseas companies, it has no meaningful way of enforcing this and the legislation appears to have been largely ignored. In effect, therefore, the IGA has ensured that domestic consumption of online gaming services will be exclusively provided by offshore companies.<sup>14</sup>

7.15 Regarding the effect of the IGA, the PC expressed the view that 'it would be surprising if the ban had no effect, for no other reason than it limits advertising of online gaming and means that Australians cannot gamble with providers that they recognise to be safe brands for venue-based gambling in Australia'.<sup>15</sup> The PC pointed out that while the IGA and the ban on advertising in particular may have reduced demand for online gaming below what it otherwise would have been, it is not clear that the effect has been large. It added:

Australian consumption of online gaming has grown and will continue to do so, making the prohibition less effective over time.<sup>16</sup>

7.16 The PC concluded that the ban would be less effective over time as customers become accustomed to gambling over the internet and 'as overseas sites develop reputations for probity (if not safety)'.<sup>17</sup>

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12 Productivity Commission, *Gambling*, vol. 1, Commonwealth of Australia, Canberra, 2010, p. 35.

13 Productivity Commission, *Gambling*, vol. 2, Commonwealth of Australia, Canberra, 2010, p. 15.19.

14 Productivity Commission, *Gambling*, vol. 2, Commonwealth of Australia, Canberra, 2010, p. 15.18.

15 Productivity Commission, *Gambling*, vol. 2, Commonwealth of Australia, Canberra, 2010, p. 15.18.

16 Productivity Commission, *Gambling*, vol. 2, Commonwealth of Australia, Canberra, 2010, p. 15.18.

17 Productivity Commission, *Gambling*, vol. 1, Commonwealth of Australia, Canberra, 2010, p. 35.

## Deficiencies of the IGA raised with the committee

### *Questions about enforcement*

7.17 The IGA is supported by a complaints-based system, as described in the previous chapter, which is intended to limit and discourage access to overseas gambling sites. However, submissions drew attention to what is seen as a lack of enforcement, particularly around access to overseas sites.

7.18 Dr Gainsbury and Professor Blaszczynski noted that little appears to be done to prevent overseas sites from allowing Australians to play or to stop the sites from directly marketing to Australians.<sup>18</sup> They detailed their concerns:

One particular deficiency of the IGA is the degree of compliance enforcement. Despite a policy of prohibition, Australians can easily access offshore Internet gambling sites, spend large amounts of money and be exposed to unfair player practices. This is of significant concern as Australians have little recourse if they lose their money or experience unscrupulous treatment. However, little appears to be done to prevent these sites from allowing Australians to play or to stop the sites from directly marketing to Australians.<sup>19</sup>

7.19 They pointed to the absence of prosecutions for breaches of the IGA as evidence for the inadequacy of regulatory restrictions and compliance.<sup>20</sup> The NSW Government also expressed concern over the adequacy of enforcement:

With no prosecutions having been conducted under the Act to date, the Act's ability to effectively prevent Australians from accessing overseas online gaming sites would appear to be minimal.<sup>21</sup>

7.20 The NSW Government emphasised that its concern about the lack of effectiveness of the IGA is compounded by the potential for growth in the online gambling industry and reports of increased participation by Australian consumers on overseas gambling sites.<sup>22</sup>

7.21 The Victorian InterChurch Gambling Taskforce was also of the view that little effort has been made to enforce the IGA. The Taskforce noted that in FY2008-2009, ACMA investigated only 11 complaints relating to prohibited internet gambling

18 Dr Sally Gainsbury and Professor Alex Blaszczynski, *Submission 7*, p. 3.

19 Dr Sally Gainsbury and Professor Alex Blaszczynski, *Submission 7*, p. 3.

20 Dr Sally Gainsbury and Professor Alex Blaszczynski, *Submission 7*, p. 2. See also Asher Moses, 'FBI, federal police target overseas poker websites that flout law', *Sydney Morning Herald*, 30 May 2011, p.1; Andrew Tillett, 'Online bets flourish despite a 10-year ban', *West Australian*, 30 June 2011, p. 4.

21 NSW Government, *Submission 56*, p. 8. See also Tasmanian Government, *Submission 26*, p. 4.

22 NSW Government, *Submission 56*, p. 8.

content. In three cases, ACMA notified providers of internet filter software to add these sites to the blocked list.<sup>23</sup>

7.22 The committee notes that the enforcement process is subject to the referral of complaints. DCBDE emphasised that the system is reactive rather than proactive and the agencies involved can only respond to complaints received:

One point to make in reference to that is that their [AFP] starting point is going to be the number of sites about which they have received referrals from ourselves, the ACMA, or someone else. There is no guarantee that, for example, there have been complaints about all 2,000 sites. Their starting point is the number of complaints that have come through to them...<sup>24</sup>

#### *DCBDE/ACMA process*

7.23 DCBDE advised that from July 2010 to June 2011, ACMA completed 48 investigations. 38 involved overseas-hosted prohibited internet gambling content and the URLs were referred to the Australian Federal Police (AFP). Seven did not provide access to prohibited internet gambling content and were not referred to the AFP. Three investigations were terminated due to lack of information. Also during this period ACMA referred one Australian hosted site to the AFP.<sup>25 26</sup>

7.24 ACMA took the committee through the method of investigating complaints concerning overseas providers and clarified that the IGA does not provide ACMA with a direct relationship to overseas regulators:

The ACMA delegate would make the finding about whether the site contained prohibited content. It would then refer the matter to the AFP, because that is what the act requires. From there, the AFP would then make notifications to overseas law enforcement agencies—for instance, the law enforcement agency responsible for matters dealing with Gibraltar—and then it would be up to that overseas law enforcement agency to communicate with a licensing authority.<sup>27</sup>

7.25 ACMA advised that following a finding by the ACMA that there is prohibited content available to Australian residents, the first action is to notify the AFP which will notify overseas enforcement agencies. The second action is for ACMA to advise

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23 Victorian InterChurch Gambling Taskforce, *Submission 31*, p. 7.

24 Mr Richard Windeyer, *Committee Hansard*, 19 August 2011, p. 37.

25 As ACMA does not have the jurisdiction to investigate an Australian-hosted URL this is not included in the total of 48 investigations.

26 Department of Broadband, Communications and the Digital Economy, *Review of the Interactive Gambling Act 2001*, Discussion paper, August 2011, pp 12–13.

27 Ms Elizabeth Press, *Committee Hansard*, 19 August 2011, p. 32.

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the family friendly filters. Australian residents who utilise those filters will then have those services blocked.<sup>28</sup>

7.26 ACMA stressed that following through on the investigation of a prohibited service lies with the appropriate law enforcement authority.<sup>29</sup>

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; and
- the resources required by the AFP to undertake the matter.<sup>30</sup>

7.27 It added that further pursuing DCBDE and ACMA referrals is up to the AFP:

...I do not think we are in a position to comment on how the AFP makes judgments about which ones to pursue and which ones not to, other than the fact that they have a prioritisation system, which they could no doubt explain to you. That is theirs to determine and takes into account all the matters they have got before them.<sup>31</sup>

#### *Australian Federal Police process*

7.28 The AFP advised the committee that:

In the previous two years (since 2009), the AFP received 15 referrals concerning allegations of offences committed contrary to the Act. In isolation, when compared to other criminal activity, these referrals were categorised as low priority for investigation and consequently not investigated.<sup>32</sup>

7.29 The AFP provided the following flow chart to illustrate the referral process.<sup>33</sup>

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28 Ms Elizabeth Press, *Committee Hansard*, 19 August 2011, p. 36.

29 Ms Jennifer McNeill, *Committee Hansard*, 19 August 2011, p. 32.

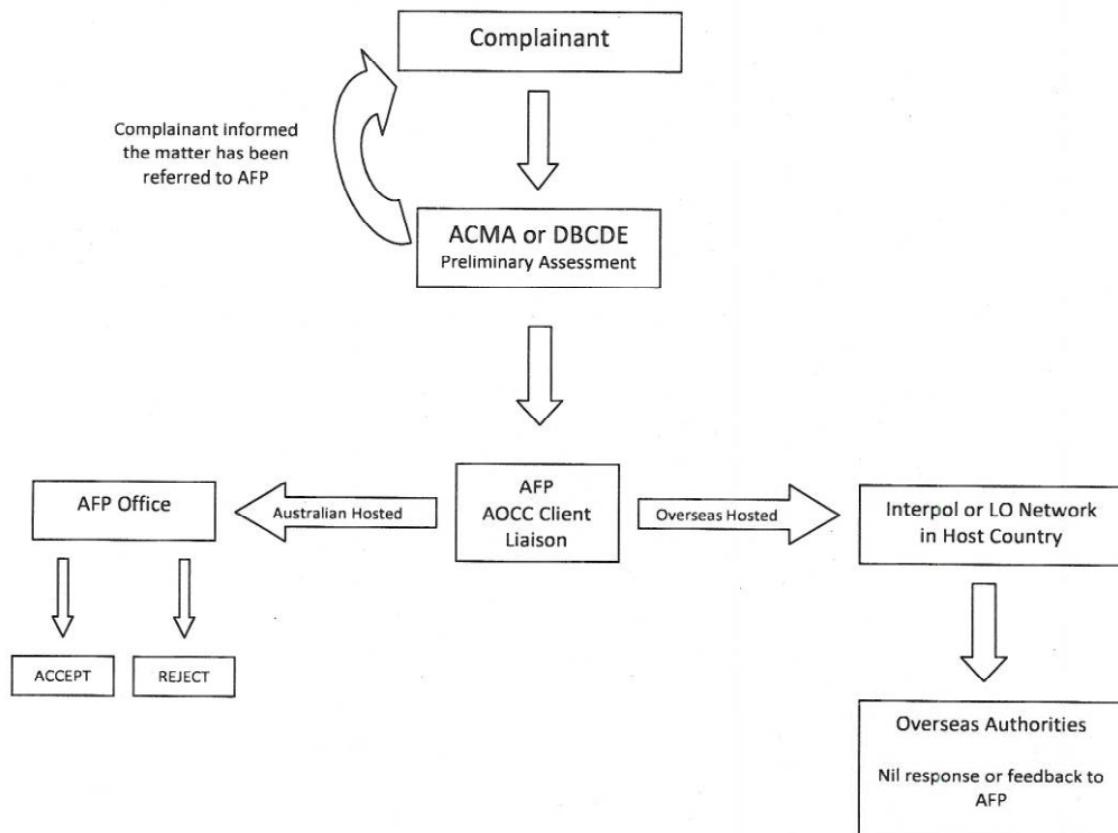
30 Department of Broadband, Communications and the Digital Economy, *Review of the Interactive Gambling Act 2001*, Discussion paper, August 2011, p. 12.

31 Mr Richard Windeyer, *Committee Hansard*, 19 August 2011, p. 37.

32 Australian Federal Police, *Submission 49*, p. 1.

33 Additional information received from AFP, 19 August 2011, available from:  
[http://www.aph.gov.au/Senate/committee/gamblingreform\\_ctte/interactive\\_online\\_gambling\\_advertising/submissions.htm](http://www.aph.gov.au/Senate/committee/gamblingreform_ctte/interactive_online_gambling_advertising/submissions.htm).

### Interactive Gambling Act 2001 Complaints – Referral Process



#### *Challenges of enforcement*

7.30 The AFP expanded on their submission at a hearing. Although the evidence was taken in-camera, in general terms the committee heard of the complexity of the online environment and the difficulties in pursuing investigations of and obtaining evidence from providers which are located and licensed in jurisdictions where their activities are legal. As can be seen from the diagram above, the AFP is reliant on assistance from foreign law enforcement which the committee notes again can be challenging if the activity is lawful in that country.<sup>34</sup>

7.31 Dr Gainsbury and Professor Blaszczynski argued that legal action should be taken against unregulated sites that allow Australians to play and pointed to the recent legal action in the US where, despite the difficulties of taking legal action in this area, several large online poker sites were prosecuted and forced to stop providing services to US residents.<sup>35</sup>

34 Australian Federal Police, general summary of evidence provided in-camera, 19 August 2011.

35 Dr Sally Gainsbury and Professor Alex Blaszczynski, *Submission 7*, p. 3.

7.32 Online gambling has been illegal in the United States since 2006. In April 2011, the websites for PokerStars, Full Tilt Poker and Absolute Poker were seized by the Federal Bureau of Investigation (FBI). The US websites have been shut down and the founders were charged with bank fraud,<sup>36</sup> money laundering and breaches of US gambling laws.<sup>37</sup>

7.33 The committee notes that the Australian Crime Commission has identified online gambling as a money laundering risk and also as a risk for revenue and taxation fraud.<sup>38</sup> The committee notes these recent prosecutions overseas point to an increased willingness by authorities to take action regarding illegal activities overseas despite the complexity of the online environment.

7.34 DCBDE confirmed that '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'.<sup>39</sup> Its discussion paper highlighted the difficulties of enforcement:

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.<sup>40</sup>

7.35 DCBDE emphasised that another technical challenge is that internet gambling sites can move and relaunch very quickly.<sup>41</sup>

7.36 When asked about the issue of enforcement, DCBDE confirmed that the review of the IGA would include the mechanisms of enforcement:

I think the example you give is one of the challenges associated with enforcing this particular act in this space. The challenge is partly related to the jurisdictional difficulties when you are operating in the online

36 In the US, financial institutions are compelled to identify and block restricted gambling transactions. The prosecutions centre on a scheme to deceive banks about the true nature of transactions to evade the financial transactions controls. See Australian Racing Board, *Submission 5, Interactive Gambling and Broadcasting Amendment (Online Transactions and Other Measures) Bill 2011*, p. 3.

37 Asher Moses, 'FBI poker crackdown could hit biggest Australian players', *Sydney Morning Herald*, 19 April 2011, p. 3; 'Online poker site a "global Ponzi scheme"', *Sydney Morning Herald*, 21 September 2011.

38 Australian Crime Commission, *Submission 8*, p. 3.

39 Department of Broadband, Communications and the Digital Economy, *Review of the Interactive Gambling Act 2001*, Discussion paper, August 2011, p. 12.

40 Department of Broadband, Communications and the Digital Economy, *Review of the Interactive Gambling Act 2001*, Discussion paper, August 2011, p. 13.

41 Mr Richard Windeyer, *Committee Hansard*, 19 August 2011, p. 37.

environment and, as such, that is one of the [things the] review will need to have a good look at—just how the enforcement arrangements do work and whether there are ways that that could be improved.<sup>42</sup>

7.37 The example referred to in the quote above<sup>43</sup> was the website Casino.com which lists 'Australian winners' and displays the Australian flag in the background. Senator Xenophon suggested that the appearance of the site could give customers the sense that they are dealing with an Australian company. The committee was advised that the site is hosted in Singapore but licensed through a licence entity that is located in Gibraltar. ACMA clarified that, as far as the IGA is concerned, the issue is one of accessibility<sup>44</sup> not whether or to what degree a site references Australia. In relation to the IGA review, DCBDE responded that:

The general issue that the review needs to look at is the more general point about, in a sense, the ability to offer services globally in the online environment, irrespective of where you are located or the customer is located. Also, there is then the question of how and what is the right way of regulating that and dealing with that, including what is the right way of enforcing it. The point is that just because there is, apparently, a particularly strong link to Australia or a reference to Australia that will not make a great deal of difference in how easy it is to enforce upon the overseas based providers. So I think the review will be looking more at how you deal with the overseas and jurisdictional challenges rather than at the Australian specific component of an overseas site.<sup>45</sup>

7.38 Regarding the targeting of Australians by overseas websites, ACMA explained:

There is at least one instance which is expressly contemplated as relevant in the Interactive Gambling Act. That is in connection with a potential defence available under section 15, which sets out the offence of providing an interactive gambling service to customers in Australia. Subsection 3, in short, indicates that it is a defence if the person who is providing the service could not with reasonable diligence have ascertained that the service had an Australian customer link. Clearly, that would not be a potential defence available in that situation. Otherwise, my understanding is that factors like that might have been regarded as aggravating factors or relevant factors at a sentencing stage, if the matter had been prosecuted.<sup>46</sup>

7.39 ACMA added:

There have been no prosecutions to date, so there is not a body of jurisprudence to which I can refer you but, based on my understanding of

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42 Mr Richard Windeyer, *Committee Hansard*, 19 August 2011, p. 32.

43 See *Committee Hansard*, 16 September 2011, pp 55–59.

44 *Interactive Gambling Act 2001*, Section 16, subsection 1.

45 Mr Richard Windeyer, *Committee Hansard*, 19 August 2011, p. 33.

46 Ms Jennifer McNeill, *Committee Hansard*, 19 August 2011, p. 34.

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how these things work in other spheres, that would be a relevant matter for a judge to consider.<sup>47</sup>

### *Capacity for illegal activities and tax avoidance*

7.40 The committee noted above that the Australian Crime Commission has identified online gambling as a money laundering risk and also as a risk for revenue and taxation fraud.<sup>48</sup> Dr Gainsbury and Professor Blaszczynski listed a number of activities associated with internet gambling that need to be addressed by any regulatory framework. These include: the capacity for cross-jurisdictional shifting of monies for illegal or terrorist purposes, laundering money, loss of taxable revenue to overseas countries, possibilities of exploiting/cheating players, lack of procedures for the resolution of disputes, lack of clarity over boundaries of legal responsibility, and harm to local residents.<sup>49</sup>

7.41 The Victorian InterChurch Gambling Taskforce expressed its concern that many overseas gambling providers are located in secrecy jurisdictions commonly known as tax havens:

For example, Pokerstars is located in the Isle of Man, ranked 24th in the Financial Secrecy Index (FSI). Daniel Meisel, who was subject to an indictment for engaging in an illegal online gambling business in the US, set up the operation in Costa Rica, ranked 34th on the FSI. A number of these secrecy jurisdictions allow for arrangements where the beneficial owners of the online gambling provider may be kept secret, undermining the ability to ensure probity standards. Further, the tax arrangements in these secrecy jurisdictions will allow providers in these jurisdictions a financial advantage over a provider based in Australia, and actively encourage tax avoidance.<sup>50</sup>

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47 Ms Jennifer McNeill, *Committee Hansard*, 19 August 2011, p. 34. Another example of enforcement difficulties with the IGA is the case of Bet365, a UK-based online bookmaker and gaming operator, which recently applied for an Australian sports betting licence in the Northern Territory. In preparation for this licence application, Bet365 advised its Australian customers in August 2011 that it was shutting down its casino, poker, games and bingo sites, which it had been offering to Australians in breach of the IGA. Media reporting on this licence application drew attention to the lack of enforcement of the IGA. It noted that if Bet365 were to be successful in obtaining a licence to operate in Australia when it had been openly flouting Australian legislation, the effectiveness of the current regulatory framework would need to be questioned. (At the time of printing, it is understood that Bet365's licence application was still being considered). See Patrick Smith, 'Offshore bookies mock betting rules', *The Australian*, 19 August 2011; CasinoListings, 'Bet365 applies for Australian sportsbetting licence', 18 May 2011, <http://www.casinolistings.com/news/2011/05/bet365-applies-for-australian-sportsbetting-licence> (accessed 29 November 2011).

48 Australian Crime Commission, *Submission 8*, p. 3.

49 Dr Sally Gainsbury and Professor Alex Blaszczynski, *Submission 7*, p. 3.

50 Victorian InterChurch Gambling Taskforce, *Submission 31*, p. 5.

7.42 The Taskforce argued that the significant numbers of providers located in secrecy jurisdictions 'provides even stronger reason for the Commonwealth Government to do all it can to resist the access of these gambling providers to the Australian community'. It added:

We would urge the Commonwealth Government reject any temptation to respond by allowing Australian online gambling providers to be set up with low taxes, which seek to target gamblers in other countries with the aim of extracting profit from those places. In effect Australia would then be seeking to export gambling problems and harms to other parts of the world, while seeking the profits to be brought onshore to Australia.<sup>51</sup>

### ***Ambiguities and inconsistencies***

7.43 Submitters suggested the lack of enforcement of the IGA to date may be in part due to ambiguities in the Act being exploited. The Victorian InterChurch Gambling Taskforce said that after making a complaint to ACMA about a site, they were advised that:

...although the website provides links to other sites that offer internet gambling services, the access to games were not provided directly by the site itself. ACMA stated th[at] it was not possible to deposit money on the website and therefore the website is not a gambling service as defined under section 4 of the IGA, and as such it is not [a] prohibited internet gambling service as defined under section 6 of the IGA.<sup>52</sup>

7.44 The Taskforce concluded that people wishing to market an online casino appear to only have to set up a website to which the online casino is linked to be able to legally do so.<sup>53</sup>

7.45 In response to whether the website detailed above, which did not directly provide internet gambling services, would be looked at by the review of the IGA, DCBDE stated:

I think the review is looking at a pretty broad suite of aspects of the act to the extent it will look at the questions around the provision of prohibited services as well as the advertising of prohibited services and how best those should be treated in the future. As you would appreciate, the terms of reference are not going to, in a sense, specify instance by instance the sorts of things considered, but the review is intended to cover the act and, broadly, what it does.<sup>54</sup>

7.46 The DCBDE discussion paper admitted that the structure and complexity of the legislation 'may have caused difficulties in the interpretation and application of

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51 Victorian InterChurch Gambling Taskforce, *Submission 31*, pp 5–6.

52 Victorian InterChurch Gambling Taskforce, *Submission 31*, p. 8.

53 Victorian InterChurch Gambling Taskforce, *Submission 31*, p. 8.

54 Mr Richard Windeyer, *Committee Hansard*, 19 August 2011, p. 34.

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certain provisions in the IGA, especially those relating to the advertising of prohibited interactive gambling services'. Advertising and the IGA is discussed in chapter nine

*Regulation is difficult to understand*

7.47 In addition to the ambiguities and inconsistencies for providers interpreting the legislation, Dr Gainsbury and Professor Blaszczynski referred to preliminary research which indicates a high level of confusion among Australians regarding internet gambling regulation which has led to:

...a disparity in that sites that abide by the regulatory requirements compete unfairly with offshore sites that offer better odds, more products and have fewer personal identification requirements.<sup>55</sup>

7.48 They advocated that further efforts be made to educate Australians about the differences between regulated and unregulated sites and the dangers of playing on unregulated sites.<sup>56</sup> Dr Gainsbury pointed out that:

There are a number of sites which are branded to Australian poker players which, people are unlikely to be aware, are not acting in a legal manner in providing those services.<sup>57</sup>

7.49 The Coalition of Major Professional and Participation Sports (COMPPS) also mentioned that the current legislation is 'inadequate, fragmented and confusing'.<sup>58</sup>

7.50 Wesley Mission submitted that an appropriate range of sanctions and warnings should apply based on a public health approach and it is important for consumers who choose to gamble online to understand the following:

1. that they are participating in an activity that is prohibited in Australia;
2. that there are numerous alternative forms of gambling that are legal in Australia that are government regulated and provide some level of consumer protection;
3. that there are serious risks of harm attached to online gambling;
4. that the government is unable to control offshore gambling operations, and cannot offer any consumer protections or redress for consumers who get into trouble; and
5. that help for problem gambling is available in Australia.<sup>59</sup>

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55 Dr Sally Gainsbury and Professor Alex Blaszczynski, *Submission 7*, p. 3.

56 Dr Sally Gainsbury and Professor Alex Blaszczynski, *Submission 7*, p. 3. See also Dr Sally Gainsbury, *Committee Hansard*, 16 September 2011, p. 33.

57 Dr Sally Gainsbury, *Committee Hansard*, 16 September 2011, p. 35.

58 COMPPS, *Submission 16*, p. 4.

59 Wesley Mission, *Submission 2*, p. 5.

## Options to strengthen the IGA

7.51 The main enforcement mechanism for the IGA relies on the investigation of complaints about services hosted outside Australia, which is reactive rather than proactive. However, it was pointed out to the committee this mechanism has not resulted in any prosecutions. To address the deficiencies highlighted to the committee, particularly access to overseas sites, a number of suggestions were provided to strengthen the IGA. These are discussed below.

### ***Financial restrictions***

7.52 One option to strengthen the IGA would be not to allow financial transactions with gambling providers. Many submitters pointed to US legislation where this is the case. The Victorian InterChurch Gambling Taskforce suggested requiring Australian financial institutions to block the payment of credit card transactions with known internet gaming and casino sites. This would 'curtail Australians doing business with such sites and reduce the incentive for off-shore based providers to market to Australian customers'. It noted that in the US, this legislation prohibiting financial transactions related to internet gambling has resulted in several large internet gambling providers removing access for US customers to their services.<sup>60</sup>

7.53 The Australian Racing Board (ARB) also supported the introduction of financial transactions controls and suggested:

Section 69A of the IGA provides the Minister with the capacity to develop regulations relating to financial agreements involving illegal interactive gambling services. The regulations may provide:

- that an agreement has no effect to the extent to which it provides for the payment of money for the supply of an illegal interactive gambling service; and
- that civil proceedings do not lie against a person to recover money alleged to have been won from, or paid in connection with, an illegal gambling service.

To date no such regulations exist.<sup>61</sup>

7.54 The ARB submitted that the IGA should be amended to adopt the approach taken in the US. It highlighted that the US uses the *Unlawful Internet Gambling Enforcement Act 2006* (the UIGEA) to control interactive gambling through financial regulation. The Act:

...restricts US banks and credit card companies from processing transactions for any internet gambling sites. The UIGEA also makes it illegal for

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60 Victorian InterChurch Gambling Taskforce, *Submission 31*, p. 7.

61 Australian Racing Board, *Submission 27*, p. 22.

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internet gambling providers to accept money transfers from potential US online gamblers.<sup>62</sup>

7.55 This approach was also supported by other submitters.<sup>63</sup> The US approach is discussed in greater detail in chapter five where approaches taken by overseas jurisdictions to prohibit online gambling are outlined.

7.56 The Interactive Gambling and Broadcasting Amendment (Online Transactions and Other Measures) Bill 2011 is also being considered by the committee. It contemplates including provisions in the IGA to allow consumers to cancel financial transactions to international gambling websites provided the transactions have not been completed. The bill's provisions relating to financial transactions are discussed separately in chapter 15.

### ***ISP blocking***

7.57 Blocking online gambling websites by internet service providers (ISPs) is an option used in some overseas jurisdictions which received support from submitters. The Victorian InterChurch Gambling Taskforce noted:

The main enforcement mechanism has been for the Australian Communications and Media Authority (ACMA) to investigate complaints about interactive gambling services hosted outside Australia. Sites that host content prohibited by the Act are placed on a “black list” maintained by approved vendors of internet filter software. The installation and use of internet filters is voluntary so this measure is only effective in cases where users install and regularly update their software. ACMA has no power to compel internet service providers to block content.<sup>64</sup>

7.58 The Australian Racing Board supported the need for ISP blocking:

France moved in 2010 to legislate in respect of online gambling. Importantly its legislative framework makes provision for ISPs to block access to illegal gambling sites.

The IGA should be amended to require the regulator to block the ISPs of online firms who do not comply with the required form minimisation responsibilities, probity measures and funding obligations or breach restrictions on advertising...<sup>65</sup>

7.59 ISP blocking was also supported by other submitters.<sup>66</sup> DCBDE mentioned ISP blocking in its IGA review discussion paper, which stated:

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62 Australian Racing Board, *Submission 27*, p. 22.

63 See for example Greyhounds Australasia, *Submission 41*, p. 11; Harness Racing Australia, *Submission 52*, p. 7.

64 Victorian InterChurch Gambling Taskforce, *Submission 31*, p. 7.

65 Australian Racing Board, *Submission 27*, p. 23.

66 See for example Greyhounds Australasia, *Submission 41*, p. 11.

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 [publicly] 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.<sup>67</sup>

7.60 J.G. Phillips and Professor Blaszczynski advised that to restrict access to sections of the community such as minors, filters could be used but they are unlikely to be 100 per cent successful.<sup>68</sup>

7.61 In its 2010 report, the Productivity Commission (PC) acknowledged that strengthening the IGA would require 'a technological barrier aimed at impeding access to off-shore gaming websites'. It noted that:

...the Australian Government is currently developing a technology to filter the internet, at the provider level, in order to block websites known to contain illegal material. Online gaming does not appear to be targeted in the scheme, but it is included in a supplementary voluntary scheme that the Government is encouraging internet service providers to offer on a commercial basis.<sup>69</sup>

7.62 The PC further noted that blocking websites 'may reduce, but would not eliminate, online gaming by Australians' as there are relatively straightforward methods to circumvent this measure. It added that:

To meaningfully reduce online gaming, the internet filtering system would need to be compl[e]mented with amendments to the IGA that made it an offence for Australian citizens to access online gaming products. Further, resources would need be allocated to the detection and prosecution of Australian online gamblers who breach these provisions. Combined, these measures would significantly curtail online gaming by Australians.<sup>70</sup>

7.63 However, the PC submitted that such measures could be seen as a 'draconian response to a practice that is widely accepted in a physical setting'. It concluded that:

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67 Department of Broadband, Communications and the Digital Economy, *Review of the Interactive Gambling Act 2001*, Discussion paper, August 2011, p. 15.

68 J.G. Phillips and Professor Alex Blaszczynski, *Gambling and the Impact of New and Emerging Technologies and Associated Products*, Final Report, August 2010, p. 11.

69 Productivity Commission, *Gambling*, vol. 2, Commonwealth of Australia, Canberra, 2010, p. 15.21.

70 Productivity Commission, *Gambling*, vol. 2, Commonwealth of Australia, Canberra, 2010, p. 15.21.

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The magnitude of these costs is such that the level of harm associated with online gaming would need to be very high, and unavoidable through alternative regulatory responses, in order for a net benefit to arise from bolstering the IGA.<sup>71</sup>

### ***Criminal sanctions***

7.64 The DBCDE IGA review discussion paper also mentioned that some countries impose criminal sanctions on the provision of interactive gambling services:

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.<sup>72</sup>

### ***Licensing agreements***

7.65 DBCDE also advised that licensing agreements can be used to regulate access:

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.<sup>73</sup>

### ***International agreements***

7.66 As outlined in chapter five, there appears to be a movement towards attempting to put in place international agreements around probity and consumer protection standards. Wesley Mission suggested that Australia could seek to work with European nations that allow online gambling to develop international standards on probity and consumer protection:

In the longer term, the Australian government should work with the international community to see if a relatively safe international online gambling framework can be established. In our opinion, Australia should not open the door to offshore online gambling until there are means to control the activities of offshore online gambling providers. By legalising

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71 Productivity Commission, *Gambling*, vol. 2, Commonwealth of Australia, Canberra, 2010, p. 15.22.

72 Department of Broadband, Communications and the Digital Economy, *Review of the Interactive Gambling Act 2001*, Discussion paper, August 2011, p. 15.

73 Department of Broadband, Communications and the Digital Economy, *Review of the Interactive Gambling Act 2001*, Discussion paper, August 2011, p. 15.

online gaming in Australia we lose the ability to argue against consumers also gambling with unregulated offshore casinos.<sup>74</sup>

7.67 Gaming Technologies Association agreed and stated that 'appropriate operation [of online gambling] through legislation and regulation requires transnational thinking and international cooperation'.<sup>75</sup>

7.68 Dr Gainsbury and Professor Blaszczynski also supported work with overseas jurisdictions to achieve greater consistency:

Australian approaches to responsible Internet gambling ought to take into consideration, and where appropriate, adopt or introduce relevant policies and procedures that are consistent with those implemented in other international jurisdictions. Given the Internet is a global phenomenon, a uniform set of guidelines informing policy decision makers across international boundaries must be pursued to maximize regulatory control and monitoring.<sup>76</sup>

7.69 DBCDE also mentioned this work as an option:

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.<sup>77</sup>

7.70 However, it noted:

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.<sup>78</sup>

7.71 The committee notes that the PC concluded that 'the whole reason we have a problem with the IGA is that there is no such international arrangement in place'. It

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74 Wesley Mission, *Submission 2*, p. 5.

75 Gaming Technologies Association, *Submission 19*, p. 3.

76 Dr Sally Gainsbury and Professor Alex Blaszczynski, *Submission 7*, p. 4.

77 Department of Broadband, Communications and the Digital Economy, *Review of the Interactive Gambling Act 2001*, Discussion paper, August 2011, p. 17.

78 Department of Broadband, Communications and the Digital Economy, *Review of the Interactive Gambling Act 2001*, Discussion paper, August 2011, p. 17.

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recommended that, because this is a global issue, the government should investigate the cost-effectiveness of an international agreement.<sup>79</sup>

## **Other approaches to regulation**

### ***The view of the Productivity Commission***

7.72 Somewhere between prohibition and liberalisation is the view put forward by the PC which recommended 'managed liberalisation' of online gaming, starting with online poker games. It argued that the effects of this change should then be evaluated before further liberalisation is considered.<sup>80</sup>

7.73 It emphasised that managed liberalisation should be subject to a regulatory regime that mandates:

- strict probity standards;
- high standards of harm minimisation, including:
  - prominently displayed information on account activity, as well as information on problem gambling and links to problem gambling support;
  - automated warnings of potentially harmful patterns of play;
  - the ability to pre-commit to a certain level of gambling expenditure, with default settings applied to new accounts, and the ability for gamblers to set no limit on their spending as one of the system options (with periodic checking that this remains their preference); and
  - the ability to self-exclude.<sup>81</sup>

7.74 The PC recommended that the government should monitor the effectiveness of these harm minimisation measures, as well as the performance of the regulator overseeing the national regulatory regime. In addition, the government should also evaluate whether: the provision of online poker card games should continue to be permitted and whether liberalisation should be extended to other online gaming forms.<sup>82</sup> The PC emphasised to the committee that it recommended contingent liberalisation where an evaluation would look at the operation of liberalised online

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79 Dr Ralph Lattimore, *Committee Hansard*, 16 September 2011, p. 45. See Productivity Commission, *Gambling*, vol. 2, Commonwealth of Australia, Canberra, 2010, p. 15.35.

80 Productivity Commission, *Gambling*, vol. 2, Commonwealth of Australia, Canberra, 2010, pp 15.34–15.35.

81 Productivity Commission, *Gambling*, vol. 2, Commonwealth of Australia, Canberra, 2010, p 15.35.

82 Productivity Commission, *Gambling*, vol. 2, Commonwealth of Australia, Canberra, 2010, p 15.35.

poker; however, if it found there were significant problems, then consideration would be given as to whether it should continue to be permitted.<sup>83</sup>

### **Why treat online poker differently**

7.75 The PC outlined why it believed that online poker could be liberalised:

- it has a different character to poker machines;
- it is seen as a game of skill;
- there is no evidence that players experience the trance-like states that occur when playing EGMs;
- there is a social dimension in that one plays against other people so it is very interactive;
- other games can be played much more quickly and the stakeholder for other games is the casino; and
- the ground rules that apply, with players competing for a pot of money to which they contribute, limits losses.<sup>84</sup>

7.76 However, research questioning the relative safety of online poker is also available:

A key example of this is the argument that online poker games appear to involve the lowest risks and, consequently, should be liberalised as a 'relatively safe gambling product'...The argument used to support this argument...contains several limitations. The parameters of legal poker playing are still unclear and differ between jurisdictions (Grohman, 2006; Kelly, Dhar, & Verbiest, 2007). Despite the element of skill involved, poker is still considered a game of chance, hence a gambling activity. Although in the long run, skill might predominate over chance, for each individual session or over a short period of time (months to a year), the outcome of poker is determined by chance (Grohman, 2006). A skilled player may know that his poker-hand has an 85% chance of beating his opponents hand, but 15% of the time, the player will lose the hand and the money staked.<sup>85</sup>

7.77 Dr Gainsbury advised:

...when played on the Internet, poker can be both rapid and continuous, with multiple games played simultaneously, immediate shuffles and dealing and large stakes possible. The assertion that online poker players do not experience dissociation is contrary to results from a study examining

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83 Dr Ralph Lattimore, *Committee Hansard*, 16 September 2011, p. 44.

84 Mr Gary Banks, *Committee Hansard*, 16 September 2011, pp 45–46.

85 Dr Sally Gainsbury, Response to the Productivity Inquiry Report into Gambling: Online Gaming and the Interactive Gambling Act, *Gambling Research*, Vol. 22, No. 2, p. 3.

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potential predictors for excessive online poker playing (Hopley & Nicki, 2010).<sup>86</sup>

7.78 However, iBus Media, the world's largest poker media company, unsurprisingly agreed with the PC recommendations and stated that:

Online poker can be clearly distinguished from other forms of interactive gambling and wagering activities. Online poker is a game of skill, which is conducted peer-to-peer in a social setting.<sup>87</sup>

7.79 It therefore argued that online poker should be excluded from the IGA and noted that section 10 of the IGA allows the Minister for Broadband, Communications and the Digital Economy to exclude any service from the provisions of the IGA at his discretion.<sup>88</sup>

7.80 Mr Bill Barton, a regular poker player, agreed. While supporting any moves to increase the effectiveness of Australia's legislation, he submitted that online poker should be excluded and should be able to operate and be regulated in Australia. To support his argument, he noted that online poker 'is an activity quite distinct to other forms of online gambling and gaming'. He concluded:

Lastly, Australia sees itself as a modern country that provides relative freedoms to its residents. It is interesting that a person in a country like Russia, a country that we would proclaim generally restricts personal freedoms, can play online poker without fear of their government restricting these activities. We must protect our weakest links (problem gamblers and families of those problem gamblers), there is no doubt that this is our Governments policy and the stance of the majority of Australians. However we can do that through education, licensing, regulation, and better directed and funded support programs not removing personal freedoms from people that undertake those activities sensibly and responsibly.<sup>89</sup>

### ***Committee majority view***

7.81 The committee majority notes that currently the IGA does not distinguish online poker from other online casino-type games. It also notes that the question of whether poker is a game of skill has been the subject of various legal cases.<sup>90</sup> Given its lack of expertise in this particular area and the fact that the committee did not take detailed evidence on this point, the committee majority continues to support a cautious approach to regulation and does not support online poker being excluded from the IGA.

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86 Dr Sally Gainsbury, Response to the Productivity Inquiry Report into Gambling: Online Gaming and the Interactive Gambling Act, *Gambling Research*, Vol. 22, No. 2, p. 3.

87 iBus Media, *Submission 42*, p. 3.

88 iBus Media, *Submission 42*, p. 13.

89 Mr Bill Barton, *Submission 36*, p. 5.

90 See iBus Media, *Submission 42*, pp 8–11.

## Committee conclusion

7.82 This section will detail the areas regarding the IGA that the committee as a whole agreed. The committee agrees that the IGA should be retained. It agrees that as far as preventing Australians from accessing Australian-based prohibited interactive gambling services, there is no doubt that the IGA has been successful.

7.83 In relation to Australians being able to access overseas-based prohibited gambling services, the committee acknowledges the limitations of the current complaints-based scheme to effectively regulate Australian consumers' overseas internet gambling activities. This is due in large part to the current lack of ability to enforce the IGA. The lack of any prosecutions since the IGA came into effect is concerning and provides little in the way of a deterrent. The committee emphasises that this is not due to a lack of willingness or effort on the part of the AFP, but is in large part due to the reliance on foreign assistance often in countries where the activity is legal. This does not point to a deficiency in the legislation but reflects the complexities of the online environment. However, the recent action taken by the US in this area shows that despite the complexities of the online environment, enforcement action is possible. The committee notes recent reporting that the AFP has now joined forces with the FBI to investigate untaxed and unregulated online casino sites.<sup>91</sup>

7.84 The committee is pleased to note AFP advice that the ACMA, DBCDE and the AFP have 'agreed to develop a stringent regulatory regime with a view to deterring those engaging in this unregulated industry'.<sup>92</sup> The committee supports this work which is occurring separately to the review of the IGA and 'recognises the difficulties we all face with enforcement of the existing act and the need to work together as best we can to make it as effective as possible'.<sup>93</sup>

7.85 Despite the limitations, the committee believes these do not mean that the IGA is ineffective. As acknowledged by the PC, it has been successful in limiting the provision of interactive gambling services to Australians and has reduced demand for these services below what it would have been without the Act in place. The committee believes that this is mainly due to the restrictions on advertising. The IGA is particularly effective in ensuring these services are not offered by Australian-based providers. However, given the challenges of the online environment it is less effective at limiting services from overseas providers.

7.86 A number of areas were pointed out to the committee which, if addressed, would improve the effectiveness of the IGA. The committee supports the review of the IGA addressing the inconsistencies and ambiguities identified in the Act that can be exploited by providers. The review should take into account the apparently narrow

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91 Asher Moses, 'FBI, federal police target overseas poker websites that flout law', *Sydney Morning Herald*, 30 May 2011, p. 1.

92 Australian Federal Police, *Submission 49*, p. 1.

93 Mr Richard Windeyer, *Committee Hansard*, 19 August 2011, p. 43.

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construct of the IGA to ensure that the legislation is able to effectively deal with the development of technical and other measures aimed at avoidance. This would include websites which are clearly providing a link to facilitate prohibited interactive gambling services.

### **Recommendation 3**

**7.87 The committee recommends that the *Interactive Gambling Act 2001* (IGA) be amended to address the inconsistencies and ambiguities identified to the committee regarding prohibited interactive gambling services and any others that are identified through the review being conducted by the Department of Broadband, Communications and the Digital Economy. Specifically the IGA should be amended to capture methods of avoidance such as websites which provide links to facilitate access to prohibited interactive gambling services.**

7.88 In addition, given the apparently high level of confusion in the community regarding online gambling regulation, the committee would support an education campaign aimed at consumers. This should occur after the review of the IGA has been completed and should provide clarification, education and highlight the risks of harm involved with online gambling, particularly if accessing overseas unregulated websites.

### **Recommendation 4**

**7.89 The committee recommends that following the review of the *Interactive Gambling Act 2001* by the Department of Broadband, Communications and the Digital Economy, an education campaign be developed for consumers to provide clarification of online gambling regulation and highlight the risks of harm.**

7.90 The committee is left with the following options in relation to the IGA. The first is to strengthen the IGA to ensure it can be adequately and appropriately enforced for overseas as well as domestic providers of interactive gambling services. The other option is to liberalise and regulate currently prohibited interactive gambling services with appropriate safeguards which would allow Australian-based providers into the market. Another option would be a combination of these.

7.91 At this point in its consideration of this issue, the committee diverged in its views. The committee majority view is outlined below. Additional comments by the Chair, Coalition committee members and Senator Xenophon follow this report.

#### ***Committee majority view***

7.92 The committee majority agrees that while there are limitations to its effectiveness, the IGA should be retained. The committee majority recognises that the IGA is intended to deter or limit users from accessing prohibited interactive gambling services. It has been particularly effective in preventing Australians from accessing Australian-based prohibited interactive gambling services. In relation to preventing Australians from accessing overseas-based prohibited interactive gambling services, the committee majority acknowledges its limitations. However, the committee

majority believes that these shortcomings do not mean the IGA is ineffective. While it is difficult to measure, the PC has acknowledged that the IGA has reduced demand for these services below what it would have been without the Act in place. The PC also acknowledged that the shortcomings of the IGA do not indicate a policy failure.

7.93 The committee heard about a number of areas in the IGA that could be amended to make it more effective. The committee majority agrees that the current review of the IGA is the most appropriate vehicle to address these identified inconsistencies and ambiguities. The committee also heard about areas requiring additional safeguards, such as advertising and inducements (addressed in a following chapter) and the need for more consumer education in this area. The committee majority agrees that providing information to consumers who choose to gamble online is important and supports the need for an education campaign. It also supports the work being undertaken by the AFP and DBCDE to make the enforcement mechanism more effective.

7.94 Customers have become increasingly familiar and comfortable with online transactions over the past 10 years. However, there will be some customers who remain cautious about using overseas gambling websites. There are overseas providers developing a good reputation and working to maintain it but there are still unscrupulous operators, so the use of an overseas gambling website is not without risk. While the committee majority acknowledges that the deterrent factor of the IGA has been reduced, it is not nullified. Also difficult to measure is the effect of the message that the IGA sends to the community that online gaming is not an activity currently sanctioned by the government.

7.95 In summary, the committee majority supports retaining the IGA and making changes to address issues identified to the committee and others that arise during the review of the IGA by DCBDE to improve its effectiveness. The committee heard about various measures to strengthen the IGA in relation to deterring customers from using overseas websites to access prohibited interactive gambling services. The committee received most evidence on financial transactions controls, such as those contained in the bill before the committee. However, the banking industry detailed practical, legal and technical difficulties and the committee majority is not convinced of this approach, as outlined in chapter 15. It looks forward to the further examination of such options by the IGA review being conducted by DCBDE.

# **Chapter 8**

## **Other issues raised in relation to the IGA**

8.1 This chapter covers other issues raised with the committee concerning the Interactive Gambling Act.

### **The need for legislation to be able to deal with emerging new technologies**

8.2 Submissions highlighted the emerging technologies that can be used to gamble and raised concerns that the current regulations may not be keeping pace with these developments.<sup>1</sup> Wesley Mission noted that 'the potential for new, enticing and addictive gambling products is limitless'.<sup>2</sup> Reports indicate that gambling applications on iPhones appeal to the tech-savvy youth market and make it easy to lose money.<sup>3</sup> Wesley Mission emphasised:

The new technology makes it possible for problem gamblers to lose more money, and faster, in the privacy of their own homes or anywhere they are not observed. Young people are the main demographic group accessing the new gambling and in many cases their lives will be ruined.<sup>4</sup>

8.3 Dr Sally Gainsbury and Professor Alex Blaszczynski noted:

Advances in computer graphics and technology have led to the development of sophisticated and graphically attractive Internet gaming sites that operate 24 hours 7 days per week and are readily accessible through mobile phones, personal wireless devices (e.g., iPad), and laptop computers. As a consequence, there is an expression of public concern that Internet gambling results in the negative impact and costs associated with excessive gambling and the potential to exploit vulnerable segments of the community.<sup>5</sup>

8.4 The Social Issues Executive, Anglican Church, Diocese of Sydney, believes that 'new technology presents possibilities for casual wagering and betting that have not been considered'.<sup>6</sup>

8.5 J.G. Phillips and Professor Blaszczynski noted that:

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1 Note: the section below covers technologies that also facilitate sports betting and wagering which is not covered by the IGA (except the exclusions outlined in the previous chapter).

2 Wesley Mission, *Submission 2*, p. 8.

3 Anne Wright, 'Explosion in smartphone gambling, Apps luring youth punt, *Herald Sun*, 6 June 2011, p. 13.

4 Wesley Mission, *Submission 2*, p. 2.

5 Dr Sally Gainsbury and Professor Alex Blaszczynski, *Submission 7*, p. 5.

6 Social Issues Executive, Anglican Church, Diocese of Sydney, *Submission 17*, p. 1.

Interactivity (and potentially gambling) can be achieved using a number of technologies including PCs (through the internet), via television (through the telephone network e.g. Foxtel) or through games consoles and other devices (e.g. TiVo) that can access the internet, or by using mobile devices such as mobile phones (e.g. via the internet or using premium SMS).<sup>7</sup>

8.6 Clubs Australia highlighted the differences between online and venue-based gambling including the growth of the online gambling environment, adding that unlike traditional venues which have mandatory shutdown periods:

...new technologies foster a 'gamble anywhere, anytime' mentality. Gamblers can now place bets twenty-four seven via the internet, mobile phones or interactive televisions. As internet technology continues to pervade our lives, the number of individuals choosing to participate in online gambling will increase accordingly.<sup>8</sup>

8.7 The Coalition of Major Professional and Participation Sports (COMPPS) was of the view that the IGA provides a good framework but it needs to be updated to 'keep pace with recent developments in technology'.<sup>9</sup>

8.8 Regis Controls reported that gambling via mobile phones is a major growth area for the gambling industry.<sup>10</sup> For example Paddy Power, which owns Sportsbet, reported a 42 per cent increase in online customers and just over one third of its active customers made their transactions via mobile devices.<sup>11</sup> Regis Controls also noted the potential for gambling via pay TV using the remote control for sports wagering/betting. It submitted that state and territory gambling authorities 'do not have a clear mandate to monitor gambling via some of the new technologies e.g. mobile phones and pay-TV and there is no overarching regulation by the Commonwealth Government covering the use of these new technologies'.<sup>12</sup>

8.9 Leagues Club Australia also pointed out that the growth in the mobile betting market over the past few years has provided customers a range of services to choose from for their mobile phones, particularly the iPhone:

iPhone betting apps have provided a huge step forward for the mobile market. iPhone (and smart phones in general) have such large, user-friendly

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7 J.G. Phillips and Professor Alex Blaszczynski, *Gambling and the Impact of New and Emerging Technologies and Associated Products*, Final Report, August 2010, p. 12.

8 Clubs Australia, *Submission 24*, p. 2.

9 COMPPS, *Submission 16*, p. 4. See also Mr Paul Aalto, *Submission 53*, p. 1.

10 Regis Controls Pty Ltd, *Submission 35*, p. 7. See also Anglicare Tasmania, *Submission 6*, p. 3.

11 Roger Blitz, 'Paddy Power chalks up 42% rise in web clients', *Financial Times*, 30 August 2011.

12 Regis Controls Pty Ltd, *Submission 35*, p. 8.

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and high resolution screens and processing speeds that it actually makes markets such as sports betting very user-friendly.<sup>13</sup>

8.10 It also noted the growth in mobile betting announced by Betfair which has previously marketed mobile betting as 'A bookie in your pocket'.

Betfair has seen remarkable growth in their mobile betting announcing last week that it took more than £1 billion in bets on mobile phones, with 168,000 users (up 122% on the previous years) and revenue was up 88% year on year. There is no doubt that mobile betting will continue to increase as technology continues to improve. As well, Paddy Power in Great Britain has released apps for mobile roulette, blackjack and poker, which will make these games more accessible, and will no doubt drive similar revenue growth.<sup>14</sup>

8.11 Leagues Clubs Australia also highlighted the ability to gamble via digital TV with the main provider currently being Tabcorp:

Through Foxtel services, Tabcorp has launched Sky Racing ACTIVE. Sky Racing ACTIVE is an interactive television service that provides Victorian and NSW Foxtel subscribers with the chance to view racing forms, odds, fields and results on all Gallops, Harness and Greyhound TAB meetings.

Interactive betting through this service is available only to TAB account holders in Victoria and NSW, who must satisfy identification requirements. Account holders can also manage their TAB Account, deposit funds and check transaction history. In the UK there are over 30 Digital TV stations offering sports betting and fixed odds betting.<sup>15</sup>

8.12 It reported that gambling through interactive digital TV has the potential to grow significantly:

...by bringing more new and immediate opportunities to gamblers and this will not be restricted to horse racing alone but many sports. There are several digital TV channels that have signed exclusive rights with companies to provide gambling products over the Interactive television and also through SMS TV. These channels will provide live gambling products like poker, roulette, sports betting, blackjack and racing packages. These services will be offered through the digital TV and would have a revenue sharing model with the gaming company.<sup>16</sup>

8.13 Greyhounds Australasia also mentioned the growth in gambling opportunities via interactive TV and reported:

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13 Leagues Clubs Australia, *Submission 40*, p. 9.

14 Leagues Clubs Australia, *Submission 40*, p. 9.

15 Leagues Clubs Australia, *Submission 40*, p. 9.

16 Leagues Clubs Australia, *Submission 40*, p. 9.

Wagering via interactive television originally entered the Victorian market in early 2008, but has since been approved in New South Wales in 2008, Queensland in April 2011 and South Australia in June 2011. It will not be long before coverage is extended to all Australian States and Territories.<sup>17</sup>

8.14 The committee notes media reporting that a company called Two Way has developed an interactive TV wagering service with Tabcorp Holdings and Foxtel, which has now been extended to include Racing and Wagering Western Australia (RWWA). The report noted:

The company's products are currently being deployed by leading wagering and interactive TV operators in Australia and New Zealand, with the client list including Tabcorp, RWWA, TattsBet, Sportingbet, Betfair, FOXTEL, Austar, Optus TV and Sky New Zealand - with Two Way having five year contracts with some of these major companies. The unique positioning of Two Way includes being the only company with a live betting service linked to the betting engines of all the TABs, and is Australia's first and only TV wagering service. Highlighting that some punters are moving towards the service, in the last three years more than 25,000 users have placed at least one bet using the TAB ACTIVE interactive TV service on the Foxtel platform. Two Way also said more than 15.5 million bets in total have been made, with total turnover exceeding \$137 million.<sup>18</sup>

8.15 The Australian Internet Bookmakers Association was of the view that with the growth in the digital economy 'it is simply not appropriate to think that some sections of online business, such as gambling, can be quarantined from the sweeping changes that are occurring'. It added:

Similar comments can be made with respect to the interactive television betting. It is pointless to resist the introduction of this technology. Instead, the question becomes how should this be managed? Interactive television betting raises slightly different issues to online gambling because, in the usual case, the person must choose to access a particular gambling site whereas television viewers have little choice in the stations they watch. However this objection is readily overcome if the interactive gambling service is a supplementary "add on" to the televised program. The client would choose whether a betting service should be available alongside the live coverage of, say, a golf tournament, cricket match or horserace. This would also avoid the concerns that arise with certain forms of advertising around sporting events...<sup>19</sup>

8.16 However, the Australian Racing Board was more cautious and pointed out:

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17 Greyhounds Australasia, *Submission 41*, p. 7.

18 Information available from:

<http://www.proactiveinvestors.com.au/companies/news/19760/interactive-media-and-gambling-group-two-way-in-pre-open-pending-capital-raising-19760.html> (accessed 19 September 2011).

19 Australian Internet Bookmakers Association, *Submission 54*, p. 23.

One of the most significant implications for public policy from the development of new technologies is the ingenuity of existing and emerging technology companies and remote operators to introduce more and more new products, to find ways of working around regulations, and to achieve high growth to drive their low-margin, high-volume business models.<sup>20</sup>

8.17 DCBDE recognised in its IGA review discussion paper that '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'. It pointed to the growth of mobile gaming via the use of smartphones noting that this is 'changing the landscape of gambling'.<sup>21</sup>

### Potential for harm minimisation measures

8.18 In response to the concerns about increased accessibility to gambling resulting from new online technologies, some submissions rejected the view that new technologies increase the risk and incidence of problem gambling and urged the committee to think of new technology providing new opportunities for consumer protection.<sup>22</sup> Betchoice argued:

...technologies, especially those used by online operators, present opportunities for new operators to provide better harm minimisation mechanisms than traditional wagering providers.<sup>23</sup>

8.19 Betchoice also explained the opportunities provided by the online environment to enhance probity. It explained that it is a requirement of its licence that it maintain an account for each customer and that it complies with the provisions of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth). For an account to remain open, the Act requires that customers provide a suitable level of identification within 90 days.<sup>24</sup> These checks are of a similar standard to the 100 point identity check. Compliance is monitored and enforced by AUSTRAC and regular audits of all wagering operators are conducted. Betchoice is able to use these requirements of the Act and the associated technologies to provide customers with the ability to monitor their gambling activity and restrict their access if they wish.<sup>25</sup> The potential for enhanced harm minimisation measures and probity in the online environment is further discussed in chapter three.

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20 Australian Racing Board Limited, *Submission 27*, p. 3.

21 Department of Broadband, Communications and the Digital Economy, *Review of the Interactive Gambling Act 2001*, Discussion paper, August 2011, p. 10.

22 Note: the example provided in this section below relates to an online sports betting provider which is not covered by the IGA (except the exclusions outlined in the previous chapter).

23 Betchoice Corporation Pty Ltd, *Submission 43*, p. 12.

24 See chapter 11 for a further discussion of the 90 day period to verify identification.

25 Betchoice Corporation Pty Ltd, *Submission 43*, p. 12.

### **Committee view**

8.20 The committee notes that the use of new technologies could be seen as just an extension of the existing internet technology. For example, people who would gamble anyway can access gambling on their mobiles instead of their laptop. But the key question is whether this increased accessibility is providing the same people with mobile access or whether mobile access is opening up the market to more people, thus increasing gambling participation and the potential for increased problem gambling.

8.21 The short answer is that we don't yet know the effect of these new technologies on gambling behaviour. It would certainly be normal practice for companies to try to increase market share and to do so would mean trying to attract new customers through advertising and inducements, for example. Advertising and inducements are discussed in the next chapter.

8.22 The committee agrees the IGA review needs to take into account the emergence of new technologies for gambling to ensure the legislation stays as up to date as possible and that it does not allow for loopholes. The IGA should be reviewed more regularly to take account of technology developments. The committee also believes there is a need to properly evaluate the risks from new technologies that could be used for gambling and that they should be the subject of further research. The need for further research in a number of areas is discussed in chapter two.

### **Other online gaming opportunities**

8.23 The NSW Law Reform Commission report into *Cheating at Gambling* mentioned new forms of games such as Massive Multiplayer Online Role Playing Games which could constitute virtual casinos offering a variety of gambling opportunities. These are games such as World of Warcraft and Second Life. The games allow players to interact in a virtual world which involves the use of virtual money and trading virtual goods and services. The virtual money can, however, have real currency values 'either through mechanisms comparable to currency exchanges, where virtual currency is bought and sold, or through private real-world transactions, including transactions on online auction sites'.<sup>26</sup> The Law Reform Commission raised the question:

...whether any of the forms of gaming that may be made available in virtual worlds (including, potentially, wagering on player versus player contests), but which can have real-world economic consequences, should be regulated by any of the existing laws at either the State or Commonwealth level, including for example laws prohibiting participation by minors.<sup>27</sup>

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26 NSW Government, NSW Law Reform Commission, *Cheating at Gambling*, Report 130, August 2011, pp 48–49.

27 NSW Government, NSW Law Reform Commission, *Cheating at Gambling*, Report 130, August 2011, p. 49.

8.24 The report noted that some of these activities could potentially come within the reach of the IGA as they could be seen to involve a game 'played for money or anything else of value' on an internet carriage service. It concluded that this is a matter for Commonwealth regulation. It also noted that similar questions have arisen in the US where the Unlawful Internet Gambling Enforcement Act prohibits:

'the staking or risking by any person of something of value upon the outcome of a contest of others, a sporting event, or a game subject to chance' but specifically exempts 'participation in any game or contest in which participants do not stake or risk anything of value other than...personal efforts of the participants in playing the game...or...points or credits that the sponsor of the game...provides to participants free of charge and that can be used or redeemed only for participation in games or contests offered by the sponsor'.<sup>28</sup>

8.25 Regis Controls pointed out some other examples which in its view should be treated as gambling opportunities:

There are other forms of new technology which are not generally regarded as part of the gambling industry but in our view should be treated as such and should be appropriately regulated and taxed. There are several hundred SMS competition sites often linked to television advertisements offering prizes (often fairly minimal in relation to the total cost of entry) for quizzes, footy tipping, pick the best catch etc. Many of these providers target minors who only need a mobile phone to enter and pay. A typical entry cost is \$2.20.<sup>29</sup>

### ***Emerging gambling opportunities for youth***

8.26 Some potential new gambling opportunities appear to be targeted at youth. The committee notes the website [wyngle.com.au](http://wyngle.com.au), which is based on a new concept called ratio shopping. It lets customers try their luck at purchasing an item for \$1, otherwise they pay the advertised price. The website has been registered as a lottery with the NSW Office of Liquor, Gaming and Racing and displays the state government logo on its homepage. The Responsible Gambling Fund chairman, Mr Harry Herbert, expressed concern that young people could access the website and over-commit themselves as they hope to win an item for \$1. The director of the

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28 NSW Government, NSW Law Reform Commission, *Cheating at Gambling*, Report 130, August 2011, p. 49.

29 Regis Controls Pty Ltd, *Submission 35*, p. 7. Additional information provided by Senator Nick Xenophon drew attention to another example of DoubleDown Casino which offers free casino games but when free chips run out players are required to purchase chips with real money to continue playing. If a player wins and requests their winnings the payment is made in chips. This was referred to ACMA which responded that the content is not prohibited content as defined under the IGA as it is not possible to win 'money or anything else of value' from playing the games. See Senator Nick Xenophon and ACMA, additional information, received 1 December 2011.

National Children's and Youth Law Centre, Mr Matthew Keely, said the website targeted youth and its terms of use were problematic:

'Young people under 18 generally cannot get a credit card, but they can have a debit card so they may be enticed to give ratio shopping a go', he said. 'Wyngles's terms of use say a person must be at least 18 years of age or have the consent of a parent or guardian to purchase. It's a bit of an issue then that Wyngle's sign up page doesn't ask for information about a person's age'.<sup>30</sup>

8.27 The committee notes that in July 2011 the media reported that Facebook was promoting a game called Slotmania which could be played by children as young as 13 for real money. The game appears to target young people with cartoons and encourages players to purchase coins with credit cards, BPAY or PayPal. The CEO of Clubs Australia wrote to the government warning about the site. Minister Conroy's office responded that the government would be conducting a review of the Interactive Gambling Act.<sup>31</sup>

8.28 Clubs Australia also noted the format and content of similar sites such as Slotmania are designed to appeal to children:

Social networking sites such as Facebook allow account holders of all ages to access gambling content through programs known as "apps." Children can play slot games, buy credits and send free gifts such as "five free gifts" to friends. Apps such as "Slotmania" and "Texas HoldEm Poker" operate without any age verification measures and allow under-aged gamblers to purchase games and credits via PayPal or credit card accounts. Generous inducements encourage users to purchase "credits" in bulk amounts and players are continually encouraged to "invite" friends to play.<sup>32</sup>

8.29 The NSW Law Reform Commission report also drew attention to games such as Slotmania which simulates gaming machines and Farkle Pro which simulates an ancient dice game. While it appears that players cannot redeem points for cash and such games may be legal, 'a concern does exist that they may encourage young people to engage those forms of online gaming that do amount to unlawful gambling'.<sup>33</sup>

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30 Henrietta Cook, 'Shopping or Gambling', *The Canberra Times*, 30 August 2011, Information available from: <http://www.canberratimes.com.au/news/national/national/general/shopping-or-gambling/2274468.aspx> (accessed 30 August 2011).

31 Joe Hildebrand, 'online betting aiming at kids', *Daily Telegraph*, 22 July 2011, p. 5.

32 Clubs Australia, *Submission 24*, p. 5.

33 NSW Government, NSW Law Reform Commission, *Cheating at Gambling*, Report 130, August 2011, p. 49.

### ***Committee view***

8.30 The committee was concerned to hear about online games that appear to be targeting children and notes this will also be considered as part of the current review of the IGA underway by DBCDE:

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>34</sup>

8.31 While supporting the inclusion of this issue in the review the committee notes that in its 2010 report, the PC recommended that the ministerial council on gambling should develop a consistent national approach for regulating gambling-based quizzes, competitions and auctions operated or marketed through television, mobile phones and the internet'.<sup>35</sup> The committee agrees with this recommendation.

### **Recommendation 5**

**8.32 The committee supports the recommendation of the Productivity Commission that the COAG Select Council on Gambling Reform should review new gambling opportunities, particularly those which appear to target youth, with a view to developing a national regulatory approach.**

### **Other issues**

#### ***Election outcomes***

8.33 Although it would appear that there has been growth in the popularity of election betting,<sup>36</sup> the committee did not receive a great deal of evidence on this term of reference and the evidence that was received was evenly divided. The Responsible Gambling Advocacy Centre argued the major issue is that 'if people have placed a bet on the outcome of a political event they are likely to vote in accordance with that bet. This can effectively undermine the election process'.<sup>37</sup>

8.34 Others saw no issue with betting on election outcomes. The Australian Internet Bookmakers Association advised:

34 Department of Broadband, Communications and the Digital Economy, *Review of the Interactive Gambling Act 2001*, Discussion paper, August 2011, p. 11.

35 Dr Ralph Lattimore and Mr Gary Banks, *Committee Hansard*, 16 September 2011, p. 48. Productivity Commission, *Gambling*, vol. 1, Commonwealth of Australia, Canberra, 2010, pp 8.26–8.27.

36 See Transcript of 'Online Gambling', *Insight*, SBS, 13 September 2011.

37 Responsible Gambling Advocacy Centre, *Submission 29*, p. 13.

It is not clear why election betting has been raised as a term of reference. The integrity of elections is subject to intense public scrutiny - the possibility of cheating in betting on this event is remote. Election betting has been conducted for over a decade in Australia and for longer periods in such places as the United Kingdom, without concerns being raised. There are no reasonable grounds for an objection to be made on election betting.<sup>38</sup>

8.35 As betting on election outcomes was not raised as a major issue of concern, the committee makes no comment.

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38 Australian Internet Bookmakers Association, *Submission 54*, pp 6–7.

# Chapter 9

## Interactive gambling advertisements and inducements

9.1 This chapter will begin by detailing relevant research on online gambling advertising and inducements and their effects. It then discusses interactive gambling service advertising covered by the *Interactive Gambling Act 2001* (IGA). Advertising in relation to sports betting is introduced and touched on as necessary but is dealt with in detail in chapters 12 and 16.

### Effects of gambling advertising

9.2 There is only a small body of empirical research on the effects of gambling advertising. However, Dr John McMullan told the committee that despite this limitation:

We do know that exposure to gambling ads is high and likely to trigger gambling urges and promote positive attitudes towards gambling perceptions and behaviours. Gambling advertisements [have] also been found to be ubiquitous. They are embedded in everyday life, appear in many mediums [radio, print, television, point of sale, internet] and locales and all times of the day and days of the week.<sup>1</sup>

9.3 Dr McMullan pointed to a 'troubling convergence of online gambling advertising with new social media and social networking sites that offer new dramatic access points to online gambling as well as gambling experiences to young consumers'. A study found that popular networking sites such as Facebook provide direct and indirect opportunities for poker, sports betting, casino and slot gambling involving both credit and money wagers.<sup>2</sup>

9.4 Dr McMullan highlighted research which studied the themes of television advertisements for online poker and blackjack and found:

...the dominant theme represented was that gambling was like sport (53%), followed by the messages that gambling was routine, natural and externally reoccurring (50%), gambling was a positive life-changing force that could alter people's social status from a social loser to a high-net-worth person (42%), gambling was a way to prosper through wins and winnings (38%) and gambling was a reprieve from the mundane activities and relationships of everyday life (27%).<sup>3</sup>

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1 Dr John McMullan, *Submission 32*, p. 1.

2 Dr John McMullan, *Submission 32*, p. 2.

3 Dr John McMullan, *Submission 32*, p. 2.

9.5 Other research found the dominant message of online gambling websites was that they:

were domains of virtual socialization conveying knowledge, techniques, beliefs and expected behaviours about the culture of virtual gambling (94%). This was followed by the messages that poker was a consumption practice that occurred every minute of every day rather than an occasional leisure activity (92%), that poker was part and parcel of a winning way of life (83%) and an alternative means to financial and social success (73%), and that poker was an overt skilled activity rather than a mixed skill/chance game (51%).<sup>4</sup>

9.6 Research by Binde on gambling advertising concluded that 'gambling advertising is likely to have some impact on the extent of problem gambling'. It listed some of the risk factors which could, in theory, be related to gambling advertising which include:

**High availability of gambling.** Gambling advertising informs and reminds us of the availability of gambling. It increases awareness of the existence of games and their features as well as of where these games can be played. A high availability of gambling would not affect the extent of problem gambling if people were not aware of the availability.

**Participation in gambling.** This factor should be considered as distinct from availability. Advertising exhorts people to gamble and is likely to increase overall participation. When someone gambles, he or she is exposed to the features of that form of gambling that make it enjoyable for the casual gambler. At least some of these features are those that also make that form of gambling addictive for the problem gambler. Continuous exposure to the potentially addictive features of games—such as their capacity to excite or relax—makes it more likely that someone with the potential for developing problem gambling may realize it, for example, during a stressful period of his or her life.

**Features of the brain's reward system...**the study by Grant and Kim (2001) suggests that advertising constitutes a trigger for gambling. In neurobiological terms, such triggers are linked to the activation of the reward system of the brain. In Skinnerian terms, they constitute cues that activate conditioned responses.

**Impulsive personality.** Advertising can be assumed to have a greater influence on the behaviour of an impulsive person than on a person of average impulsiveness. According to the DSM-IV criteria (APA, 1994), pathological gambling is an impulse control disorder.

**A substantial early win.** Numerous studies conducted in various countries report that a large proportion of problem gamblers had won a substantial amount of money early in their gambling careers (Delfabbro, Lahn, & Grabosky, 2005; Turner, Zangeneh, & Littman-Sharp, 2006; Walker, 1992, p. 137-138). Presumably, this event created a lasting impression that it is

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easy to win and that gambling can produce intense feelings of joy and satisfaction. Much advertising for gambling gives the impression that it is easy to win, which might reinforce such impressions.

**Overconfidence in one's own skill in sports and horse betting.** Advertising for sports and horse betting often exaggerates the importance of skill (Binde, 2005a). Attribution of gambling wins to one's own skill, while blaming losses on bad luck or occasional and unlikely events, is a thought configuration found among some problem gamblers (Gilovich, 1983; Rosecrance, 1986).

**Sensation-seeking personality.** The theme of some advertising is the excitement of gambling. For example, ads may emphasize high odds, big jackpots and the thrill of gambling. This may persuade people who are exceptionally sensation seeking to satisfy their need for excitement through gambling rather than through other activities. Although not all gambling involves sensation seeking (Dickerson, Hinchy, & Fabre, 1987), some forms do (Zuckerman, 1994).

**Irrational thinking.** Although the importance of irrational thinking and cognitive factors in problem gambling is somewhat disputed (Delfabbro, 2004; Dickerson, 1991; May, Whelan, Meyers, & Steenbergh, 2005), most researchers agree that irrational thinking contributes to problem gambling. Advertising often suggests that luck is of importance. It emphasizes the wonderful consequences of jackpot wins while saying little about the minute probability of winning, and in other ways exploits biases in how people think about probabilities (Binde, 2005a; Mumpower, 1988).<sup>5</sup>

## 9.7 The research by Binde identified ways in which advertising may contribute to the prevalence of problem gambling:

**Advertising recruits new players, some of whom later become problem gamblers.** This effect ought to be at its strongest when a new game is introduced and when the market is immature. For example, people may be persuaded by advertising (Web banners or TV commercials) to try Internet poker, a game that for some becomes an obsession. Had it not been for advertising, a number of these persons would not have started playing and others would have done so later, when they were perhaps more aware of the risks involved or when Internet poker operators had increased their implementation of measures to counter excessive gambling.

**Advertising intensifies established gambling habits.** On the continuum between problem-free gambling and pathological gambling, some people will, because of advertising impact, move a little towards pathological gambling. A problem free gambler may develop at-risk gambling behaviour, an at-risk gambler may become more of a problem gambler, and a problem gambler may behave more like a pathological gambler.

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5 P. Binde, 'Selling Dreams – causing nightmares? On gambling advertising and problem gambling', *Journal of Gambling Studies*, Issue 20, June 2007, pp.178–179.

**Advertising may sustain and aggravate established problem gambling** by providing hard to-resist impulses for gambling that make it harder to adhere to a decision to quit or cut down on gambling.<sup>6</sup>

9.8 These findings were noted by the Productivity Commission in its 2010 report where it concluded that 'empirical evidence suggests that gambling advertising can have adverse effects on susceptible people, but not for many others'.<sup>7</sup>

9.9 Dr McMullan acknowledged that on one hand, advertising is 'one of several factors contributing to problem gambling including opportunities to play, access to money, machine design characteristics, and speed of play'. However, 'advertising that appeals to problem gamblers in the form of strategically located enticements, persistent inducements and constant reminders to play, as is often the case with online gambling, is likely to arouse negative habitual patterns and faulty cognitive beliefs that cause harm'. He concluded that the findings regarding gambling advertising and problem gambling 'signal the need for a vigilant approach to advertising'.<sup>8</sup>

#### *Suggestions to address message content*

9.10 Dr McMullan argued 'there is a need for more exacting restrictions on the message content of much gambling advertising' and suggested that online gambling advertising should use more clear and factual messages and fewer emotional or potentially misleading ones. For example, advertising, inducements or images emphasising the following messages should be avoided: winning is easy; winning is guaranteed; winning is substantial; winning changes your status in life; winners are celebrities and vice versa; play every day; play online any time; prizes are free; guaranteed cash prizes; free promotions in cash or kind; bonuses available; referrals for benefits; free money to play and deposit matching to recruit new consumers. These messages should be avoided as they encourage players to 'play, play longer and play beyond their means'.<sup>9</sup>

9.11 Dr McMullan also suggested that in addition to the above:

a responsible advertising program might insist that gambling advertising not imply that games of chance are games of skill or imply that skill predominates over luck in mixed skill/luck games such as poker, blackjack, or pari-mutuel sport betting. It should not convey that gambling is a solution to financial problems or a method of earning income, or imply that

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6 P. Binde, 'Selling Dreams – causing nightmares? On gambling advertising and problem gambling', *Journal of Gambling Studies*, Issue 20, June 2007, pp.179–180.

7 Productivity Commission, *Gambling*, vol. 1, Commonwealth of Australia, Canberra, 2010, p. K.11.

8 Dr John McMullan, *Submission 32*, p. 8.

9 Dr John McMullan, *Submission 32*, pp 10–11.

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gambling can make consumers more popular, attractive, successful or happy.<sup>10</sup>

## **Effect of advertising on youth**

9.12 The effect of online gambling advertising on youth was a particular concern raised with the committee. Dr Sally Gainsbury and Professor Alex Blaszczynski advised the committee that research indicates youth are 'highly influenced by gambling advertising'. For example:

Studies involving Canadian adolescents report that advertisements for gambling products increases the extent to which youth think about and want to try gambling as well as the likelihood of youth engaging in gambling (Derevensky, Sklar, Gupta, & Messerlian, 2010; Felsher, Derevensky, & Gupta, 2004). Promotional products, sexualised images, and celebrity endorsements appear to be highly appealing to youth and these techniques may encourage adolescents and young adults to engage in gambling.<sup>11</sup>

9.13 Dr Gainsbury and Professor Blaszczynski recommended that:

...efforts be made to protect children and adolescents from being exposed to Internet gambling advertisements online and offline. Efforts should also be undertaken to reduce the appeal of advertising and marketing strategies to youth and young adults and ensure that all advertisements are balanced with appropriate education of gambling risks and potential harms.<sup>12</sup>

9.14 Clubs Australia pointed out practices used by internet gambling sites which are contrary to responsible gambling measures:

Online gambling sites are permitted to advertise, offer inducements and accept credit card payments. A number of sites prompt players to gamble via text message or offer lucrative sign-up bonuses in exchange for credit card details. Such practices are at variance with responsible gambling procedures.<sup>13</sup>

9.15 It recommended that children and adolescents should be protected from exposure to internet gambling advertisements..<sup>14</sup>

9.16 Dr Jeffrey Derevensky told the committee that gambling advertising is problematic. He noted that following a relaxation of advertising standards, a number of internet gambling companies are placing games or simulated gambling activities on Facebook. He added that the number one activity in North America on Facebook is

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10 Dr John McMullan, *Submission 32*, p. 11.

11 Dr Sally Gainsbury and Professor Alex Blaszczynski, *Submission 7*, p. 6.

12 Dr Sally Gainsbury and Professor Alex Blaszczynski, *Submission 7*, p. 6.

13 Clubs Australia, *Submission 24*, p. 2.

14 Dr Sally Gainsbury and Professor Alex Blaszczynski, *Submission 7*, p. 6.

poker.<sup>15</sup> Dr Derevensky told the committee that research around lotteries indicates that gambling advertising does not seem to encourage non-gamblers to gamble but if you are already a problem gambler you are much more likely to feel like gambling.<sup>16</sup>

9.17 Dr Gainsbury and Professor Blaszczynski also noted the dangers for youth with these gambling opportunities:

Young people these days are already doing everything online. For example, if you look at Facebook, which is obviously one of the most popular sites in the world and certainly in Australia, there are already a lot of gambling opportunities. Zynga Poker is the most popular Facebook platform, which is a credit base—so free—site. It is incredibly popular, especially amongst youth, as well, so it is a sort of normalising activity in the free play sites. It is not much of a step to go from a free play [site] to a 1c game and then gradually increase the stakes.<sup>17</sup>

9.18 Professor Blaszczynski added:

One of the difficulties with the free play sites is that the odds are geared towards the benefit of the player, which gives them the false impression that they have skills which enable them to win. And then, as soon as they go to the pay-for-play sites, the odds change and they end up losing. That has been demonstrated by the research of Sevigny and Ladouceur in Canada.<sup>18</sup>

9.19 The committee notes that Facebook recently changed its advertising policy and it is now permitted to broadcast commercials about online gambling (poker games, lotteries, bingo or sports betting). The game should be legal according to the law, meaning that its practice is regulated. The committee notes that such advertisements are currently prohibited in the US.<sup>19</sup> The Facebook advertising guidelines state:

#### E.Gambling and Lotteries

- i. Ads that promote or facilitate online gambling, games of skill or lotteries, including online casino, sports books, bingo, or poker, are only allowed in specific countries with prior authorization from Facebook.
- ii. Lottery commissions licensed or sponsored by government entities may advertise on Facebook; provided that ads must be targeted in accordance with applicable law in the jurisdiction in which the ads will be served and may only target users in the jurisdiction in which the lottery is available.

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15 Dr Jeffrey Derevensky, *Committee Hansard*, 16 September 2011, p. 2.

16 Dr Jeffrey Derevensky, *Committee Hansard*, 16 September 2011, p. 4.

17 Dr Sally Gainsbury, *Committee Hansard*, 16 September 2011, p. 41.

18 Professor Alex Blaszczynski, *Committee Hansard*, 16 September 2011, p. 41.

19 Information available from: <http://www.poker777.com/20110902/online-poker-facebook-allows-advertising.php> (accessed 27 September 2011).

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iii. Ads that promote offline gambling establishments, such as offline casinos, in accordance with applicable laws and regulations, are generally permitted, provided that ads must be appropriately targeted.<sup>20</sup>

## Regulating online gambling advertising

9.20 Dr McMullan told the committee that the growth of online gambling has 'contributed to situations where online gambling advertising has flowed freely across borders without meeting minimum advertising or broadcasting standards in many jurisdictions'. The result is that:

...in some jurisdictions, ads and websites for remote gambling are reluctantly tolerated even though they pose major concerns regarding deceptive messaging, targeting youthful populations via practice sites, free games and bonuses, cheating and fraud of consumers, ethical financial probity and appropriate responsible messaging.<sup>21</sup>

9.21 In contrast, other jurisdictions have prohibited internet gambling advertisements and blocked websites and others have regulated advertising. Dr McMullan informed the committee that the online gambling industry has established a code of practice but compliance is voluntary and 'enforcement is varied and uncertain'.<sup>22</sup>

9.22 To address this expansion of advertising, Dr McMullan suggested the following:

- jurisdictions could license operators to advertise gambling products and services and that this licensed status could be prominently displayed on promotional materials in all communication mediums;
- advertising for 'practice' sites should be subjected to the same regulations for money sites. In addition, practice sites should be prohibited from containing or communicating ads to money sites that are often the same operators;
- gambling providers in other jurisdictions should be encouraged to meet the advertising standards of the jurisdiction in relation to exposure, design features, message content and tone, promotional emails and bonus materials, branding, the use of celebrities and sponsorship and responsible messaging. In addition, these standards should be reviewed on a regular basis; and

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20 Information available from: [http://www.facebook.com/ad\\_guidelines.php](http://www.facebook.com/ad_guidelines.php) (accessed 27 September 2011).

21 Dr John McMullan, *Submission 32*, p. 12.

22 Dr John McMullan, *Submission 32*, p. 12.

- 'practice' sites offering free games should be honest at all times and the odds of winning and payout ratios should operate on the same basis as money games on real sites as this is currently not always the case.<sup>23</sup>

9.23 Dr McMullan acknowledged that the difficulty is establishing 'territorial controls over internet communication' but where appropriate, regulation should include:

...internet ads on radio, newspapers, magazines and television that promote gambling websites in remote jurisdictions and regulating online advertising of offshore sites (i.e. "pop ups") to play at other internet gambling sites in remote jurisdictions.<sup>24</sup>

9.24 He recommended an 'inclusive integrated regulated approach' by inviting private providers to meet appropriate standards. He argued this would create a 'competitive level playing field' among providers.<sup>25</sup> He acknowledged the difficulty of enforcement but outlined a best practice regulatory environment:

Creating the best accountability in gambling advertising environments, including virtual worlds, should likely include: (a) distinct mandatory gambling codes of practices above and beyond existing advertising guidelines and broadcast standards which will set the rules and practices against which gambling providers will be evaluated, (b) legislated gambling acts which set out clear obligations of care, firm restrictions with regard to advertising gambling, and precise penalties including the refusal or/and loss of license for those who do not comply with the codes and legislation, (c) independent third party control commissions who have extensive powers of investigation and prosecution in support of compliance and who can evaluate guidelines and regulations within a uniform stringent casuistic framework, and (d) independent review boards who have the authority to consult with interested parties and experts, and the power to assess the particulars of advertising codes and relevant legislation annually, monitor breaches and complaints on an ongoing basis and propose changes that are legally binding (Binde, 2010; Griffiths, 2005; RIGT, 2007).<sup>26</sup>

9.25 In addition, gambling advertising codes could include:

...(a) statements of principle covering the naming, packaging, advertising and promotion of gambling products and organizations and emphasize that actions will follow the spirit as well as the letter of the law; (b) language that as much as possible is exact, explicit and measurable; (c) monitoring systems that are proactive and foster climates of evaluation and exclusion before inappropriate commercials have run their course in the media; and (d) creative sanctioning systems for offenders who fail to comply with the

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23 Dr John McMullan, *Submission 32*, p. 12.

24 Dr John McMullan, *Submission 32*, pp 12–13.

25 Dr John McMullan, *Submission 32*, pp 12–13.

26 Dr John McMullan, *Submission 32*, p. 13.

spirit and the letter of the codes involving negative publicity, revocation of privileges, services and licenses, fines, administrative controls, and referrals to civil or criminal bodies for repeat offenders where appropriate. (Griffiths, 2005; Korn et al., 2005; RIGT, 2007; McMullan & Miller, 2008) As Poulin (2006) notes, it is time for governments and public health advocates “to stop being seduced by the promise of anti-gambling campaigns and education that place the onus of control on the shoulders of the very individuals who have a serious disorder of impulse control”. Rather we should apply what has been learned from tobacco’s successful control strategies, namely that “success is achieved primarily through public policy” (p1).<sup>27</sup>

9.26 The Productivity Commission addressed gambling advertising in its 2010 report. It took the view that each form of gambling has its own risk profile, so different approaches would be needed:

We took the view that, in relation to different forms of gambling, you might need to take different approaches. So if the evidence is starting to show, for example, that the way in which sports betting is marketed has a detrimental effect, it is quite appropriate that governments respond to that...If we were looking at poker machines, I can say with some certainty that the three people sitting here would never recommend that poker machine playing be subject to liberal advertising because the harms associated with poker machines are so great, which we have evidenced.<sup>28</sup>

9.27 Mr Gary Banks, Chairman of the PC, added:

By looking at each of the forms of gaming and gambling we see very different risk profiles. It is possible to argue in relation to alcohol and liquor generally that perhaps the risk profiles are less divergent across the products. When you come to gambling and gaming—and I think we said this in 1999—it is almost like looking at different industries, with very different products. They have similar characteristics. It is much more difficult to recommend a universal approach to all forms of gaming and gambling, but we are very clear that, to those that have higher risks, like EGMs, you would take a particular approach; to those, like lotteries, that have a lesser risk profile, you might take a different approach. But I do not think our report goes into the detailed analysis that you would be looking at.<sup>29</sup>

### **Advertising of prohibited content under the Interactive Gambling Act**

9.28 The IGA makes it an offence to advertise prohibited interactive gambling services in Australia. This covers all forms of media:

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27 Dr John McMullan, *Submission 32*, pp 13–14.

28 Mr Robert Fitzgerald, *Committee Hansard*, 16 September 2011, p. 53.

29 Mr Gary Banks, *Committee Hansard*, 16 September 2011, p. 53.

...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.<sup>30</sup>

9.29 The legislation does not cover 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'.<sup>31</sup>

### ***Television***

9.30 Free TV Australia detailed the current regulation of gambling advertising during broadcasting:

Under clause 6.14 of the Commercial Television Industry Code of Practice, gambling ads are not permitted to be broadcast during G classification periods.<sup>32</sup> In practice, this means that gambling advertisements must not be broadcast between 6.00am and 8.30am on any day, between 4.00pm and 7.00pm on weekdays and between 4.00pm and 7.30pm on weekends. These restrictions do not apply to other media platforms like pay TV.<sup>33</sup>

9.31 Free TV submitted that the current provisions are 'adequately meeting community standards'. As evidence it noted that the Code of Practice has only recently been reviewed and of the over 1,400 submissions to the review, only five raised concerns regarding betting and gambling advertisements. It further stated that 'of the

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30 Department of Broadband, Communications and the Digital Economy, *Review of the Interactive Gambling Act 2001*, Discussion paper, August 2011, p. 4.

31 Department of Broadband, Communications and the Digital Economy, *Review of the Interactive Gambling Act 2001*, Discussion paper, August 2011, p. 4.

32 Except for a commercial broadcast in a news, current affairs or sporting program.

33 Free TV Australia, *Submission 20*, p. 1.

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6,096 Code of Practice complaints received in the five years to 2011, only 11 related to clause 6.14 of the Code, representing just 0.18 % of overall complaints'.<sup>34</sup>

9.32 Advertisements must also comply with the IGA which prohibits commercial television, commercial radio, subscription television and community broadcasting licensees as well as those providing broadcasting services under a class licence from broadcasting an interactive gambling service advertisement.<sup>35</sup>

### ***Enforcement***

9.33 It is the responsibility of individual broadcasters, internet content providers and print publishers to ensure that their programs or advertisements comply with the IGA.<sup>36</sup> Again the enforcement of the advertising provisions of the IGA is reliant on the complaints-based system. The Department of Broadband, Communications and the Digital Economy (DBCDE) advised the committee that the IGA does not specify the process for complaints about the advertising of interactive gambling services and in the absence of provisions conferring the function on 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.<sup>37</sup>

9.34 DBCDE suggested the IGA could benefit from the inclusion of a complaints mechanism to ensure complaints 'are handled efficiently and effectively'.<sup>38</sup>

9.35 The committee notes that from July 2010 to June 2011, DCBDE received nine complaints about the advertisement of prohibited interactive gambling services. Seven of these were referred to the AFP for further investigation and one was not pursued due to a lack of information.<sup>39</sup> The other complaint was ongoing at the time the discussion paper was published. DBCDE acknowledged 'the limited range of

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34 Free TV Australia, *Submission 20*, p. 1.

35 Department of Broadband, Communications and the Digital Economy, additional information received 7 July 2011.

36 Department of Broadband, Communications and the Digital Economy, *Review of the Interactive Gambling Act 2001*, Discussion paper, August 2011, p. 4.

37 Department of Broadband, Communications and the Digital Economy, *Review of the Interactive Gambling Act 2001*, Discussion paper, August 2011, p. 4.

38 Department of Broadband, Communications and the Digital Economy, *Review of the Interactive Gambling Act 2001*, Discussion paper, August 2011, p. 13.

39 Department of Broadband, Communications and the Digital Economy, *Review of the Interactive Gambling Act 2001*, Discussion paper, August 2011, p. 13.

enforcement options available under the IGA<sup>40</sup> and the challenges for the AFP undertaking investigations in the online environment.<sup>40</sup>

## **Issues raised with the committee**

### ***Growth in advertising***

9.36 Most of the evidence received in relation to advertising dealt with the growth in advertising of sports betting. This is covered in chapter 12 which also includes sponsorship of sporting clubs by gambling providers. However, in relation to other forms of online gambling advertising, submitters also supported more action being taken to block advertising by overseas sites.

9.37 Dr Sally Gainsbury and Professor Alex Blaszczynski noted that little appears to be done to prevent overseas gambling sites from directly marketing to Australians. One result of this is high levels of confusion about internet gambling regulation among Australians. Dr Gainsbury and Professor Blaszczynski recommended that 'further action should be taken to block advertising online and offline by offshore sites, legal action be taken against unregulated sites that allow Australians to play, and efforts made to educate Australians about the dangers of playing on unregulated sites'.<sup>41</sup>

### ***Ambiguities and inconsistencies***

9.38 Some submissions pointed to a lack of clarity in the IGA regarding advertising. The Victorian InterChurch Gambling Taskforce provided the following example:

...the 'Australian Marketing Team' of an internet gaming and casino provider has sent letters to Australian citizens at their home addresses offering up to \$3,500 in free credits to induce Australians to gamble at their sites.<sup>42</sup>

9.39 In relation to the unsolicited letters, ACMA advised:

...as this website is not a prohibited internet gambling service, the unsolicited letter does not constitute a prohibited internet gambling service advertisement under Part 7A of the IGA.<sup>43</sup>

9.40 In addition, the Taskforce advised that the 'Australian Marketing Team' of this provider was able to register an 1800 number in Australia that allows Australians to get in touch with a call centre in South Africa to facilitate Australians gambling on

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40 Department of Broadband, Communications and the Digital Economy, *Review of the Interactive Gambling Act 2001*, Discussion paper, August 2011, p. 13.

41 Dr Sally Gainsbury and Professor Alex Blaszczynski, *Submission 7*, p. 3.

42 Victorian InterChurch Gambling Taskforce, *Submission 31*, pp 7–8.

43 Victorian InterChurch Gambling Taskforce, *Submission 31*, p. 8.

their sites. The Taskforce submitted that greater effort needs to be made to deter off-shore internet gaming and casino providers from actively marketing to Australian customers to avoid examples such as the 'Australian Marketing Team' above.<sup>44</sup> It also submitted that, at the very least, the IGA should be amended to allow the Australian phone numbers of internet gaming and casino providers to be disconnected and to require telecommunication providers to do so.<sup>45</sup>

*Clarification regarding accidental or incidental advertising*

9.41 Free TV submitted that any gambling advertising restrictions should be at the national level and apply equally across all media platforms. It asked that there be greater clarity around receiving the broadcasts of overseas sporting events which feature prominent signage and other advertisements for interactive gambling services. It provided the example of the final of the 2010 World Snooker Championships, won by an Australian, which featured signage for betfred.com in the background. Free TV believes this to be an incidental accompaniment to the broadcast, satisfying the conditions of para 61DB(a). It noted that as this type of programming is often shown live or with a short turn-around, there is no opportunity for local networks to remove the material before broadcast. It submitted that 'given the uncertainty regarding ACMA's potential interpretation, it was decided not to broadcast this event, to the detriment of free-to-air viewers'.<sup>46</sup> The committee notes that Free TV has raised this issue with ACMA.

9.42 The committee received the following advice from DBCDE which would appear to cover this example:

The IGA permits an interactive gambling service advertisement that is broadcast or published as an accidental or incidental accompaniment to another matter, provided the broadcaster or publisher does not receive any benefit, either financial or other, in addition to the benefit received for the broadcast or publication of the other matter (s61DB and s61ED of the Act refers).

For example, this could permit the broadcast of an international sporting event at an overseas venue where an interactive gambling service advertisement might be permitted, where the broadcaster does not receive any benefit for the interactive gambling service advertisement, additional to the benefit arising from broadcasting the sporting event (refer Interactive Gambling Bill 2001, revised explanatory memorandum).<sup>47</sup>

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44 Victorian InterChurch Gambling Taskforce, *Submission 31*, p. 7.

45 Victorian InterChurch Gambling Taskforce, *Submission 31*, p. 8.

46 Free TV Australia, *Submission 20*, pp 1–2.

47 Secretariat communication with the Department of Broadband, Communications and the Digital Economy, 7 July 2011.

9.43 DBCDE acknowledged there was potential for further clarification of such issues in the IGA:

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.<sup>48</sup>

9.44 DBCDE acknowledged and further explained the difficulties experienced by broadcasters:

...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.<sup>49</sup>

#### *Clarification of Australian-based companies providing assistance to overseas customers*

9.45 The committee notes that PokerStars owns a company in Australia, GP Information Services, through a subsidiary out of its base in the Isle of Man. The company reportedly believes it is operating within the law as the Sydney office provides customer service only to foreign players.<sup>50</sup>

9.46 DCBDE acknowledged the issue of Australian-based companies that provide 'back-end' services to Australian customers on behalf of a prohibited interactive gambling service. These include financial services or customer assistance. It noted

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48 Department of Broadband, Communications and the Digital Economy, *Review of the Interactive Gambling Act 2001*, Discussion paper, August 2011, p. 13.

49 Department of Broadband, Communications and the Digital Economy, *Review of the Interactive Gambling Act 2001*, Discussion paper, August 2011, p. 13.

50 Asher Moses, FBI, federal police target overseas poker websites that flout law', *Sydney Morning Herald*, 30 May 2011, p. 1.

that concerns have been raised 'regarding the operation of such services and whether it constitutes a breach of the IGA'.<sup>51</sup>

### *Misleading advertising*

9.47 The committee was very concerned to hear from an individual who had not gambled previously who saw an advertisement on a social networking site to make extra money. When he clicked on the advertisement it took him to an overseas gaming website and he ended up losing significant sums of money.<sup>52</sup>

### *Committee view*

9.48 While aware of limitations, the committee agrees that the advertising restrictions in the IGA have limited the amount of advertising for prohibited interactive gambling services. The committee notes that demand for online gambling is driven in part by advertising, but currently this demand is constrained by the advertising restrictions. One of the strongest themes in the inquiry was the level of concern in the community about the proliferation of advertising for sports betting. As the government works with industry to rein this in (as covered in chapters 12 and 16), the committee supports retaining and strengthening the provisions in the IGA that attempt to limit the amount of advertising for prohibited interactive gambling services. The committee particularly notes research that gambling advertising could intensify gambling habits and sustain or aggravate established problem gambling. Allowing additional gambling advertising would create demand, attract more customers—more customers results in more chances for people to develop gambling problems.

9.49 In the previous chapter, the committee agreed that clarifying ambiguities and inconsistencies in the IGA regarding the provision of interactive gambling services would improve its operation. The same holds true for advertisements for interactive gambling services. The committee was concerned to hear about the ways organisations appear to have found to circumvent the advertising ban in the IGA, such as those outlined above, and supports amendments to address these. It is important that the IGA is reviewed regularly so that various methods being used to circumvent it can be addressed quickly and effectively.

### **Recommendation 6**

**9.50 The committee recommends that the *Interactive Gambling Act 2001* be amended to address the inconsistencies and ambiguities identified to the committee regarding the advertising of prohibited interactive gambling services, and any others that are identified through the review being conducted by the Department of Broadband, Communications and the Digital Economy.**

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51 Department of Broadband, Communications and the Digital Economy, *Review of the Interactive Gambling Act 2001*, Discussion paper, August 2011, p. 13.

52 See *Committee Hansard*, 16 September 2011, pp 55–59.

**Specifically it should be amended to capture methods of avoidance such as advertisements that do not mention gambling linked to gambling websites.**

### **Inducements to gamble**

9.51 Inducements to promote gambling services and entice people to keep gambling are common and can take a number of forms, such as free games, bets, credits and free daily allowances. Leagues Club Australia reported:

Marketing and promotion of gambling websites is aggressive and competitive, with attractive inducements to sign up and play. These range from sign up bonuses (eg. NobleHouse.com \$4,000), matched deposits for 1st deposit or up to a certain amount, free plays and bonuses, ongoing rewards redeemable for playing credits and refer a friend to get bonus or play credits. Free play sites (including those available in Australia through .net sites) are also a popular conduit for operators to them entice new players to play for money.<sup>53</sup>

9.52 Anglicare Tasmania has a counselling and family support program which runs Gamblers Help. While the majority of clients experience problems with poker machines, it has clients with online gambling problems and advised:

Gamblers Help clients tell our workers that the gambling environment, including advertising, inducements and player loyalty schemes encourage them to gamble.<sup>54</sup>

9.53 Clubs Australia noted that inducements or incentives to open accounts or place bets are standard practice for online gaming and wagering providers. It explained that:

Typically, these take the form of free bets or games or sign up bonuses at improved odds and higher payout rates. According to a report by Blaszczynski, Sharpe, & Walker, there is evidence to suggest that the possibility to play without money makes games more attractive, reduces barriers to play, and may undermine attempts to quit. Free gambling inducements 'have been identified as fostering future gambling problems.'<sup>55</sup>

9.54 Mr Christopher Hunt, Counsellor, Gambling Treatment Clinic, University of Sydney, told the committee about a client who has been trying to cut down on his gambling. However, a site offered him a free \$50 which enticed him to gamble and he ended up chasing his losses and losing considerably more than the \$50. While this refers to an Australian-based online betting agency, which does not fall under the IGA, the risks are the same regardless of the gambling form. Mr Hunt confirmed that

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53 Leagues Clubs Australia, *Submission 40*, p. 4.

54 Anglicare Tasmania, *Submission 6*, p. 2.

55 Clubs Australia *Submission 24*, p. 6.

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while such inducements may not contribute to a person becoming a problem gambler, they can certainly exacerbate an existing problem.<sup>56</sup>

9.55 Recent media describes young people being enticed by the offer of free games. These games encourage players to play free for practice where the odds of winning are greater than the paid version to which they are then directed.<sup>57</sup> Practice games having more favourable odds than real games was also mentioned by the Responsible Gambling Advocacy Centre, which noted:

This leads the player to believe they are able to win more often than they will in 'real life' play. In turn, the player may continue to gamble in order to 'chase the win' and to experience the 'thrill associated with winning', as well as mistaking practice odds for the real chances of winning.<sup>58</sup>

9.56 The Centre believes this practice is dishonest and coercive and recommended that practice games have the same odds as real games.<sup>59</sup> The Centre also recommended that the practice of offering a free first bet or a guaranteed win should be stopped as 'this lulls the user into a false sense of security and encourages them to return to the website and continue placing bets'. Alternatively a low value limit (\$1-20) should be required.<sup>60</sup>

9.57 Clubs Australia also noted the following practice:

Some sites require the gambler to place a bet or provide credit card details in order to receive free credit. It is often the case that if a gambler wagers a high amount, the incentive is increased accordingly. As one research paper notes, in some cases such practices operate 'ostensibly to familiarise the person with the game and to improve their skill. However, research suggests that there may be a more nefarious purpose.' Players are then conditioned to expect large payouts only to find that when they swap to cash based gaming, the odds have been altered.<sup>61</sup>

9.58 Clubs Australia submitted that the practice of offering free bets or other inducements is particularly dangerous. It noted that governments in Victoria, New South Wales and South Australia 'have introduced laws forbidding the advertising of incentive bonuses for sign-ups; however, the websites of many online operators reveal that the sign-up incentives still exist and are being promoted online'.<sup>62</sup>

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56 Mr Christopher Hunt, *Committee Hansard*, 16 September 2011, p 21–22.

57 Anne Wright, 'Explosion in smartphone gambling, Apps luring youth punt, *Herald Sun*, 6 June 2011, p. 13.

58 Responsible Gambling Advocacy Centre, *Submission 29*, p. 11.

59 Responsible Gambling Advocacy Centre, *Submission 29*, p. 11.

60 Responsible Gambling Advocacy Centre, *Submission 29*, p. 10.

61 Clubs Australia, *Submission 24*, p. 7.

62 Clubs Australia, *Submission 24*, p. 7.

9.59 Dr John McMullan emphasised that online gambling advertising messages are:

...communicated in a web marketing context of highly attractive incentives and inducements – deposit bonuses, reload bonuses, generous ‘refer a friend’ programs, affiliate programs, online retail stores, free demo practice sites, and of course online tourneys – which rather constantly and aggressively exposed consumers to gambling to gain their attention to play, to inspire likability in their products and to incite returns to gamble continuously.<sup>63</sup>

9.60 Wesley Mission cautioned that if Australian-based providers were regulated, they would need to offer inducements to gamble to be competitive with overseas providers:

The experience of the now defunct Lasseter’s Online was that an Australian regulated product is not going to be able to compete with offshore competitors unless it can offer the same level of inducements to gamble as the competitors.<sup>64</sup>

9.61 This example was also put forward by the Victorian InterChurch Gambling Taskforce:

A decade ago, Lasseters Online Casino appeared to be in a strong position as the only Australian online casino. Gamblers could experience online casino gambling in a regulated environment by an Australian government. Yet Lasseters Online failed because Lasseters Online was not permitted the same inducements that were offered by online casinos in less regulated parts of the world. In particular, the competitors of Lasseters were offering free credit to gamble. Open an account with these casinos and they give you ‘free’ money to get your gambling started.<sup>65</sup>

### ***Offering credit***

9.62 The committee notes recent media coverage of a Melbourne man with a mental illness who ran up \$80,000 in debts with Sportsbet. He claimed he was lured in by the offer of \$5,000 in free bets and then accepted credit.<sup>66</sup> This issue is discussed in further detail in chapters 11 and 12 dealing with advertisements and inducements for sports betting.

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63 Dr John McMullan, *Submission 32*, p. 3.

64 Wesley Mission, *Submission 2*, p. 3.

65 Victorian InterChurch Gambling Taskforce, *Submission 31*, pp 4–5.

66 Richard Willingham, ‘Betting agency settles over man’s \$80,000 debt’, *The Age*, 26 July 2011, p. 3.

### ***Free play sites***

9.63 There appears to be different treatment of sites where individuals can play games for money (generally referred to as dot com sites) and practice or free play sites where money is not used (generally referred to as dot net sites). PokerStars and Full Tilt Poker are prohibited from advertising in Australia but PokerStars subsidiary, PokerStars.net, an 'educational' website, is one of the major sponsors of the Cronulla Sharks rugby league team.<sup>67</sup> The committee notes the following response from DBCDE on this issue:

There may be instances where the promotion of a 'free play' .net site (that was closely associated with a "for money" .com site) would be a prohibited advertisement under the Act. For example, on 11 Nov 2010 ACMA announced that Network Ten's licensees, and the Nine Network's licensees, had breached a condition of their commercial television broadcasting licences by broadcasting advertisements promoting interactive gambling services, in contravention of the IGA, through the promotion of 'pokerstars.net' which is a free play site that is closely associated with 'pokerstars.com'.<sup>68</sup>

9.64 ACMA advised that the final finding of the authority in relation to the example above 'was that that promotion through the dot net site was a clear attempt to promote an interactive gambling service'.<sup>69</sup>

9.65 ACMA further explained the issues taken into consideration for an investigation:

From an investigation point of view, the ACMA will look at a dot net site and a dot com site—it is not necessarily the URL that is indicative, it is whether the site permits gambling and consideration to be paid by the person participating in the service. If, for example, we were investigating a hypothetical site called casino.net and we could not play with real money, that would not amount to prohibited Internet gambling content under the IGA. If the user was able to provide funds and provide consideration in exchange for winnings or losses, that would fall within the requirements of the act.<sup>70</sup>

9.66 The committee notes that such training sites are increasingly being used, especially for poker and blackjack, to 'widen the demographic to people who know little about poker, to popularise it to potential customers and to reproduce the online gambling experience as a cultural product'. A survey of 8,598 students from 201 UK

67 Michael McKenna, 'Online poker site shut down in FBI sting has Aussie officer', *The Australian*, 19 April 2011, p. 5.

68 Secretariat communication with the Department of Broadband, Communications and the Digital Economy, 7 July 2011.

69 Ms Elizabeth Press, *Committee Hansard*, 19 August 2011, p. 42.

70 Ms Elizabeth Press, *Committee Hansard*, 19 August 2011, p. 42.

schools found that 'gambling in money-free mode was the most important predictor of whether an adolescent would gamble for real money'.<sup>71</sup>

### ***Committee view***

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

9.68 It agrees that the IGA should be strengthened in order to ensure that along with advertising, inducements for a prohibited interactive gambling service are banned. The committee has also been inquiring into the Interactive Gambling and Broadcasting Amendment (Online Transactions and Other Measures) Bill 2011. This bill amends the IGA to make it an offence to offer customers an inducement to gamble. This amendment will prohibit gambling service providers offering customers incentives to gamble. The committee supports the intent of this amendment, the operation of which is covered in chapter 15. Inducements to gamble in relation to sports betting and wagering are covered in chapter 12.

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71 Dr John McMullan, *Submission 32*, p. 3.

## **Part 3**

### **Sports betting and wagering**

Chapters 10-14 cover issues related sports betting and wagering. They examine the Australian wagering industry, the growth of online wagering and the recent emergence of online corporate bookmakers. As the provision of online wagering services is permitted under the *Interactive Gambling Act 2001*, this part of the report discusses a number of issues that are currently regulated by states and territories, including the risk of betting on losing outcomes, the practice of credit betting, and the offering of inducements to bet. The risks of match-fixing and corruption in Australian sport as well as exotic betting are also discussed, as are gambling advertising and regulatory responses in relation to sport.



# **Chapter 10**

## **Introduction to sports betting and wagering**

10.1 This chapter provides an introduction to sports betting and wagering in Australia. It will cover definitions and types of bets and wagers; the sporting codes and racing industries involved; the prevalence and recent growth of sports betting, including the effect of online technologies; and sports wagering providers, including corporate operators, traditional bookmakers, totalisators and betting exchanges. It will also discuss how sports betting and wagering is excluded from the Commonwealth *Interactive Gambling Act 2001* (IGA) with the exception of 'in-play' betting online. The chapter will conclude with a summary of state and territory regulation of gambling services.

### **Introduction**

10.2 Sports betting, where individuals bet on the outcome of a sporting event or individual events within the context of a match, has become increasingly popular.<sup>1</sup> The fast growth in sports betting activity in recent years, combined with the pervasive advertising of sports betting products and services during sporting broadcasts, has resulted in what some describe as the 'gambification' of sports.<sup>2</sup> It has also raised particular concerns this will contribute to problem gambling.<sup>3</sup>

### **Definitions**

10.3 Sports betting can be defined as:

...the wagering on approved types of local, national or international sporting activities (other than the established forms of horse and greyhound racing), whether on or off-course, in person, by telephone, or via the internet'.<sup>4</sup>

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- 1 The betting options available to online sports betting customers are numerous. According to Sportsbet.com.au: 'Any day of the week, 24 hours a day, punters can place single bets - head-to-head, pick the score, line and margin bets to name but a few. Given you're placing bets on the World Wide Web, it makes sense that you can place bets on sports across the world. Yes, you can bet on international sports matches, competitions and tournaments from all parts of the globe.' <http://www.sportsbet.com.au/content/articles/online-betting> (accessed 21 September 2011).
  - 2 John L. McMullan and Delthia Miller (2008). 'All in! The commercial advertising of offshore gambling on television', *Journal of Gambling Issues*: Issue 22, p. 243, <http://jgi.camh.net/doi/pdf/10.4309/jgi.2008.22.6> (accessed 21 September 2011).
  - 3 See for example Sophie Scott, 'Internet fuelling problem gambling', ABC News Online, 11 March 2011, <http://www.abc.net.au/news/stories/2011/03/11/3162154.htm> (accessed 21 September 2011).
  - 4 *Australian Gambling Statistics, 1982–83 to 2007–08, 26th Edition*, p. 227.

10.4 Wagering is a broader term which refers to gambling on the outcome of sporting, racing or other events, or contingencies within an event.<sup>5</sup> In the following chapters, the committee uses the general term 'wagering' to refer to both racing and sporting events. Sports wagering on non-racing events will be specified as 'sports betting' (as opposed to 'race wagering').<sup>6</sup>

### ***'In-play' betting***

10.5 The committee will use the term 'in-play' betting to describe the practice of placing bets after an event has commenced. The term 'in-play' betting is used by some interchangeably with the term 'in the run' betting, but 'in the run' usually refers to racing events.<sup>7</sup> 'In-play' betting can be further divided into:

- bets placed on the outcome of an event (e.g. which team wins or loses); and
- betting on 'micro'-events (also known as 'ball-by-ball' betting) on a discrete contingency within an event *after* the event has started (e.g. whether the next serve in a tennis match will be an ace). Betting on such contingencies is referred to as exotic betting (explained below).

10.6 'In-play' betting is discussed further at the end of this chapter in the context of its regulation under the IGA.

### ***Exotic bets***

10.7 Exotic betting (also known as spot-betting) involves placing wagers on individual events and contingencies within a particular event or match, such as the number of goals scored, points won or penalties awarded. These 'micro'-events may pertain to a certain team or to a certain player, or to certain time periods (e.g. within the first set of a tennis match, or the fourth over of the first innings in a cricket match). These bets on individual events within a match may be placed *prior* to an event online, over the phone or in person, or *during* an event by phone or in person (not online). The existence of such bet types is a relatively recent practice and is discussed in further detail in chapter 14.

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5 Department of Broadband, Communications and the Digital Economy, *Review of the Interactive Gambling Act 2001*, Discussion paper, August 2011, p. 26.

6 The Productivity Commission also notes that minor forms of wagering exist, such as wagering on the outcome of elections or television shows, but that this is a very small market. See 'other issues' in chapter eight.

7 See Australian Racing Board, *Submission 27*, p. 9; Sportsbet, *Submission 44*, p. 4. 'In-play' or 'in the run' betting is offered on racing in some jurisdictions but is more attractive for sporting events lasting longer than a few minutes—see Australian Racing Board, *Submission 27*, p. 9.

## Which sports are involved?

10.8 Betting occurs on all of Australia's major national sports: Australian Football League (AFL), National Rugby League (NRL), rugby union, cricket, tennis, netball and soccer.<sup>8</sup> Australians can also place bets on international sporting events. Other sports including golf, basketball, cycling, motor racing and swimming all attract sports betting activity.<sup>9</sup> However, the majority of wagering in Australia is conducted on horse-racing.<sup>10</sup>

### *Wagering and the Australian racing industry*

10.9 The Australian racing industry is treated somewhat differently to other sports in terms of gambling, as wagering is fundamental to the interest in racing:

For much of Australia's history, wagering on horse, harness and dog races has been the most popular form of gambling. The three racing codes, and in particular thoroughbred horseracing, have a cultural significance to many Australians that exists regardless of any monetary stake they may have. Nevertheless, wagering underpins most of the interest in racing, which makes these industries mutually interdependent.<sup>11</sup>

10.10 The Australian Racing Board compared race wagering and sports betting:

Sports betting shares some common features with race wagering in that it is active, participatory, and benefits from prior knowledge. Probably the key difference is that betting is a secondary reason for people to follow sports, whereas in racing, wagering is typically the main reason. Also, many more people believe they have the know-how and insight to the outcome of sporting fixtures than horse races.<sup>12</sup>

10.11 Racing is a 'gambling based activity and is totally reliant on betting proceeds for its existence'.<sup>13</sup> State and territory governments administer and regulate the racing industry differently to other sports through governing bodies in each jurisdiction. Chapter 11 will cover some of the pressures facing the racing industry in light of the growth in online wagering, including competitive tensions arising from the increasing popularity of betting on other sports.

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8 Coalition of Major Professional and Participation Sports (COMPPS), *Submission 16*, p. 2.

9 For example, see the Sportsbet website [www.sportsbet.com.au](http://www.sportsbet.com.au) for a list of sports on which bets can be placed.

10 Productivity Commission, *Gambling*, vol. 1, Commonwealth of Australia, Canberra, 2010, p. 2.37.

11 Productivity Commission, *Gambling*, vol. 2, Commonwealth of Australia, Canberra, 2010, p. 16.2.

12 Australian Racing Board, *Submission 27*, p. 8.

13 NSW Bookmakers' Co-operative Limited, *Submission 11*, p. 2.

## Prevalence of sports betting and race wagering

10.12 While expenditure on race wagering has remained stable over the last twenty years, sports betting has grown rapidly since the mid 1990s.<sup>14</sup> Betfair's submission notes that 'sports betting is one of the fastest growing areas of the gambling market and is now estimated to be worth \$250 million annually in Australia'.<sup>15</sup>

### *Comparing trends in race wagering and sports betting*

10.13 While sports betting growth rates are high, the overall share of sports betting in both the wagering and broader gambling market remains small.<sup>16</sup> The Productivity Commission's (PC) 2010 report on gambling showed that within the overall Australian gambling market, the comparative market share for race wagering was 14 per cent and for sports betting it was one per cent.<sup>17</sup>

10.14 The NSW Bookmakers' Co-operative Ltd noted a trend towards declining participation in betting on races and the increasing popularity of sports betting:

Race wagering participation rates are generally flat and falling in many instances. On-course racing attendances, which vitally affect our members' viability, are stagnant. Excluding "once a year" days and prime carnivals, "normal" meeting attendances are generally in long term decline.

While off-course race betting expenditure levels remain more stable, only sports betting has shown any significant growth in participation rates and consumer expenditure, and this is off very low base levels when compared with racing and other mainstream forms of gambling.<sup>18</sup>

10.15 However, the PC report does not go so far in its assessment of participation trends in race wagering and sports betting:

During the 2000s, racing has remained a more pervasive form of wagering than sports betting...Both racing and sports wagering are subject to several annual special events (such as the Melbourne Cup or football grand finals), and therefore attract irregular or occasional gamblers. Participation in race wagering appears to have fallen marginally. Participation rates for sports wagering have been up in some jurisdictions and down in others.<sup>19</sup>

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14 Productivity Commission, *Gambling*, vol. 1, Commonwealth of Australia, Canberra, 2010, p. 2.37.

15 Betfair, *Submission 12*, p. 16.

16 NSW Bookmakers' Co-operative Ltd, *Submission 11*, Attachment 1, p. 2.

17 Productivity Commission, *Gambling*, vol. 1, Commonwealth of Australia, Canberra, 2010, p. 2.5.

18 NSW Bookmakers' Co-operative Ltd, *Submission 11*, Attachment 1, p. 2.

19 Productivity Commission, *Gambling*, vol. 1, Commonwealth of Australia, Canberra, 2010, p. 2.38.

### ***Wagering expenditure***

10.16 The PC also noted significant increases in sports betting expenditure over the past two decades; however, total expenditure remains low in comparison with wagering on racing events (\$171 million for sports betting versus \$2.37 billion for race wagering in 2006-07).<sup>20</sup>

10.17 More recent figures show that around \$205 million was spent by gamblers on sports betting in 2007–08.<sup>21</sup> Roy Morgan research estimates that for the 12 months to September 2011, Australians spent \$2.6 billion betting on races, down from \$2.7 billion in 2002. Sports betting expenditure increased from \$0.4 billion to \$0.8 billion over the same period.<sup>22</sup>

10.18 According to media reports of IBISWorld's assessment of the industry, sports betting expenditure has grown by an average of 12 per cent a year over the past five years, compared to 1.2 per cent on poker machine spending and 0.5 per cent growth on betting on horse-racing.<sup>23</sup>

### **The growth of online wagering**

10.19 Many submitters to the inquiry commented on the recent growth of sports betting and wagering and the influence of new online technologies on this growth. However, the extent to which the availability of online platforms (i.e. internet, smart phone technology) has driven growth in sports betting cannot at this stage be measured clearly.

10.20 In terms of expenditure, Dr Sally Gainsbury and Professor Alex Blaszczynski cited a Global Betting and Gaming Consultants estimate that Australians will spend \$611 million on online sports betting in 2011, representing a 230 per cent increase from 2006.<sup>24</sup> By 2016-17, online wagering is expected to be worth \$10.6 billion or 38 per cent of the gambling industry.<sup>25</sup>

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20 Productivity Commission, *Gambling*, vol. 1, Commonwealth of Australia, Canberra, 2010, p. 2.37.

21 *Australian Gambling Statistics, 1982–83 to 2007–08, 26th Edition*, p. 227. Expenditure is defined as 'the net amount lost or, in other words, the amount wagered less the amount won, by people who gamble. Conversely, by definition, it is the gross profit (or gross winnings) due to the operators of each particular form of gambling'.

22 Roy Morgan research, 'Australians spent \$18.5 billion on gambling in the 12 months to September 2011; Spending on pokies falls to \$11.2 billion', Media Release, 24 November 2011, <http://www.roymorgan.com/news/press-releases/2011/1489/>, (accessed 1 December 2011).

23 Danielle Teutsch, 'Perfect storm fear for problem gamblers', *Sun Herald*, 30 May 2010, p. 21.

24 Dr Sally Gainsbury and Professor Alex Blaszczynski, *Submission 7*, p. 8.

25 IBISWorld, 'Horse, sports betting in Australia: Market Research Report', June 2011, quoted in John Stensholt, 'Gambling on steroids', *Australian Financial Review*, 1-2 October 2011, p. 45.

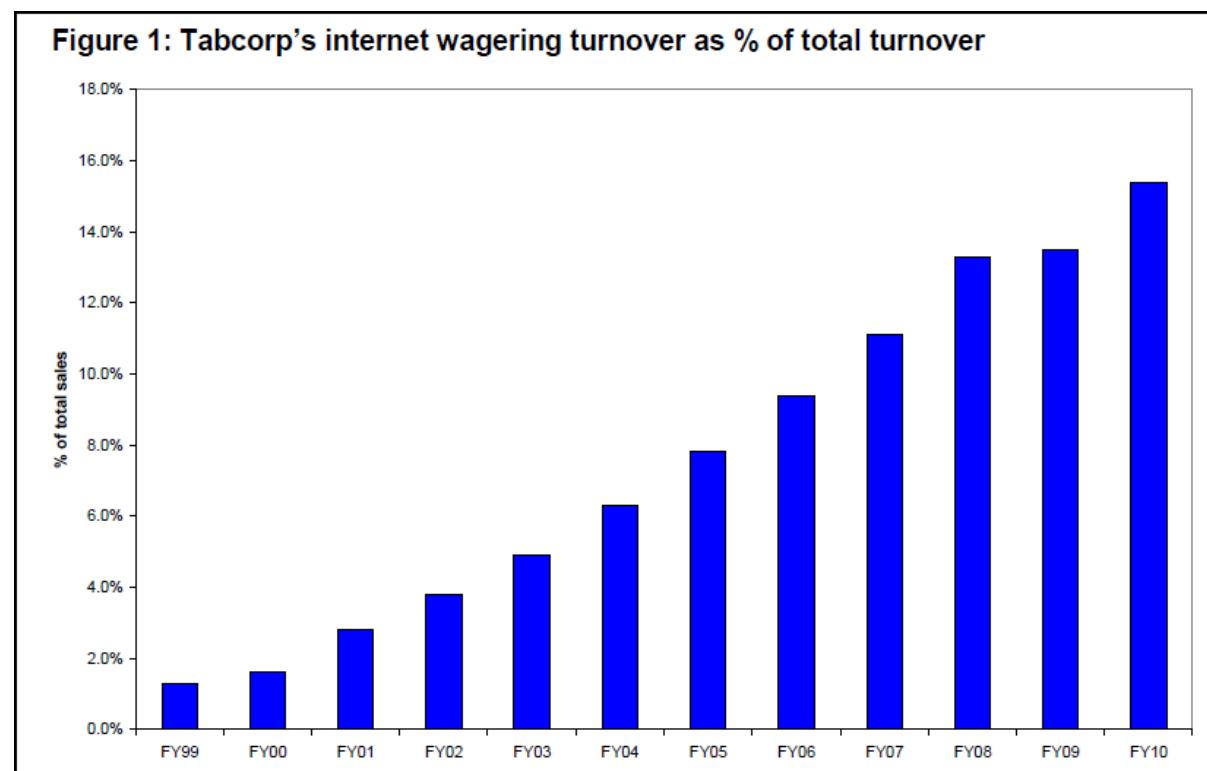
10.21 The Australian Racing Board's submission also highlighted recent growth in internet betting for sports and race wagering:

While phone betting is still twice the volume of internet betting, growth in the latter is strong. In 2006/07, betting via the internet accounted for 10 per cent of wagering on thoroughbred racing through all Australian TABs, a three-fold increase over five years. The internet is much more important for sports betting than race wagering, and for corporate bookmakers and Betfair than the TABs, so the total amount of internet wagering overall figure is probably several percentage points higher, in the order of 13 per cent, excluding online wagering on offshore sites.<sup>26</sup>

10.22 According to Tabcorp, the internet has allowed wagering providers to expand their market at low cost and to become 'very competitive':

Corporate bookmakers have established their online businesses in jurisdictions that charge little or no wagering tax and racing industry fees, and have regulatory structures that allow them to offer products and services not permitted in other jurisdictions.<sup>27</sup>

10.23 Tabcorp's submission included the following graph, showing the company's internet wagering turnover as a percentage of total turnover over the last decade:



26 Australian Racing Board, *Submission 27*, p. 10.

27 Tabcorp, *Submission 22*, p. 4.

10.24 In its first quarter report for 2010–11, Tabcorp reported that its online betting turnover was up by 18 per cent, from \$424 million to \$508 million over the past year to the end of September 2011.<sup>28</sup>

10.25 Appearing on SBS TV's *Insight* program in September 2011, Neil Evans of Centrebet stated that online operations constituted the majority share of Centrebet's business and spoke about its growth:

Online is 90–95 per cent – it is virtually the entire operation...The growth is big and that's come about because I think in the world today the idea of taking fixed odds and having an account or multiple accounts is very attractive for punters.

The markets are there now for everyone. No one can say anymore, "I'm quite fascinated by betting but I don't bet because there is nothing in the area I like or know something about." Now there is a market for everyone...[I]t is a very rock solid growth industry, particularly in a volatile world...

[T]his financial year...I think we've got about 12,000, 13,000 new registrations in two and a half months of which 9,000 to 10,000 are actively playing.<sup>29</sup>

### ***Reasons for the growth of online wagering***

10.26 While it is difficult to identify the causes of the recent growth in sports betting, Frontier Economics suggested that:

While the data on real expenditure can establish that the market for wagering has grown, they are not sufficient to establish on their own what the causes are...

Consequently, while it is true that [online] operators such as Sportsbet have increased their share of the market, it would be incorrect to infer that they they have driven an increase in wagering overall. Rather the flat per capita expenditure on wagering suggest[s] that the growth of corporate bookmakers has been driven by substitution away from traditional wagering service providers.<sup>30</sup>

10.27 Betchoice also acknowledged that it was difficult to quantify or determine the factors which may be responsible for the growth in online wagering:

The most obvious explanation seems the most likely, namely that the growth is simply a function of the relatively recent liberalisation of the activity. A similar growth curve is evident with other forms of gambling after liberalisation...

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28 Neil Wilson and AAP, 'Tabcorp cashes in on online betting', *Herald Sun*, 12 October 2011.

29 Neil Evans, Centrebet, 'Online Gambling', *Insight*, SBS TV, 13 September 2011, <http://www.sbs.com.au/insight/episode/index/id/428/Online-Gambling#transcript> (accessed 11 October 2011).

30 Sportsbet (Frontier Economics Paper, Appendix 2), *Submission 44*, pp 39–40.

In the case of Betchoice, we believe our growth has also been due to the fact that we are able to offer customers a more customised service than the “one size fits all” approach of traditional wagering outlets. Betchoice customers have greater control over which events they wish to bet on and are able to follow the events that interest them rather than those that are simply the most popular. This flexibility is a function of the versatility afforded by the technology underpinning our wagering systems and the more liberal licensing regime in the Northern Territory.<sup>31</sup>

10.28 The main drivers of the growth in online betting were identified by the Australian Racing Board as follows:

1. Its relative novelty, though obviously private betting on sports events is long-standing. Its growth is closely linked to the growth in sports coverage on pay TV.
2. The fastest-growing segment of the population, Generation Y, is keenest on sports betting. The average age of sports bettors is about ten years younger than that for race wagerers.
3. The range of sports events is extremely broad and international. The past decade has seen the commercialisation of many sports codes and a rapid growth in the number of matches played or events staged.
4. The proliferation of sports betting sites which are often treated more leniently by regulators than online gaming (mainly casino games).<sup>32</sup>

10.29 The NSW Bookmakers' Co-operative Ltd pointed to a substitution effect from traditional betting to online formats:

It is reasonable to attribute a significant proportion of this growth to transfers of traditional telephone and 'retail' forms of betting. In other words, many consumers have found that interactive channels of betting are more convenient and 'informative' [than] the traditional means.<sup>33</sup>

10.30 Advertising was singled out among submitters as a crucial factor in the growth of online sports betting and is covered as a separate topic in chapter 12.

### ***A national wagering market***

10.31 As a result of the development of online technologies, some submitters argued that a 'national wagering market' has evolved. Tabcorp outlined the history and development of the new online industry and illustrated how the 'borderless nature of the internet' has affected the market as well as consumer behaviour:

Historically the industry has consisted of:

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31 Betchoice, *Submission 43*, p. 11.

32 Australian Racing Board, *Submission 27*, p. 9.

33 NSW Bookmakers' Co-operative Limited, *Submission 11*, Attachment 1, p. 3.

- State/territory-based totalisators, offering wagering services on-course, in retail shops, over the telephone and, more recently, over the internet, and
- Bookmakers, offering fixed odds wagering services on-course and more recently, over the telephone and internet.

Punters in a particular state or territory have traditionally bet with their home state's totalisator which, in turn, made significant returns to the local racing industry. Although bookmakers make a small contribution to racing industry funding, between 70% and 90% of the racing industry's funding comes from TAB operations, depending on the state or territory...

The borderless nature of the internet now means that whereas wagering has previously operated as a series of state-based markets, it has evolved to become a national market. For example, a Victorian punter can now bet with a Northern Territory bookmaker on a South Australian race or sporting event.<sup>34</sup>

10.32 Tabcorp also pointed out that the online platform has made wagering much more accessible across Australia:

Australian wagering customers have traditionally bet in retail betting shops, on-course or over the telephone. The growth of the internet has changed this with some account customers preferring to transact with wagering operators online...

The borderless nature and immediacy of the internet means that Australians can now place bets with wagering operators not licensed in their home state much more readily than before. For example, Victorian and NSW residents can now easily locate and place bets with interstate corporate bookmakers and betting exchanges, or with international operators established to target customers in Australia. These operators are not precluded from accepting such bets. The immediate nature of the internet has enabled customers to compare products offered by wagering operators and choose the product that best appeals to them.<sup>35</sup>

### ***Advantages of online betting***

10.33 The attraction and benefits of online betting were described by a number of submitters. The NSW Bookmakers' Co-operative Ltd outlined the advantages that the online format had brought to the industry and the flow-on benefits for consumers, such as increased convenience:

From a racing and wagering industry perspective, internet betting is a vital business tool for many Australian on-course bookmakers and wagering operators in general. It has enabled the industry to maintain consumer interest at a time when competition for the gambling dollar has been high and in an era where race wagering has consistently lost market share to other forms, especially gaming machines.

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34 Tabcorp, *Submission 22*, p. 12.

35 Tabcorp, *Submission 22*, pp 4–5.

Put simply, the consumers of race and sports wagering services highly value the benefits and convenience that the internet has provided. They [have] progressively shifted their access methodology from traditional "face to face" and telephone forms of betting, to the internet and other newer communications technologies...

To summarise, the internet and similar telecommunications technologies are keeping the wagering market share in the broader gambling industry afloat. These technologies are vitally important to the consumers of betting services, the providers of these commercial activities (including bookmakers) and the Australian Racing Industry which relies heavily on the resultant revenues for its viability and growth.<sup>36</sup>

10.34 A range of other advantages for both providers and consumers were nominated by the Australian Racing Board:

- Bookmakers can now locate in low cost, low regulation jurisdictions, remote from customers;
- New wagering operating models are possible such as betting exchanges;
- Information on, and coverage of, racing and sports events is packaged with interactive wagering (though pay-TV probably plays a bigger role still);
- Uncertainty exists about the scope and extent of any intellectual property rights which may affect gambling activities; and
- Comparing odds among TABs/bookmakers is much easier for bettors, with dedicated websites that identify the best odds on each race.<sup>37</sup>

10.35 While such advantages were readily acknowledged, traditional bookmakers and the racing industry also expressed concern to the committee about the growing influence of online corporate bookmakers and the regulatory frameworks under which they currently operate. These concerns are discussed in more detail in the next chapter.

## **Wagering providers**

10.36 Wagering services on racing and sports are provided by on-course bookmakers, corporate bookmakers, totalisator agency boards (TABs), totalisators and betting exchanges.

10.37 The types of wagering providers that operate in Australia have been summarised by the PC as follows:

- on-course bookmakers, individuals who are licensed by states and territories to operate at racing venues. They offer fixed odds, usually

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36 NSW Bookmakers' Co-operative Ltd, *Submission 11*, p. 2.

37 Australian Racing Board, *Submission 27*, p. 10.

- provide simpler wagering products such as 'win' and 'place' bets, and can operate face-to-face and over the phone and internet;
- corporate bookmakers, which provide services over the phone and internet. They tend to have fewer restrictions than on-course bookmakers (e.g. 24 hour service) and offer a wider range of betting products. The major corporate bookmakers operating in Australia are: Sportsbet, Betchoice, Betezy, Betstar, Centrebet, Centreracing, Luxbet, Overtheodds and Sportingbet Australia;<sup>38</sup>
  - totalisators, which are operated by TABs and do not offer fixed odds bets. All bets are pooled, with the winning bets sharing the pool (minus a percentage taken by the operator). The final dividend is continuously updated prior to a race;
  - TABs, which refer to state and territory bodies exclusively licensed to operate totalisators. They also offer off-course retail wagering services, as well as on-course phone and internet wagering services. Modern TABs provide a range of other wagering products (e.g. most TABs offer sports betting and Tabcorp in the Northern Territory also owns Luxbet); and
  - betting exchanges, similar to a stock exchange, where wagers can be traded at different prices and quantities.<sup>39</sup>

10.38 The following table<sup>40</sup> from the PC report illustrates the type of wagering services offered by online operators:

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<sup>38</sup> Sports Alive, an online bookmaker registered the ACT, was originally listed in the PC's report. However, Sports Alive went into liquidation on 25 August 2011 – see Henrietta Cook, 'Sports Alive a long shot to survive two years ago, company papers show', *The Canberra Times*, 10 September 2011, p. 3.

<sup>39</sup> Productivity Commission, *Gambling*, vol. 2, Commonwealth of Australia, Canberra, 2010, p. 16.6.

<sup>40</sup> Productivity Commission, *Gambling*, vol. 1, Commonwealth of Australia, Canberra, 2010, p. 2.42.

**Table 2.20 Examples of online wagering operators**

<i>Online wagering operator</i>	<i>Licensing jurisdiction</i>	<i>Type of wagering</i>	<i>Type of wagering events</i>
www.tab.com.au	NSW, Victoria	totalisator, fixed odds	racing, sports
www.acttab.com.au	ACT	totalisator, fixed odds	racing, sports, Keno, racing simulation.
www.ozbet.com.au	Western Australia	totalisator, fixed odds	racing, sports
www.centrebet.com.au	Northern Territory	totalisator, fixed odds	Australian and international racing, sports
www.tabonline.com.au	South Australia, Northern Territory, Queensland	totalisator, fixed odds	racing, sports
www.thetote.com.au	Tasmania	totalisator, fixed odds	racing sports
www.betfair.com.au	Tasmania	betting exchange	racing, sports, racing simulation, novelty bets
www.betchoice.com	Northern Territory	fixed odds	racing, sports
www.luxbet.com.au	Northern Territory	fixed odds	racing, sports

10.39 The effects of different regulatory and licensing regimes across states and territories on the growth of corporate bookmakers are illustrated in the table below, also from the PC report.<sup>41</sup>

**Table 2.21 Growth of corporate bookmakers from 2003 to 2008**

<i>Jurisdiction</i>	<i>Turnover growth 2003 to 2008</i>
	%
Northern Territory	171
ACT	10
Victoria	-6
South Australia	-6
Tasmania	-10
New South Wales	-20
Western Australia	-30
Queensland	-33
Total	47

Source: Australian Bookmakers' Association, (sub. 243, p. 6).

10.40 A number of wagering providers made submissions to the committee's inquiry.<sup>42</sup> Sportsbet and Betfair also appeared to give evidence before the committee. An outline of these companies' business operations is set out below.

41 Productivity Commission, *Gambling*, vol. 1, Commonwealth of Australia, Canberra, 2010, p. 2.42.

42 Tabcorp, *Submission 22*; Betchoice, *Submission 43*.

### **Sportsbet**

10.41 Sportsbet told the committee that it is Australia's largest corporate bookmaker, with over 200,000 active customers in the last financial year. It estimates that it holds 20 per cent of the Australian online wagering market:

sportsbet.com.au is one of Australia's leading internet betting and entertainment websites, which is fully owned by Irish listed company Paddy Power. Paddy Power is headquartered in Dublin and is listed on the Dublin and London stock exchanges. It has a market capitalisation of over A\$2 billion and has over 2,500 employees...

Sportsbet is licensed as a bookmaker in the Northern Territory and is regulated by the Northern Territory Racing Commission. Sportsbet is a globally competitive e-commerce business which provides high value, high tech jobs for Australians. Sportsbet employs more than 250 people, with 200 people based in Melbourne and an additional 50 in Darwin.<sup>43</sup>

### **Tabcorp**

10.42 With the privatisation of TABs over the last 15 years (except in Western Australia, Tasmania and the ACT), Tabcorp has emerged as one of Australia's leading wagering operators (while also managing keno and venue-based gaming interests). Tabcorp manages the TABs in both Victoria and New South Wales through a network of 2,750 agencies and licensed venues. It also owns TAB Sportsbet, which provides fixed odds betting on racing and sports, as well as Luxbet, a national online racing and sports bookmaker licensed in the Northern Territory.<sup>44</sup> It employs more than 3,000 people in Australia and serves millions of customers each day.<sup>45</sup>

10.43 In July 2011, Tabcorp signed a \$410 million exclusive wagering licence with the state of Victoria which will take effect from August 2012. Under this deal, the Victorian racing industry will receive half of Tabcorp's Victorian TAB profits instead of a quarter (amounting to at least \$1 billion between August 2012 and June 2015).<sup>46</sup>

### **Betting exchanges**

10.44 Betting exchanges are similar to the stock market in that 'outcomes' can be traded during the course of an event (i.e. customers can back one outcome or 'buy' at a high price and then sell or 'lay' it at a lower price):

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43 Mr Cormac Barry, Chief Executive Officer, Sportsbet, *Committee Hansard*, 11 August 2011, p. 1.

44 Gaming, Racing and Wagering Conference 2011, Confirmed Speakers, Ms Kerry Willcock, Tabcorp,  
[http://www.beaconevents.com/2011/grwa2011/en/Speaker\\_Info/speaker\\_bio.jsp?num=34](http://www.beaconevents.com/2011/grwa2011/en/Speaker_Info/speaker_bio.jsp?num=34)  
 (accessed 4 October 2011).

45 Tabcorp, *Submission 22*, p. 14.

46 Reid Sexton, 'State in \$410m Tabcorp deal', *The Age*, 20 July 2011.

A punter places a lay bet when he or she thinks the odds are too short – it's the same as an investor selling shares when he or she thinks the price has peaked.<sup>47</sup>

10.45 Tabcorp's submission provided an overview of betting exchanges, noting that Betfair is Australia's only licensed betting exchange:

Betting exchanges are a relatively new form of wagering, allowing customers to bet against each other on a variety of events at mutually agreed odds.

Betting exchanges were introduced in Great Britain in 2000. In January 2006 the Tasmanian Government licensed the conduct and operation of Betting Exchanges in Tasmania under the Gambling Control Act (TAS) 1993...

The Tasmanian-licensed betting exchange, Betfair, now matches bets on racing and sporting events in all Australian jurisdictions and across all codes.<sup>48</sup>

### *Betfair*

10.46 Giving evidence to the inquiry, Betfair alluded to the 'degree of controversy' that had accompanied its entry into the Australian marketplace in 2006. Mr Andrew Twaits, Betfair's Chief Executive Officer, remarked that this sentiment was:

...predominantly driven by fears about the impact that our entry would have on the TAB operations and revenue flowing to the racing industry. Without putting words in the mouth of the racing industry, I think that most of those fears have been allayed. We have now been in operation in Australia for over five years and we are making contributions right around the country to the racing industry and to the sports industry, and we initiated those contributions. We are seeing that consumer preferences are changing. There has definitely been an increase in the willingness of consumers to transact online. And that is not just a phenomenon in wagering; you are seeing that in retail and other forms of purchasing products and services. We are also seeing a shift in the younger customer demographic to interest in betting on sports rather than racing.<sup>49</sup>

10.47 Betfair told the committee that its betting exchange service was similar to 'eBay for wagering'<sup>50</sup> and provided further detail in its submission:

Betfair...provides products through a betting exchange platform, where punters effectively bet against one another, in a similar way to buying and selling on the stock exchange. Technically, Betfair operates in a similar

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47 Betfair, *Submission 12*, p. 19.

48 Tabcorp, *Submission 22*, p. 6.

49 Mr Andrew Twaits, Chief Executive Officer, Betfair, *Committee Hansard*, 11 August 2011, p. 21.

50 Mr Andrew Twaits, *Committee Hansard*, 11 August 2011, p. 21.

way to a bookmaker – accepting bets from customers, but only doing so where it is immediately and fully able to offset the risk of those bets from other customers...

Using sophisticated technology, Betfair administers markets where punters effectively bet against each other. For each transaction one punter is required to 'back' a result and another is required to oppose that outcome by placing a 'lay' bet. Punters are not aware of the identity of their opponents, but Betfair and its regulators have capacity to view the transactions of every customer. Betfair's revenue is generated by a commission that is generally between two and five per cent of a punter's net winnings on a particular market.<sup>51</sup>

10.48 Further discussion of the concept and merits of betting on losing outcomes is contained in the next chapter.

### Sports betting and problem gambling

10.49 Data from counselling services that treat problem gamblers shows that, nationally, the percentage of problem gamblers reporting harms associated with sports betting is around seven per cent. Western Australia has the highest percentage of problem gamblers who report harms associated with sports betting (20 per cent), while Tasmania reports the lowest percentage (five per cent).<sup>52</sup> This suggests that a small but notable proportion of gamblers experience harms from sports betting.

10.50 Researchers from the University of Sydney Gambling Treatment Clinic (the Clinic) drew attention to the increasing number of clients presenting to the Clinic with problematic sports betting:

Indeed, from representing less than 5% of our clients in the 2006-07 financial years, problem gamblers with sports betting problems now represent 15-20% of new clients in the current financial year. Thus, whilst still representing a minority, reported problems with sports betting are rising, and rising rapidly.<sup>53</sup>

10.51 Illustrating that the problems appear to be exacerbated by the online format of sports betting services, the Clinic stated that:

...the majority of clients report accessing online betting sites from their home or work computers, on their phones, or through university/educational facilities or other public computers. Many clients report gambling sessions that last for long hours as they bet on a range of sports and events. As they are able to bet freely on events from anywhere in the world, they often spend many hours betting on things such as Australian

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51 Betfair, *Submission 12*, pp 3–5.

52 Productivity Commission, *Gambling*, vol. 2, Commonwealth of Australia, Canberra, 2010, pp F.8–9.

53 University of Sydney Gambling Treatment Centre, *Submission 9*, p. 1.

sports during daylight hours and sports in U.S.A. or in Europe through the night.<sup>54</sup>

10.52 The Clinic also reported that the amounts wagered by clients fluctuated markedly and depended on a number of factors including:

...funds available, confidence in the bet and the extent of recent wins and losses. In contrast to most other gambling clients however, including those players who gamble excessively on Electronic Gaming Machines, online sports betting clients do not typically report that the extent of their betting or gambling sessions depends on the time that they have available. Instead, they report that the accessibility of online betting enables them to attend work, spend time at home and socialise. They do, however, typically report that dividing their attention between these tasks and monitoring gambling sites greatly detracts from their productivity and quality of life.<sup>55</sup>

10.53 At a public hearing, Mr Christopher Hunt of the Clinic also described the 'human face' of these addictions to sports betting:

It is not unusual for people even in their late 30s to already be in debt for up to hundreds of thousands of dollars. Then they start to feel low self-worth, they can be quite depressed, they get quite anxious about where their money is coming from. Sometimes if they are gambling at work that can lead to difficulties with their productivity at work, and that can lead to being reprimanded, sanctioned or potentially even terminated at work. Frequently that also [leads] to suicidal thoughts in a significant proportion of our clients.

We also find that the impact on family can be just as great. We do counsel family members of gamblers as well and what we find is that they are often having to do without, from minor things like not being able to go on holidays as much to quite major things like not being able to feed children to the extent that they would normally or not being able to buy new clothes for children or to do renovations on their home. Particularly for spouses of problem gamblers that can lead to a lot of frustration, a lot of depression and anxiety as well, and a lot of hopelessness. So the impacts are diverse and can be quite severe.<sup>56</sup>

10.54 The Clinic also noted that the pervasive promotion of sports betting contributed significantly to their clients' problems and relapses. The impact of sports betting advertising on problem gambling behaviours will be addressed separately in chapter 12.

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54 University of Sydney Gambling Treatment Centre, *Submission 9*, p. 3.

55 University of Sydney Gambling Treatment Centre, *Submission 9*, p. 2.

56 Mr Christopher Hunt, University of Sydney Gambling Treatment Clinic, *Committee Hansard*, 16 September 2011, pp 18–9.

### ***Committee view***

10.55 The committee notes with concern the risks and consequences of excessive sports betting that the University of Sydney Gambling Treatment Clinic described. It also appears that advertising is a significant factor for individuals who are at risk or who already have a problem. The committee acknowledges that further research into the risks and harms associated with online sports betting is necessary to develop appropriate harm minimisation measures.

### **Sports betting and the Interactive Gambling Act**

10.56 As mentioned in chapter six and earlier in this chapter, while the IGA prohibits the supply of interactive gambling services to customers in Australia, online wagering on racing or sporting events is excluded or allowed, with the exception of two forms of 'in-play' betting in the online format:

- betting on the *outcome* of an event; i.e. betting online on the outcome of an event, after the event has started, is prohibited (except for racing events) but customers can still use the TAB or phone for such bets; and
- 'ball-by-ball' wagering (e.g. who will score the first try) in the online format (again, such betting 'in-play' is permitted over the phone or in person).

10.57 During the inquiry, betting agencies unsurprisingly argued that the wagering exemptions in the IGA should continue. The argument was made that online wagering is different from forms of gambling that rely on random events or are pure games of chance. For example, Tabcorp argued that the exclusion of online wagering services from the IGA should be retained because of this fundamental distinction:

TABs take wagers on real events such as horse races or football games, that take place elsewhere and are not controlled by the gambling operator, as opposed to computer generated random results produced by interactive gaming operators.

Wagering through the internet is merely an alternative method of transmitting bets to the TAB and is equivalent to existing telephone services that the TAB has been operating for many years.<sup>57</sup>

### ***Prohibition of 'in-play' betting online***

10.58 When the IGA was enacted, 'in-play' betting over the internet was considered to be a riskier form of gambling than conducting 'in-play' betting over the telephone or in person. According to the Department of Broadband, Communications and the Digital Economy's (DBCDE) 2011 discussion paper on the Review of the IGA, the IGA currently prohibits 'in-play' wagering in an online format to:

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57 Tabcorp, *Submission 22*, p. 7.

...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).<sup>58</sup>

10.59 The exemption of wagering from the IGA and the prohibition of 'in-play' online betting are discussed further in the following chapter, which covers a number of key issues in relation to wagering and sports betting.

## **State and territory regulation**

10.60 States and territories regulate gambling providers offering services that are not restricted by the IGA, i.e. those which can be licensed and offered in Australia. Mr Richard Windeyer, First Assistant Secretary of the Digital Economy Strategy Division, DBCDE, clarified the distinction between the work of the Commonwealth and the states and territories in the online environment:

One of the points to keep in mind is that in a sense by definition the state based authorities are in the business of regulating providers offering services that they can offer in Australia. The Commonwealth authorities are by and large in the business of looking at and investigating complaints about providers who are offering services that are not able to be licensed and offered in Australia. So, to some extent we are looking at different bits of the environment.<sup>59</sup>

10.61 Submissions on the inquiry's terms of reference were invited from all jurisdictions. However, the committee only received responses from the Tasmanian, New South Wales and Queensland Governments, the Western Australian Department of Racing, Gaming and Liquor, and the Northern Territory Racing Commission. During the inquiry the committee wrote to all regulators to request information. The information below is drawn from submissions, correspondence and other available sources.

### **Tasmania**

10.62 The committee was advised that Tasmania has established a strong framework to regulate gambling and this includes online gaming and wagering:

The regulation of online gaming and wagering has been in place since 1999 and currently Tasmania has two wagering operators licensed under this framework (TOTE Tasmania Pty Ltd (the TOTE) and Betfair Pty Ltd).<sup>60</sup>

10.63 Other than on-course bookmakers,<sup>61</sup> all gaming and wagering licence holders within Tasmania are regulated under the *Gaming Control Act 1993* and the *TT-Line*

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58 Department of Broadband, Communications and the Digital Economy, *Review of the Interactive Gambling Act 2001*, Discussion paper, August 2011, p. 9.

59 Mr Richard Windeyer, First Assistant Secretary, DBCDE, *Committee Hansard*, 19 August 2011, p. 31.

60 Tasmanian Government, *Submission 26*, p. 4.

61 Regulated by the Director of Racing under the *Racing Regulation Act 2004*.

*Gaming Act 1993.*<sup>62</sup> The Tasmanian Gaming Commission (TGC), an independent body established under the Act, is responsible for the regulation of gaming and wagering.<sup>63</sup>

10.64 All gambling that takes place in Tasmania or from Tasmania requires the operators to hold an appropriate licence or permit. The Gaming Control Act was amended in 1999 to extend the regulatory framework to include gaming activities conducted via the internet, by telephone and by any other means of telecommunications. Providers can apply to the TGC for a Tasmanian Gaming Licence but they must meet the required regulatory, financial and probity standards. In January 2008, the UK Government 'recognised Tasmania's strong regulatory framework by granting Tasmania a 'white listing'...to enable gambling operators, licensed in Tasmania to advertise their services in the UK'.<sup>64</sup>

10.65 The regulatory controls governing interactive gambling provide for a number of player protection measures which include:

- the ability for players to impose limits on the amount they can gamble and exclude themselves from participating in gambling activities;
- a prohibition on the provision of credit by a licensed provider; and
- a complaints mechanism.<sup>65</sup>

### **New South Wales**

10.66 The principal pieces of NSW legislation covering gambling are: the *Unlawful Gambling Act 1998*; the *Racing Administration Act 1998*; the *Totalizator Act 1997*; and racing controlling body legislation. NSW legislation is complemented by the IGA 'which includes a 'carve out' in section 8A of the Act that results in the NSW laws not being in conflict with the Act'. The NSW government supports the continuation of this exclusion in relation to traditional wagering and also lotteries.<sup>66</sup>

10.67 The submission acknowledged that wagering laws across jurisdictions are fragmented, but cautions that a national approach should not adopt the lowest common denominator which would lower wagering regulation standards across Australia. Another example of fragmentation is the race fields fees scheme, which governs the payment of fees by wagering operators that allow bets on Australian racing events. Each jurisdiction has its own regulatory framework and fee structure.<sup>67</sup>

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62 Tasmanian Government, *Submission 26*, p. 4.

63 Tasmanian Government, *Submission 26*, p. 9.

64 Tasmanian Government, *Submission 26*, p. 9. The 'white list' is under review as outlined in chapter four.

65 Tasmanian Government, *Submission 26*, p. 11.

66 NSW Government, *Submission 56*, p. 3.

67 NSW Government, *Submission 56*, p. 4.

Although this particular issue is not specified in the terms of reference, it was raised with the committee and is described in more detail in chapter 11.

### ***Queensland***

10.68 The Queensland Interactive Gambling Act is supported by the Interactive Gambling (Player Protection) Regulation 1998. The Act 'applies to prohibit a person from conducting an interactive game in Queensland or allowing a Queensland person to participate in an interactive game, unless the person holds an interactive gambling licence'. The Act:

...incorporates best practice harm minimisation and consumer protection measures that are reflective of the risk posed by internet gambling (such as the requirement to provide limit setting facilities (i.e. pre-commitment)). The Act also provides a regulatory framework that seeks to ensure the probity of licensed interactive gambling providers and the ongoing audit of their activities as well as a legislative complaints process.<sup>68</sup>

10.69 With the introduction of the IGA, no interactive gambling licences have been issued in Queensland. Prior to the IGA, Queensland had one licensee which surrendered its licence when the IGA came into effect.<sup>69</sup>

10.70 TattsBet Ltd holds a sports wagering licence issued under the Queensland Wagering Act. The legislation does not prevent TattsBet from accepting wagers on certain bet types for sporting events. TattsBet may also offer wagering events or contingencies not related to sports or racing; for example, political elections or interest rate changes. However, this requires approval of the minister. To date, TattsBet has only received approval to conduct wagering on the Academy Awards.<sup>70</sup>

### ***Victoria***

10.71 Interactive gaming in Victoria is regulated under the provisions of Chapter 7 of the *Gambling Regulation Act 2003*. To date no licence has been issued under Chapter 7 of the Act.<sup>71</sup>

### ***Australian Capital Territory***

10.72 The ACT Gambling and Racing Commission advised that sports bookmakers and their agents are licensed under the *Race and Sports Bookmaking Act 2001*.<sup>72</sup>

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68 Queensland Government, Department of Justice and Attorney-General, *Submission 55*, p. 8. See also iBus Media, *Submission 42*, pp 25–28.

69 Queensland Government, Department of Justice and Attorney-General, *Submission 55*, p. 8.

70 Queensland Government, Department of Justice and Attorney-General, *Submission 55*, p. 10.

71 Victorian Commission for Gambling Regulation, correspondence received 20 September 2011.

72 ACT Gambling and Racing Commission, correspondence received 22 September 2011.

### ***South Australia***

10.73 The South Australian Office of the Liquor and Gambling Commissioner advised that:

Under the Authorised Betting Operations Act 2000 (SA) (the ABOA) an interstate betting operator who is lawfully permitted to conduct betting operations (under a licence or other authorisation) in another State or Territory of Australia can become authorised to engage in betting by telephone, internet or other electronic means with South Australians. This authorisation is given by the Independent Gambling Authority (SA) (the IGA).<sup>73</sup>

### ***Northern Territory***

10.74 Although the committee did not receive a submission from the Northern Territory Government, it did receive a submission from the Northern Territory Racing Commission (NTRC) which is responsible for the racing industry.<sup>74</sup> Sports bookmakers are licensed pursuant to section 90 of the Racing and Betting Act (NT).<sup>75</sup> The Northern Territory is where Australia's largest online corporate bookmakers are licensed and it is important to understand what attracts them to be licensed in that jurisdiction. For example, Tabcorp pointed out:

Corporate bookmakers have established their online businesses in jurisdictions that charge little or no wagering tax and racing industry fees, and have regulatory structures that allow them to offer products and services not permitted in other jurisdictions. The Northern Territory is one example of a jurisdiction with a flexible regulatory structure. Such an environment enables corporate bookmakers to:

- Offer better prices to customers because of the relatively low tax and racing industry contributions required; and
- Offer a broader product suite to customers, including the ability to bet on novelty events and to extend credit to their customers.

This “arbitrage” of taxes, product fees and regulation has fuelled growth in the corporate bookmaking market...<sup>76</sup>

10.75 The figure below shows the growth in Northern Territory corporate bookmaker turnover over the past decade.<sup>77</sup>

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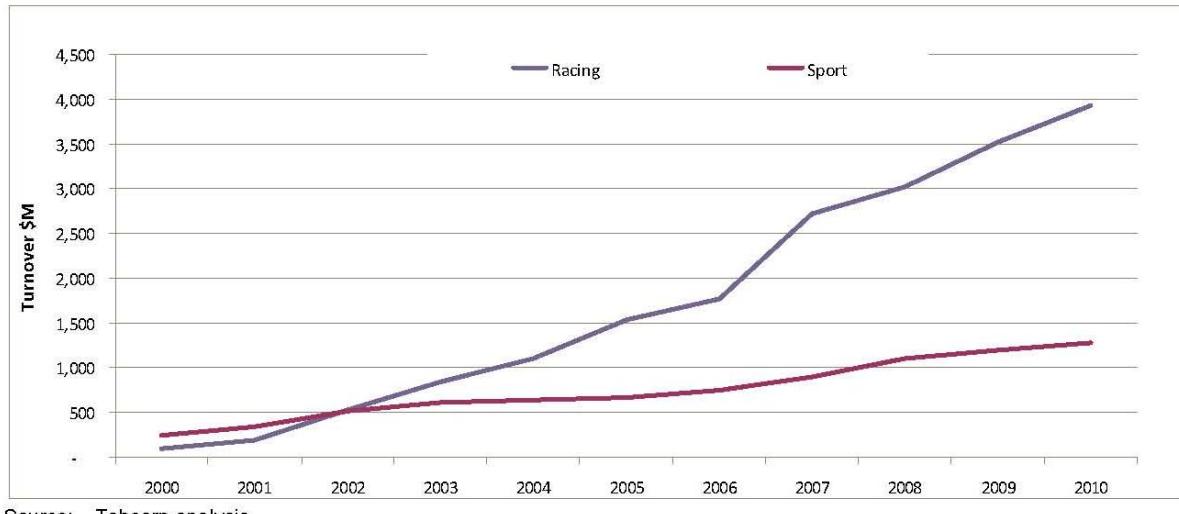
73 Government of South Australia, Office of the Liquor and Gambling Commissioner, correspondence received 15 September 2011.

74 Information on the regulation of racing and sports betting is available from: [http://www.nt.gov.au/justice/licenreg/sports\\_betting.shtml](http://www.nt.gov.au/justice/licenreg/sports_betting.shtml) (accessed 14 October 2011).

75 Northern Territory Racing Commission, *Submission 51*, p. 2.

76 Tabcorp, *Submission 22*, pp 5–6.

77 Tabcorp, *Submission 22*, p. 6.



Source: Tabcorp analysis

10.76 The 2008 Social and Economic Impact Study into Gambling in Tasmania noted the effect of the regulatory regime in the Northern Territory:

A significant proportion of the nation's sports betting expenditure is actually channelled through the Northern Territory. This outcome has been brought about by the Northern Territor[y]s relatively liberal attitude towards sports betting, which has encouraged the development of a significant local sports betting industry that services the nation. For instance, the Northern Territory approved Australia's first sports bookmaker—Centrebet—in December 1992, which went on to launch the nation's first internet based wagering service in August 1996. As a consequence of interstate gambling "exports", average expenditure on sporting betting is relatively high in the Northern Territory with the Territory accounting for 25 per cent of national sports betting expenditure in 2005/06, which is well above its share of the national adult population (0.9 per cent).<sup>78</sup>

10.77 The NTRC advised that:

From 1 January 2010, the Government replaced the Northern Territory's current bookmaker turnover tax with a tax based on gross wagering profits. The Government has capped the tax each Corporate Bookmaker has to pay to a maximum of \$250,000 which is subject to annual indexation based on the Darwin consumer price index.<sup>79</sup>

10.78 The NTRC also explained that each sports bookmaker must:

- a) comply with the mandatory Code of Practice for Responsible Gambling;

78 *Social and Economic Impact Study into Gambling in Tasmania*, Volume 1, Report to the Department of Treasury and Finance Tasmania by the South Australian Centre for Economic Studies, June 2008, p. 74.

79 Northern Territory Racing Commission, *Submission 51*, p. 5.

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- b) have established account opening procedures and steps to ensure accounts cannot be opened by under aged customers;
  - c) ensure all senior personnel, directors and major shareholders have undergone police checks and have not been found guilty of any offence in the last 10 years;
  - d) must have systems in place to properly record bets and monitor all betting patterns;
  - e) report unusual and/or suspicious betting patterns and circumstances to AUSTRAC.<sup>80</sup>

10.79 A number of issues were raised in relation to sports betting and wagering which highlight the lack of regulatory consistency between jurisdictions. These are detailed in chapters 11 and 12.

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80 Northern Territory Racing Commission, *Submission 51*, p. 2.



# **Chapter 11**

## **Key issues in wagering and sports betting**

11.1 This chapter covers the key issues raised with the committee arising from wagering and sports betting activity. These are: the exclusion of wagering from the *Interactive Gambling Act 2001* (IGA); whether the current ban on online 'in-play' betting should remain in place; the risk of underage gambling; the merits of betting on losing outcomes; calls for nationally consistent regulation of wagering providers across states and territories; the practice of credit betting; and the practice of paying commissions to third parties to introduce new clients to betting agencies.

### **Exemption of online wagering from the Interactive Gambling Act**

11.2 As noted in the previous chapter, online wagering prior to the commencement of an event is not restricted by the IGA. The Australian Internet Bookmakers Association (AIBA) noted that the exemption of wagering (and lotteries) from the IGA had been in recognition of 'a different risk profile for each form of gambling'.<sup>1</sup>

11.3 No submitters to the inquiry called for online wagering on racing, sporting and other events to be banned. Of those who mentioned the IGA exemption, all emphasised that it should be maintained. As noted in the previous chapter, Tabcorp supported retaining the exemption.<sup>2</sup> The Australian Racing Board noted that wagering had been exempted from the IGA 'on the basis of the lower relative risk of problem gambling from wagering'.<sup>3</sup> Greyhounds Australasia also argued that:

...race wagering is one form of gambling that is less likely to involve addiction...[E]vidence...has shown that the predominance of problem gambling occurs not with wagering products but with gaming products which are games of pure chance, are repetitive in nature, and do not involve social interaction.<sup>4</sup>

11.4 Greyhounds Australasia<sup>5</sup> and Harness Racing Australia supported the continuing exemption of wagering but only on the basis that it:

...cannot be exploited by internationally "footloose" wagering providers. This term was used by the Productivity Commission in its 2010 report to describe the practice of bookmakers relocating their businesses away from

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1 Australian Internet Bookmakers Association, *Submission 54*, p. 11.

2 Tabcorp, *Submission 22*, p. 7.

3 Australian Racing Board, *Submission 27*, p. 23.

4 Greyhounds Australasia, *Submission 41*, p. 8.

5 Greyhounds Australasia, *Submission 41*, pp 10–11.

established jurisdictions to avoid paying tax or contributing to the controlling body on whose product they are wagering.<sup>6</sup>

11.5 The Australian Racing Board also argued that the UK experience pointed to a potential 'weakness' in the current IGA exemption:

The experience in the UK is that the major bookmaking companies and betting exchange operators have relocated their online businesses to tax havens such as Gibraltar and Malta.

Ensuring payment of industry fees and taxation amongst internationally footloose wagering providers is one of the fundamental challenges thrown up by online gambling.

Accordingly, the IGA should be amended so that compliance with Australian legal requirements (including access to betting records for integrity purposes, compliance with harm minimisation measures and payment of industry fees) are a condition precedent of the IGA wagering exemption.<sup>7</sup>

### **The current ban on 'in-play' betting online**

11.6 The IGA's restriction on 'in-play' (also known as 'in the run') wagering means that online bets can be placed on a sporting event up until the start of play but that no bets can be placed once the match commences. However, betting 'in-play' on the telephone or in person is permitted.

11.7 Betting online 'in the run' on racing events is permitted under the IGA. However, this service is not offered on all racing events by all online bookmakers. For example, Tabcorp only offers live online betting on the Melbourne Cup:

Live betting on racing is difficult in Australia because the majority of our races are sprint races and over in 60 to 90 seconds...That does not make it conducive to live betting, unlike an AFL or NRL game, which plays out over 80-plus minutes.<sup>8</sup>

11.8 A number of wagering providers commented that the restriction on 'in-play' betting on sport was obsolete in light of new developments in technology (see also the discussion of smartphones and other emerging interactive technologies in chapter eight). For example, Betfair's submission stated that:

...restrictions on in-play betting have extended beyond their intended scope, which was to prevent "micro-betting" (or exotic betting) (i.e. discrete contingencies within a broader event, such as whether the next call of a... cricket match would be a wide). The practicality of banning punters from betting in-play using the internet has effectively been rendered obsolete due

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6 Harness Racing Australia, *Submission 52*, p. 6.

7 Australian Racing Board, *Submission 27*, pp 23–24.

8 Nicholas Tzaferis, General Manager of Corporate Affairs, Tabcorp, quoted in Roy Masters, 'Odds shortening on net betting shake-up', *Sydney Morning Herald*, 26 October 2011.

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to the convergence over the last decade (since the Interactive Gambling Act was enacted) of telephone and internet technologies.<sup>9</sup>

11.9 Similarly, the AIBA argued that:

An Australian punter is able to bet “in the run” with an Australian betting provider if he or she uses 19th Century technology – the telephone — but is able to bet with anyone else in the world using 21st Century technology – the internet. Restricting “in the run” betting on a technological basis is not sound. The artificiality is becoming more apparent as new generations of smart phones blur the distinction between “telephones” and other forms of interactive communication.<sup>10</sup>

11.10 The AIBA commented on the reasons why ‘in the run’ online betting had originally been restricted during the development of the IGA:

This approach reflected an inability to distinguish between “betting in the run” and “micro-event wagering” when the Act was developed. “Betting in the run” refers to betting on approved bet types (eg, who will win) after the event has commenced. “Micro-event wagering” is the much publicised notion of whether the next ball bowled in a cricket match will be a googly, or whether a tennis player will serve an ace on the next point. Although the restriction was imposed in the light of concerns with “micro-event wagering”, “betting in the run” was caught up in the process. The amendment allowed “betting in the run” by Australians with Australian betting providers only when it was undertaken by means of the telephone. The internet could not be used.<sup>11</sup>

11.11 Betchoice stated that ‘in-play’ betting was no riskier than other bet types:

First, there is no evidence of which Betchoice is aware indicating that in-play betting products carry greater risks than other types of betting (no evidence was submitted as the basis for the distinction at the time that the IGA was passed). The argument is particularly weak when in-play betting is permitted in terrestrial betting outlets.

Secondly, as noted above, online operators have mechanisms available which can be used to detect and prevent those customers that are at risk of problem gambling behaviour. Ironically, such mechanisms are not necessarily available to terrestrial operators that are permitted to offer these bet types.

Finally, the prohibition of these bet types does not protect individuals. Instead, it results in those wanting such bet types to look outside Australia. There is no shortage of overseas operators offering this type of product. The effect of the IGA in respect of in-play betting is to cause and require Australians to use overseas operators which do not necessarily have the same standards of probity, care or interest in the welfare of the customer as

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9 Betfair, *Submission 12*, p. 11.

10 Australian Internet Bookmakers Association, *Submission 54*, p. 4.

11 Australian Internet Bookmakers Association, *Submission 54*, p. 24.

Australian operators and which are beyond the regulatory reach of Australian authorities.

For these three reasons, Betchoice submits that the prohibition on in-play betting is not appropriate and should be removed from the IGA.<sup>12</sup>

11.12 According to Betfair, 'in-play' betting is 'crucial for hedging bets to minimise [a punter's] exposure or enable a guaranteed return from an event'.<sup>13</sup>

11.13 Mr Paul Aalto also supported a lifting of the current restriction on 'in-play' betting online as it would have advantages for consumers:

Being able to bet in-play has the major advantage for the punter (especially on a betting exchange), of being able to trade out of a market and either lock in a profit or minimise a loss.

Share traders have the ability to do just that - they can take a position and if they reach an acceptable level of profit, trade out and lock in that profit. Vitally, they can do the opposite as well - i.e. if the market moves the wrong way, they can trade out and lock in a smaller loss and save their capital for another investment.

Why shouldn't punters be able to do the same?<sup>14</sup>

### ***Availability of online 'in-play' betting through offshore providers***

11.14 A number of betting providers pointed out the 'anomaly' that Australian wagering operators are permitted to accept online bets from overseas customers, but that Australian customers could not do the same:

Australia is the only jurisdiction in the world that allows online wagering on sport but at the same time prevents punters from using the internet to place in-play bets. To put it another way, except in Australia, wherever it is legal to place a wager over the internet, it is also legal to do so in-play on a racing or sporting event.<sup>15</sup>

11.15 Telephone betting was said to be 'impractical for Australian customers trying to limit risk, particularly in circumstances where an event hangs in the balance':

By the time an Australian customer telephones to make an in-play transaction, the odds will often have changed (through weight of money coming from overseas customers who are betting online). The opportunity to trade out of an existing "position" has thus been missed.<sup>16</sup>

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12 Betchoice, *Submission 43*, pp 14–15.

13 Betfair, *Submission 12*, p. 13.

14 Mr Paul Aalto, *Submission 53*, p. 1.

15 Betfair, *Submission 12*, p. 11.

16 Betfair, *Submission 12*, pp 11–12.

11.16 The Australian Racing Board observed that 'Northern Territory corporate bookmakers and Betfair both promote 'in-play' betting heavily and Australian residents can still place 'in-play' internet bets through UK bookmakers.'<sup>17</sup>

11.17 Sportsbet also noted that 'in-play' betting was offered by a majority of offshore wagering providers to Australian consumers and argued that the prohibition should not be maintained for a number of reasons:

This form of betting is legalised in Australia when conducted over the telephone and in retail outlets operated by the TAB's but ironically is specifically prohibited online. Sportsbet believes this inconsistency should be addressed as a priority to allow online Australian wagering service providers to compete on a level playing field, both with its domestic retail and unregulated international counterparts.

Prohibition of online is not working, exposing domestic consumers to offshore gambling services, along with a number of inherent risks and dangers. In addition, it is more difficult for sporting bodies and authorities to monitor for and detect match fixing when bets are placed with unregulated offshore gambling service providers.<sup>18</sup>

11.18 To illustrate the point further, Sportsbet listed a number of offshore providers that offered 'in-play' betting to Australian customers<sup>19</sup> and concluded:

As noted previously, technology advancements, the proliferation of the internet and the thousands of online gambling websites available to Australians has meant that prohibition of these types of gambling has become less effective over time.<sup>20</sup>

11.19 Betfair cited a recent UK Gambling Commission review of 'in-play' betting across Europe which found that 'in-play' betting did not require special regulatory treatment, nor did it pose a specific risk to problem gambling.<sup>21</sup> Betfair also advocated a liberalisation of online 'in-play' betting, rather than a prohibition:

...in order to prevent Australians from wagering with illegal offshore operators who have no practically enforceable obligations to promote and action responsible gambling nor provide adequate player protection (e.g. identity and funds) measures.<sup>22</sup>

17 Australian Racing Board, *Submission 27*, p. 9.

18 Sportsbet, *Submission 44*, p. 24.

19 See Sportsbet, *Submission 44*, p. 27. For example, William Hill, Ladbrokes, Bluesquare, Skybet, Sportsbook, 188Bet, Victor Chandler.

20 Sportsbet, *Submission 44*, p. 27.

21 Betfair, *Submission 12*, p. 12. See UK Gambling Commission, 'In running (in play) betting: position paper, May 2009, <http://www.gamblingcommission.gov.uk/pdf/In-running%20betting%20position%20paper%20-%20March%202009.pdf> (accessed 4 October 2011).

22 Betfair, *Submission 3* to the Inquiry into the Interactive Gambling and Broadcasting Amendment (Online Transactions and Other Measures) Bill 2011, p. 5.

11.20 The 2011 Review of Victorian Sports Betting Regulation recently recommended that a removal of the ban on 'in-play' betting be placed on the agenda of the COAG Select Council for Gambling Reform:

There was widespread agreement amongst all stakeholders that the ban on internet betting 'in the run' contained in the *Interactive Gambling Act 2001* (Cwlth) serves no useful purpose.

If betting consumers wish to bet in the run, they are still able to do this over the telephone or over the counter at TAB outlets and, if they prefer to do so online, they are able to do so with overseas sports betting providers. The net result of this is that Australian bookmakers lose customers and, consequently, sports controlling bodies lose both revenue and access to betting information.

It was also put to the review that, in some cases, in the run betting was to be preferred. Certain betting markets may be better served from an integrity perspective if they can only be bet on during the game, as this would avoid the possibility of pre-game collusion.<sup>23</sup>

11.21 The Coalition of Major Professional and Participation Sports (COMPPS) supported lifting the ban to ensure online 'in-play' betting is subject to Australian regulatory controls:

Rather than the current system, which has the potential to and probably will drive some gamblers offshore, the sports' preference is that online in-play betting in Australia be legalised under the Interactive Gambling Act so that the betting takes place in Australia and is subject to the regulatory controls that occur in Australia.<sup>24</sup>

### ***Support for maintaining the ban***

11.22 Other submitters, however, argued that the current restrictions on wagering via the online platform should be maintained given the potential for more rapid betting over the internet (i.e. at the touch of a button or key). For example, FamilyVoice Australia stated that in-play betting was likely to 'induce problem gamblers caught up in the excitement of a match [to bet] inappropriate amounts on the spur of the moment'.<sup>25</sup>

11.23 Regis Controls advised against a relaxation of the ban on 'in-play' online sports betting, stating that the practice was targeted at 'younger age groups and provides a real incentive for match and live incident fixing (penalties, cricket no balls, goals missed etc.)'.<sup>26</sup>

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23 Mr Des Gleeson, *Review of Sports Betting Regulation*, 31 March 2011, pp 22–23.

24 Mr Malcolm Speed, Executive Director, COMPPS, *Committee Hansard*, 11 August 2011, p. 15.

25 FamilyVoice Australia, *Submission 11*, Inquiry into the Interactive Gambling and Broadcasting Amendment (Online Transactions and Other Measures) Bill 2011, p. 3.

26 Regis Controls, *Submission 35*, p. 4.

11.24 Dr Jeffrey Derevensky gave evidence to the committee on young people's preference for immediate gratification in relation to gambling activity, suggesting that the availability of 'in-play' betting may be more risky for that age group:

We do know that young people in particular are very much interested in immediate reinforcement. They want to know what the outcome of the event is going to be. So when you look at political races and you can actually bet on the internet who the next Pope is going to be, many adolescents are not really interested in those types of activities. They are interested in knowing in the next quarter on the football game or who is going to win the reality show today as opposed to looking at who is going to be [the] ultimate winner a month from now. Young people are very interested in the immediacy of their gambling and the outcomes of their gambling wagers.<sup>27</sup>

11.25 Concerns were also raised about the opportunities that the interactive TV platform may provide for gambling 'in-play'. For example, Regis Controls stated that:

...many will argue that [gambling via pay TV] is a logical extension of telephone betting but the technology convergence allows the scope for many other forms of gambling, particularly in conjunction with new and overseas based channels.<sup>28</sup>

11.26 Further discussion of the merits of 'in-play' betting forms part of chapter 16 on the Interactive Gambling and Broadcasting Amendment (Online Transactions and Other Measures) Bill 2011. The bill proposes to ban the provision of 'in-play' betting services in all formats.

#### *Committee view*

11.27 The committee considers that the current prohibition on the provision of online 'in-play' betting should remain in place. When the IGA was introduced, 'in-play' betting online was restricted due to concerns about new technology providing a platform for excessive betting 'in the heat of the moment' during a sporting match. While some would argue that today's smartphone technology renders the current prohibition obsolete and inconsistent, the risks associated with rapid 'in-play' betting at the touch of a button and its attraction to young people remain a concern to the committee. 'In-play' betting is still permitted via the telephone and in person, so the committee sees the current restriction on the online format as striking the right balance.

11.28 An alternative to the current ban that could be investigated in the context of research in this area might be to relax the ban on 'in-play' betting online by allowing 'simple' bet types such as which team will win a match or which horse will win a race, but continuing to restrict 'in-play' betting online on micro-events or discrete

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27 Dr Jeffrey Derevensky, *Committee Hansard*, 16 September 2011, pp 2–3.

28 Regis Controls, *Submission 35*, p. 8.

contingencies within an event (i.e. exotic bets, which are discussed in greater detail in chapter 14).

11.29 Given that the effects of the convergence of new technologies in this area are not yet well understood, the committee would support the government commissioning research on the risks and effects of online 'in-play' betting. Until such time as a national independent research institute on gambling (as recommended in chapter two and in the committee's previous report) can undertake this work, the committee recommends that research on the risks of online 'in-play' betting in the Australian context be commissioned as part of the current IGA review.

### **Recommendation 7**

**11.30 The committee recommends that the current prohibition on online 'in-play' betting should remain in place.**

### **Recommendation 8**

**11.31 The committee recommends that the attractions, risks and potential harms of online 'in-play' betting be the subject of appropriate research commissioned by the current IGA review being undertaken by the Department of Broadband, Communications and the Digital Economy.**

### **The risk of underage gambling**

11.32 During the inquiry, the issue of young people under 18 being able to gamble on betting websites was raised. Gambling providers assured the committee that appropriate preventive measures were in place to address the risk of minors gambling.

11.33 Sports betting agencies told the committee that there was a 90-day identity verification period from when a customer set up a new betting account. Sportsbet's Chief Executive Officer, Mr Cormac Barry, admitted that it could be possible for minors to bet and lose money on the website during that 90-day verification period:

**Mr Barry:** It is possible. In order for someone to deposit on the site they have to have a credit card or they have to have access to those facilities. Typically those facilities would not be provided to minors. We make every possible effort to ensure that we verify those individuals as quickly as possible.

**Senator XENOPHON:** Within 90 days?

**Mr Barry:** Yes.

**Senator XENOPHON:** So in 90 days there is the potential for that. Have you identified any minors in terms of the verification period after the 90-day period?

**Mr Barry:** There will be people who fail to provide identification. When you register you provide details and you provide your date of birth. You cannot provide a date of birth that is less than 18. If people are unable to

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provide identity, it would not necessarily be the case that we identified someone—that person would choose not to engage further in the process.<sup>29</sup>

11.34 Betfair's submission also stated that 'strict controls around customer identity and verification also minimise the risk of minors accessing and using Betfair's website'.<sup>30</sup>

11.35 Sportsbet explained to the committee what proof was required to verify identity and argued that the current 90-day verification window struck the right balance between convenience for consumers who wish to register and a duty of care to minors:

**Mr Barry:** Those details are the 100 points. It is the same thing that you would use to open a bank account. You have to provide, as you said, a passport or a drivers licence and a Medicare card or credit card to get up to 100 points.

**Senator XENOPHON:** Sure. So you provide all those cards but no-one actually verifies that the person providing it is the person who is the cardholder, though. By virtue of the online transaction, you cannot, can you?

**Mr Barry:** I think you can. They have to be able to provide that. They are supplying their passport, they are supplying their drivers licence. It has to match up with the address. We are verifying those details against third-party databases through services like Veda. We verify that information with third parties that that information is accurate.

**Senator XENOPHON:** And that takes 90 days effectively?

**Mr Barry:** It actually can be done almost instantly when the customer supplies relevant information.

**Senator XENOPHON:** Do [you] think it would be appropriate for there to be a much shorter window or in fact require the 100 points before someone sets up an account so that you actually have that verification upfront?

**Mr Barry:** I think a barrier of that level would be very onerous. It would only serve to drive customers to use offshore sites that do not have that level of regulation. The key thing when we are looking at regulation here is to strike a balance between allowing the business to operate and to put in processes that protect the customers, whether they are minors or responsible gamblers. It has to be proven that those processes would actually improve those procedures for minors or responsible gamblers. But there is a balance to be struck, because if we have very onerous obligations and very strong barriers to entry to our product it would only serve to drive consumers to offshore operators who operate with much less rigorous regulatory standards. You are exposing the customers to much greater risk...<sup>31</sup>

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29 Mr Cormac Barry, Sportsbet, and Senator Nick Xenophon, *Committee Hansard*, 11 August 2011, p. 4.

30 Betfair, *Submission 12*, p. 6.

31 Mr Cormac Barry and Senator Xenophon, *Committee Hansard*, 11 August 2011, pp 4–5.

11.36 Sportsbet argued that it made 'every practical effort that can be made' to verify that account-holders were not minors and that it was not in the company's business interests to allow this to happen:

We are investing a significant amount of money. That verification process is not free; that costs us a couple of dollars per customer, and when you have hundreds of thousands of customers that adds up to a significant sum of money. I do accept that, as with any process, individuals can find a way to get around it, but we are making every effort possible to ensure that people under 18 do not use the site. We have no economic interest in that occurring, and the same applies to problem gamblers. We are in the business of creating a sustainable, growing business and providing a facility to recreational gamblers, so there is no upside for us in taking money from under-age individuals or problem gamblers.<sup>32</sup>

11.37 The AIBA argued that the concern over the risk of minors being able to gamble online was 'misplaced'. Its submission quoted the 2004 review of the IGA, which found that:

...minors have little motivation to engage in regular, unsupervised Internet gambling because they cannot make any financial gain (unless a parent endorses the gambling) and because parents can easily detect gambling by a minor. Further, methods are available to exclude minors from participating in interactive gambling that are not available to onsite gambling, such as age verification software.<sup>33</sup>

11.38 The AIBA also pointed out that all Australian online betting providers are obliged to:

...obtain and verify the identity of the account holder. The Federal *Anti-Money Laundering and Counter Terrorist Financing Act 2006* requires internet gambling providers to verify a players identity (including age) within 90 days of the account being opened or they must freeze the account.<sup>34</sup>

11.39 Chapter four noted that in the UK, in the event that a customer's age is not verified within 72 hours, the betting account must be frozen. If the user is found to be underage, the provider must return any money played and provide no winnings.<sup>35</sup>

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32 Mr Cormac Barry, *Committee Hansard*, 11 August 2011, p. 9.

33 Department of Communications, Information Technology and the Arts, *Review of the Interactive Gambling Act 2001*, 2004, p. 34, quoted in Australian Internet Bookmakers Association, *Submission 54*, pp 15–6.

34 Australian Internet Bookmakers Association, *Submission 54*, p. 15.

35 UK Gambling Commission, *Licence Conditions and Codes of Practice*, Consolidated version, March 2011, <http://www.gamblingcommission.gov.uk/pdf/Licence%20conditions%20and%20codes%20of%20practice%20-%20consolidated%20March%202011.pdf> (accessed 12 October 2011).

### **Committee view**

11.40 The committee notes that while online gambling providers are required to verify a player's identity within 90 days, there remains a risk that underage persons could still open accounts and gamble on such websites for potentially 90 days, having used the identity documents of adults. The committee understands that a proper balance should be struck between customer convenience and a duty of care towards minors. It notes the licensing conditions and codes of practice set out by the UK which require age verification in 72 hours. Given this example and discussion at hearings, it would appear that identity/age verification in a much shorter timeframe is quite achievable.<sup>36</sup> As gambling is a risky product, the committee believes that to further minimise the risk to minors, the 90-day timeframe to verify identity (including age) should be reduced to 72 hours.<sup>37</sup>

### **Recommendation 9**

**11.41 The committee recommends that through the COAG Select Council on Gambling Reform, governments, in consultation with industry, review the 90-day timeframe to verify identity when opening a betting account, with a view to reducing it to 72 hours, in order to diminish the risk of minors using the current timeframe to gamble illegally.**

### **Betting on losing outcomes**

11.42 The ability to bet on losing outcomes is the main purpose of the betting exchange model, which was explained in the previous chapter. Most submitters who addressed this point supported the concept of the betting exchange, with some advocating the need for greater caution in regulating such a service.

11.43 Betfair, Australia's only licensed betting exchange, explained the rationale for consumers to be able to bet on losing outcomes:

Betting exchanges offer an efficient, cost-effective mechanism for gambling on sports and racing events. The exchange's similarity with a stock market lends itself particularly well to punters seeking to trade during the course of an event by 'backing' one outcome (buying) at a high price and 'laying' it at a lower price (selling). The exchange model allows gamblers to set their own prices and seek better value odds, helping to further extend their gambling dollar.

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36 Exchange between Senator Xenophon and Mr Cormac Barry, *Committee Hansard*, 11 August 2011, p. 4.

37 It is not clear to the committee whether betting agencies are complying with Commonwealth legislation such as the *Anti-Money Laundering and Counter Terrorist Financing Act 2006* or state and territory legislative requirements (see Mr Cormac Barry, *Committee Hansard*, 11 August 2011, p. 3: 'We are required by Darwin for a customer to verify their identification within 90 days, and a customer cannot make a withdrawal until that verification has taken place'). Whatever the legislation, there is nothing to stop companies from undertaking to conduct identity checks in a significantly shorter timeframe such as 72 hours.

It is not immediately apparent to some people that laying generally involves risking a larger sum of money for the potential return of a smaller sum of money (e.g. a lay bet of \$10 at odds of 11.0 means risking \$100 for the chance to win just \$10). Backing is the reverse in that it is risking a smaller sum of money for the potential return of a larger sum of money (e.g. a back bet of \$10 at odds of 11.0 means risking just \$10 for the chance to win \$100). A punter places a lay bet when he or she thinks that the odds are too short – it's the same as an investor selling shares when he or she think[s] the price has peaked.

When a customer places a bet on a winning outcome with any betting operator, they are betting that the other outcomes will lose. This is clearly illustrated in head to head sporting contests when a bet to win on one team is the equivalent of a bet for the opposing team to lose. In respect of contests with more than two runners (for example horse racing), a betting exchange provides an efficient platform for customers to lay a horse.<sup>38</sup>

11.44 As a worldwide operation, Betfair's Australian arm is regulated by the Tasmanian Gaming Commission in accordance with the *Gaming Control Act 1993*. Under this Act, Betfair must adhere to:

- the prevention of wagering on illegal events;
- allowing the Tasmanian Gaming Commission to override any betting exchange rules if it deems they are oppressive or unfair;
- allowing the betting exchange to freeze player funds immediately where inappropriate activity is suspected; and
- preventing wagering on an event the Commission considers unfit for betting exchange wagering.<sup>39</sup>

11.45 Betchoice, a Northern Territory online bookmaker, praised the Tasmanian regulatory approach to Betfair's operations:

The Tasmanian legislation under which [Betfair] operates include strict provisions that aim to prevent the corruption of integrity and which have worked well. Betchoice submits that this should be a model for regulation of the wagering sector generally, namely that regulation developed with all stakeholders is preferable to prohibition that only drives the market underground.<sup>40</sup>

11.46 Mr Andrew Twaits, Betfair's Chief Executive Officer, explained why a betting exchange service was not significantly different to more traditional wagering services:

**Mr CIOBO:** I know you made some comments earlier on about your concern with respect to the proposed prohibition on placing loss bets. I

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38 Betfair, *Submission 12*, pp 19–20.

39 Betfair, *Submission 12*, p. 4.

40 Betchoice, *Submission 43*, p. 18.

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would just ask you to expand on why you think it is not a bad idea and not a riskier proposition.

**Mr Twaits:** The starting point is that you can bet on a losing outcome through a bookmaker or a TAB. History has shown that people who have set out to profit from either inside knowledge or intentional conduct—for instance, rigging a race—have used bookmakers and/or TABs. So in a sense we are no different. I guess what I would say is that I think we have shown over the last 5½ years here, and beyond that globally, that transparency is the key to protecting the integrity of racing and sporting events. As I said, we think we are the high-water mark in dealing with integrity issues in sport. We provide a power of veto to sports in terms of saying what markets we can offer and, if they are unreasonably risky or they take too many resources to deal with, we will not offer them.<sup>41</sup>

11.47 COMPPS also affirmed that the establishment of Betfair in Australia has had a positive effect on sport:

Six of the COMPPS members have information and revenue sharing arrangements with Betfair, the major betting exchange operating in Australia. The information sharing arrangements have worked well and sports have received valuable, timely and detailed information that has greatly assisted them.

It is in the interests of the betting agencies to work with sports so as to ensure that the integrity of sporting contests is maintained.<sup>42</sup>

11.48 The AIBA agreed that Betfair's management of integrity concerns was of a very high standard:

Through a combination of strict regulation and high standard business practices, integrity concerns have been addressed. Betfair has recognised the potential for corrupt betting arising from the use of its facility, and has in response implemented state-of-the-art monitoring and review mechanisms to detect unusual or suspicious betting activity. Indeed, Betfair must be credited with providing early warning of corrupt activity.<sup>43</sup>

11.49 The Tasmanian Department of Treasury and Finance noted that there had been no complaints regarding Betfair's operations since its inception:

There have been no incidences in Tasmania requiring proceedings to be taken against Betfair. The Tasmanian Gaming Commission has had no instances of prosecutions arising from serious corruption or match-fixing since Betfair began their Tasmanian operations in 2006.

In conclusion, if a betting operator has in place a highly transparent wagering platform with traceable audit trails, and information-sharing

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41 Mr Steven Ciobo MP and Mr Andrew Twaits, Betfair, *Committee Hansard*, 11 August 2011, p. 33.

42 COMPPS, *Submission 16*, p. 6.

43 Australian Internet Bookmakers Association, *Submission 54*, p. 32.

agreements with racing and sports industry bodies, then along with strong probity requirements in legislation the risks to the integrity of sport from being able to lay bet are minimised and there is no case to prohibit this type of betting activity.<sup>44</sup>

11.50 The UK Gambling Commission outlined its experience of betting exchanges, stating that:

The introduction of betting exchanges created a business opportunity for many due to the low overhead operations of an exchange. Initially, this had an impact on traditional bookmakers and their profit margins, but with the impact now settled throughout the market many bookmakers find the exchanges as a useful tool for their business and some elect to lay off their liabilities on the exchange. It has also had a large impact on the way starting prices are calculated, in many cases the betting exchange odds are the default starting prices used by bookmakers now as it provides a fair and accurate estimate of the market.

The ability to back the loser is and will continue to be under the spotlight particularly in relation to horse racing yet we have found little evidence to suggest that it has led to an increase in betting corruption. A properly regulated betting exchange with built in market integrity checks can provide valuable intelligence and help detect activity that may have otherwise been missed. While the...report ‘Risks to the integrity of sport from betting corruption’ explored whether exchanges might in principle provide more opportunities to those wishing to fix events, particularly in-running events, in practice the deterrent benefits of better scrutiny and identification of who is betting appear to outweigh the potential risks.<sup>45</sup>

11.51 Mr Paul Aalto also argued that that betting exchanges posed no harm:

Every sporting event has winners and losers - betting on Team A to win a match automatically means that you are betting on Team B to lose it. This equation becomes a little more complicated in events with multiple entrants but the principle remains the same. There will only ever be one winner (other than in a dead-heat) and the other participants will lose. If you back all but one entrant to win, you are effectively backing that final entrant to lose. This has been happening for years and long before betting exchanges came into play.

Overall, I see the entry of Betfair, the only betting exchange currently licensed in Australia, into the market as a positive for the following reasons:

- As a punter, better prices on average;

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44 Tasmanian Department of Treasury and Finance, *Submission 8* to the Inquiry into the Interactive Gambling and Broadcasting Amendment (Online Transactions and Other Measures) Bill 2011, p. 3.

45 UK Gambling Commission, *Submission 33*, p. 7.

- Additional revenue streams for sports/racing through distributions, sponsorship and most importantly the introduction of overseas clients to our market - i.e. they have grown the pie;
- Their audit trail and willingness to share information with authorities has enhanced, rather than detracted, from the ability of the regulators/stewards to do their job - i.e. they make it easier to detect cheating.<sup>46</sup>

11.52 Some submitters, however, were more cautious about the betting exchange model, highlighting the potential for integrity breaches.

11.53 The NSW Bookmakers' Co-operative Ltd acknowledged that while betting exchanges were 'a legitimate component' of the wagering industry, enhanced vigilance over their activities was required:

As with other technological advances within the industry, our main concern is that bookmakers are legally allowed to access these options whilst conducting their businesses, and that there are no regulatory-imposed commercial disadvantages for our members in terms of this access and related costs.

The Co-op is aware that persons 'betting to lose' via betting exchanges are often closely following the business practices of licensed bookmakers who accept bets 'against' racing and sporting contestants as their main business trade.

Whilst we would not advocate the prohibition of unlicensed persons 'laying' contestants in this manner, we would suggest that the enhanced focus of racing and sports regulatory bodies is warranted in respect of these transactions, given the potential for inappropriate betting activities.<sup>47</sup>

11.54 The Australian Athletes Alliance submitted that betting exchanges 'should not be permitted a free ride on the efforts of [sport] governing bodies, clubs and athletes':

Accordingly betting exchanges should not be permitted to:

- 1) place bets on any sport, including racing, unless the governing body of the sport provides its consent; and
- 2) use the likeness, statistics, and/or name of any athlete without the athlete's specific consent.

A sport should only be permitted to provide its consent if it has collectively bargained the minimum levels of risk management described above.<sup>48</sup>

11.55 Regis Controls also called for better regulation of the ability to bet on losing outcomes, warning that:

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46 Mr Paul Aalto, *Submission 53*, pp 2–3.

47 NSW Bookmakers' Co-operative Ltd, *Submission 11*, p. 5. This view was shared by the Australian Bookmakers' Association, *Submission 18*, p. 9.

48 Australian Athletes Alliance, *Submission 48*, p. 3.

...this type of betting allows significant betting on credit and betting on "losing" outcomes increases the risk of fraudulent activity. Regulation relies too heavily on post-bet evaluation of suspicious activities which some State and Territory Government regulators are currently insufficiently equipped to monitor effectively.<sup>49</sup>

11.56 Further discussion of how integrity concerns are managed by racing and sporting bodies in light of 'lay' bet types is contained in the following chapters on match-fixing and corruption in sport.

### ***Committee majority view***

11.57 The committee majority acknowledges that Australia's only licensed betting exchange, Betfair, has been operating in the Australian market since 2006, and that no significant concerns about its operation have come to light. However, the committee majority notes the risks inherent in being able to bet on losing outcomes and supports betting exchange providers working closely with governing bodies, as Betfair has done, to mitigate the risk to the integrity of the sporting or racing product on which lay bets are placed.

### **Regulation of online wagering by state and territory governments**

11.58 With the exception of the provisions in the IGA regarding 'in-play' betting online, states and territories are each responsible for regulating and licensing wagering operators. One of the key issues raised during the inquiry was that regulatory approaches differed considerably between jurisdictions. These inconsistencies have resulted in corporate bookmakers gravitating to more 'progressive' jurisdictions to establish and grow their operations. The distinct business advantage held by these online wagering operators has caused considerable tension and 'market distortion' between the newer players and the traditional wagering operators on a range of issues such as wagering taxation, revenue to the racing and sporting industries and regulatory approval processes.

11.59 Harness Racing Australia provided an overview of the race wagering regulation environment and the significant changes that have recently taken place:

The regulation of wagering on racing has traditionally been the domain of the states and territories. For over one hundred years, this proved successful, particularly when each State Government owned and controlled its own TAB, bookmakers were permitted to operate only when situated on a racecourse and arrangements existed between states regarding betting on each other's racing product.

The privatisation of TABs, the emergence of telephone and online betting and the changes associated with globalisation, has irrevocably altered the wagering landscape.

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49 Regis Controls, *Submission 35*, p. 4.

No longer are state and territory borders relevant and the protectionist policies of past decades have gone, replaced with an emphasis on competition and free trade. The result is inconsistent regulation being imposed by states and territories, including different taxation rates. For the racing controlling bodies, the prevalence of 'free-riding' bookmakers, located in small jurisdictions, paying little or no tax to the local government and providing minimal or no return to the racing controlling bodies, has had a detrimental effect.<sup>50</sup>

11.60 According to Tabcorp, the regulation of online wagering across different states and territories has not kept pace with the growth of the online industry, and has created significant market distortions:

Whilst the Australian online wagering market has evolved to a national one, state and territory governments and racing industry authorities continue to regulate the industries as if they were still state/territory based markets. Each jurisdiction has its own approach to:

- Racing industry funding, including race field fees
- Wagering taxation
- Integrity management
- Products approved
- Regulatory approval processes
- Harm minimisation/responsible gambling requirements.

Wagering customers will seek out wagering opportunities that provide the best price, product offering and suite of complementary services. Wagering operators will seek out a business environment that enables them to maximise returns. Where a non-level playing field exists, customers and wagering operators will "jurisdiction shop" to find the environment that best suits them.<sup>51</sup>

11.61 Tabcorp also stated that a range of different taxation regimes across jurisdictions led to a distortionary 'non-level playing field':

The impacts of a non-level playing field in the areas of taxes, racing industry fees and regulation leads to leakage of wagering revenue to jurisdictions in which wagering operators pay little or no contribution to the racing industry.

In 2008, the loss of income for the NSW and Victorian racing industries as a results of these distortions was \$58 million and \$45 million respectively.<sup>52</sup> As online wagering continues to grow, this leakage will continue.

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50 Harness Racing Australia, *Submission 52*, p. 5.

51 Tabcorp, *Submission 22*, p. 12.

52 Tabcorp, *Submission 22*, p. 13.

11.62 Betfair also referred to 'forum shopping', which resulted in disparities between states and territories and 'an entrenched protection of the state-based monopoly TABs'.<sup>53</sup>

### **'Regulatory arbitrage'**

11.63 Submitters argued that the regulatory discrepancies between jurisdictions had led to online based businesses being able to take advantage of what are seen as more flexible licensing arrangements in smaller jurisdictions.

11.64 The Australian Racing Board noted three characteristics of the current system of state-based regulation:

Inconsistency. New technologies which can be applied to gambling purposes present the same issues for all States and Territories and a consistent national framework should exist. Instead we have a patchwork series of responses to changes.

Regulatory arbitrage. Lack of a consistent national framework means that operators are able to pick [from] States and Territories willing to trade off regulatory or tax standards in order to secure local investment or other economic activity. The result is a "race to the bottom".

Regulatory capture. Some operators in particular jurisdictions may have significant sway over the relevant regulators and/or legislators because of their size in the particular State or Territory market.<sup>54</sup>

11.65 According to the NSW Bookmakers' Co-operative Ltd, the Australian Capital Territory and the Northern Territory are considered to be 'corporate bookmaking strongholds', having put in place 'progressive regulatory reforms' when compared to the major states.<sup>55</sup> Its submission argued that:

...non-online regulatory inconsistency across the nation has resulted in poor outcomes for bookmakers who – at least at an on course level – do not have the ready ability to 'relocate' their licenses to more 'favourable' jurisdictions. Whilst we understand the challenges in doing so, jurisdictions should wherever possible provide for nationally consistent State and Territory non-online gambling regulations (and taxes) to avoid competitive bias and the negative commercial and public policy impacts that this brings.<sup>56</sup>

11.66 The Northern Territory's 'flexible regulatory structure', according to Tabcorp, enables corporate bookmakers to:

- offer better prices to customers because of the relatively low tax and racing industry contributions required; and

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53 Betfair, *Submission 12*, p. 16.

54 Australian Racing Board, *Submission 27*, pp 12–13.

55 NSW Bookmakers' Co-operative Ltd, *Submission 11*, p. 3.

56 NSW Bookmakers' Co-operative Ltd, *Submission 11*, p. 4.

- offer a broader product suit[e] to customers, including the ability to bet on novelty events and on credit.<sup>57</sup>

11.67 Regarding the detrimental impact on traditional wagering providers, the Australian Bookmakers' Association stated:

Unfortunately these progressive arrangements that allowed 7-day trade via the internet and the broadest possible range of betting products were not readily adopted for bookmaking in the other States. This fragmented approach to regulation continues to this day. As a result many jurisdictions still confine bookmakers to their traditional racecourse locations, traditional operational limitations and limited product range. (For example Queensland bookmakers are still to this day unable to accept bets via the internet.)<sup>58</sup>

11.68 The Association emphasised that traditional on-course bookmakers were heavily disadvantaged by the 'patchwork' regulation approaches across the country:

The vast majority of on-course bookmakers remain 'sole traders' in the sense that they own and operate small businesses with few employees - mainly race day staff such as ledger recorders ('pencillers') and cash handlers ('bagmen') – and minimal administrative support. Although some jurisdictions now allow limited types of partnerships or simple corporate entities to be formed, most on-course bookmakers continue to individually manage and finance their business activities.

These limitations, as well as other operational restrictions, are in most cases the result of longstanding government and/or industry regulatory policy. In essence, the regulatory arrangements that apply to on-course bookmakers have in many cases failed to keep up with changes in the national market, and especially for the newer "corporate bookmaking" businesses.<sup>59</sup>

### ***The call for a national approach***

11.69 Sports wagering operators, even those located in more 'favourable' jurisdictions, overwhelmingly called for a nationally consistent regulatory framework to replace the currently fragmented state and territory regimes.

11.70 Tabcorp's submission argued for 'a single national approach to taxation and funding of the racing industry, possibly administered by the Commonwealth'.<sup>60</sup>

11.71 The NSW Bookmakers' Co-operative Ltd also observed that inconsistent regulations across states and territories were problematic and that:

...a single national set of regulations – if only in the area of harm minimisation and related advertising and promotions, would be of

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57 Tabcorp, *Submission 22*, pp 4–5.

58 Australian Bookmakers' Association, *Submission 18*, p. 2.

59 Australian Bookmakers' Association, *Submission 18*, p. 2.

60 Tabcorp, *Submission 22*, p. 12.

significant advantage and would negate the attraction of 'border hopping' by wagering licensees.<sup>61</sup>

11.72 Betfair, licensed in Tasmania, suggested that the current system was too protectionist towards the monopoly TAB providers:

Betfair believes the current state-based system of gambling regulation in Australia is inconsistent and there's a need for a more co-operative framework. There are too many disparities between the various jurisdictions and an entrenched protection of the state-based monopoly TABs (mostly now in private sector ownership). While Betfair believes it's crucial that states be able to offer tax incentives for new business, it is strongly of the view that a nationally consistent approach be taken in regard to regulation.<sup>62</sup>

11.73 Taking things a step further, Betchoice, licensed in the Northern Territory, argued there is a need for a single Commonwealth department and minister to oversee gambling and wagering regulation:

In the case of Betchoice, we compete with other operators at a national level and serve customers across Australia. It is costly and time consuming to have separate and, at times, inconsistent regulation in different States and Territories. It makes advertising and marketing expenses greater than they should be and runs the risk that operators may operate in breach of the law due to the complexity of the issues involved.

If the Federal Government intends to play a greater role in gambling issues, we submit that a single minister should be made responsible and that a department be given responsibility over the portfolio. The Federal Minister should then work with State and Territory Governments to harmonise existing laws so that regulation is clearer and serves the public interest.<sup>63</sup>

### **Race field fees**

11.74 Another issue that was not specifically included in the inquiry's terms of reference, but was nevertheless raised by numerous submitters, is that of race field fees. Arising out of inconsistent regulatory arrangements, the multiple fees and authorisations required by states and territories is a source of consternation for many wagering operators.

11.75 The NSW Bookmakers' Co-operative Ltd drew attention to the complexity of current race field fees models in operation across states and territories:

Our on-course bookmaking members are at present disadvantaged by the complexity of the various State and Territory based fee models. Put simply, the fees charged by each racing code in each jurisdiction are too inconsistent to allow holders of bookmaking licenses to operate under level

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61 NSW Bookmakers' Co-operative Ltd, *Submission 11*, p. 4.

62 Betfair, *Submission 12*, p. 14.

63 Betchoice, *Submission 43*, p. 20.

competitive arrangements. As with inconsistent regulatory standards, this results in commercial disadvantage for those operators who are located in higher fee paying jurisdictions.

In addition, our members are now burdened with the unprecedented requirement to obtain ‘multiple’ regulatory (race fields) approvals from each racing authorisation body within each Australian jurisdiction that he or she operates betting [on]. This exponential increase in required regulatory approvals provides a huge additional administrative burden on bookmakers, the majority of whom operate as small businesses / sole traders.

A single national licensing process, or at minimum a system of mutual recognition of State / Territory approvals, must be a more logical solution.<sup>64</sup>

11.76 Similarly, the Australian Bookmakers' Association argued there was a completely fragmented approach to race fields authorisations and fee collection schemes:

Mutual recognition of interstate licensing is often ignored by relevant authorities.

...The ABA strongly recommends that there be established, either, a single national licensing and financial contributions process or a system of ‘mutual recognition’ by all jurisdiction of ‘home state’ licensing and fees payments.<sup>65</sup>

11.77 Betfair outlined the original 'product fee' arrangements that operators paid to the states in which they were licensed, as well as the newly introduced 'race field fees' arrangements:

Licensed wagering operators in Australia have traditionally paid all product fees and taxes to the states where they are licensed. For example, a bookmaker licensed in New South Wales paid taxes and product fees to the NSW Government and/or NSW racing industry. The fees were paid irrespective of an event's location.

The funding model originated with the advent of the state-based (and owned) TABs. It was widely referred to as the ‘Gentleman’s Agreement’. In effect, each jurisdiction permitted TABs and bookmakers to accept bets on each other’s racing without the requirement to pay product fees.

Throughout Australia, this funding model has now been replaced by the introduction of race fields legislation. Wagering operators pay licence fees and taxes in the state in which they are licensed, but the race fields legislation means they now have to contribute product fees directly to the racing bodies that control the product from which they are sourcing revenue. Betfair supports this new funding model. It’s an arrangement that allows the racing industries in each state to properly reap the rewards of their own products and gives racing bodies a strong incentive to provide a better quality product.

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<sup>64</sup> NSW Bookmakers' Co-operative Ltd, *Submission 11*, Attachment 1, p. 4.

<sup>65</sup> Australian Bookmakers' Association, *Submission 18*, p. 6.

Betfair supports the concept of product fees provided that the fee being imposed is fair and equitable to all wagering operators.<sup>66</sup>

11.78 Betchoice also highlighted the waste and duplication associated with different fee regimes:

The issue of duplication extends beyond governments, however. For wagering operators, the worst example concerns product fees. Product fees are generally statutorily imposed requirements on wagering operators to pay an amount to a sport or racing code in order to offer bets on the event. The product fee acts as a mechanism, particularly in the case of racing, to provide an ongoing source of funding.

Most wagering operators, including Betchoice, are not opposed to product fees in general. As was noted above in respect of integrity issues, without sport and racing, there is no wagering. Betchoice does not want to see events that could bring in customer dollars disappear. However, the complexity and duplication is a waste of money and time.<sup>67</sup>

11.79 The committee notes that the race field fees matter is currently the subject of legal proceedings in the High Court of Australia, with corporate bookmakers Sportsbet and Betfair appealing against the NSW Government's bid to charge them fees on the basis of 1.5 per cent of turnover. Sportsbet contends that it should not pay any fee to operate in NSW, whereas Betfair contends that the NSW fee model is discriminatory.<sup>68</sup>

11.80 At its last meeting in September 2011, the Australasian Racing Ministers' Conference discussed these matters:

The Ministers discussed the absolute need for a national approach to product fee legislation driven by the Commonwealth to ensure the racing industry continues to be a major contributor to Australia's economy and proposed a further approach to the Federal Government on this issue.<sup>69</sup>

11.81 However, in July 2011, a spokesman for the Assistant Treasurer, the Hon Bill Shorten MP, noted that racing was a state issue and that any proposed Commonwealth intervention was likely to be 'costly and complex and involve a significant impost on

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66 Betfair, *Submission 12*, p. 15.

67 Betchoice, *Submission 43*, pp 20–21.

68 Jamie Nettleton, Addisons Commercial Lawyers, 'NSW Race Fields Legislation – Constitutional Challenge by Betfair and Sportsbet – Round 2', 17 November 2010, <http://www.addisonslawyers.com.au/documents/doc-147-nsw-race.pdf>; Nabila Ahmed, 'Tabcorp's stake in Betfair challenge', *The Australian*, 5 August 2011.

69 Australasian Racing Ministers' Conference, Communique, 23 September 2011, <http://www.mediastatements.wa.gov.au/Pages/default.aspx?ItemId=144578&> (accessed 4 October 2011).

business.' The Commonwealth would prefer to see a harmonised approach arrived at by states and territories.<sup>70</sup>

### ***Committee view***

11.82 The committee notes the legal proceedings currently underway in the High Court of Australia on the matter of race field fees. It acknowledges the frustration of wagering providers in what appears to be a fragmented and complex system. The committee notes the level of concern raised during the inquiry on this issue and welcomes the work being undertaken by the Australasian Racing Ministers' Conference to achieve national consistency in this area. The committee supports the Commonwealth Government's view that a harmonised approach by jurisdictions should be pursued over federal intervention.

### ***Consumer protection issues***

11.83 Recent media reports have highlighted examples of consumer protection concerns in relation to gambling and sports betting services.

11.84 In August 2011, Sports Alive, an online bookmaker based in Melbourne but licensed in the ACT, went into liquidation. Almost 13,000 customers are likely to lose up to \$3.2 million, including \$2.6 million in payouts not made to winners and \$600,000 in 'wagered open bets'. Staff of the betting agency confirmed that company managers were falsely marking customers' betting accounts as 'paid' and it is claimed that this was being done to mislead the regulator, the ACT Gambling and Racing Commission.<sup>71</sup> Liquidators said that it was unlikely that Sports Alive had complied with the ACT *Race and Sports Bookmaking Act 2001*, requiring bookmakers to keep a separate bank account for all betting monies and to not withdraw money from this account until a bet's outcome is determined. Inquiries are being conducted into whether the company had been trading while insolvent.<sup>72</sup>

11.85 Another case relates to three gambling-related schemes being operated in Victoria which promise financial returns to clients by using computer software to predict the outcome of racing and sporting events. Media reported that the schemes,

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70 Mathew Dunckley, 'Shorten cracks whip on national racing rules', *Australian Financial Review*, 21 July 2011.

71 Michael Bachelard, 'Betting agency misled, say staff', *The Age*, 4 September 2011.

72 Henrietta Cook, 'Sports Alive a long shot to survive two years ago, company papers show', *The Canberra Times*, 10 September 2011; Noel Towell, 'Fraud squad will probe collapse of Sports Alive', *The Canberra Times*, 19 November 2011. See also Nick Clark, 'TOTE's \$5m losing bet', *Hobart Mercury*, 10 November 2011, which reports that the Tasmanian Government (through TOTE Tasmania) had invested \$5 million in Sports Alive to give TOTE a 25 per cent stake in Sports Alive's parent company Bet Worldwide Pty Ltd in December 2009. A recent media article reported that another online bookmaker, Betezy (registered in the Northern Territory), has alleged financial problems. The Australian Taxation Office has filed a lawsuit claiming that Betezy owes \$160,000 in tax and should be wound up as it is insolvent. See Ben Butler, 'Taxes and Tinkler trip up Betezy', *The Age*, 16 November 2011.

operating under the names of Pro-Trader Technologies, Advanced Trading Strategies and Queenbury Investments, offer potential investors profits of up to 70 per cent by predicting the winners of horse racing and other sporting events. Some investors have found that the promised returns did not materialise and have had difficulty recovering their money. The Victorian Consumer Affairs Minister has warned against investing in such schemes, suggesting they may well be scams.<sup>73</sup>

11.86 The Australian Competition and Consumer Commission (ACCC) warns consumers against buying into gambling schemes which are camouflaged as 'investments'.<sup>74</sup> Until recently such schemes have been operating out of Queensland. The ACCC has been working with the Queensland Office of Fair Trading, Queensland Police, the Australian Securities and Investment Commission and the Australian Taxation Office 'to develop coordinated enforcement and consumer education strategies to tackle these types of sports betting products'.<sup>75</sup>

### ***Committee view***

11.87 The committee notes with concern the emerging consumer protection issues around sports betting and wagering and gambling-related schemes being marketed as 'investments'. The committee urges regulators to continue to be vigilant in monitoring for and addressing such practices, as well as providing appropriate consumer education. Additional consumer protection issues that arose during the inquiry are discussed below.

### **Credit betting**

11.88 Credit betting refers to the practice of placing bets on credit and settling the account at a later date. The practice of wagering providers offering clients 'free' credit will be dealt with in the next chapter under the topic of inducements.

11.89 The Productivity Commission's (PC) 2010 report into gambling addressed the practice of credit betting and ultimately recommended that there were insufficient grounds to recommend a prohibition on current credit betting practices:

...bookmakers have a commercial interest in the prudent provision of credit facilities as they bear the cost of the collection of outstanding debts, as well as the risk of default. As credit seems to be offered to well known and established clients, bookmakers' commercial interests may be reinforced by a personal interest arising from the ongoing relationship they have with

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73 Richard Baker and Nick McKenzie, 'Gambling "scam" websites targeting Victorians', *The Saturday Age*, 22 October 2011.

74 ACCC, 'Sports 'investment' scams', Fact Sheet, <http://www.accc.gov.au/content/item.phtml?itemId=878568&nodeId=571b137e58039f712f74468418602adc&fn=Sports%20investment%20scams.pdf> (accessed 24 October 2011).

75 ACCC, 'Horse betting software promoter stops advertising', <http://www.accc.gov.au/content/index.phtml/itemId/940129> (accessed 24 October 2011).

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their clients. Such relationships are likely to be stronger in the face-to-face environment on-course, than they are over the internet.<sup>76</sup>

11.90 The NSW Bookmakers' Co-operative Ltd noted that credit betting was 'an important part of bookmaking practices in the modern era' and it supported the PC view that there would not be a net benefit in a ban on the use of credit betting in either the online wagering or online gaming environment. The Co-operative:

...strongly advocates the retention of credit betting as an essential tool in doing business established clients who have demonstrated a capacity to bet (and settle any debts) at a level appropriate to their personal financial circumstances.<sup>77</sup>

11.91 Betfair advised that it does not allow customers to bet on credit and that an account-based betting model has particular advantages for regulation:

Unlike traditional wagering platforms such as bookmakers and the TABs, Betfair does not accept cash, nor does it allow customers to obtain credit. Betfair only permits customers to place bets if they have opened an account. There are a number of advantages in offering only account-based betting, the key one being that Betfair is always aware of who has placed a bet.

The account-based model removes the traditional anonymity of punters. It provides significant advantages in controlling and detecting attempts to launder money or to engage in deceptive conduct...<sup>78</sup>

11.92 Tabcorp pointed to the inconsistency across jurisdictions on the practice of credit betting:

The approach of states and territories to harm minimisation in online wagering differ markedly. For example, while totalisators in general cannot provide credit to their customers, bookmakers are free to offer credit betting services. Between jurisdictions, differences also apply to restrictions on bet types, wagering advertising and the capacity of operators to offer account opening inducements to wagering customers.

Customers who wish to take advantage of credit betting, account opening inducements and a broad product offering are taking their business to jurisdictions with regulatory environments that allow wagering operators to provide these services.<sup>79</sup>

11.93 The AIBA supported further research into the merits of credit betting to consider whether further controls would be appropriate:

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76 Productivity Commission, *Gambling*, vol. 2, Commonwealth of Australia, Canberra, 2010, p. 16.55.

77 NSW Bookmakers' Co-operative Ltd, *Submission 11*, pp 5–6. See also Australian Bookmakers' Association, *Submission 18*, pp 10–11.

78 Betfair, *Submission 12*, p. 6.

79 Tabcorp, *Submission 22*, p. 10.

The genesis of credit betting is betting on a racecourse. To avoid the inconvenience and risks associated with handling large amounts of cash on course, bookmakers would allow certain clients to "bet on the nod", or on credit, on the understanding that they would settle up at a later time.

The facility is also used by larger professional gamblers who seek to arbitrage differences in prices between various operators. In this case, the punter will outlay large sums for a more probable small win.

The practice of credit betting is limited to wagering, and the extent and terms of any "trading account" that an operator allows a client to use, is agreed between the two of them. Any commercial default is borne by the operator, although there have been instances of bankruptcies where the outstanding debts included debts owed to bookmakers...<sup>80</sup>

This Association supports the recommendation for further research. It appears sensible to maintain the benefits to clients of credit betting, but look to the development of appropriate controls to mitigate the risks. It is proposed the Committee recommend the immediate issue of a reference to a national research body to consider appropriate parameters governing the issue of credit.<sup>81</sup>

#### *Sportsbet case*

11.94 During a public hearing, the committee questioned Sportsbet about a case in which a Melbourne man with a mental illness ran up \$80,000 in debts with that company.<sup>82</sup> According to media reports, the man claimed he was lured in to open a betting account by the offer of \$5,000 in free bets. He then accepted thousands of dollars worth of credit to continue betting. After joining in May 2010, he said he accepted an offer of \$10,000 credit, then a further \$30,000 within the next week. He also successfully applied for a further \$40,000 in credit. Sportsbet took the man to court to force him to pay but eventually agreed to cancel his debts.<sup>83</sup>

11.95 This case raised a number of concerns for the committee. Despite this, the committee thanks Sportsbet for being very open about its business practices during this inquiry and also for its openness about this case. The committee commends Sportsbet's compassionate approach for the individual involved and understands that the case is well on the way to being resolved.

11.96 The 'free bets' aspect of this case is discussed in more detail in chapter 12 under a section covering inducements to bet. The final section of this chapter also deals with another aspect of the case – i.e. the introduction of the man to Sportsbet by a third party and the payment of commissions.

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80 Australian Internet Bookmakers Association, *Submission 54*, p. 27.

81 Australian Internet Bookmakers Association, *Submission 54*, p. 28.

82 Senator Xenophon declared his interest in the case, as he had been acting *pro bono* for the man in question. See *Committee Hansard*, 11 August 2011, p. 3.

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

11.97 Sportsbet's Chief Executive Officer, Mr Cormac Barry, and the Chief Financial Officer, Mr Ben Sleep, explained Sportsbet's policy in relation to credit betting:

**Mr Barry:**...of the people who have credit accounts with Sportsbet, 80 per cent have a facility of \$200 or less and 90 per cent have a facility of \$1,000 or less. Of the 15,000 active credit accounts we had in the last financial year, 21 of them went to legal action pursuant in the recovery of funds and there were two cases of bankruptcy. We would typically treat these matters with compassion and it is very much a last resort. We would only pursue individuals if we believed they had the ability to pay ... [A]s it has come to light through the proceedings within the court that this individual does not have the ability to pay, there are now currently unprejudiced discussions underway to waive that debt. In the vast majority of cases, we will come to an arrangement where we make a partial settlement to paying on plan or we write off the amount. In the last financial year, we wrote off close to \$1 million.

**Senator XENOPHON:**...But how on earth did we get to the stage where an individual who, if you scratch below the surface you could tell, was quite a vulnerable individual and got to the stage of getting that amount of credit so quickly and lost that money so quickly?...

**Mr Sleep:** If you look at the transactional history of the particular customer, he bet with us for a number of months and, in fact, was very successful. In his operation he certainly looked to us like he was a professional punter, as in the information provided. Initially, the credit facility provided was \$10,000, which was in existence for a reasonable period of time. The particular customer in question then, on repeated occasions, was requesting high levels of credit—in fact, higher than where he ended up. Statements were made to us about his ability to pay, about certain assets that the individual had and about a history of having similar types of facilities and repaying them accordingly. Over a series of many conversations, this was the basis of extending the credit that we did. As Cormac pointed out, proceeding to this level of legal proceedings is an absolute last resort for us. To the extent that we go legal in the 20-odd cases, typically that is dropped, but in this instance it was based on what the particular customer was saying. It was our belief, based on his statements, that he in fact had the ability to pay. It was not until we got further into the proceedings and saw the reports from the trustee that those statements were baseless.<sup>84</sup>

11.98 The committee wrote to state and territory regulators asking them to outline their rules around credit betting. Responses were received from all jurisdictions except the Northern Territory where it appears this practice is allowed:

**Senator XENOPHON:** Are you familiar that in other jurisdictions, for instance in South Australia, under the Gaming Machines Act it is an offence to provide credit to someone for the purpose of gambling?

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84 Senator Xenophon, Mr Cormac Barry and Mr Ben Sleep, *Committee Hansard*, 11 August 2011, p. 6.

**Mr Barry:** I am familiar with the fact that there are different regulations in the different states. It is not illegal in Darwin to provide those services.<sup>85</sup>

11.99 New South Wales, Victoria and Queensland appeared to have the strictest rules against credit betting while other jurisdictions permitted the practice to differing degrees, depending on the licensees in question.<sup>86</sup> As the case referred to above involves a betting agency registered and licensed in the Northern Territory, the committee is disappointed that the Northern Territory has not responded to its inquiries around rules in place for credit betting.

11.100 Sportsbet expressed its view in relation to this practice at the hearing during this exchange:

**Senator XENOPHON:** I appreciate you are operating within the laws of the Northern Territory. But do you understand the policy rationale between not providing credit to someone to gamble, in the sense that it may help fuel problem gambling or exacerbate existing problem gambling?

**Mr Barry:** I do not believe that the provision of credit has the effect that you outlined. There is a broad number of credit facilities available to consumers, whether it be retailers or banks et cetera, so I do not believe the fact that we provide credit in any way increases the likelihood that a problem gambler would have an issue.

**Senator XENOPHON:** Sportsbet is not a charity. You are not giving credit because you are philanthropists. You are giving credit to get more customers—

**Mr Barry:** We are giving credit to provide a convenient facility for customers to bet. We do not charge for credit. Obviously we are not a charity, but nor are the other people who provide credit in society.<sup>87</sup>

11.101 The committee notes that under the *Privacy Act 1988*, gambling providers such as Sportsbet do not fall under the current definition of a credit provider as they do not charge interest or fees.<sup>88</sup> While the definition of a credit provider is being broadened under the government's privacy reforms, gambling providers such as

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85 Senator Xenophon and Mr Cormac Barry, *Committee Hansard*, 11 August 2011, p. 3.

86 Correspondence received from the NSW Office of Liquor, Gaming and Racing, 5 October 2011; Western Australian Department of Racing, Gaming and Liquor, 30 September 2011; Victorian Commission on Gambling Regulation, 20 September 2011; the Queensland Office of Liquor and Gaming Regulation, 16 September 2011; South Australia's Independent Gambling Authority, 8 September 2011; the South Australian Office of the Liquor and Gaming Commissioner, 14 September 2011; Tasmanian Gaming Commission, 16 September 2011; and ACT Gambling and Racing Commission, 21 September 2011.

87 Senator Xenophon and Mr Cormac Barry, *Committee Hansard*, 11 August 2011, p. 3.

88 Comlaw, 'Credit Provider Determination 2011-2 (Classes of credit providers)', <http://www.comlaw.gov.au/Details/F2011L01648> (accessed 21 September 2011) and Australian Government, Companion Guide, 'Privacy Reforms: Credit Reporting', p. 7, [http://www.aph.gov.au/Senate/committee/fapa\\_ctte/priv\\_exp\\_drafts/guide/credit\\_guide.pdf](http://www.aph.gov.au/Senate/committee/fapa_ctte/priv_exp_drafts/guide/credit_guide.pdf) (accessed 21 September 2011).

Sportsbet will still not fall within the new definition. The committee's view and recommendation on credit betting is incorporated into this chapter's conclusion below.

### **Payment of commissions to third parties**

11.102 In relation to the case mentioned above, in which a Melbourne man ran up \$80,000 in debts with Sportsbet,<sup>89</sup> the committee heard about the practice of third parties being paid commissions by Sportsbet to introduce new clients.

11.103 While explaining the case to the committee, Mr Barry, Chief Executive Officer of Sportsbet, stated that third parties could refer potential clients to Sportsbet and receive an 'affiliate share' of the gambler's losses. The exchange took place as follows:

**Mr Barry:** In this case, the client was referred to us by a third party. There are a number of third-party agents who would network within racing clubs and professional gambling circles. He was referred to us on the basis—

**Senator XENOPHON:** Sorry—let's go back a step. When you get a referral from a third party, and you have your Facebook page where people share tips and things like that, do you provide any credits, any inducements or any reward for third parties introducing customers to you?

**Mr Barry:** Yes. Those third parties can be on a finders fee or they could gain a share of the revenue from the customer—an affiliate share.

**Senator XENOPHON:** If the punter loses \$10,000 and they were introduced by a third party, that third party could be getting a share of that?

**Mr Barry:** Absolutely.

**Senator XENOPHON:** Is that disclosed to the punter?

**Mr Barry:** Not necessarily, but it would not be in any way deliberately hidden.<sup>90</sup>

11.104 The question of whether this practice constituted a 'secret commission' was then discussed:

**Senator XENOPHON:**...I know that there have been laws in place around the country about secret commissions and disclosing commissions. If a third party introduces someone, they can get a cut of that person's losses?

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

**Senator XENOPHON:** But isn't this a little bit different? The bigger the person's loss, the more the referrer gets.

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

90 Senator Xenophon and Mr Barry, *Committee Hansard*, 11 August 2011, p. 5.

**Mr Barry:** It is often the case that when a third party refers someone to you they would get a share of the benefit. I do not think it is any different.

**Senator XENOPHON:** But given that you are dealing with an unusual product—you are dealing with a product that you acknowledge in your very comprehensive submission has a risk of harm and you have items on your website to deal with problem gambling—don't you see that offering those sorts of inducements could fuel problem gambling? The third party that introduces the punter to you might have an incentive to encourage that person to keep playing.

**Mr Barry:** Typically an affiliate would be something like a racing forum, an information site or that type of thing and those people would have links to our site. They refer a customer through that means. So typically that is a reward for the affiliate and the affiliate has an ongoing relationship with that customer.

**Senator XENOPHON:** How much do you pay out in commissions each year?

**Mr Barry:** Each year we would pay out approximately \$3 million to \$4 million.

**Mr Sleep:** About \$3½ million.<sup>91</sup>

11.105 Giving evidence to the committee, Mr Mick Rolfe, Vice Chairman of the Australian Bookmakers' Association, stated that he would not support such a practice:

**Senator XENOPHON:** As a bookmaker of good standing and 40 years experience, do you have a view about that sort of practice of a) giving a commission to someone and b) not disclosing that commission to your new customer?

**Mr Rolfe:** I take the position that that would be wrong. I think that that would be counter-productive. I think that that would give the wrong view to any potential client that you may be looking at that you need to have those clients to reward others for coming forward to you. I myself would take a dim view of that policy. I have never practised it, and I do not know any of my colleagues who have practised it.<sup>92</sup>

11.106 Betfair also told the committee it ran a 'refer-and-earn scheme', where a customer would be introduced by an existing customer, who would get \$50 credit in their account. However, this would be disclosed, as well as the trailing revenue share, on Betfair's website.<sup>93</sup>

11.107 In response to a question taken on notice at the hearing regarding this issue, Sportsbet provided further information that the potential for commission arrangements

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91 Senator Xenophon, Mr Barry and Mr Ben Sleep, *Committee Hansard*, 11 August 2011, p. 5.

92 Senator Xenophon and Mr Mick Rolfe, Vice Chairman, Australian Bookmakers' Association, *Committee Hansard*, 16 September 2011, p. 12.

93 Mr Andrew Twaits, *Committee Hansard*, 11 August 2011, pp 24–5.

to exist is disclosed in the 'General Rules' section of its website.<sup>94</sup> After scrolling through terms and conditions, under 'General Rules', number 49 states:

49. Where a Member has been referred to Sportsbet by a third party including by a third party operated website and where that third party is an Affiliate or agent of Sportsbet, Members acknowledge that Sportsbet may make commission payments to that third party. Payments to agents or Affiliates are unrelated to the odds or prize money offered to Members by Sportsbet. Details of Sports's Affiliate program can be located at <http://www.sportsbettaffiliates.com/>.<sup>95</sup>

11.108 The committee notes that the committee and Senator Xenophon have separately approached the Northern Territory Licensing Commission to ask about regulations covering the practice of third party commissions. However, to date the committee has not received a response. It notes that no other jurisdiction that responded to the committee has addressed this practice in its legislation or regulations.<sup>96</sup>

11.109 The committee's view and recommendation in relation to this practice are contained in the conclusion below.

## **Conclusion**

11.110 It is clear that betting on sports or racing is now a national market. The committee heard how, for example, a customer in South Australia can bet on an event in New South Wales through a service licensed in the Northern Territory. The online environment facilitates this national market.

11.111 The committee does support maintaining the exemption for online wagering in the IGA. However, the committee remains cautious about allowing 'in-play' betting in the online format, given that not enough is known about the effect of new technologies on this form of gambling.

11.112 The committee notes a growing focus on consumer issues generally in the online environment around complaints about online shopping and that this matter is

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94 Sportsbet, answers to questions taken on notice at the 11 August 2011 hearing, received 6 October 2011.

95 Information available from <http://www.sportsbet.com.au/help/betting/rules#GeneralRules> (accessed 17 October 2011).

96 Correspondence received from the NSW Office of Liquor, Gaming and Racing, 5 October 2011; Victorian Commission on Gambling Regulation, 20 September 2011; the Queensland Office of Liquor and Gaming Regulation, 16 September 2011; South Australia's Independent Gambling Authority, 8 September 2011; the South Australian Office of the Liquor and Gaming Commissioner, 14 September 2011; and Tasmanian Gaming Commission, 16 September 2011; ACT Gambling and Racing Commission, 21 September 2011; Western Australian Department of Racing, Gaming and Liquor, received 30 September 2011.

'on the radar' of the Australian Competition and Consumer Commission.<sup>97</sup> While these complaints concentrate on unclear refund policies and lack of available stock, clearly concern about consumer protection in the online environment is on the rise.

11.113 In the online gambling environment, the committee heard about a number of emerging areas where differences in jurisdictional regulation expose marked differences in standards for online wagering services. While the committee supports competition between jurisdictions, it believes that harm minimisation and consumer protection measures for customers should be nationally consistent. However, achieving national consistency should not be at the expense of trade-offs that result in a lowering of current standards.

11.114 In emphasising a consumer protection approach to credit betting and third party commissions, the committee draws on the view of the Productivity Commission, which recognised that a consumer protection framework, along with the public health model, 'provide the broadest insights into the kinds of policies that promote the public good in this area':

The consumer approach recognises that gambling is a consumer good, and that, as for other consumption, the policy environment should seek to maximise benefits for consumers. This includes ensuring appropriate product safety standards; fitness for purpose; informed consent; the absence of unconscionable behaviour and misleading or deceptive conduct by suppliers; protection of vulnerable consumers; and markets that encourage innovation and low prices for consumers.<sup>98</sup>

### ***Credit betting***

11.115 The committee notes that credit betting is a long-standing practice that has traditionally been reserved for 'professional punters' in an on-course setting. However, the committee has reservations about the practice now taking place in an online bookmaking environment. The committee is concerned to hear that such vast amounts of credit are seemingly provided to sports betting agencies' clients with such ease. As this issue currently needs to be addressed through pursuing consistency in state and territory legislation, the committee considers that the COAG Select Council on Gambling Reform, in consultation with the COAG Legislative and Governance Forum

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97 News.com.au, 'Deal of the day: Fix coupon sites or we'll fix them for you', <http://m.news.com.au/TopStories/fi893720.htm> (accessed 18 October 2011).

98 Productivity Commission, *Gambling*, vol. 1, Commonwealth of Australia, Canberra, 2010, p. 3.20.

on Consumer Affairs,<sup>99</sup> should investigate nationally consistent regulations in relation to tighter controls on credit betting (see below).

### ***Payment of commissions to third parties***

11.116 The committee is concerned about what it sees as a lack of sufficient transparency regarding the payment of third party commissions raised in Sportsbet's evidence. While third party commissions are indeed standard business practice, in other business contexts (e.g. mortgage brokers), the payment and disclosure of commissions is governed by strict rules and regulations. The committee believes that a commission for a gambling product should be treated in the same way.

11.117 While the committee acknowledges that the inclusion of the potential for commission arrangements to exist in the Terms and Conditions section of the Sportsbet website goes some way to achieving a basic level of transparency, it believes this does not go far enough. As an example, the committee notes the *National Consumer Credit Protection Act 2009* which applies to licensed credit providers:

(2) The licensee's credit guide must:

...(g) give information about:

- (i) any commissions that the licensee, or an employee, director or credit representative of the licensee, is likely to receive, directly or indirectly, from credit providers in relation to credit contracts for which the licensee has provided credit assistance; and
- (ii) a reasonable estimate of the amounts of those commissions or the range of those amounts; and
- (iii) the method for working out those amounts; and

(3) The regulations may prescribe:

- (a) information that need not be included in the credit guide, despite subsection (2); and
- (b) for the purposes of paragraph (2)(g):
  - (i) the method for working out amounts of commissions; and
  - (ii) how commissions or amounts of commissions must be described.<sup>100</sup>

99 The COAG Legislative and Governance Forum on Consumer Affairs, formerly the Ministerial Council on Consumer Affairs, comprises Commonwealth, state, territory and New Zealand ministers responsible for consumer protection and fair trading. Its role is to 'provide the best and most consistent protection for Australian and New Zealand consumers through its consideration of consumer affairs and fair trading issues of national significance and, where possible, development of consistent approaches to those issues.' See [http://www.consumerlaw.gov.au/content/mcca/mcca\\_meetings/downloads/Meeting\\_25\\_3\\_June\\_11.pdf](http://www.consumerlaw.gov.au/content/mcca/mcca_meetings/downloads/Meeting_25_3_June_11.pdf) (accessed 17 October 2011).

100 Section 113, *National Consumer Credit Protection Act 2009*, <http://www.comlaw.gov.au/Details/C2010C00182> (accessed 17 October 2011).

11.118 The committee believes that a greater level of transparency is required; i.e. reasonable estimates of commission amounts and how these are worked out. Therefore, the committee believes that increasing transparency of the payment of commissions to third parties by betting agencies should be subject to closer scrutiny by the COAG Select Council on Gambling Reform in consultation with the COAG Legislative and Governance Forum on Consumer Affairs. Work should be undertaken with a view to developing nationally consistent standards in relation to tighter controls on credit betting and greater transparency for the practice of third party commissions. This work should include consultation with industry.

### **Recommendation 10**

**11.119 The committee recommends that the COAG Select Council on Gambling Reform, in consultation with the COAG Legislative and Governance Forum on Consumer Affairs, develop nationally consistent consumer protection standards for tighter controls on the practice of credit betting.**

### **Recommendation 11**

**11.120 The committee recommends that the COAG Select Council on Gambling Reform, in consultation with the COAG Legislative and Governance Forum on Consumer Affairs, develop nationally consistent consumer protection standards for greater transparency around the practice of paying third party commissions by betting agencies.**

11.121 The committee notes that this work should feed into the work recommended in the next chapter for a national code of conduct for wagering providers addressing a number of business practices, including advertising. The development of appropriate standards around the practices of credit betting and the payment of third party commissions should be incorporated into this national code of conduct.

11.122 The committee believes that, in the interests of harm minimisation and consumer protection, the practices of credit betting and third party commissions in the online environment should be addressed so that standards are nationally consistent. The committee would prefer that this national consistency for harm minimisation and consumer protection measures be achieved by states and territories in consultation with industry. The committee notes comments by the NSW Sports Minister, the Hon Graham Annesley MP, reported in the media that match-fixing was 'an issue serious enough to reach uniformity between the states'.<sup>101</sup> The committee considers that harm minimisation and consumer protection should also be sufficiently serious to warrant consistency.

11.123 In the event that consensus cannot be achieved in a reasonable timeframe over 2012, the committee believes that the Commonwealth should consider legislating in this area in order to achieve consistent regulatory arrangements.

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101 Paul Kent, 'Tighter laws on way to fix rorts', *Courier Mail*, 7 October 2011, p. 114.

# **Chapter 12**

## **Sports betting advertising**

12.1 This chapter will cover sports betting advertising. While chapter nine dealt with advertising of interactive gambling services covered by the *Interactive Gambling Act 2001* (IGA), this chapter will consider the reasons for the growth in advertising of sports betting services. As well as outlining some current research on the proliferation and possible effects of the growth of sports betting advertising, it will also cover the practice of offering inducements to bet and the sponsorship links between the betting industry and sport. The recent government announcement on reducing promotion of live odds during sport will also be covered. The chapter finishes with discussion of the current regulatory landscape and the calls for a national approach to regulation of advertising for sports betting.

### **Recent proliferation of sports betting advertising**

12.2 Sports betting has grown at a rapid pace in Australia over the past several years, as outlined in chapter 10. Many submitters to the inquiry attribute this growth to the proliferation of marketing campaigns to promote online sports betting services.<sup>1</sup>

12.3 Clubs Australia described the landscape for advertising of legal sports betting services and contrasted it with that for prohibited interactive online gaming services:

While the *Interactive Gambling Act 2001* prohibits the advertising of interactive gambling services, there are virtually no restrictions on advertising gambling products such as sports betting and wagering online or through mainstream media. Currently, companies advertise widely during televised national sporting events, heavily promoting gambling services and the placing of bets. In some instances, sporting odds are even provided during match commentary. A number of researchers have indicated that advertising expenditure appears to be increasing and that gambling advertising during sporting events is increasingly viewed as a social norm. A High Court judgment has confirmed that current laws permit wagering companies to advertise, offer inducements to players and offer credit betting facilities. These outcomes are contrary to good public policy.<sup>2</sup>

12.4 The Australian Christian Lobby argued that the growing relationship between sport and gambling was 'unhealthy':

Sport is an important part of Australian culture and is widely followed by families and children. Encouraging gambling and normalising it as an inherent characteristic of sport presents an unhealthy image of sport to

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1 Sportsbet, for example, expects to spend \$30 million this year on marketing alone; Brendan King, 'Online sports betting', *Breakfast*, ABC Radio National, 25 November 2011.

2 Clubs Australia, *Submission 24*, p. 8.

young fans. Such frequent promotion of gambling is unnecessary and creates an unwelcome sporting environment for families who do not desire gambling as a part of their sporting experiences.

As well as unnecessary messages about the place of gambling in sport, this provides an unhealthy culture within sport itself. In the light of some prominent recent controversies involving match fixing and a growing problem of betting scandals within sport, addressing gambling advertising in sport is timely, and regulation would be welcome in addressing some unhealthy trends.<sup>3</sup>

12.5 Dr John McMullan's submission also highlighted research showing that sustained promotion of sports betting is having negative effects on young people:

According to Dyall, Tse & Kingi (2007) the repeated promotion of gambling through sport products, images, usages and icons has created community wide legitimacy to participate in wagering at an earlier age overall. New Zealand children, they say, are heavily exposed to gambling advertisements that are "linked to sport or a major sport or track event, such as watching a major rugby game or horse racing event."<sup>4</sup>

12.6 Dr McMullan argued that the reinforcement of messages about sport and gambling have combined in such a way as to lead to the perception that there is an indissoluble association between the two activities:

...the messaging in more and more gambling advertising is evincing an emergent sport-related belief system within actual advertising content. McMullan & Miller (2008; 2009; 2010) found that the use of sport symbols such as footballs, hockey pucks, goal lines, goal posts, soccer pitches, golf greens, tennis courts, pool tables and stadiums, along with the shouts of players, the images of sport gear and the roar of spectators have come together in both online and brick and mortar advertising to associate winning at gambling with winning at sports. The sport content, they say, brings gambling products to consumers in new ways while simultaneously minimizing the negative impressions of wagering by relating online card games to popular approved uses, users and ideals that equate the fun of gambling with the fun of playing the big game on grass, clay or ice.<sup>5</sup>

12.7 Clubs Australia asserted that excessive sports betting advertising was glamorising gambling behaviour and noted that land-based venues did not operate on a level playing field in relation to advertising:

The association of gambling with sportspeople and sports broadcasters glamorises participation in gambling and informs youth of opportunities to engage. The results of a recent study clearly underscore the power of gambling advertising. Forty-two per cent of those surveyed stated that

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3 Australian Christian Lobby, *Submission 21*, p. 3.

4 Dr John McMullan, *Submission 32*, p. 5.

5 Dr John McMullan, *Submission 32*, p. 5.

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gambling advertising made them want to try gambling. Another study examined sources of gambling advertising: 96 per cent reported exposure through television advertising and 93 per cent reported internet exposure.

By contrast, land-based venues in most jurisdictions are prohibited from promoting their gambling operations in advertising and signage. In NSW, venues are not permitted to acknowledge that such facilities even exist.<sup>6</sup>

12.8 Dr Sally Gainsbury has suggested that future trends in the sports betting environment will include an increasing use of social media, an increasing relationship with television and growth in the use of sponsorship.<sup>7</sup>

12.9 For example, a Centrebet presentation to the Gaming, Racing and Wagering Conference in August 2011 illustrated the company's intention to be ranked in the top two operators in the Australian corporate bookmaking market. To achieve this goal, Centrebet's marketing activities focused on major Australian sports sponsorship and promotion activity including sponsorship of National Rugby League (NRL) and Australian Football League (AFL) teams (e.g. Cronulla Sharks and St Kilda) and on-ground signage deals with the Sydney Cricket Ground (SCG), including sponsorship of NRL 'corner-posts'. As part of its deal with the SCG, Centrebet reported that it was able to access the Sydney Swans team database to 'understand how the club works and how to convert fans to punters'.<sup>8</sup> Sponsorship links between betting agencies and sporting clubs are further discussed later in this chapter.

12.10 Some in the community also object to the advertising methods used by sports betting agencies. One submitter to the inquiry observed that a sports betting advertisement that had been screened on Saturday afternoon during the AFL preliminary final on Channel Ten was distasteful and offensive because of its 'intended and overt sexual connotations'.<sup>9</sup>

### ***2008 High Court decision on Betfair***

12.11 A number of submitters pointed to the 2008 High Court ruling involving Betfair and the state of Western Australia as being a crucial decision for sports betting advertising. In March 2008, the High Court of Australia ruled that section 92 of the Constitution, guaranteeing the absolute freedom of interstate trade and commerce, effectively invalidated Western Australian laws which had been introduced to prohibit

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6 Clubs Australia, *Submission 24*, p. 8, citing Monaghan, S, Derevensky, J & Sklar, A (2008). Impact of gambling advertisements and marketing on children and adolescents: Policy recommendations to minimise harm. *Journal of Gambling Issues*: Issue 22, December 2008.

7 Dr Sally Gainsbury and Professor Alex Blaszczynski , *Submission 7*, Attachment A, p. 34.

8 'Building the Centrebet brand via sport', presentation to the Gaming, Racing and Wagering Conference 2011, Sydney, 23 August 2011, <http://www.beaconevents.com/2011/grwa2011/en/DLPaper/index.html> (accessed 4 October 2011).

9 Ms Heather Coyne, *Submission 57*, p. 1.

people in Western Australia from using a licensed betting exchange and to prohibit a licensed betting exchange offering markets on Western Australian races.<sup>10</sup>

12.12 Betfair's submission also referred to this landmark case:

The Western Australian government justified the prohibition on the basis that betting exchanges supposedly threatened the integrity of racing in WA. The legislation was ruled constitutionally invalid by the High Court. The Court found that a prohibition is not "necessary for the protection of the integrity of the racing industry of that State" (paragraph 110) and that the regulation imposed by Tasmanian legislation (i.e. the *Gaming Control Act 1993 Tas*) is effective and non-discriminatory. In reaching its decision, the High Court compared the three types of betting operators in the Australian marketplace – totalisators, bookmakers and betting exchanges – and determined that Western Australia was not permitted to treat betting exchanges differently on the basis of integrity.<sup>11</sup>

12.13 FamilyVoice Australia pointed out that this ruling has since 'opened up advertising to sports betting agencies registered under looser laws in the Northern Territory':

The High Court decision makes it constitutionally problematic for individual States to adequately control gambling advertising. This puts the onus on the Commonwealth to take the lead in promoting a co-operative federalist approach to this issue.<sup>12</sup>

12.14 The calls for national action on a number of areas of advertising are outlined throughout the rest of this chapter.

### **Inducements to bet**

12.15 Unsurprisingly, sports betting providers argued against restricting the practice of offering inducements to bet (including the offering of free credit or 'free bets'). On the other hand, some submitters to the inquiry claimed that the use of 'inducements' to advertise betting products was inappropriate and could contribute to or exacerbate problem gambling.

12.16 Leagues Clubs Australia's submission described a range of inducements and promotions offered by online sports betting providers:

Inducements include:

- 100% first deposit bonus

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10 Betfair, Media Release, 'High Court upholds Betfair's claim', 27 March 2008, [http://www.betfaircorporate.com.au/media/PR%20High%20Court%20upholds%20Betfair's%20claim\\_270308.pdf](http://www.betfaircorporate.com.au/media/PR%20High%20Court%20upholds%20Betfair's%20claim_270308.pdf) (accessed 4 October 2011).

11 Betfair, *Submission 12*, p. 20.

12 FamilyVoice Australia, *Submission 4*, p. 2.

- Deposit \$25 to get a \$100 free bet
- Deposit \$30 to get a \$100 free bet
- Place first bet up to \$50 and if it loses they'll refund you up to \$50  
(Excludes VIC and SA)
- \$1000 Free Bet – 15% Signup bonus: Enter promotional Code HIGHROLLER. To get the most of this bonus we need to deposit \$15,000. The minimum requirement is a \$2,000 first deposit.
- Get 10% added to your odds
- Get \$50 FREE Bets. 20% BETTER ODDS
- Score a \$200 Bet You Can't Lose!
- Join Today and Receive \$100 Deposit Bonus!<sup>13</sup>

12.17 The Productivity Commission's (PC) view was that inducements, including the offering of free bets to open betting accounts, are not necessarily harmful and may even enhance competition by reducing 'switching costs between incumbent wagering operators and new entrants'. It recommended that any perceived risks of inducements should be properly assessed and that, regardless of whether prohibition or managed liberalisation is the appropriate outcome, a nationally consistent approach would be warranted.<sup>14</sup>

12.18 The PC's view was supported by a number of submitters including the NSW Bookmakers' Co-operative Ltd, the Australian Bookmakers' Association and Greyhounds Australasia.<sup>15</sup>

12.19 Betchoice's submission argued that the use of the term 'inducement' was 'overly broad' and provided:

...little assistance in developing good policy. Inducements cover a wide range of business practices, can occur in a variety of media and may be targeted at widely differing groups. As an example, we set out below<sup>16</sup> some of the practices, media and target audiences that may be involved in an inducement:

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13 Leagues Clubs Australia, *Submission 40*, p. 8.

14 Productivity Commission, *Gambling*, vol. 2, Commonwealth of Australia, Canberra, 2010, pp 16.58–16.59.

15 NSW Bookmakers' Co-operative Ltd, *Submission 11*, Attachment 1, p. 5; Australian Bookmakers' Association, *Submission 18*, p. 8; Greyhounds Australasia, *Submission 41*, p. 8.

16 Betchoice, *Submission 43*, p. 15.

Business Practice	Advertising Medium	Target Audience
<ul style="list-style-type: none"> <li>• Lower price</li> <li>• Rebate</li> <li>• Free trial</li> <li>• Gift</li> <li>• Satisfaction guarantee</li> <li>• Endorsement</li> </ul>	<ul style="list-style-type: none"> <li>• Official website</li> <li>• Third party websites</li> <li>• Email newsletter</li> <li>• Third party email</li> <li>• Direct mail</li> <li>• Newspaper/magazine</li> <li>• Trade publication</li> <li>• Billboard</li> <li>• Radio</li> <li>• Television</li> </ul>	<ul style="list-style-type: none"> <li>• Existing customer</li> <li>• Customer of competitor</li> <li>• New customer</li> </ul>

12.20 Betchoice argued strongly against a prohibition on all inducements:

A prohibition...would, if taken literally, extend to preventing operators from lowering prices to respond to competitive pressures or to pass on production savings. It makes no sense in a liberalised environment, such as wagering, to prevent so broad a range of standard business practices.<sup>17</sup>

12.21 Sportsbet reaffirmed the PC's position on inducements and promotional activities as being pro-competitive:

New entrants will seek to invest heavily in advertising and inducements; we would expect that the returns to advertising spending would only materialise after a threshold level is exceeded.

Promotional activities by new entrants will be pro-competitive, if undertaken on a sufficient scale. The Productivity Commission found that inducements may serve primarily to reduce the cost to consumers of switching from incumbents to new entrants, and could therefore be pro-competitive.

Incumbents will seek to invest in promotional activities, but they also stand to gain from restrictions on such activities. This is because their reputational advantage as incumbents means that an inability to spend an extra dollar on such activities will disadvantage new entrants to a much greater extent than it would the incumbents.<sup>18</sup>

12.22 Betfair acknowledged that while offering inducements is a common practice used by all types of businesses, such offerings should be done 'responsibly', and suggested limits on free bet amounts:

Wagering operators, like any other legal business, have the right to advertise their services responsibly. The offering of inducements is common place and legitimate for all types of businesses and as such,

17 Betchoice, *Submission 43*, p. 15.

18 Sportsbet, *Submission 44*, Attachment A, p. 41.

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operators should be permitted to offer inducements to open a betting account - provided such offerings are responsible.

The increasing level of competition in Australia's online and offline gambling market has seen the proliferation of promotions offering free bets to new customers. Betfair does not believe that a free bet, of itself, encourages problem gambling, but we believe that bets should be limited to \$50.<sup>19</sup>

12.23 At a public hearing, committee members questioned Betfair about the practice of offering inducements to bet. Mr Andrew Twaits, Chief Executive Officer, explained that the company offered 'terms of trade' to a small number of customers, similar to the 'credit betting' practice covered in chapter 11:

**Senator XENOPHON:** Does Betfair provide credit or inducements to gamble?

**Mr Twaits:** Not in the sense that bookmakers traditionally provide credit. We are not allowed to provide unsolicited credit, if you like, to customers; however, like the TABs we are able to provide terms of trade to our more sophisticated corporate type customers who are approved by the Gaming Commission. There are about 20 of those customers.

**Senator XENOPHON:** So apart from those 20 with Gaming Commission approval, you cannot make a commercial decision to say, 'We're going to give you \$10,000 in credit'?

**Mr Twaits:** No.<sup>20</sup>

12.24 When asked about whether the company offered inducements to open a betting account, Betfair told the committee that 'in the past we would have offered a free cap or \$50 in your account if you open an account with Betfair'. In relation to offering free credits or free bets, the company said:

**Mr Blanksby:** Certain jurisdictions do not allow it and do not allow the advertising of it, so we ensure that any offerings we make abide by that legislation.

**Senator BILYK:** But in the jurisdictions where it is allowed, do you do it?

**Mr Twaits:** We do. Generally up to \$50 or \$100—\$200 maybe—depending on the potential size of the customer.<sup>21</sup>

12.25 The committee then questioned Betfair on how the offering of free credits or bets to customers is determined:

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19 Betfair, *Submission 12*, p. 11.

20 Senator Nick Xenophon and Mr Andrew Twaits, Betfair, *Committee Hansard*, 11 August 2011, p. 27.

21 Senator Catryna Bilyk, Mr Andrew Twaits and Mr Josh Blanksby, Betfair, *Committee Hansard*, 11 August 2011, p. 27.

**Senator BILYK:** If you do offer free credits, how do you determine that you [are] going to offer them to the customers?

**Mr Blanksby:** The promotion is usually done on an action of the customer. Usually you want the customer to place a bet with us on a certain event and that will trigger their credit...

**Senator BILYK:** So why don't you offer free credits to all customers?

**Mr Twaits:** It costs money to offer those benefits. Our system is quite complex compared to the run of the mill bookmaker or the TAB. Sometimes we have problems educating people on how the back and lay system works, how a lay bet works. Even for experienced punters it is quite hard. The free bets we offer are typically targeted to reactivation or encourage them to experience the full—

**Senator BILYK:** If someone has not used their account for awhile?

**Mr Twaits:** Potentially that and sometimes, even if they are quite active, to encourage them to take advantage of a broader range of benefits that we think Betfair has to offer.<sup>22</sup>

12.26 Other submitters argued that inducements to bet were aggressive and needed restrictions. For example, the Social Issues Executive of the Anglican Diocese of Sydney put forward its concerns about trends:

...towards anonymous, individual gambling contexts which lack social accountability and which make it more difficult for problem gamblers to separate themselves from situations in which problem gambling behaviours can be exercised. Inducements to bet online are thus a cause for concern as they promote this shift and endorse gambling opportunities for individuals that are not mediated by a social context.<sup>23</sup>

12.27 Mr Christopher Hunt of the University of Sydney Gambling Treatment Clinic also stated that inducements to gamble have the potential to hinder the recovery efforts of existing problem gamblers:

I have a client, who I saw this week, for example, who was trying to cut down and then the gambling site gave him a free \$50 and that got him into a spiral where he ended up losing considerably more than that. While it might not contribute to someone becoming a problem gambler it definitely exacerbates the problem of already existing problem gamblers.<sup>24</sup>

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22 Senator Bilyk, Mr Josh Blanksby and Mr Andrew Twaits, *Committee Hansard*, 11 August 2011, pp 27–28.

23 Social Issues Executive, Anglican Diocese of Sydney, *Submission 17*, p. 3.

24 Mr Christopher Hunt, University of Sydney Gambling Treatment Clinic, *Committee Hansard*, 16 September 2011, pp 21–22.

### ***Regulation of inducements to bet***

12.28 Significant discrepancies exist in the regulation of inducements to bet across states and territories. For example, the Queensland Government noted that there has been discussion of a national approach to inducements to bet for some years. However, no agreement has yet been arrived at:

Inducements to bet on sporting events have been discussed at a national level both through the Australasian Racing Ministers Conference and through the National Wagering Advertising Working Party.

It is understood that at a meeting of the Australasian Racing Ministers Conference in December 2008, state and territory Ministers indicated their support for a national approach to prohibiting the advertising of inducements to open new wagering accounts.

Specifically, a prohibition on offers of any credit, voucher or reward as an inducement to participate, or to participate frequently, in any gambling activity or to open a betting account was supported.

At a meeting of the National Wagering Advertising Working Party in December 2010, participants raised that the definition of 'inducement' could be open to interpretation and suggested a nationally consistent definition be adopted.

The offering of inducements for gambling is not unlawful in Queensland. However, given that online gambling has no jurisdictional boundaries and there is a need for constitutional adherence with free trade requirements, if restrictions are to be placed on inducements to bet on sporting events online, a consistent national approach is warranted.<sup>25</sup>

12.29 The Australian Internet Bookmakers Association (AIBA) argued that recent moves by states and territories to restrict certain types of inducements to bet had not been 'evidence-based':

Recently, some States and Territories prohibited Australian operators from offering modest "signup bonuses" to those who open new accounts - the "\$100 free bet" offer. This had been labelled an improper inducement to gamble.

Offers such as this must be kept in perspective.

"Cash-back" offers and giveaways are a standard (and unremarkable) feature of the marketing of all businesses. In the case of gambling sites, the "free bet" or other "bonus" offers are a practical way of appealing to the market.

This is not a new concept, with "free bets" and bonuses having become so prevalent in the global internet gambling industry, they are now the subject of specialist websites and services that compare the bonuses on offer.

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25 Queensland Government, *Submission 55*, p. 15.

As this is global practice, with various forms of bonuses being offered by all major operators, a ban on Australian operators matching these modest offers has had the effect of making the Australian industry less competitive in the global market but at the same time making overseas operators more attractive to Australian punters.

Furthermore, it appears that the impetus for such a step was less a concern about problem gambling, and more a desire to protect TABs from competition.<sup>26</sup>

12.30 The committee wrote to state and territory regulators asking them to outline their rules around the offering of inducements to bet. Responses were received from New South Wales, Victoria, Queensland, South Australia, Western Australia, Tasmania, and the ACT. Responses varied, demonstrating a range of different rules in place across jurisdictions.

12.31 The Victorian Commission for Gambling Regulation stated that Section 4.7.10 of the *Gambling Regulation Act 2003* made it an offence for a wagering service provider to offer any credit, voucher or reward as an inducement to open a betting account.<sup>27</sup> New South Wales has similar restrictions.<sup>28</sup>

12.32 In South Australia, the relevant responsible gambling codes of practice (not legislation) prohibit the SA TAB, bookmakers and authorised interstate betting operators from offering inducements.<sup>29</sup>

12.33 Queensland reported that there were no prohibitions on licensees regarding the offering of inducements, whereas in Tasmania, Western Australia and the ACT only certain types of inducements were prohibited.<sup>30</sup>

12.34 As an international example, the UK Gambling Commission noted that under its licensing arrangements, inducements to bet were regulated in the following manner:

The code aims to balance operators' legitimate use of inducements and other marketing incentives to differentiate themselves from competitors and to attract customers against the risk that the inducements are frustrating the licensing objectives (for example, by encouraging loss-chasing). For

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26 Australian Internet Bookmakers Association, *Submission 54*, p. 28.

27 Correspondence from the Victorian Commission on Gambling Regulation, 20 September 2011.

28 Correspondence from the New South Wales Office of Liquor, Gaming and Racing, received 5 October 2011.

29 Correspondence from South Australia's Independent Gambling Authority, 8 September 2011; and South Australian Office of the Liquor and Gaming Commissioner, 14 September 2011.

30 Correspondence from the Queensland Office of Liquor and Gaming Regulation, 16 September 2011; Tasmanian Gaming Commission, 16 September 2011; Western Australian Department of Racing, Gaming and Liquor, 30 September 2011; and ACT Gambling and Racing Commission, 21 September 2011.

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example, a promotion that encourages people to gamble by requiring them to spend a minimum amount within a relatively short period of time to qualify for rewards would be of concern.<sup>31</sup>

12.35 Clubs Australia expressed its concern about inducements, viewing them as 'particularly dangerous'. It advised that in Victoria, New South Wales and South Australia, the advertising of incentive bonuses to sign up is prohibited and that despite this regulation, operators continue to promote these sign up incentives online.<sup>32</sup> The committee acknowledges the recent action by the Victorian Commission for Gambling Regulation which has charged four operators with allegedly offering illegal incentives to open betting accounts.<sup>33</sup>

#### *Sportsbet case—free bets*

12.36 To demonstrate the danger of incentives, the committee notes the case of a Melbourne man with a mental illness who ran up \$80,000 in debts with Sportsbet, which was canvassed at one of the committee's public hearings. According to media reports, the man claimed he was lured in by the offer of \$5,000 in free bets. He then accepted thousands of dollars worth of credit to continue betting.<sup>34</sup> The evidence from Sportsbet on the case was covered at the end of chapter 11 in the sections on credit betting and the payment of commissions to third parties.

#### *Committee view*

12.37 The provision of free bets presents risks and the committee is unconvinced that all inducements to bet should be treated as simply standard advertising practice. With a riskier product such as a gambling service, such inducements and 'free bets' can lead to significant financial problems, such as those experienced by Sportsbet's client who lost \$80,000. This case demonstrates how dangerous the combination of free bets and the provision of credit can be. Along with rules on advertising in general, regulations covering such practices appear to be inconsistent between jurisdictions.

12.38 At the end of this chapter, the committee makes a recommendation on a national code of conduct which covers inducements to bet. The development of consistent standards on inducements to bet should take into consideration the risks posed by inducements to encourage consumers to chase losses or spend a certain amount in a short period to qualify for rewards.

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31 UK Gambling Commission, *Submission 33*, p. 6.

32 Clubs Australia, *Submission 24*, p. 7.

33 Ashley Gardiner, 'Betting operators accused of offering free bets, a refund on losing wagers', *Herald Sun*, 10 October 2011. The operators are: IASbet.com, Sportsbet, Betezy and Betfair.

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

## Sponsorship of sports

12.39 For many sporting codes, sports betting and the advertising of sports betting services are a lucrative source of income.<sup>35</sup> According to media reports, Tabcorp and Betfair have deals with the AFL worth more than \$2 million annually. In addition, more than 20 other betting agencies pay a dividend of their AFL-related takings to the league and many clubs have sponsorship deals with wagering companies.<sup>36</sup> For example, TAB Sportsbet is a major sponsor of the Collingwood AFL club.<sup>37</sup>

12.40 Restricting access to revenue derived from sports betting could have some financial and commercial implications for these sporting codes. However, sporting codes are also concerned about the erosion of the sports experience for fans if advertising of sports betting becomes too prominent.<sup>38</sup>

12.41 The Australian Christian Lobby drew attention to the obvious sponsorship links between popular sporting clubs and gambling providers:

In addition to the promotion by commentators and at grounds during the game, sport teams are commonly sponsored by gambling providers – for example, the NRL’s Canberra Raiders are sponsored by prominent poker machine venue the Tradies Club, while the Manly Sea Eagles in the NRL and the St Kilda Saints in the AFL are sponsored by Centrebet.<sup>39</sup>

12.42 Leagues Clubs Australia's submission described the extent of betting agencies' sponsorship of major Australian sports:

The major Sports betting agencies have commercial agreements with sport governing bodies such as the NRL, AFL, Cricket Australia, Tennis Australia, PGA and V8 Supercars Australia as well as sponsorships with individual AFL teams such as Carlton (Sportingbet), St Kilda (Centrebet) and Richmond (Tabcorp), NRL teams such as St George Illawarra, Manly, Penrith, North Queensland, Parramatta (all Centrebet) and Brisbane (Sportingbet).

These collective agreements result in maximum exposure at sporting grounds (electronic scoreboards and fence advertising), during televised sport on free to air, pay TV and radio (including live odds during games),

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35 It should be noted that some sponsorship deals with gambling companies are entered into with broadcasters of sporting events, not with sporting clubs, so the sports themselves may not have influence over these arrangements during the broadcast of their events.

36 Samantha Lane, 'AFL in a bind over advertising explosion', *Sydney Morning Herald*, 8 April 2011.

37 See <http://www.collingwoodfc.com.au/tab%20sportsbet/tbid/14380/default.aspx> (accessed 17 October 2011).

38 Samantha Lane, 'AFL in a bind over advertising explosion', *Sydney Morning Herald*, 8 April 2011.

39 Australian Christian Lobby, *Submission 21*, p. 3.

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high exposure in the print media (newspapers & sporting magazines) as well as via the internet and mobile phones.<sup>40</sup>

12.43 Some of the sponsorship deals that have raised concerns provide cash incentives to fans in return for signing up a friend with a particular betting agency. Anti-gambling campaigner Rev. Tim Costello has described these sorts of deals as 'disgraceful'.<sup>41</sup>

12.44 The AFL club Collingwood and its major partner, TAB Sportsbet, recently launched a competition where fans who bet a minimum of \$5 through TAB Sportsbet were offered the chance to win a spot in the Collingwood coach's box at a match. TAB Sportsbet denied the promotion was designed to encourage fans to open betting account 'as that is illegal in Victoria'.<sup>42</sup>

12.45 Other AFL clubs have arrangements in place with BetEzy, an online bookmaker licensed in the Northern Territory. For example, the club websites for the Adelaide Crows, the Melbourne Demons and the Essendon Bombers provide links (under 'Tipping') to 'CrowsBet', 'DeesBet' and 'Bombersbet', offering club members a 'VIP service for VIP clients' with the opportunity to bet on a broad range of Australian and international racing and sporting events.<sup>43</sup>

12.46 David Scharwz, a former AFL player and recovering problem gambler, argued on SBS TV's *Insight* program that gambling advertising during sport was 'out [of] control':

It's too skewiff, it's too out of kilter with what society is thinking...Whilst money is coming in from betting agencies to government, to the codes, to the associations they are almost drunk on it. It's that appealing.<sup>44</sup>

12.47 The rise in corporate sponsorship of sport by gambling companies internationally was described at length by Dr McMullan:

...both offline and online gambling providers have increasingly used sport sponsorship as a marketing platform deploying huge investments of money to recruit and retain consumers (Binde, 2007; Monaghan et al., 2008). This sponsorship has included reaching people by putting posters in bars during National Football League (NFL) games, running billboard ads during college basketball tournaments, displaying racy billboards featuring models on the sides of trucks parked in the lots outside sport events, posting

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40 Leagues Club Australia, *Submission 40*, p. 8.

41 Ben Butler, 'Footy clubs cashing in big on gambling deals', *Herald Sun*, 23 December 2009.

42 Jason Dowling, 'Sit with the Pies' coach? You bet', *The Age*, 2 June 2011.

43 See <http://www.crowsbet.com.au/Home/Default.aspx>; <http://deesbet.com.au/home/default.aspx>; <http://bombersbet.com.au/Home/Default.aspx> (accessed 17 October 2011).

44 David Scharwz, 'Online Gambling', *Insight*, SBS TV, 13 September 2011, <http://www.sbs.com.au/insight/episode/index/id/428/Online-Gambling#transcript> (accessed 11 October 2011).

website addresses to gamble on women's swimwear, and promoting corporate brands on team uniforms and replica promotional products (McMullan & Miller, 2008). According to Monaghan et al. (2008), corporate sponsorship deals in Premier League soccer in the United Kingdom, for example, have "increased from 2006 to 2007 by 25% to approximately £70 million" (p. 256). Gambling providers, in turn, have directed their viewing and listening audiences on their advertising slots and programs to watch sport programs such as soccer qualifiers, baseball events, tennis matches, snooker tournaments and the like.<sup>45</sup>

12.48 He also highlighted the increasing dependence of sport on sponsorship from gambling providers:

Most recently, the European Parliament has acknowledged that sports in their jurisdictions are increasingly dependent on gambling as a primary source of revenue resulting in more promotional products being sold, more in-store product sales taking place and more celebrity endorsements occurring where the naming rights, brands and logos of gambling companies are associated directly with sporting teams and venues as selling techniques. Indeed some sport icons have been promoting preferred gambling sites by wearing branded merchandize available for purchase, offering their legendary status as prizes to tournament winners and sponsoring their own worthy causes through gambling. The sales pitch has been to twin gambling with sport culture and to encourage consumers to purchase the myth of gambling as a sport, an approach that has been especially appealing to adolescents in several countries (Dyall et al., 2007; Korn et al., 2005; Maher et al., 2006; McMullan & Miller, 2008; Monaghan et al., 2008).<sup>46</sup>

12.49 Dr McMullan also pointed out the risks posed by the close relationship between sports and gambling and its effects on young people:

...learning about gambling through sport programming on television and the internet promotional products such as clothing, electronic gear and travel accessories, and sale ads and billboards at actual sport venues (Korn et al., 2005). Indeed Monaghan et al. (2008) suggest that merchandizing gambling through sports poses "a direct risk to youth at a developmental age that makes them susceptible to influence" (p. 257) and a New Zealand study states that gambling advertisers have created "unhealthy sponsorships" with gambling providers that excessively expose and normalize their products to young people (Maher, Wilson, Signal & Thompson, 2006).<sup>47</sup>

12.50 Dr Declan Hill has called sponsorship of sporting clubs by betting providers 'dancing with the devil':

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45 Dr John McMullan, *Submission 32*, pp 4–5.

46 Dr John McMullan, *Submission 32*, p. 5.

47 Dr John McMullan, *Submission 32*, pp 4–5.

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These kinds of relationships must be watched very, very closely. If the gambling industry wants to bet on sports events, then they should be footing the bill for the integrity units and anti-corruption activities, including higher salaries and better pensions for players.

You are always going to have some idiot who will take a bribe. But the trick is to bring levels of corruption down to where it is simply the odd psychotic thug who will do these things. What Australia must avoid are the levels of corruption in some Asian sports leagues, where it is as common for a fan to watch a fixed match as a normally played one.<sup>48</sup>

12.51 Dr Gainsbury and Professor Alex Blaszczynski noted the 'symbiotic' relationship between internet betting services and sporting clubs:

Partnerships between Internet gambling corporations and sporting associations appear to be quite symbiotic as costs associated with sports increase and sports fans represent an ideal market for online gambling (Lamont et al., 2011). Although mandated and self-regulated codes of conduct restrict the involvement of other "non-healthy" products including tobacco, alcohol, and junk food, little attention has been paid to the potential harm caused by sports sponsorship from Internet gambling corporations. Some jurisdictions, including the UK, have prohibited the placement of gambling corporation logos on promotional merchandise, in recognition of the potential risk posed to vulnerable populations. The prominent exposure of gambling products normalises this activity and associates it with healthy activities and role models posing a direct risk to youth who are susceptible to influence (Monaghan & Derevensky, 2008; Monaghan et al., 2008).<sup>49</sup>

12.52 Their submission therefore recommended that:

The involvement of Internet gambling sites in the sponsorship of sporting teams and events should be carefully considered and regulated to reduce any risks of exposure to vulnerable populations.<sup>50</sup>

### **Extent of sports betting advertising during sporting events**

12.53 As noted earlier, one of the key issues raised during the inquiry was the view that there has been a proliferation of sports betting advertising over recent years. The committee was told<sup>51</sup> about relevant research being conducted by Dr Samantha Thomas and Associate Professor Colin McLeod and invited them to a hearing to speak about their work on gambling advertising and sports betting. These studies included the frequency, length and content of online betting advertising in sporting stadiums

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48 David Sygall, 'Beware of tainted money', *Sydney Morning Herald*, 12 June 2011.

49 Dr Sally Gainsbury and Professor Blaszczynski, *Submission 7*, p. 8.

50 Dr Sally Gainsbury and Professor Blaszczynski, *Submission 7*, p. 8.

51 Ms Penny Wilson, Responsible Gambling Advocacy Centre, *Committee Hansard*, 11 August 2011, p. 36.

and during sporting broadcasts, and the effectiveness of harm minimisation messages in gambling advertising. In addition, Dr Thomas has conducted qualitative research with a range of gamblers on their conceptualisations of risk.<sup>52</sup> A summary of the research and findings is provided below.

12.54 Dr Thomas and Associate Professor McLeod found that marketing strategies are embedded in the game itself at stadiums and also in television broadcasting and that sponsorship adds another layer to these marketing strategies. In addition to gambling advertisements at the match, sponsorship is visible on banners (including run through banners), player uniforms and fan jerseys. There are also pop up messages at the stadiums and during broadcasting which encourage people to 'bet now'. This leads to a troubling convergence of aggressive gambling advertising and the technology which allows people to bet in real time.<sup>53</sup>

### ***Effect of exposure to gambling advertising on children***

12.55 The high level of in-venue advertising is of concern to the committee because spectators are a captive audience. Sporting matches are promoted as 'family friendly', yet the environment exposes children to a very high level of marketing for an adult product.<sup>54</sup>

12.56 In this context, the committee notes with concern the information provided to the committee indicating that children are vulnerable to the gambling advertising messages and that we do not know the long-term effect of this level of exposure.<sup>55</sup>

12.57 The committee discussed the role of parents to educate children about the risks and benefits of gambling, noting this argument is made by gambling providers<sup>56</sup> and parents as role models. Dr Thomas commented:

As a sociologist I think that no longer can we say that parents are the most influential role model on children and their behaviours. Now young people

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52 Thomas, S.L. Lewis, S. McLeod, C. Haycock, J. (2011) 'They are working every angle'. A qualitative study of Australian adults' attitudes towards, and interactions with, gambling industry marketing strategies. *International Gambling Studies*. 1–17, iFirst article.

53 Thomas, S.L. Lewis, S. McLeod, C. Haycock, J. (2011) 'They are working every angle'. A qualitative study of Australian adults' attitudes towards, and interactions with, gambling industry marketing strategies. *International Gambling Studies*. 1–17, iFirst article, pp 10–11.

54 Thomas, S.L. Lewis, S. McLeod, C. Haycock, J. (2011) 'They are working every angle'. A qualitative study of Australian adults' attitudes towards, and interactions with, gambling industry marketing strategies. *International Gambling Studies*. 1–17, iFirst article, p. 11.

55 See chapters two and nine and earlier in this chapter. See also Thomas, S.L. Lewis, S. McLeod, C. Haycock, J. (2011) 'They are working every angle'. A qualitative study of Australian adults' attitudes towards, and interactions with, gambling industry marketing strategies. *International Gambling Studies*. 1–17, iFirst article, p.12, 14.

56 See comments from Alan Eskander, 'Online Gambling', *Insight*, SBS TV, 13 September 2011, <http://www.sbs.com.au/insight/episode/index/id/428/Online-Gambling#transcript> (accessed 17 October 2011).

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are exposed and have access to so much outside of their parents that we are seeing a whole new level of influence on behaviour and particularly on risk and risk perceptions.<sup>57</sup>

12.58 Long-term effects on children have not been studied but Dr Thomas and Associate Professor McLeod described the following developments already evident for children. The advertising to a captive audience promotes an adult product in what is considered to be a family environment. Children are exposed to this marketing. Dr Thomas emphasised that while the advertising is not directly marketed to children and children cannot consume the product, they are absorbing the message.<sup>58</sup> In addition, the constant promotion of live odds updates at matches and within game play during broadcasts may have a normalising effect on children. This is because there is a blurring between advertising and the game so children may consider the live odds, for example, to be part of the game.<sup>59</sup>

12.59 The committee discussed with Dr Thomas what the effects might be over the long term. Although there is currently no available research, Dr Thomas thought an educated guess would be possible based on the effects of tobacco, alcohol and junk food advertising:

We can probably make an educated guess, that, as with those products, kids are being softened to this. It is becoming part of their talk...Kids are consuming these messages. They are consuming the brands. What we do not know is what long-term impact it is having on them and what will happen over time in terms of encouraging them to engage in gambling...<sup>60</sup>

### ***Committee view***

12.60 The committee notes that the boundaries between sports betting advertising and the game are being blurred. It is concerned that sports betting is becoming normalised for children and that they consider it to be just part of the sport. One of the main ways this occurs is through the live odds announcements, particularly those that occur within the match or game play. The committee heard how odds are now embedded in conversations about sport. With constant consumption of gambling advertising by children who follow sport, where they are subjected to high levels of gambling advertising, the long-term effects are unknown. The committee's view on live odds promotion is discussed in greater detail later in this chapter.

12.61 At this point, the committee recommends further research into these trends to determine what effects such promotions may be having on children. Until such time as a national independent research institute on gambling (as recommended in chapter two and in the committee's previous report) can undertake this work, the COAG Select

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57 Dr Samantha Thomas, *Committee Hansard*, 11 October 2011, p. 9.

58 Dr Samantha Thomas, *Committee Hansard*, 11 October 2011, p. 8.

59 Dr Samantha Thomas, *Committee Hansard*, 11 October 2011, p. 2.

60 Dr Samantha Thomas, *Committee Hansard*, 11 October 2011, pp 8–9.

Council on Gambling Reform should commission this work. (In chapter 16, the committee makes a broader recommendation on legislative action to restrict gambling advertising during children's viewing times).

## **Recommendation 12**

**12.62 The committee recommends that the COAG Select Council on Gambling Reform commission further research on the longer-term effects of gambling advertising on children, particularly in relation to the 'normalisation' of gambling during sport.**

### **Effects of gambling advertising on young men**

12.63 Dr Thomas and Associate Professor McLeod discussed with the committee their qualitative research findings which shed light on the way in which sports betting advertising has contributed to young men watching sport through a 'gambling prism'.<sup>61</sup> These young men were aware that gambling advertising was being deliberately marketed towards their demographic. They described the aggressive tactics used in advertising in 'war metaphors'; for example, feeling bombarded, targeted, or unable to escape it.<sup>62</sup>

12.64 Gambling appears to be increasingly normalised for young men, with discussions about odds regularly included in conversations about sport. Some young men feel pressured to bet by their peers and the committee heard of an emerging trend where groups of young men choose a neutral sporting event to attend with their peers, specifically to gamble on it. This was highlighted to the committee as an unusual trend, as often gambling advertising was targeted to a fan's sense of team loyalty.<sup>63</sup>

12.65 The advertising is appealing to these young men in a number of ways. It taps into team loyalty, knowledge of the game and self-identity. Associate Professor McLeod elaborated:

The way in which a lot of the promotion around gambling is pitched is: 'Show us how smart you are, show us that you really belong'. So there is a normative thing but it is also about your own sense of loyalty to the team that you follow—you are not a fan unless you are gambling on the team. There is also the idea that you understand the game better than anyone else and if you do gamble on the team then you are probably going to win.<sup>64</sup>

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61 Dr Samantha Thomas, *Committee Hansard*, 11 October 2011, p. 2.

62 Dr Samantha Thomas, *Committee Hansard*, 11 October 2011, p. 2. See also Thomas, S.L. Lewis, S. McLeod, C. Haycock, J. (2011) 'They are working every angle'. A qualitative study of Australian adults' attitudes towards, and interactions with, gambling industry marketing strategies. *International Gambling Studies*. 1–17, iFirst article, p. 10.

63 Dr Samantha Thomas, *Committee Hansard*, 11 October 2011, pp 2–3.

64 Associate Professor Colin McLeod, *Committee Hansard*, 11 October 2011, p. 3.

12.66 In addition, Dr Thomas explained how betting companies were deliberately 'softening' the language used to advertise their services:

You will never hear the gambling industry use the word 'gambling'. It talks about betting and punting and so on, and punting in particular. There is the softening of language; a slow embedding within conversations, but again within our research we are seeing this purely with young men.<sup>65</sup>

12.67 Along with the advertising messages which appeal to young men, the research found that young men are attracted to inducements to bet, such as the offer of free bets or other such incentives to open an account. Young men believed that they were taking advantage of and could exploit the industry with their knowledge of sport and skill in betting. For example, the research found numerous examples of young men who opened multiple betting accounts but who still felt they were in control and were taking advantage of something that was being given away for free.<sup>66</sup>

### ***Read the fine print***

12.68 Given that young men appear to believe they are taking advantage of the inducements to bet, it is important to note that reading the terms and conditions, or the 'fine print', is essential to understanding the offer as the details are not usually presented in the advertisements. For example, a recent Betstar 'join up' offer of \$500 free bets actually offered a free bet of 20 per cent of the original deposit up to a maximum of \$500. To reach \$500, it was conditional on a minimum \$2,500 deposit which had to be spent within 30 days with restrictions on the kinds of bets that could be placed. These conditions were not presented in the advertisements for the offer. In addition, unless customers read the terms and conditions they would not be aware the offer was not available in Victoria or South Australia.<sup>67</sup> The terms and conditions specify:

1. Upon funding the newly registered account the account holder will be eligible to receive a free bet being 20% of their initial deposit, to a maximum of \$500.
2. To be eligible for the Betstar Sign Up Bonus, the initial deposit must be turned over and the bonus must be redeemed within 30 days of the account being opened. If the offer is not redeemed within the 30 days, the offer is void. Kindly note qualifying turnover must be placed on outcomes at a dividend of \$1.20 or greater and does not include turnover on \$2 Powerlines.

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65 Dr Samantha Thomas, *Committee Hansard*, 11 October 2011, p. 2.

66 Dr Samantha Thomas, *Committee Hansard*, 11 October 2011, p. 8.

67 Information available from: <http://www.cyenne.com/discussion/sneaky-bastards-file-betstar/> (accessed 2 November 2011). Under section 4.7.10 of the Victorian *Gambling Regulation Act 2003*, it is an offence for a wagering service provider to offer any credit, voucher or reward as an inducement to open a betting account. In South Australia, the relevant responsible gambling codes of practice prohibit the TAB, bookmakers and authorised interstate betting operators to offer an inducement (see discussion earlier in the chapter on inducements to bet).

3. The Betstar sign up bonus is only available to Australian residents, however due to legislative requirements, Victorian and South Australian residents are not eligible to receive the Betstar Sign Up Bonus...<sup>68</sup>

12.69 Another example is an offer from Luxbet.com of a \$100 first deposit bonus. However, the following conditions apply:

The Bonus must be wagered as a single bet on a fixed odds market with a dividend of greater than or equal to \$1.50 per \$1 bet.

If the Bonus returns a winning dividend, those winnings (excluding the Bonus stake) will be credited to your Luxbet betting account.

Each Bonus and any winnings accrued from the Bonus must be turned over at least once (x1) for a Bonus up to and including \$250 and at least twice (x2) for a Bonus of greater than \$250 on bets with a dividend of greater than or equal to \$1.50 per \$1 bet within 90 days before you can withdraw the Bonus or any winnings from your Luxbet bonus bet account or Luxbet betting account (the Minimum Turnover Threshold)...<sup>69</sup>

12.70 The committee also received a further example from an individual who created a Centrebet account just to place a bet on the Melbourne Cup. After reading the terms and conditions closely, the person thought they were eligible for the advertised \$200 bonus offer but were advised that they were not as the bonus was only paid on the first 'stake', which they felt was unclear. Then when they attempted to close down the account they were asked for a Medicare, passport or drivers licence number to do so. The submitter pointed out that they were not asked to provide such details to create the account and indicated that had they known such information was required at the outset, they would not have created the account.<sup>70</sup>

### ***Committee view***

12.71 The committee notes that exposure to gambling advertising is a public health issue. Some groups, such as young men appear to be particularly vulnerable. The need for responsible gambling messages to counter the messages in online sports betting advertising is discussed below. The need for consistent legislation around inducements to bet is also discussed below.

### **Effectiveness of harm minimisation messages**

12.72 Given the high level of advertising by online gambling providers, it is timely that Dr Thomas<sup>71</sup> has also conducted research on the awareness of and recall of harm

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68 Information available from: [https://www.betstar.com.au/betstar-terms-and-conditions/free\\_bet\\_bonuses.html](https://www.betstar.com.au/betstar-terms-and-conditions/free_bet_bonuses.html) (accessed 2 November 2011)

69 Information available from: [http://info.luxbet.com/bonus\\_bet\\_rules.pdf](http://info.luxbet.com/bonus_bet_rules.pdf) (accessed 2 November 2011).

70 Name withheld, *Submission 60*.

71 Research undertaken with PhD student Shenae Beus.

minimisation messages that are currently present in television commercials for online gambling products. This research used eye tracking software to investigate whether 166 students saw and recalled a responsible gambling message in broadcast advertisements for three online betting companies.<sup>72</sup>

12.73 The study found that overall, 60 per cent of individuals did not see any responsible gambling or gamblers help message in the three advertisements. However, there were differences in recall for each advertisement. In addition, no students were able to either recall the message in full, or recall the 1300 Gamblers Help helpline number. The differences in recall for each advertisement could be due to the different presentation of the messages. For example, in the Tom Waterhouse commercial there is a different colour scheme and the message is displayed in the middle of the advertisement rather than at the end of the advertisement, which makes it less likely to be seen.<sup>73</sup>

12.74 Dr Thomas suggested that there needed to be greater consistency in standards applied to the presentation of harm minimisation messages in advertising. For example, reference to a phone help-line could be mandated; the font size and length of the message could be standardised; clear references could be made to the likelihood of losing money. Dr Thomas argued that such messages were valuable from a public health perspective:

...I think they are in-principle messages that we need to have there. They make a strong statement that we need those there; that we need counterframing on those ads. This is kind of like the old days of cigarettes when we used to have that tiny little warning on the packet...

It needs to be more clearly signposted and for a longer period. Will people act on that information? Maybe or maybe not, but it is the first step and then directing people towards a suite of help services and so on that can help them if they need that...

Do not forget that those messages are not really geared towards problem gamblers. They are aimed towards people who are bordering on risky gambling behaviours. They are the little reminder ones...<sup>74</sup>

12.75 To support the need for greater consistency in standards, the committee notes a recent media article which reported that some betting companies showed 'contempt' for the requirement to provide responsible gambling messages. Uniting Care Wesley manager Mr Mark Henley said that a complaint had been lodged with the South Australian Independent Gambling Authority in March 2011 about a company whose radio advertising concluded with the fast delivery of the message: 'Gamble

72 Dr Samantha Thomas, *Committee Hansard*, 11 October 2011, p. 5. The three companies were Centrebet, Sportsbet and Tom Waterhouse.

73 Dr Samantha Thomas, Associate Professor Colin McLeod, *Committee Hansard*, 11 October 2011, pp 5–6.

74 Dr Samantha Thomas, *Committee Hansard*, 11 October 2011, p. 6.

responsibly, don't drink too much and be nice to your mother'. Mr Henley observed: 'The wording coupled with the delivery is clearly, in my opinion, applying ridicule to the requirement...to include a responsible gambling message'.<sup>75</sup>

### ***Committee view***

12.76 The committee notes that responsible gambling messages support a public health approach to preventing and minimising harm. They are a reminder about risky gambling behaviour. The committee supports the use of responsible gambling messages from a public health perspective to counter the amount of sports betting advertising. While such messages will never be able to compete with the slick advertising campaigns funded by the industry, the committee agrees that further work is necessary to ensure these messages are as effective as possible. To increase effectiveness there should be greater consistency of standards such as size, duration, colour and they should include references to the likelihood of losing money.

### **Recommendation 13**

**12.77 The committee recommends that the COAG Select Council on Gambling Reform work towards nationally consistent requirements for responsible gambling messages to ensure they work effectively as harm minimisation measures to counter-balance the promotion of gambling.**

### ***Other issues***

#### ***Binge gambling not currently measured***

12.78 Dr Thomas told the committee that during the interviews, they heard about periods of 'binge gambling':

...we are certainly seeing patterns of binge gambling with young men where they may not bet the whole year but they bet excessively during grand final week or they put an excessive amount of money on who will win the Brownlow or the Coleman or so on.<sup>76</sup>

12.79 She pointed out that binge gambling is not measured by current screening tools as it may be event-specific. These individuals may score very low on gambling screening tools (such as the Problem Gambling Severity Index) but the researchers heard that some then struggle to pay bills and spend the rest of the year trying to

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75 Miles Kemp, 'Commentators may be told to tone down TV betting plugs', *The Advertiser*, 9 November 2011.

76 Dr Samantha Thomas, *Committee Hansard*, 11 October 2011, p. 4.

recover from their losses. Dr Thomas explained that this is a weakness with the current screening tools that needs to be addressed.<sup>77</sup>

### **Committee view**

12.80 The committee believes that being able to measure binge gambling would be helpful in order to assess whether this behaviour is increasing and whether any targeted harm minimisation measures could be effective. Rather than revise the current screening tools, the committee suggests this could be achieved by including some additional questions designed to capture and measure this behaviour.

### **Problem gambling associated with advertising of sports betting**

12.81 The committee received evidence that the heavy promotion of sports betting was associated with experiences of problem gambling.

12.82 The University of Sydney Gambling Treatment Clinic's submission outlined the degree to which its clients with problem gambling behaviours had been affected by sports betting advertising:

Our clients consistently report that the promotion of sports betting has contributed to the onset and maintenance of their gambling problems. Firstly, almost all sports betting clients report they began by gambling on sports that they had previously followed or had participated in. By watching sports on television, or checking scores through other media outlets, they report that they were frequently exposed to promotion of betting and prices that outlets were giving for various betting combinations. Many of our clients reported that they observed advertisements encouraging them to bet and portraying sports gamblers winners who were able to have a better time with friends, and that promoted the idea that they may actually become a deeper supporter of the sport through wagering. Advertisements of this ilk appeared to have led many of our clients to believe that they could turn their knowledge and interest in their favourite sports into a supplementary income source. This idea, that one can use knowledge and interest to wager successfully, is also widely promoted in media reports on betting on non-sporting events (e.g. elections, reality television contests). Major media outlets frequently run stories on the betting markets in non-sporting areas, which emphasise the (false) belief, central to the development of gambling problems, that there is easy money to be made if you know something about an upcoming event. Invariably though, they begin to lose more money than they win, and turn to other sports to try to recoup the money that they lost during their initial betting outlays.<sup>78</sup>

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77 Dr Samantha Thomas, *Committee Hansard*, 11 October 2011, pp 3–4. See also Thomas, S.L. Lewis, S. McLeod, C. Haycock, J. (2011) ‘They are working every angle’. A qualitative study of Australian adults’ attitudes towards, and interactions with, gambling industry marketing strategies. *International Gambling Studies*. 1–17, iFirst article, p. 2, 9.

78 University of Sydney Gambling Treatment Clinic, *Submission 9*, p. 3.

12.83 The Clinic also noted that some of its clients, after trying to take action to deal with their own problem gambling behaviour, can often no longer watch their favourite sports without being bombarded with gambling advertising:

...the constant promotion of gambling that is tied to sports broadcasting and reporting also becomes problematic when gamblers try to cut back on or stop their betting. They report that they are unable to watch previously enjoyed sports without being inundated with prices and odds, which again encourages them to think about winning and activates their hope that they could win back some of their losses. Over time, sports gamblers report that they no longer enjoy watching or reading about sports, because the focus of their attention is no longer about the different aspects of the sport, but rather almost exclusively on the outcome of their bet.<sup>79</sup>

12.84 At a public hearing, Mr Christopher Hunt of the Clinic elaborated:

For a lot of clients we are seeing, watching sports can be one of their favourite pastimes, so taking that away from people is a catch-22 situation. It stops them from doing something they enjoy that could stop them thinking about gambling, but they may watch sports and think about gambling. So it takes away an avenue for doing something different rather than gambling. It can make it difficult to give up gambling when one of your previously enjoyed pastimes is now no longer an avenue for you to get some relaxation or enjoyment.<sup>80</sup>

12.85 Dr Gainsbury and Professor Blaszczynski also pointed out the hazardous influence that aggressive marketing was exerting over the youth market:

Advertising and aggressive promotion of online sports betting plays a significant role in the influencing participation rates among youth. This is evidenced in anecdotal reports among some treatment providers of a rapid escalation in young males presenting for treatment for excessive sports betting. The trend is apparent that lucrative gambling contracts and sponsorship of sporting clubs and television broadcasts is now replacing alcohol and tobacco sponsorship. The same arguments that has led to the banning of alcohol and tobacco sponsorship of sporting activities applies equally to gambling; namely influencing the attitudes and behaviour of youth to encourage gambling behaviour resulting in the emergence of a problem gambling and harm within this vulnerable sub-population within the community.<sup>81</sup>

12.86 Dr Jeffrey Derevensky told the committee of his deep concern about the blurring of advertising and sports wagering and its potential impact on youth. Using the example of live odds commentary, he stated:

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79 University of Sydney Gambling Treatment Clinic, *Submission 9*, pp 3–4.

80 Mr Christopher Hunt, University of Sydney Gambling Treatment Clinic, *Committee Hansard*, 16 September 2011, p. 17.

81 Dr Gainsbury and Professor Blaszczynski, *Submission 7*, p. 9.

I do believe that many adolescents will certainly be influenced by commentators' recommendations for where to place a wager. This is particularly concerning to me. Rather than just commenting on the football game, they are talking about the odds and the probabilities. This influences young people to gamble and place bets. I worked with a sports announcer who on one Sunday lost 12 out of 13 games. He said broadcasting sports was his livelihood and he knew everything about sports. He knew who had had a fight with his girlfriend, who had broken his arm, but even he could not pick a winner. He said: 'If I had a monkey throwing a dart at a board, the monkey probably would have done better.' You have sports announcers and sports teams promoting different kinds of gambling. I think that is particularly problematic.<sup>82</sup>

12.87 A recent Newspoll survey of 1,200 Australians aged 18 to 64 found that 63 per cent believed that sports betting advertising contributed to an increase in problem gambling, with one in 10 stating that advertising by sports betting agencies was more harmful to the community than alcohol or tobacco advertising.<sup>83</sup>

12.88 The survey, organised by PR agency Crossman Communications, also found that the younger generation was less concerned about the marketing practices of betting agencies. Ms Jackie Crossman, Managing Director, observed:

The 18 to 34 age bracket is almost three times more likely to have a regular bet than those aged 50 plus and they are considerably more laissez-faire and opposed to controls on sports betting agencies.

It used to be that we enjoyed a flutter on the Melbourne Cup and had the odd spin on the pokies. But the introduction of more exotic options and the promotion of odds and options at venues during coverage has normalised sports betting for younger segments of society.

When such sophisticated marketing practices become mainstream it is extremely difficult to turn back the tide...and young males are the ones happily riding the waves.<sup>84</sup>

### Promotion of 'live odds' during sport

12.89 The committee heard there was considerable community concern about the practice of announcing 'live odds' at sporting events and during broadcasts. This normally involves sporting commentators—some of them respected former players—or representatives of betting agencies providing live updates on the odds prior to or

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82 Dr Jeffrey Derevensky, *Committee Hansard*, 16 September 2011, p. 7.

83 Crossman Communications, 'Australians say no to marketing by sports betting agencies', Media Release, 28 July 2011, <http://crossmancommunications.com.au/?p=772> (accessed 24 October 2011).

84 Crossman Communications, 'Australians say no to marketing by sports betting agencies', Media Release, 28 July 2011, <http://crossmancommunications.com.au/?p=772> (accessed 24 October 2011).

during an event. The in-game advertising of live odds is seen as particularly problematic.

12.90 Showing the level of concern in the community over this practice, a recent Newspoll survey of 1,200 Australians found that 42 per cent believed that giving live odds during sports coverage should be illegal.<sup>85</sup>

12.91 The main concern, apart from announcements interrupting enjoyment of the game, is the effect on children. A recent discussion on the *Insight* program on SBS TV illustrated one parent's views on the merits of broadcasting of live odds during sports coverage when children were likely to be watching:

...my seven-year-old son is seeing those exact same odds and they are filtering down into his mind and it's normalised gambling as a seven-year-old. It's great for you as a punter. You can walk into the TAB at the football and check out those odds. It's not that I have problem with them being in an accessible location to adults who can understand it, but how can you say it's acceptable and it's a good thing to have them up on the screen for everyone to see.<sup>86</sup>

### ***Government plans to reduce 'live odds' promotion during sport***

12.92 On 27 May 2011, the Minister for Families, Housing, Community Services and Indigenous Affairs, the Hon Jenny Macklin MP, the Minister for Broadband, Communications and the Digital Economy, Senator the Hon Stephen Conroy, and the Assistant Treasurer, the Hon Bill Shorten MP, announced the federal government's intention to work with the sporting and betting industries to 'reduce and control' the promotion of live odds during sporting broadcasts:

The Government will work with the sporting and betting industries to reduce and control the promotion of live odds during sports coverage through amendments to their existing industry codes.

If satisfactory amendments are not in place by the end of June 2012, the Australian Government will consider the need for legislation, noting that the measures would not apply to pre-existing contracts for the promotion of live odds during sports coverage as of 1am today [27 May 2011].<sup>87</sup>

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85 Crossman Communications, 'Australians say no to marketing by sports betting agencies', Media Release, <http://crossmanccommunications.com.au/?p=772> (accessed 24 October 2011).

86 Russel Dennison, 'Online Gambling', *Insight*, SBS TV, 13 September 2011, <http://www.sbs.com.au/insight/episode/index/id/428/Online-Gambling#transcript> (accessed 11 October 2011).

87 The Hon Jenny Macklin MP, Media Release, 'Tackling problem gambling in Australia', 27 May 2011, [http://www.jennymacklin.fahcsia.gov.au/mediareleases/2011/Pages/jm\\_m\\_prob\\_gambling\\_27\\_may2011.aspx](http://www.jennymacklin.fahcsia.gov.au/mediareleases/2011/Pages/jm_m_prob_gambling_27_may2011.aspx) (accessed 14 June 2011).

12.93 This course of action had been agreed at the meeting of the COAG Select Council on Gambling Reform on the same day. The COAG communiqué stated:

Governments are concerned that promotion, including commentary by sporting role models, is becoming insidious in live sports coverage. We are concerned that this can significantly influence vulnerable and young people and normalise gambling behaviour.<sup>88</sup>

12.94 Ministers agreed that consultation on the scope of the measures would be undertaken with industry. However, governments agreed that the racing industry would be exempt 'due to its long standing integral connection with wagering'.<sup>89</sup>

12.95 The NSW Government's submission supported the announcement on reducing the promotion of live odds, noting it would reduce the potentially harmful effects on young people:

The NSW Government shared research findings with the COAG Select Council on Gambling Reform confirming the potential harmful effects of this form of advertising, particularly for young people significantly influenced by advertising associated with their favourite media/sporting personalities. The use of commentators and sporting role models to promote gambling and discuss betting odds can normalise gambling and influence vulnerable and young people in an adverse manner. This approach is at odds with broadcasting codes of practice in relation to alcohol and tobacco advertising aimed at protecting children from exposure to adult activities.<sup>90</sup>

12.96 Betting agencies such as Sportsbet and Betfair have publicly supported the government's moves in this area.<sup>91</sup> The committee notes that sporting grounds such as the MCG have also announced that they are moving towards eliminating live odds from their scoreboards.<sup>92</sup>

12.97 The AIBA did acknowledge that the government announcement on reducing promotion of live odds 'achieves a proper balance between improper advertising and acceptable advertising'.<sup>93</sup>

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88 COAG Select Council on Gambling Reform, Communiqué, 27 May 2011, [http://www.jennymacklin.fahcsia.gov.au/statements/Pages/jm\\_comm\\_gamblingreform\\_27may2011.aspx](http://www.jennymacklin.fahcsia.gov.au/statements/Pages/jm_comm_gamblingreform_27may2011.aspx) (accessed 14 June 2011).

89 The Hon Jenny Macklin MP, Media Release, 'Tackling problem gambling in Australia', 27 May 2011, [http://www.jennymacklin.fahcsia.gov.au/mediareleases/2011/Pages/jm\\_m\\_prob\\_gambling\\_27may2011.aspx](http://www.jennymacklin.fahcsia.gov.au/mediareleases/2011/Pages/jm_m_prob_gambling_27may2011.aspx) (accessed 14 June 2011).

90 NSW Government, *Submission 56*, p. 5.

91 See Sportsbet, *Submission 44*, p. 33; Betfair, *Submission 12*, p. 22.

92 Editorial, *The Age*, 25 August 2011.

93 AIBA, *Submission 54*, p. 35.

### ***Harm minimisation messages***

12.98 Dr Thomas from Monash University, whose research on gambling advertising and sports betting was described earlier in the chapter, pointed out that her work found that live odds announcements were a relatively small part of the overall marketing for online betting agencies at the game. However, the research found that the only clear harm minimisation messages that were either visible or audible were given during the live odds announcements. She pointed out that this has important implications for the work underway to reduce and control the live odds announcements, as it will mean there will be fewer opportunities for the only clear responsible gambling message to appear. Therefore, consideration is needed on how best to ensure responsible gambling messages are included in all sports betting advertising.<sup>94</sup>

### ***Committee view***

12.99 While the committee welcomes the reduction of live odds announcements, it notes that uncertainty remains regarding the scope of the ban. While numerous media reports<sup>95</sup> of the government's announcement described a plan to 'phase out' live odds altogether, the committee notes that Senator Conroy has stated there will be discussions with broadcasters about the scope of a ban, which may be limited to the duration of a sporting event and not include pre-match and half-time commentary.<sup>96</sup>

12.100 The committee believes that the level of concern in the community about this practice is sufficient to warrant the total ban of the promotion of live odds both at venues and during the broadcast of a match (which includes pre-match coverage). Information on betting odds will still be easily available through websites, TABs and other betting outlets at stadiums.

### **Recommendation 14**

**12.101 The committee recommends that the government legislate a total ban of the promotion of live odds both at venues and during the broadcast of a sporting event.**

12.102 The committee also agrees that there needs to be an investigation of how best to ensure the inclusion of responsible gambling messages in the marketing for online betting agencies.

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94 Dr Samantha Thomas, Associate Professor Colin McLeod, *Committee Hansard*, 11 October 2011, pp 6–7.

95 Michael Edwards, 'No dice on live odds', ABC AM, 28 May 2011, <http://www.abc.net.au/am/content/2011/s3229566.htm> (accessed 30 May 2011); ABC News Online, 'Industry questions live odds ban benefits', 28 May 2011, <http://www.abc.net.au/news/2011-05-28/industry-questions-live-odds-ban-benefits/2735180> (accessed 30 May 2011); Malcolm Farr, 'Live broadcasts of betting odds to be phased out by June, Stephen Conroy says', *Courier Mail*, 27 May 2011.

96 Malcolm Farr, 'Live broadcasts of betting odds to be phased out by June, Stephen Conroy says', *Courier Mail*, 27 May 2011.

## **Recommendation 15**

**12.103** The committee recommends that the work to legislate a total ban on live odds promotion also ensures that responsible gambling messages are retained as a harm minimisation measure and continue to appear as a counterpoint to other instances of gambling advertising, both in venues and during sporting broadcasts.

### **Calls for further action on advertising**

12.104 A number of submitters suggested that further restrictions on advertising, beyond the promotion of live odds, were required.

12.105 Dr Gainsbury and Professor Blaszczynski welcomed the government's moves to work cooperatively with industry to reduce live odds broadcasting; however, they also advocated legislation to underpin such policy directions:

...unless strict policies are mandated by legislation there will remain temptations to utilise funds provided by online gambling providers through creative avenues allowing continued marketing and promotions. *Regulators must carefully consider and set limits on the degree to which online gambling may be promoted during sporting events with clear penalties that are enforced for teams, individuals and event organisers that do not abide by these policies.*<sup>97</sup>

12.106 Similarly, the University of Sydney Gambling Treatment Clinic favoured:

A banning of, or at least much tighter regulation of, the promotion of online gambling in sports broadcasting, either directly through advertisement and sponsorship, or indirectly through well placed media stories and commentator's remarks.<sup>98</sup>

12.107 The Australian Christian Lobby also welcomed this initial step by authorities to regulate sports betting advertising but felt that much more could be done in this area:

Although prohibiting the promotion of gambling odds by commentators is a positive start, further regulation of other forms of gambling advertising in sport would be an appropriate additional measure to further limit the potential harms of gambling. This would be consistent with the policy behind the current move, and would help to slow the growing view of gambling as an inherent feature of sport.

ACL recommends that, in addition to advertising during broadcasting, the government regulate the broader advertising methods of gambling

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97 Dr Gainsbury and Professor Blaszczynski, *Submission 7*, pp 8–9.

98 University of Sydney Gambling Treatment Clinic, *Submission 9*, p. 4.

companies, particularly sponsorship of sporting teams, venues, and competitions.<sup>99</sup>

12.108 Dr McMullan also advocated further restrictions on advertising activity:

A responsible advertising program would restrict companies that generate their revenues primarily from gambling to promote or advertise their organizations or products, including branding, logos or naming rights through the sponsorship of sporting figures or teams who are under the age of majority. Products advertising gambling – shirts, shoes, hats, belts, travel bags, etc. – should not be sized for minors, be awarded as prizes or given away in free promotions. Furthermore, gambling providers should be discouraged from advertising their products directly through amateur sport sponsorship and encouraged to act with charitable intentions by providing money to independent government operated agencies who, in turn, can supply funds to sporting events, community teams and individual athletes. Moreover real winners, or models and actors portraying real winners, should not be deployed to promote or advertise internet gambling products. Gambling providers and advertisers should not utilize celebrity endorsements that are likely to appeal to youth, and only be permitted to use them at locations and on time slots primarily frequented and viewed by adults and in a manner that does not suggest that gambling contributed to their success (Dyall et al., 2007; Maher et al., 2006; McMullan & Miller, 2008; Monaghan et al., 2008; Poulin, 2006; RIGT, 2007).<sup>100</sup>

12.109 In a Newspoll survey of 1,200 Australians aged 18 to 64, over one third of respondents (36 per cent) wanted to ban betting agencies from sponsoring sporting teams or events.<sup>101</sup>

12.110 However, betting agencies argued against any further restrictions on gambling advertising during sport. For example, Betchoice stated:

One of the most prominent points of concern in the community in the past 12 months has been the nature of betting advertising associated with sport...

...in the context of sport, Betchoice can understand this concern and believes there are situations in which a particular form of advertising is inappropriate and are of the view that this is one such occasion where the practice should not be conducted.

However, Betchoice does not support broad prohibitions on other types of advertising (eg. during advertising breaks, sponsorship of particular sporting teams, etc). For the reasons outlined earlier in respect of inducements, we believe that advertising is a vital mechanism by which we can notify customers and potential customers about our business. Given that

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99 Australian Christian Lobby, *Submission 21*, pp 3–4.

100 Dr John McMullan, *Submission 32*, pp 11–12.

101 Crossman Communications, 'Australians say no to marketing by sports betting agencies', Media Release, <http://crossmancommunications.com.au/?p=772> (accessed 24 October 2011).

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we are restricted from opening terrestrial outlets, this type of advertising is critical in order for us to provide genuine competition to existing gambling businesses.

...our preferred approach is to impose restrictions requiring adequate harm minimisation measures be in place. We believe this will be a more effective mechanism by which operators are encouraged to implement systems that protect those potentially at risk.<sup>102</sup>

12.111 Similarly, the AIBA argued that gambling advertising was already 'subject to strict codes of practice' and did not contribute to problem gambling:

Advertising is not targeted at problem gamblers and there is no evidence to suggest that it increases the rate of problem gambling per se. It is true that as the number of sports bettors increases, the number of sports bettors who have a gambling problem would correspondingly increase. But this is not to say that the rate or percentage of problem gamblers in the sports betting sector increases.

...it is recognised and acknowledged by the industry that a small percentage of clients may develop a gambling problem. This is an ongoing concern and the interactive sports betting industry has been proactive in developing strategies to minimize this risk and to help those with a problem. We do far more in this area than any other form of gambling.

But we see no evidence that the advertising of sports betting is exacerbating or increasing the current rate of problem gambling within this sector.

We do not see any justification for restrictions on advertising based on this ground.<sup>103</sup>

### ***Logos on players' uniforms***

12.112 Some witnesses told the committee of their concern about the widespread use of betting agencies' logos on professional sports players' team uniforms. A number of NRL and AFL teams are sponsored by betting agencies, whose logos appear on the back of football jerseys. The teams who display logos on players' uniforms include St Kilda (Centrebet); the Manly Sea Eagles (Centrebet); and the Brisbane Broncos (Sportingbet).<sup>104</sup>

12.113 In a presentation entitled 'Building the Centrebet brand via sport', Centrebet noted its success in NRL sponsorship (Dragons, Cowboys, Eels and Sea Eagles) and

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102 Betchoice, *Submission 43*, p. 19.

103 AIBA, *Submission 54*, p. 35.

104 Sportingbet Betblog, 'Sportingbet announces record Broncos sponsorship deal', 16 February 2011, <http://www.sportingbet.com.au/betblog/index.php/sportingbet-announces-record-broncos-sponsorship-deal/> (accessed 28 September 2011).

referred to a 'free jersey campaign' which had generated 'thousands of bettors from each club'.<sup>105</sup>

12.114 Dr Derevensky told the committee that the appearance of betting agencies' logos on athletes clothing was a concerning practice that should be prohibited, as many of the players are seen as heroes and role models for young people:

**Senator XENOPHON:** You have made reference to players with gambling advertising on the backs of their jumpers and to advertising at sports grounds in addition to the advertisements and broadcasts during the broadcasts. Given that athletes are role models, as you indicated, are you saying that there ought to be a prohibition on that sort of advertising—advertising on the backs of players' jumpers and at sports ground—as a measure to deal with the risks associated with youth gambling?

**Prof. Derevensky:** I think that is one good beginning. It would be a wise idea to remove those logos on the backs of these sports heroes or individuals. We know that young people look upon these people as important role models. So I think that is one very good approach that we can implement with very little effort.<sup>106</sup>

12.115 On SBS TV's *Insight* program, the father of a seven-year-old boy said that he refused to buy his son a St Kilda AFL jersey because the major sponsor of the club was Centrebet.<sup>107</sup>

12.116 During a discussion with researchers Dr Thomas and Associate Professor McLeod, the committee expressed concern about additional layers of advertising created through gambling sponsorship of sporting teams. In particular, the committee discussed shirt sponsorship. Using the example of the St Kilda AFL club and its sponsorship by Centrebet, Dr Thomas noted the 'embedding' of gambling advertising in fan merchandise and on players' uniforms. For example, a Centrebet logo was clearly visible on a St Kilda jersey 438 times during the broadcast of a St Kilda game.<sup>108</sup>

12.117 The committee acknowledges that concerns over the amount of advertising have been recognised by sports betting agencies. The AIBA highlighted proposals from sports betting agencies themselves on changes to certain advertising practices, including the removal of logos from children's sports shirts and merchandise:

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105 'Building the Centrebet brand via sport', presentation to the Gaming, Racing and Wagering Conference 2011, Sydney, 23 August 2011,  
<http://www.beaconevents.com/2011/grwa2011/en/DLPaper/index.html> (accessed 4 October 2011).

106 Senator Xenophon and Dr Jeffrey Derevensky, *Committee Hansard*, 16 September 2011, p. 2.

107 Russel Dennison, Centrebet, 'Online Gambling', *Insight*, SBS TV, 13 September 2011,  
<http://www.sbs.com.au/insight/episode/index/id/428/Online-Gambling#transcript> (accessed 11 October 2011).

108 Dr Samantha Thomas, *Committee Hansard*, 11 October 2011, p. 8.

As to the community concern that certain types of gambling advertising are leading to an unhealthy relationship between sports and gambling, this has been recognised by the sports betting sector.

In May [2011], sports betting providers including Sportsbet, Sportingbet, Centrebet and Betfair presented a proposal to the Federal Minister for Sport for changes to advertising practices. Importantly, these included proposals that:

- Odds updates in commentary during play to be phased out
- Gambling companies sponsors logos not be permitted on children's replica sports shirts (a practice already applied by these companies); and that
- Sporting clubs and gambling providers be banned from offering "white label" betting sites, e.g. Bombersbet.com.au

The companies also asked for greater enforcement of advertising restrictions on non-licensed operators in all media, including the internet.

It is noted that the sponsorship of sporting clubs by gambling providers would still be permitted. Sponsorship is a valuable source of funding for sporting organisations (many of whom claim they would be adversely affected by proposals to amend the operation of gaming machines.)<sup>109</sup>

12.118 While the committee welcomes these proposals, particularly not permitting gambling company logos on children's replica sports shirts, it believes that such practices should be mandatory, apply to all betting providers and to all merchandise targeted at children. The committee's view and a recommendation on the issue of logos on sporting players' uniforms are at the end of this chapter.

## **Regulatory approaches to advertising of sports betting**

12.119 A number of laws and industry codes of conduct regulate the advertising of gambling products. With the exception of the *Interactive Gambling Act 2001* (IGA), legislation around gambling advertising is largely state-based, reflecting the fact that wagering is an activity regulated by the jurisdictions.<sup>110</sup>

12.120 For example, the NSW Government's submission outlined its own regulatory approach to gambling advertising:

The NSW regulations (clause 12 of the Racing Administration Regulation and clause 13 of the Totalizator Regulation) prohibit the publishing of gambling advertising:

- (a) that encourages a breach of the law, or

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<sup>109</sup> AIBA, *Submission 54*, p. 35. See also Sportsbet, *Submission 44*, p. 5.

<sup>110</sup> For a list of regulations that cover gambling advertising across states and territories, see Productivity Commission, *Gambling*, vol. 2, Commonwealth of Australia, Canberra, 2010, p. K.5.

- (b) that depicts children gambling, or
- (c) that is false, misleading or deceptive, or
- (d) that suggests that winning will be a definite outcome, or
- (e) that suggests that participation in gambling activities is likely to improve a person's financial prospects, or
- (f) that promotes the consumption of alcohol while engaging in gambling activities, or
- (g) that is not published in accordance with decency, dignity and good taste and (in the case of a television commercial) in accordance with the Commercial Television Industry Code of Practice as in force at the time the gambling advertising is published, or
- (h) that offers any credit, voucher or reward as an inducement to participate, or to participate frequently, in any gambling activity (including as an inducement to open a betting account).<sup>111</sup>

12.121 A range of industries have codes of conduct in place covering gambling advertising. These include the club industry, casinos, hotels, racing, lottery providers and the television industry. These codes prescribe acceptable activities and codes of behaviour around advertising of gambling products, but industry codes have no statutory basis.

12.122 The Productivity Commission's (PC) 2010 report into gambling did not make specific recommendations on wagering advertising regulations across states and territories but noted that 'the appropriate rules for racing and sports betting advertising is an emerging area of contention'.<sup>112</sup>

12.123 Regarding gambling advertising that may influence children, the PC did not advocate 'far reaching changes to the current restrictions' (e.g. on times for broadcasting). Noting that 'more sweeping prohibitions' on 'subtle forms of marketing' such as the visibility of logos on sporting figures could be possible, the PC noted it was important to balance social concerns with any effects on legitimate business activities:

...the main thrust of policy should be to address inappropriate content, being mindful of the difficulty of more generally limiting exposure to children of gambling without inadvertently eliminating the capacity for legitimate television marketing of gambling...

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<sup>111</sup> NSW Government, *Submission 56*, p. 4.

<sup>112</sup> Productivity Commission, *Gambling*, vol. 2, Commonwealth of Australia, Canberra, 2010, p. K.16.

The decision about the scope of the restrictions must therefore give significant weight to the applicability of social norms – an issue best left for political judgement.<sup>113</sup>

### ***Inconsistency across jurisdictions***

12.124 A number of submitters noted that states and territories applied inconsistent approaches to wagering advertising. Tabcorp noted the existence of different state and territory regulatory regimes and their effects on customer demand:

Between jurisdictions, differences also apply to restrictions on bet types, wagering advertising and the capacity of operators to offer account opening inducements to wagering customers.

Customers who wish to take advantage of credit betting, account opening inducements and a broad product offering are taking their business to jurisdictions with regulatory environments that allow wagering operators to provide these services.<sup>114</sup>

12.125 Unlike in some other states, sports betting and wagering operators licensed in the Northern Territory are not bound by legislative requirements on advertising but instead adhere to a voluntary code of conduct. Sportsbet outlined these arrangements applying to its operations the Northern Territory:

Sportsbet is bound by guidelines contained in the Northern Territory Code of Practice for Responsible Gambling. The Code has been developed in consultation with a Responsible Gambling Advisory Committee comprising various representatives from the gambling industry, government agencies and community services such as the Salvation Army and Anglicare Top End...

Whilst the Code is a voluntary Code, it contains serious expectations on licensed operators to ensure all measures are applied. The Code and Manual make plain that serious or persistent breaches of their terms could see action being taken against a licensee on the basis that the licensee is no longer “fit and proper” to hold a gambling licence.

The Code outlines the minimum requirements of the gambling providers.

The Code broadly requires that gambling advertising and promotions be delivered in an honest and responsible manner with consideration given to the potential impact on people adversely affected by gambling.

12.126 Sportsbet described in further detail what the code required in relation to gambling advertising:

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113 Productivity Commission, *Gambling*, vol. 1, Commonwealth of Australia, Canberra, 2010, pp 8.28–9.

114 Tabcorp, *Submission 22*, p. 9.

- compliance with the Advertising Code of Ethics as adopted by the Australian Association of National Advertisers or the Advertising Federation of Australia
- that any television advertising comply with the Federation of Commercial Television Stations (FACTS) Code of Practice
- accuracy and no false or deceptive advertising about the chances of winning a prize or the size of the potential return for the wager
- that no impression be given “that gambling is a reasonable strategy for financial betterment”
- that advertising displays not be directed at minors or portray minors participating in gambling
- that problem gambling signage (including for Internet/telephone sports bookmakers and online licensees) contain appropriate problem gambling warning signage in a clearly visible manner
- that there be no advertising of individuals’ winnings (outside of the providers’ internet site).<sup>115</sup>

### ***Current work underway on national consistency***

12.127 As noted in the previous section on inducements, the need for a consistent approach to wagering advertising has been discussed at a national level for some time.<sup>116</sup>

12.128 The committee notes that the Australasian Racing Ministers' Conference recently agreed to adopt in-principle:

...a unified approach to the regulation of gambling advertising based on provisions proposed by NSW with a cooperative approach between jurisdictions to assist in enforcing the provisions on a complementary basis.<sup>117</sup>

### ***Calls for a national approach to regulation of advertising***

12.129 During the inquiry, a number of sports betting operators repeated calls for a national approach to the regulation of online wagering, including advertising.

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115 Sportsbet, *Submission 44*, pp 31–2.

116 See Queensland Government, *Submission 55*, p. 15: 'At a meeting of the National Wagering Advertising Working Party in December 2010, participants raised that the definition of ‘inducement’ could be open to interpretation and suggested a nationally consistent definition be adopted.'

117 Australasian Racing Ministers' Communiqué, 23 September 2011, <http://www.mediastatements.wa.gov.au/Pages/default.aspx?ItemId=144578&> (accessed 4 October 2011).

12.130 Betting providers themselves called for the adoption of a national code of practice regulating advertising. For example, Tabcorp argued:

...it is important that those offering online wagering services comply with minimum, consistently applied responsible gambling standards. For this to occur, a national approach, founded in agreement by the states and territories, is necessary. Credit betting, inducements to bet and advertising should be subject to consistently applied standards.

Tabcorp's industry-leading approach to the responsible service of its gambling products and customer care could also be used as a template for the development of national standards in the development of responsible gambling codes of practice, employment of responsible gambling managers and customer care programs such as the BetCare wagering self-exclusion program.<sup>118</sup>

12.131 Tabcorp suggested the adoption of a national code of conduct for wagering operators that covers:

- Requirements for arrangements to be in place with sports controlling bodies
- Marketing
- Credit betting
- Offering of financial inducements to open an account
- Responsible gambling messaging, self-exclusion and compliance with the national sports betting code of practice.

A regulatory approach to these matters should be taken if operators do not comply with the code of conduct.<sup>119</sup>

12.132 Betfair was also of the view that a national advertising code of practice should be put in place across the wagering industry. However, in relation to advertising by gambling companies during sports broadcasts and the potential effects on children, Betfair did not advocate further regulation, stating:

Betfair does not believe there's a need to prohibit advertising where it can be seen by minors. The legal age for gambling is 18 and there are significant barriers preventing minors from access to gambling, particularly online.<sup>120</sup>

## Conclusion

12.133 The committee welcomes the government's recent announcement to reduce and control the promotion and broadcasting of live odds. This is a step in the right

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<sup>118</sup> Tabcorp, *Submission 22*, pp 9–10.

<sup>119</sup> Tabcorp, *Submission 22*, pp 2–3.

<sup>120</sup> Betfair, *Submission 12*, pp 11–12.

direction and picks up on the understandable degree of community concern about the infiltration of gambling into sport and sports coverage. However, the committee believes this does not go far enough and notes that the undertaking to reduce the promotion of live odds by mid-2012 does not appear to be a commitment to a total ban, is based on self-regulation by industry and is not underpinned by legislation. The committee therefore believes there should be a total ban which should be enforced by legislation.

12.134 The committee is also of the view that more needs to be done in the area of wagering advertising beyond live odds announcements. The committee notes the range of sponsorship relationships that betting agencies now have in place with major sporting clubs across many popular codes and remains concerned about the effects of aggressive promotional activity arising from such deals. The committee is particularly concerned about the effect on children and young people who are more vulnerable to being influenced by messages associating gambling with sport. The committee also notes the negative effects of gambling advertising in sport already being experienced by adult problem gamblers at the University of Sydney's Gambling Treatment Clinic.

12.135 The committee recognises that rules on sports betting and wagering advertising vary across states and territories. Different rules on the offering of inducements, for example, may be a contributing factor in leading online corporate bookmakers to establish themselves in jurisdictions with more liberal licensing and regulatory regimes, such as the Northern Territory.

12.136 The committee welcomes the calls from wagering providers for a national code of conduct to regulate a number of business practices relating to advertising, including inducements and harm minimisation messages on responsible gambling.

12.137 While the committee notes that a national approach to wagering advertising is being pursued by Australasian Racing Ministers, the committee recommends that the COAG Select Council on Gambling Reform work closely with Racing Ministers and the industry to develop a mandatory national code of conduct. This work should aim to adopt best practice regulation in relation to sports betting and wagering advertising. The development of consistent standards should be pursued with effective harm minimisation strategies in mind, given the influence that advertising of gambling products can have on vulnerable groups, such as children and people experiencing problem gambling. As noted in chapter 11, this code of conduct should also incorporate national standards developed around credit betting and the payment of third party commissions.

12.138 In the event that consensus on a national code of conduct cannot be achieved in a reasonable timeframe over 2012, the committee believes that the Commonwealth should consider legislating in this area in order to achieve consistent regulatory arrangements.

## **Recommendation 16**

**12.139** The committee recommends that the COAG Select Council on Gambling Reform, in consultation with Australasian Racing Ministers and the wagering industry, develop a mandatory national code of conduct for advertising by wagering providers covering:

- inducements to bet;
- credit betting and third party commissions;
- harm minimisation messages on responsible gambling; and
- other nationally consistent standards to restrict certain forms of sports betting advertising, which at a minimum, should include a ban on the display of gambling companies' logos on sporting players' uniforms and merchandise (such as children's replica sports shirts), as well as restrictions on the giveaways of free merchandise which depict betting companies' logos.

12.140 Broadcasting restrictions are a significant part of advertising regulation. The committee majority's view on broadcasting restrictions on gambling advertising as proposed in the Interactive Gambling and Broadcasting Amendment (Online Transactions and Other Measures) Bill 2011 is covered in chapter 16.

## **Other issues**

### ***Emerging opportunities to gamble***

12.141 The committee notes that a recent Federal Court ruling in favour of Sportsbet has also challenged Tabcorp's retail exclusivity in the state of Victoria. According to media reports, the decision could pave the way for Sportsbet to open up 'internet betting kiosks' or 'betboxes' from pubs, supermarkets and petrol stations. The Court found that the Victorian legislation banning the establishment of such kiosks was 'unconstitutional.' Tabcorp has indicated that it will appeal the decision.<sup>121</sup>

### ***Committee view***

12.142 While the committee did not receive any evidence on the internet kiosk issue, it remains very concerned at the potential for proliferation of betting activities in a range of venues such as supermarkets and petrol stations which have previously not offered gambling services and are entirely inappropriate venues in which to do so. While the effect that such developments may have on the wagering industry are not yet clear, the committee is concerned at increasing opportunities for gambling (and potentially problem gambling) through outlets such as 'betboxes' in local communities. Therefore, the committee recommends that, following the outcome of the court case,

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121 Rod Nicholson and Karen Collier, 'Court opens door to online betting in supermarkets, pubs and petrol stations', *Herald Sun*, 27 August 2011; Fiona Henderson, 'Eureka Hotel in court betting win', *The Courier*, 1 September 2011.

the COAG Select Council on Gambling Reform investigate this issue and consider appropriate nationally consistent regulations in light of this trend.

### **Recommendation 17**

**12.143 The committee recommends that, following the outcome of the Federal Court 'betbox' case, the COAG Select Council on Gambling Reform, in conjunction with regulators, investigate the potential for the growth of betting opportunities in a range of venues which have not previously offered gambling services and develop appropriate nationally consistent regulations to address it.**

# **Chapter 13**

## **Match-fixing and corruption in sport**

Sport without integrity is absolutely nothing, it's worthless.<sup>1</sup>

### **Introduction**

13.1 This chapter will cover match-fixing and corruption in sport. It will provide an overview of recent Australian and international sports betting scandals; survey international approaches to the problem of match-fixing in professional sport; and outline Australia's recently announced National Policy on Match-Fixing in Sport. The chapter will also examine legislative measures to address match-fixing and corruption in sport, including recent work by the New South Wales (NSW) Law Reform Commission and the recent Victorian review of sports betting regulation.

13.2 Match-fixing has been defined by Australian Sports Ministers as involving:

...the manipulation of an outcome or contingency by competitors, teams, sports agents, support staff, referees and officials and venue staff. Such conduct includes:

- (a) the deliberate fixing of the result of a contest, or of an occurrence within the contest, or of a points spread;
- (b) deliberate underperformance;
- (c) withdrawal (tanking);
- (d) an official's deliberate misapplication of the rules of the contest;
- (e) interference with the play or playing surfaces by venue staff; and
- (f) abuse of insider information to support a bet placed by any of the above or placed by a gambler who has recruited such people to manipulate an outcome or contingency.<sup>2</sup>

### ***Betting scandals and the risk of corruption in Australian sport***

13.3 Match-fixing and corruption in Australian sport are not perceived to be widespread problems. Appearing before the committee, Mr Malcolm Speed, the Executive Director of the Coalition of Major Professional and Participation Sports (COMPPS) observed that:

...Australian sports have a very good record in relation to betting related corruption. There have been very few instances in Australia. We need to go

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1 NSW Sports Minister, the Hon Graham Annesley MP, quoted in Paul Kent, 'Tighter laws on way to fix rorts', *Courier Mail*, 7 October 2011, p. 114.

2 Department of the Prime Minister and Cabinet, Office for Sport, *Submission 45*, Attachment A, p. 3.

back to the Waugh-Warne issue in 1994. As we move forward, there have been very few instances that have come to the notice of the courts—although, as you are no doubt aware, there is an issue in relation to the National Rugby League that is currently before the courts.<sup>3</sup>

13.4 Australian Sports Ministers recently released a National Policy on Match-Fixing in Sport which will be discussed in further detail later in this chapter. The preface to the policy stated that:

All Australians expect that the sport they watch or participate in is played honestly and to the ideals of fair play and good sportsmanship. Match-fixing and the corruption that flows from it, is not limited to professional or high profile sporting codes. Match-fixing has occurred in smaller sports, in lower grade team competitions and in individual events.

Match-fixing in sport is often motivated by the opportunity for significant financial or other personal gain through the manipulation of the result. Sports betting agencies provide opportunity for high sums to be gambled on sporting events with the prospect of very high returns. These potentially high returns can provide strong incentives to influence results of sporting fixtures.

While it is recognised that betting is a legitimate pursuit, illegal or fraudulent betting is not. Fraudulent betting on sport and the associated match-fixing is an emerging and critical issue globally, for sport, the betting industry and governments alike. It has the potential to undermine public confidence in the integrity of sport, sporting events and the products offered by betting agencies. Left unchecked, this corruption will devalue the integrity of sport and diminish the acceptability and effectiveness of sport as a tool to develop and support many aspects of our society.<sup>4</sup>

13.5 Recent high-profile sports betting scandals, such as those involving National Rugby League (NRL) and Australian Football League (AFL) players and officials, have raised concerns that such activity could severely damage the integrity of sport. Although players and club officials in major Australian sports are forbidden from betting on matches in their own codes of sport, the recent football betting scandals suggest this ban may not be entirely effective.<sup>5</sup> In 2011, the AFL and NRL have both been forced to follow up unusual betting trends with police laying charges in the NRL case.<sup>6</sup> Other examples are also included below.

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3 Mr Malcolm Speed, *Committee Hansard*, 11 August 2011, p. 14.

4 Department of the Prime Minister and Cabinet, Office for Sport, *Submission 45*, Attachment A, p. 3.

5 Rules against players and officials betting on matches in their own sport are contained in sports' codes of conduct. See Codes of Conduct, additional information from COMPPS, 11 August 2011.

6 Patrick Smith, 'National approach to eliminating sport graft not before time', *The Australian*, 9 June 2011.

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### NRL

13.6 Ryan Tandy, a former Storm and Bulldogs player, has been caught up in a match-fixing scandal which has led to four charges and an investigation by the NSW Crime Commission. He pleaded not guilty to a charge of attempting to manipulate the first scoring points of a match between the Canterbury Bulldogs and the North Queensland Cowboys in August 2010. An unusual betting plunge was observed by authorities on wagers that the first points of the match would be scored from a Cowboys penalty goal.<sup>7</sup> In October 2011, Tandy was found guilty of attempting to gain financial advantage for others for the sum of \$113,345 from Tabcorp. He was placed on a 12-month good behaviour bond and fined \$4,000.<sup>8</sup>

### AFL

13.7 Essendon assistant coach Dean Wallis was recently suspended from duties until mid-2012 due to gambling breaches of the AFL's code of conduct and fined \$7,500.<sup>9</sup> Exotic betting plunges involving Brisbane and Hawthorn players are also currently being investigated by the AFL.<sup>10</sup>

13.8 Collingwood player Heath Shaw was banned for eight weeks and fined \$20,000 for a \$10 bet on captain Nick Maxwell to kick the first goal in a match against Adelaide. Nick Maxwell himself was fined \$10,000 after telling family members that he would start in the forward line in the same match. His family members then placed bets on him kicking the first goal.<sup>11</sup>

### Cricket

13.9 In 1994, Australian test cricketers Mark Waugh and Shane Warne agreed to take money from an Indian bookmaker for information about pitch and weather

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7 Georgina Robinson, 'Tandy owed his mother and manager money, court hears', *Sydney Morning Herald*, 5 September 2011; AAP, 'Tandy says unaware of betting plunge', *Sydney Morning Herald*, 30 September 2011.

8 Greg Prichard and Chris Barrett, 'Ryan Tandy found guilty', *Sydney Morning Herald*, 6 October 2011.

9 Courtney Walsh, 'Dean Wallis banned for 14 weeks and fined \$7500 for three multi-bets', *The Australian*, 9 September 2011.

10 Adam Hamilton and Mark Stevens, 'AFL likely to investigate a betting plunge on Nathan Bock's first goal', *Herald Sun*, 5 September 2011.

11 Phil Lutton, 'Footballers gambling? You can bet on it', *Brisbane Times*, 28 July 2011.

conditions.<sup>12</sup> This incident, which only came to light in 1998, is well-remembered as Australia has very rarely experienced corruption in cricket by domestic players.<sup>13</sup>

### Racing

13.10 Nor has racing been immune from betting scandals. A recent investigation on the ABC's *7.30* uncovered a corruption scandal among harness racing stewards.<sup>14</sup> The Australian Racing Board's submission to the inquiry acknowledged that the racing industry has long had to grapple with integrity risks due to its close association with wagering:

The impact of gambling on the integrity of sports is something that horse racing has been dealing with virtually since it began, and the Australian thoroughbred racing industry has an internationally recognised reputation for the approach it has developed to managing the integrity risks associated with gambling on its events. Nevertheless, changes in the Australian wagering landscape have presented fresh challenges for the racing industry in this area. For other sports the potential for gambling to influence integrity is a newer problem and one that will increase hand in hand with the growth in scale of sports wagering.<sup>15</sup>

13.11 Greyhound Racing Victoria also recently sacked three employees for placing bets. They included a full-time steward, a part-time steward and a grader, who under the sport's code of conduct were all prohibited from placing bets. The employees were understood to be betting large sums—more than \$1,000.<sup>16</sup>

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- 12 Patrick Smith, 'National approach to eliminating sport graft not before time', *The Australian*, 9 June 2011.
  - 13 In October 2011, a Pakistani sports agent made allegations of Australian cricketers being involved in match-fixing during 'brackets' (set periods of a match). However, these claims are unproven, with Cricket Australia calling the accusations 'outlandish'. ABC News Online, 'Cricket Australia rubbishes fixing claims', 11 October 2011, <http://www.abc.net.au/news/2011-10-11/cricket-australia-rubbishes-fixing-claims/3497068/?site=sport&section=all?site=sport&section=cricket> (accessed 11 October 2011).
  - 14 Caro Meldrum-Hanna, 'Harness racing under scrutiny', ABC TV, *7.30*, 23 August 2011. By November 2011, a total of five men with links to the NSW harness racing industry had been arrested and charged, with police alleging trainers had been bribing stewards to tip them off about drug tests. See ABC News, 'Two more arrests over harness racing fraud', 25 November 2011, <http://www.abc.net.au/news/2011-11-25/five-men-charged-over-harness-racing-fraud/3695234> (accessed 28 November 2011); Chris Roots, 'A chance for rebirth after years of hard questions', *Sydney Morning Herald*, 27 November 2011.
  - 15 Australian Racing Board, *Submission* 27, p. 13.
  - 16 Tim Habel and Adam Hamilton, 'Greyhound Racing Victoria employees sacked for placing bets', *Herald Sun*, 8 August 2011.

## **International match-fixing and corruption scandals**

13.12 As international match-fixing and corruption cases in European and Asian sporting leagues are brought to light, the risk to Australian sport is becoming more acute.

13.13 Some recent examples of corruption in international sport include:

- Italy, with the arrest of 16 people in May 2011, on suspicion of match-fixing to gain benefits in betting, following a November 2010 incident in a Lega Pro third division football match between Cremonese and Paganese, where several players were allegedly fed sedatives;
- Austria, where tennis player Daniel Koellerer was banned for life in June 2011 for match-fixing; and Serbia, where tennis player David Savic was also banned for life by the international Tennis Integrity Unit for match-fixing in October 2011;<sup>17</sup>
- the South Korean football K-League, where a number of players and bookmakers have been charged in relation to bribery;
- Hungary, where several football players and referees have been arrested as part of a match-fixing investigation; and
- Germany, where six people have been sentenced for fixing football matches involving Switzerland, Belgium and Turkey following inquiries into the operation of a betting syndicate.<sup>18</sup>

13.14 A recent high profile match-fixing scandal involved three Pakistani test cricket players who, in February 2011, were banned from playing for lengthy periods by the Anti-Corruption Tribunal of the International Cricket Council for conspiring with bookmakers to participate in spot-fixing. In November 2011, the players, including the former captain, Salman Butt, were found guilty of conspiracy to cheat and to accept corrupt payments after deliberately bowling no-balls during a test match between England and Pakistan. The three players received custodial sentences ranging from 30 months to six months. Their agent was also sentenced to two years and eight months jail.<sup>19</sup>

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17 AP, 'Serbian tennis player David Savic, banned for life, denies match-fixing', *The Washington Post*, 5 October 2011.

18 NSW Law Reform Commission, *Cheating at gambling*, Report 130, August 2011, pp 2–3. See also Australian Racing Board, *Submission 27*, p. 14.

19 Press Association, 'Salman Butt handed 10 year ban after ICC spot fixing inquiry', *The Guardian*, 5 February 2011; Rachael Brown, 'Former Pakistan players guilty of match fixing', *ABC AM*, 2 November 2011; Paul Kelso, 'Salman Butt, Mohammad Amir, Mohammad Asif and Mazhar Majeed all imprisoned for spot-fixing', *The Telegraph*, 3 November 2011, <http://www.telegraph.co.uk/sport/cricket/international/pakistan/8866718/Salman-Butt-Mohammad-Amir-Mohammad-Asif-and-Mazhar-Majeed-all-imprisoned-for-spot-fixing.html> (accessed 4 November 2011).

13.15 Dr Declan Hill, an investigative journalist specialising in match-fixing and corruption in international sports, made a submission to the inquiry which warned that the threat posed by modern match-fixing was more serious than ever before:

...there has always been fixing and corruption in sport. You can go to the site of the ancient Olympics, built in 776 B.C. Outside that stadium were a whole collection of statues and shrines to the Gods. They were built with the fines levied on athletes and coaches who were caught cheating or fixing at the games. So corruption has had a long history in sport, back at least two-thousand eight-hundred years and that type of corruption will be with us for as long we continue to hold competitive sports. It is simply a part of human nature.

However, we of this generation - are facing something almost entirely new. It is a new form of match-fixing as if someone has taken fixing and injected it with steroids. It is an utterly modern phenomenon and it will destroy sport as we know them. People speak about other issues in sports - youth in sports, disabilities, fair access, etc - but this new form of corruption will, like a Tsunami, sweep aside all these other issues in sports and leave our sports dead and destroyed.<sup>20</sup>

13.16 Dr Hill's submission described the 'vast, powerful' Asian sports gambling market, estimated to be worth \$450 billion (compared with the Asian pharmaceutical industry of roughly \$100 billion):

What has happened is that this vast, illegal gambling market has corrupted sport across the continent of Asia. I do not want to exaggerate. There are a few Asian sports leagues which are corruption-free. I think Japanese soccer is one, but it is an exception. The fixing in Japanese Sumo wrestling is so bad and so ritualized that it has even been featured in an academic article by the American economists Levitt and Duggan. The Taiwanese baseball league has had so many scandals linked to gambling match-fixing it has now been reduced to only four teams. Much of Asian sport is drenched in corruption. There is so much corruption in sport there, that to an outsider the stories just seem extraordinary, but here are a few examples:

The Chinese soccer league is a national disgrace Those are the words of Chinese Premier Hu Jintao, who declared in the fall of 2009, that there was so much match-fixing and corruption in their soccer league that it embarrassed China. We see the same circumstances in the soccer leagues across the region: Vietnam, Hong Kong, Indonesia, Cambodia, Laos, Thailand, Malaysia and Singapore have all faced similar scandals in their own leagues. In Malaysia, the corruption was so bad that a cabinet minister there estimated that seventy percent of the matches in their leagues were corrupted.<sup>21</sup>

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20 Dr Declan Hill, *Submission 1*, p. 1.

21 Dr Declan Hill, *Submission 1*, p. 2.

13.17 He also warned of the dangerous influence that the illegal Asian gambling league was exerting on other countries' sports:

...the punters...are switching their bets from the local soccer leagues, with all the corruption in them, to other leagues around the world, including the Australian. They are betting on all measures of matches from the big, prestigious Champions League all the way down to tiny games in second division Women's Soccer in the Netherlands. There are a number of companies organizing monitors who go to matches across the world. They send people to the sidelines of these games where they stand with their mobile phones or laptops reporting back to the illegal gambling market in Shanghai or Johor Bahru or Manila.<sup>22</sup>

13.18 Dr Hill's 2008 book, *The Fix: Soccer and Organised Crime*, provides further insight into the extent of sports gambling in Asia:

The things that can be bet on in the Asian gambling syndicates are a testimony to the human imagination: four-digit number rackets, horse races, cockfights, boxing matches, basketball games, Formula One racing, hockey competitions, cricket tournaments, pre-Olympic events. In soccer alone you can bet on which team will win, by how much, who scores first, who scores last, who will get the first yellow card, who will get a red card, how many yellow cards will be shown, when the first goal will be scored, when the last goal will be scored, the total number of goals, how many headers there will be in the match, how many offsides, corners, and free kicks. The most popular structure of bet, however, is the Asian Handicap, which is like the North American idea of the point spread, where the favourite to win in the gambling market has to win the match by a certain number of goals.<sup>23</sup>

13.19 He also noted that match-fixing can never be understood as an exact science:

...a match-fixing performance is also, at least partly, opportunity based. In other words, finely laid plans are all very well in theory, but in the reality of a game, players simply have to take the opportunity to fix when it comes.<sup>24</sup>

13.20 *The Fix* describes in detail how the age of the internet has diminished the 'information asymmetry' between gambling markets in different parts of the world, thereby making fixing activity even more difficult to detect:

There used to be massive discrepancies between the Asian and European gambling markets. Information that almost every bettor knew in Europe was largely unknown in Asia. Ten years ago in the early days of the internet revolution, vast amounts of money could be made in this information gap. Gamblers call it "arbitrage", and there are some bettors who still specialize

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22 Dr Declan Hill, *Submission 1*, pp 3–4.

23 Dr Declan Hill, *The Fix: Soccer and Organized Crime*, McClelland & Stewart Ltd, Toronto, 2008, pp 60–61.

24 Dr Declan Hill, *The Fix: Soccer and Organized Crime*, McClelland & Stewart Ltd, Toronto, 2008, p. 44.

in playing the odds off between different bookmakers on either side of the planet. But now they have to be quick; it is rare that one bookmaker will be out of line with the worldwide betting odds for longer than ten minutes.

This is the public argument that gambling companies make: that because of the internet there is no longer anywhere in the world where a fixer can work without being detected. Any bookmaker who takes a vast amount of money on one side from a fixer will quickly realize there is something wrong. There are even companies that specialize in scanning the gambling market for any shifts that may be caused by fixing.<sup>25</sup>

13.21 He warns that 'the fixers are not stupid' and argues that the internet facilitates the flow of money through the illegal gambling market:

In the pre-internet days, it was sometimes difficult for a fixer to get enough money into the gambling market to make the fix worthwhile. They had to hire "beards" and "runners" — people who could put their money on without seeming to be connected with the fixers. Now with a click of the mouse the fixer can place bets with a half-dozen bookmakers around the world, and with a few elementary precautions, no one is the wiser.

Two, while a bookmaker or an "early warning system" can tell that the odds may have shifted in the illegal Asian market on a particular game, they cannot tell *how* much money has gone into the fix. So if an Asian fixer has bribed the underdog team to lose — so the stronger team will win — the fix is virtually undetectable. The odds will change, but all are just going the way of the team everyone expects to win anyway.

Most importantly, when a fixer fixes the gambling market, it is actually *more* difficult to do it in a small league like Belgium. Even carefully hiding their bets, there is so little money placed on these games that it is difficult to get a lot of money on to the fix. But ironically, the bigger the game, the easier it is for the fixers to fix the market. When there is a lot of money being bet, the fixers can get a lot on the fixed team. If they are discreet and fix the weaker team to lose, then no bookmakers, no matter how carefully they study the market, will notice the fix.<sup>26</sup>

### ***International approaches to match-fixing and corruption in sport***

13.22 Governments around the world are enacting legislation to curb criminal activities in sport. South Africa was the first country to enact federal legislation against match-fixing, followed by the UK and France.<sup>27</sup> International sporting bodies are also strengthening efforts to crack down on illegal betting activity in cooperation with gambling providers.

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25 Dr Declan Hill, *The Fix: Soccer and Organized Crime*, McClelland & Stewart Ltd, Toronto, 2008, pp 176–177.

26 Dr Declan Hill, *The Fix: Soccer and Organized Crime*, McClelland & Stewart Ltd, Toronto, 2008, pp 176–177.

27 Roy Masters, 'Here's a tip: be sure the money's clean', *Sydney Morning Herald*, 22 June 2011.

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13.23 Australian Sports Ministers have noted that:

At the international level, there is increased focus on cross-border collaboration, with an emerging push for an international information-sharing, monitoring, investigation and enforcement agency. Australia is actively working with other like-minded nations to ensure that international measures are developed and put in place that further safeguard Australian sport from international criminal activity.<sup>28</sup>

13.24 Recently, a series of international conferences have focused on the need to target match-fixing and preserve the integrity of sporting contests, including the International Olympic Committee meeting on Irregular and Illegal Sports Betting, and the Sports Funding, Sponsoring and Sports Betting Congress, both of which were held in March 2011.<sup>29</sup>

#### *FIFA*

13.25 In May 2011, the Federation Internationale de Football Association (FIFA) announced a 20 million euro plan over ten years to fund an anti-corruption training and prevention unit, based in Singapore, and to create an international betting integrity investigation task force. In 2007, FIFA established a company known as the Early Warning System Gmbh [sic] to detect suspicious betting activity surrounding football matches. A Betting Fraud Detection System was also set up to monitor football betting across Europe.<sup>30</sup>

#### *Europe*

13.26 The European Sports Security Association, established in 2005, shares and monitors information on irregular betting patterns and possible misuse of inside information among its members (including European online sports betting agencies). In April 2011, a Sports Betting Integrity Education Program was jointly launched by the World and European Lotteries Association and SportAccord (a body of international sporting federations).<sup>31</sup>

#### *United Kingdom*

13.27 The UK has recently tightened its laws on bribery and corruption and is now said to have one of the strictest anti-corruption and bribery regimes worldwide. The

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28 Department of the Prime Minister and Cabinet, Office for Sport, *Submission 45*, Attachment A, p. 4.

29 NSW Law Reform Commission, *Cheating at gambling*, Report 130, August 2011, p. 5.

30 FIFA, Media Release, 'FIFA's historic contribution to INTERPOL in fight against match fixing', 9 May 2011, and FIFA, Media Release, 'FIFA extends early warning system for monitoring sports betting', 16 August 2007.

31 SportAccord, Media Release, 'SportAccord, World and European Lotteries launch Sports Betting Integrity Education Programme', 8 April 2011.

new Bribery Act came into force from 1 July 2011. Offenders face up to 10 years' jail and companies and individuals may be subject to unlimited fines.<sup>32</sup>

13.28 Commentators have noted that the new law is open to interpretation and has implications for offering corporate hospitality at premier sporting events. Any corporate hospitality offered with the aim of influencing the recipient to act in a manner contrary to his/her duties is a bribe. The Act's guidelines do not specify what would constitute a breach and it appears that giving a ticket to a sporting event where the giver is not present would be a breach of the law. Implicit in UK Bribery Act is the need for accurate bookkeeping by both the donor and recipient of corporate hospitality.<sup>33</sup>

## National Policy on Match-Fixing in Sport

13.29 On 10 June 2011, Australia's Sport and Recreation Ministers announced a National Policy on Match-Fixing in Sport. The Commonwealth Minister for Sport, Senator the Hon Mark Arbib, stated that all governments were 'presenting a unified front against the scourge of match-fixing'.<sup>34</sup>

13.30 The ministers' communiqué stated that 'match-fixing and corruption in sport has emerged as the critical issue facing Australian and international sport'.<sup>35</sup> The key features of the policy are:

- agreement to pursue nationally consistent legislative arrangements;
- legal arrangements and integrity agreements between sports and betting companies which will include requirements to share information, provide sports with a right to veto bet types and provide a financial return from sports betting to sports;
- the adoption of codes of conduct by sports;
- the establishment of a National Integrity of Sport Unit to oversee national arrangements and provide support for smaller sports; and
- that government funding will be contingent on sport implementing appropriate anti-match-fixing and anti-corruption policies and practices.<sup>36</sup>

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32 Sport and Recreation Alliance, Compliance Alert, UK Bribery Act, June 2011, <http://www.sportandrecreation.org.uk/sites/default/files/web/documents/pdf/Compliance%20Alert.UK%20Bribery%20Act.FINAL.pdf> (accessed 21 September 2011). See also Australian Racing Board, *Submission 27*, p. 15.

33 Roy Masters, 'Here's a tip: be sure the money's clean', *Sydney Morning Herald*, 22 June 2011.

34 Senator the Hon Mark Arbib, 'Ministers take united stand against match-fixing', 10 June 2011, [http://www.ausport.gov.au/news/releases/story\\_436753\\_ministers\\_take\\_united\\_stand\\_against\\_match-fixing](http://www.ausport.gov.au/news/releases/story_436753_ministers_take_united_stand_against_match-fixing), (accessed 15 June 2011).

35 Senator the Hon Mark Arbib, 'Ministers take united stand against match-fixing', 10 June 2011, [http://www.ausport.gov.au/news/releases/story\\_436753\\_ministers\\_take\\_united\\_stand\\_against\\_match-fixing](http://www.ausport.gov.au/news/releases/story_436753_ministers_take_united_stand_against_match-fixing), (accessed 15 June 2011).

13.31 The communiqué also stated that a cross-jurisdictional working group would develop a detailed implementation plan for sports ministers to consider by September 2011. This would include an assessment of the readiness of sporting organisations and the betting industry to pursue requirements under the new national policy.<sup>37</sup>

13.32 On 30 September 2011, sports ministers reported progress on the National Policy with a legislative and administrative framework being taken to Cabinets to give effect to a number of key elements of the policy.<sup>38</sup>

13.33 Attorneys-General have also begun work on nationally consistent legislative arrangements to tackle match-fixing.<sup>39</sup> Further discussion of legislative approaches is covered later in this chapter.

13.34 Describing the agreed reforms in the Parliament, Senator Arbib stated:

The issues of match fixing and illegal and irregular gambling are growing day by day internationally. From Interpol, we have been alerted that the illegal gambling market is now worth \$140 billion. At home we have seen incidents of match fixing and there are cases currently before the courts....

It is important that all Australian sports lovers have confidence that our sports are being played fairly and that all our players are giving their best. Our athletes also deserve to know, whether they are competing here or overseas, that they are competing on a level and fair playing field. Cheating and corruption in sport erodes people's confidence in sport. It strikes at the very heart of sport.<sup>40</sup>

13.35 The Australian Crime Commission (ACC) briefed sports ministers on the impact of organised crime internationally and the potential impact on the Australian economy and Australian sport. Senator Arbib stated that the ACC had advised sports ministers:

...that currently in Australia its concern was for individual athletes and sports, rather than the sports industry as a whole. But as betting volumes

36 Senator the Hon Mark Arbib, 'Ministers take united stand against match-fixing', 10 June 2011, [http://www.ausport.gov.au/news/releases/story\\_436753\\_ministers\\_take\\_united\\_stand\\_against\\_match-fixing](http://www.ausport.gov.au/news/releases/story_436753_ministers_take_united_stand_against_match-fixing), (accessed 15 June 2011).

37 Senator the Hon Mark Arbib, 'Ministers take united stand against match-fixing', 10 June 2011, [http://www.ausport.gov.au/news/releases/story\\_436753\\_ministers\\_take\\_united\\_stand\\_against\\_match-fixing](http://www.ausport.gov.au/news/releases/story_436753_ministers_take_united_stand_against_match-fixing), (accessed 15 June 2011).

38 Sport and Recreation Ministers' Meeting Communiqué, Melbourne, 30 September 2011, [http://www.ausport.gov.au/\\_data/assets/pdf\\_file/0004/455053/110930\\_SPORT\\_AND\\_RECREATION\\_MINISTERS\\_COMMUNIQUE.pdf](http://www.ausport.gov.au/_data/assets/pdf_file/0004/455053/110930_SPORT_AND_RECREATION_MINISTERS_COMMUNIQUE.pdf) (accessed 4 October 2011).

39 Senator the Hon Mark Arbib, 'Agreement by Attorneys next step in fight against match fixing', 22 July 2011, [http://www.dpmc.gov.au/sport/minister/media\\_releases/mr\\_20110722.cfm](http://www.dpmc.gov.au/sport/minister/media_releases/mr_20110722.cfm) (accessed 25 July 2011).

40 Senator the Hon Mark Arbib, Minister for Sport, *Senate Hansard*, 14 June 2011, p. 27.

increase, sport is vulnerable to organised crime, to launder money and conceal illegal activity.<sup>41</sup>

13.36 A World Anti-Doping Authority briefing to member countries, including Australia, had warned of 'increasing involvement of crime syndicates moving cash from doping to match-fixing'.<sup>42</sup>

13.37 Senator Arbib also noted that the government was working overseas with the International Olympic Committee as part of an international working group on match-fixing.<sup>43</sup> Ministers stated that the policy will 'provide the basis for Australia to actively participate in international reforms to achieve similar international outcomes'.<sup>44</sup>

### ***Legal arrangements and integrity agreements between sports and betting agencies***

13.38 A key feature of the new National Policy on Match-Fixing includes the establishment of legal arrangements and integrity agreements between sports and betting companies.

13.39 This includes the designation and registration of a 'Sport Controlling Body' for each sport or competition under the appropriate regulator in a jurisdiction. The Controlling Body will deal with betting agencies, licensed in any state or territory, on behalf of their sports, and will register all events subject to betting with the relevant regulator.<sup>45</sup>

13.40 Each Sport Controlling Body will be expected to:

- (a) adopt an anti-match-fixing/anti-corruption code of conduct which aligns with nationally agreed principles...
- (b) apply the code of conduct to all players, player agents, support personnel, officials and staff;

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41 Senator the Hon Mark Arbib, 'Ministers take united stand against match-fixing', 10 June 2011, [http://www.ausport.gov.au/news/releases/story\\_436753\\_ministers\\_take\\_united\\_stand\\_against\\_match-fixing](http://www.ausport.gov.au/news/releases/story_436753_ministers_take_united_stand_against_match-fixing), (accessed 15 June 2011).

42 Patrick Smith, 'An alliance of unlikely bedfellows ensures cheating in sport becomes a criminal offence', *The Australian*, 11 June 2011.

43 The International Olympic Committee Working Group on the Fight Against Irregular and Illegal Betting on Sport; see Department of the Prime Minister and Cabinet, Office for Sport, *Submission 45*, p. 2.

44 Senator the Hon Mark Arbib, 'Ministers take united stand against match-fixing', 10 June 2011, [http://www.ausport.gov.au/news/releases/story\\_436753\\_ministers\\_take\\_united\\_stand\\_against\\_match-fixing](http://www.ausport.gov.au/news/releases/story_436753_ministers_take_united_stand_against_match-fixing), (accessed 15 June 2011).

45 Department of the Prime Minister and Cabinet, Office for Sport, *Submission 45*, Attachment A, p. 5.

- (c) apply a disciplinary framework within the code of conduct including sanctions and appropriate investigative processes with minimum and meaningful sanctions;
- (d) develop and enter into national integrity agreements with betting organisations in relation to the provision of betting and information sharing on the sport involved by July 2012;
- (e) provide appropriate information to betting agencies to support preventative and investigative measures in a timely manner;
- (f) provide appropriate education of players, player agents, support personnel, officials and staff on their responsibilities under the code of conduct and to provide information on match-fixing to assist with prevention, detection and disciplinary actions in accordance with this policy;
- (g) liaise with and report to the relevant government agencies including the oversighting/coordinating agency; and
- (h) provide and exchange information on suspected match-fixing or corrupt activities with the over-sighting/coordinating agency, betting agencies, and law enforcement agencies.<sup>46</sup>

13.41 Governments have agreed that to establish these arrangements, legislation (or binding agreement pursuant to legislation) must include:

- (a) requirements that a sporting organisation must apply to the appropriate regulator for approval as the Sport Controlling Body for a sports betting event;
- (b) requirements that a betting agency must not offer a betting service on an event unless:
  - i. an agreement is in effect between the registered Sport Controlling Body and the betting agency; or
  - ii. a determination of the appropriate regulator is in effect for the betting agency to offer a betting service on the event;
- (c) requirements for betting agencies to obtain agreement from the sporting organisation on all bet types offered on the sport involved, including what level of competition bets may [be] offered on (for example, minor leagues versus premier leagues), with sports having the ability to veto bet types; and
- (d) arrangements for financial return to the sport based on betting on that particular sport.<sup>47</sup>

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46 Department of the Prime Minister and Cabinet, Office for Sport, *Submission 45*, Attachment A, p. 8.

47 Department of the Prime Minister and Cabinet, Office for Sport, *Submission 45*, Attachment A, p. 5.

### ***Response of sports betting providers***

13.42 In parliament, Senator Arbib stated that the Sports Ministers' new national policy was being supported by sports betting providers who 'understand the threat to sport in the long term and to the domestic and international processes they have in place'.<sup>48</sup>

13.43 The National Policy states that betting agencies will be asked to:

- (a) adopt an industry standard for information exchange and information provision requirements with sports, governments and law enforcement agencies by July 2012;
- (b) develop and enter into national integrity agreements with sporting organisations in relation to the provision of betting and information sharing on the sport involved by July 2012;
- (c) guarantee confidentiality of information provided by sports to the betting agencies;
- (d) collaborate with sports and law enforcement agencies and the appropriate regulator on the provision of information to assist detection and investigation of suspicious activity or breaches of the relevant code of conduct for that sport; and
- (e) provide a share of revenue to implement this policy, including to sports.<sup>49</sup>

13.44 In its submission to the inquiry, Betfair stated its support for additional regulation addressing integrity issues such as match-fixing and the sale of 'price-sensitive' information:

Pursuant to Memoranda of Understandings with sports and racing bodies, Betfair has a disclosure obligation if any players or officials are placing bets on events they are associated with. Betfair has brought such situations to the attention of a number of Australian sporting organisations.<sup>50</sup>

### ***Financial return from sports betting to sports***

13.45 The importance of wagering and betting operators providing a fair financial return to the sports was raised by a number of submitters to the inquiry.

13.46 Harness Racing Australia argued that sports have not properly pursued, nor been adequately resourced, to address the current lack of financial return from betting companies:

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48 Senator the Hon Mark Arbib, *Senate Hansard*, 14 June 2011, p. 2638.

49 Department of the Prime Minister and Cabinet, Office for Sport, *Submission 45*, Attachment A, pp 9–10.

50 Betfair, *Submission 12*, p. 21.

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In cases where there have been suspect betting transactions concerning a particular sport, too often the controlling body has been ill equipped to investigate and ultimately address the incident. In some instances, the sport has had to rely on the police and the criminal law to investigate and prosecute the matter. This has often been a costly and protracted exercise which damages the sport, its participants, the punters and the betting product.<sup>51</sup>

13.47 The Australian Racing Board noted that sports needed an 'equitable entitlement' to share in revenues from gambling conducted on their events:

In this regard the Schadelmose Report recognised that "*sports bets are a form of commercial exploitation of sporting competitions*" and lent support to the notion that sports receive rights fees from gambling.<sup>52</sup>

13.48 In light of Sports Ministers' commitment to ensure that a financial return from betting companies is channelled back into sport, Betfair's submission noted that it had already:

...voluntarily entered into Product Fee agreements with all of the major sporting bodies in Australia including the AFL, NRL, ARU, FFA, Tennis Australia, Cricket Australia and the PGA Tour of Australasia. Betfair has agreed to provide the sporting bodies with a percentage of revenue earned from betting on their sports. Betfair firmly believes that sporting bodies are entitled to a share of the wagering revenue derived from their sport.<sup>53</sup>

### ***Right to veto bet types***

13.49 The National Policy proposes that betting agencies will need to obtain agreement from a sporting code on all bet types offered on the sport. Gambling regulators in states and territories will need to approve events, competitions and bet types.

13.50 Such arrangements are already in place for the AFL and NRL.<sup>54</sup> For example, in June 2011, the NRL and betting agencies took action to exclude certain forms of exotic bets, specifically bets on the first scoring play of the second half of an NRL match, the last scoring play in the second half, and whether or not there will be a field

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51 Harness Racing Australia, *Submission 52*, p. 4.

52 Australian Racing Board, *Submission 27*, p. 13. On 10 March 2010, the European Parliament adopted the Schadelmose Report, which called for strong coordinated action to fight the increasing threat of corruption and match-fixing in European sport.

53 Betfair, *Submission 12*, p. 17.

54 Department of the Prime Minister and Cabinet, Office for Sport, *Submission 45*, p. 2.

goal in the game.<sup>55</sup> Earlier in 2011, the AFL banned bets being placed on whether a coach would be dismissed before the end of the season.<sup>56</sup>

13.51 Sporting bodies and associations who made submissions to the inquiry supported the right to veto bet types. These included Netball Australia and Tennis Australia.<sup>57</sup>

13.52 In Victoria, this power has already been provided to sporting organisations which have the 'capacity to control the specific types of bets that are offered on their sports, and control the incidence of spot or exotic bets'.<sup>58</sup>

13.53 The Coalition of Major Professional and Participation Sports (COMPPS) also supported the 'power of veto over types of spot-bets that may be offered by betting operators on their sports where they have serious integrity concerns over the type of bet that is being offered'.<sup>59</sup>

13.54 The Australian Racing Board also supported such an approach:

A broader issue is that of what controls might be put in place to control inappropriate betting contingencies. That is to say, there are some events which for reasons of integrity of the sport, privacy, or offensiveness should not be allowed to form the basis of wagering. Each of these might be seen as aspects of what the public interest might require so far as some bet types are concerned.

For example, in the case of racing the practice has recently emerged of bets being taken on the margin by which a horse will win a race. The Stewards who police the Australian Rules of Racing believe that regulating the integrity of racing events will be made more difficult if margin betting is allowed to occur. Accordingly, we believe that racing, and other sports, should have the capacity to determine whether contingencies related to them are appropriate subjects for wagering.<sup>60</sup>

13.55 Chapter 14 will also cover the right to veto bet types in the context of a discussion about exotic betting.

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55 ABC News Online, 'NRL cracks down on exotic betting', 2 June 2011, <http://www.abc.net.au/news/2011-06-02/nrl-cracks-down-on-exotic-betting/2742978> (accessed 2 June 2011).

56 Jon Pierik, 'Bookies banned from betting on first coaching casualty', *Sydney Morning Herald*, 24 January 2011.

57 Netball Australia, *Submission 5*, p. 2; Tennis Australia, *Submission 38*, p. 6.

58 Tennis Australia, *Submission 38*, p. 5.

59 COMPPS, *Submission 16*, p. 7.

60 Australian Racing Board, *Submission 27*, p. 20.

### ***Codes of conduct in each sport***

13.56 Another feature of the National Policy is the requirement for sports to implement minimum code of conduct standards:

...that will restrict players, player agents, support personnel, official and staff from, *inter alia*, betting, gambling or entering into any other form of financial speculation on any match or on any event connected with the relevant sport.<sup>61</sup>

13.57 All COMPPS member sports already have in place existing codes of conduct to address such activities.<sup>62</sup>

13.58 Governments and sporting bodies have agreed that the codes of conduct must restrict players, player agents, support personnel, officials and staff, directly or indirectly, engaging in the following conduct:

- (a) betting, gambling or entering into any other form of financial speculation on any match or on any event connected with the sport involved;
- (b) inducing or encouraging any other person to bet, gamble or enter into any other form of financial speculation on any match or event or to offer the facility for such bets to be placed on the sport involved;
- (c) 'tanking' (including, in particular, owing to an arrangement relating to betting on the outcome of any match or event) other than for legitimate tactical reasons in line within the rules of the respective sport;
- (d) inducing or encouraging any player to 'tank' (including, in particular, owing to an arrangement relating to betting on the outcome of any match or event) other than for legitimate tactical reasons within the rules of the respective sport;
- (e) for money, benefit or other reward (whether for the player him or herself or any other person and whether financial or otherwise), providing insider information that is considered to be information not publicly known such as team or its members configuration (including, without limitation, the team's actual or likely composition, the form of individual players or tactics) other than in connection with bona fide media interviews and commitments;
- (f) any other form of corrupt conduct in relation to any match or event connected with the respective sport;
- (g) failing to promptly disclose to the sporting organisations or Sport Controlling Bodies that he or she has received an approach from another person to engage in conduct such as that described in paragraphs (a) - (f) above;

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61 Department of the Prime Minister and Cabinet, Office for Sport, *Submission 45*, p. 2.

62 COMPPS Codes of Conduct, additional information, received 11 August 2011.

- (h) failing to promptly disclose to the sporting organisations or Sport Controlling Bodies that he or she knows or reasonably suspects that any current or former player or official or any other person has engaged in conduct, or been approached to engage in conduct, such as that described in paragraphs (a) - (f) above;
- (i) failing to promptly disclose to the sporting organisations or Sport Controlling Bodies that he or she has received, or is aware or reasonably suspects that another player or official or any other person has received, actual or implied threats of any nature in relation to past or proposed conduct such as that described in paragraphs (a) - (f) above; or
- (j) conduct that relates directly or indirectly to any of the conduct described in paragraphs (a) - (i) above and is prejudicial to the interests of the sport or which bring him or her or the sport into disrepute.<sup>63</sup>

13.59 The National Policy notes that sporting organisations and controlling bodies will be responsible for determining appropriate responses to breaches of codes of conduct 'acknowledging that penalties should be broadly consistent across sporting codes and reflect the severity of the breach'.<sup>64</sup>

#### ***National Integrity of Sport Unit***

13.60 Ministers also announced the establishment of a National Integrity of Sport Unit to provide resources for smaller sporting codes to meet the requirements of the new national provisions. The functions associated with this new unit will include:

- (a) supporting and as required, reviewing information sharing and monitoring protocols to expand networks between governments, sports, betting industry and law enforcement agencies;
- (b) supporting the development of industry capacity to ensure the integrity of sport in all sporting codes including practical and financial support for smaller sports where necessary;
- (c) ensuring sports have the capacity either internally or through an independent body, to undertake investigations into betting impropriety;
- (d) monitoring compliance of stakeholders in relation to the application of the National Code of Conduct principles;
- (e) facilitating the adoption of National Code of Conduct principles by all sports;
- (f) resolving disputes as appropriate over issues of concern arising from the implementation of the national policy;

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63 Department of the Prime Minister and Cabinet, Office for Sport, *Submission 45*, Attachment A, pp 8–9.

64 Department of the Prime Minister and Cabinet, Office for Sport, *Submission 45*, Attachment A, p. 9.

(g) developing protocols for sanctions by sports and referral of criminal activity to law enforcement agencies; and

(h) supporting international efforts to combat corruption in sport through information sharing arrangements.<sup>65</sup>

13.61 Dr Hill praised this new unit but believed the cost of such a body should be met by the gambling companies.<sup>66</sup>

### **Legislative measures to address match-fixing**

13.62 The National Policy on Match-Fixing in Sport includes a commitment across jurisdictions to pursue nationally consistent legislative arrangements to address match-fixing:

All Australian governments agree to pursue, through Attorneys-General, a consistent approach to criminal offences, including legislation by relevant jurisdictions, in relation to match-fixing that provides an effective deterrent and sufficient penalties to reflect the seriousness of offences. Governments note the approach to implementation of such provisions may vary in jurisdictions depending on existing legislative arrangements.<sup>67</sup>

13.63 In NSW and Victoria, significant work has been undertaken on legislative measures to address match-fixing. Both states' work has been favourably received, both within Australia and internationally, and is being endorsed as a model for nationally consistent legislation.

### ***Cheating at Gambling – NSW Law Reform Commission***

13.64 In August 2011, the NSW Law Reform Commission (LRC) released its report called *Cheating at Gambling*. The Commission stated its support for the preservation of a 'safe and lawful' sports betting market in Australia:

We are convinced, in the light of the incidence of match-fixing internationally, and the failure of any prohibition model (for example, those in the US, India, Pakistan, and in several other Asian countries) to prevent its occurrence, that there is an imperative to preserve a safe and lawful market for sports and event betting. It is essential that such a market be transparent and subject to appropriate supervision by regulatory authorities, with the assistance of sports controlling bodies and betting agencies. It is

65 Department of the Prime Minister and Cabinet, *Submission 45*, p. 7.

66 David Sygall, 'Beware of tainted money', *Sydney Morning Herald*, 12 June 2011.

67 Department of the Prime Minister and Cabinet, Office for Sport, *Submission 45*, Attachment A, p. 5. On 18 November 2011, state and territory law ministers through the Standing Council on Law and Justice agreed to support the development of nationally consistent criminal offences for match-fixing; see Senator the Hon Mark Arbib, 'Match-fixers will face jail under nationally consistent laws', Media Release, 18 November 2011, [http://www.dpmc.gov.au/sport/minister/media\\_releases/viewItem.cfm?cid=27&id=282](http://www.dpmc.gov.au/sport/minister/media_releases/viewItem.cfm?cid=27&id=282) (accessed 21 November 2011).

equally essential, in our view, that there be appropriate criminal offences available to cater for those cases where cheating or other forms of corruption, including abuse of inside information, occur, and that there be means available to guard against sports betting being used for money laundering purposes.<sup>68</sup>

13.65 The NSW Government foreshadowed the LRC's report in its submission to this inquiry:

The LRC consultation paper notes that preliminary submissions are supportive of the introduction of a sports and event gambling specific offence, that would strengthen existing anti-cheating laws, that would be clear and easy to understand and apply, and that would carry an appropriate criminal sanction. The paper does highlight, however, a range of issues that would need to be addressed in relation to the creation of a specific offence. For example, the kinds of conduct it should capture and how it can be formulated so as to catch every person who is knowingly engaged in any co-ordinated cheating activity.<sup>69</sup>

13.66 Noting that the criminal law has not kept up to date with fraud in relation to cheating at sports betting, the LRC's final report proposed two new sets of sports specific offences:

The first set of offences cover conduct by anybody (including players, match officials and team support people) that "corrupts the betting outcome of an event" with the intention of obtaining a financial advantage from betting.

The conduct of a person "corrupts a betting outcome" if it affects or would be likely to affect the outcome of a bet, and is contrary to the standards of integrity expected by reasonable people.

This covers, for example, spot and match fixing, deliberate underperformance, tanking, disrupting or interfering with the course of the event, and deliberately officiating in a dishonest way. It extends to anybody who fixes the event, or agrees to do so, or persuades another to do so, and also to conduct designed to conceal the existence of any such arrangement.

The second set of offences cover using inside information in connection with a sporting event to bet on that event, as well as providing inside information to someone else to enable them to bet on the event.

In both cases, the Commission proposes a maximum penalty of 10 years imprisonment, the same penalty as for fraud, recognising the seriousness of activity that can involve the corruption of sporting activities in aid of betting.<sup>70</sup>

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68 NSW Law Reform Commission, *Cheating at Gambling*, Report 130, August 2011, p. 7.

69 NSW Government, *Submission 56*, p. 6.

70 NSW Law Reform Commission, Media Release, 'Cheating at Gambling', 26 August 2011, [http://info.lawaccess.nsw.gov.au/lawlink/lrc/l1\\_lrc.nsf/vwPrint1/LRC\\_mediarel130](http://info.lawaccess.nsw.gov.au/lawlink/lrc/l1_lrc.nsf/vwPrint1/LRC_mediarel130) (accessed 30 August 2011).

13.67 In proposing the new offences, the LRC's report also notes that criminal offences are a necessary 'safety net' and that betting agencies and sporting authorities must also take responsibility to prevent corrupt behaviour:

...to deter and punish those who do engage in cheating at gambling in its several forms. Of equal if not more importance, in a practical sense, however, is the need for sports controlling agencies, and for gaming and betting agencies and authorities, to adopt appropriate systems, through codes of conduct, educational programs, and the like, to discourage misconduct in this area, and to provide an effective means of detecting and dealing with it.<sup>71</sup>

*'Corrupting the betting outcome of the event'*

13.68 The LRC explains that the phrase on which the new offence is based is intended to cover activity such as:

- deliberately under-performing or failing to employ best efforts in the running of, or officiating in respect of, an event;
- withdrawing from an event without proper cause;
- improperly fixing or manipulating the outcome of an event or of a contingency; or
- otherwise improperly interfering with or disrupting the normal course of an event.<sup>72</sup>

*'Offence of using inside information about an event for betting purposes'*

13.69 This offence provision is aimed at those who abuse 'inside information', which is intended to cover non-public information such as:

- any injury to a player;
- player selection and team composition;
- the likely performance of a team or participant;
- tactics to be employed by a team or participant;
- the existence of any agreement or arrangement or conduct that may corrupt a betting outcome of the event, for example, knowledge of the blackmailing of a sporting participant, or of the existence of an agreement to fix the event; or
- [a] matter that is subject to confidentiality restrictions under a code of conduct, or contract, entered into by a person who might be regarded as an insider.<sup>73</sup>

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71 NSW Law Reform Commission, *Cheating at Gambling*, Report 130, August 2011, pp 1–2.

72 NSW Law Reform Commission, *Cheating at Gambling*, Report 130, August 2011, p. 14.

73 NSW Law Reform Commission, *Cheating at Gambling*, Report 130, August 2011, p. 28.

*10 year penalty*

13.70 The LRC argued that a 10 year maximum penalty for corrupting betting outcomes was appropriate:

By reason of the seriously fraudulent nature of the conduct involved, its consequences for a potentially wide group of people, and the need for a strong deterrent, we consider that the offences proposed should each carry a maximum penalty, that is in line with that which is available for the general fraud offence under s 192E of the *Crimes Act 1900* (NSW), namely imprisonment for 10 years.<sup>74</sup>

13.71 The NSW Government is yet to respond to the LRC's report. Responses from submitters to NSW's work in the context of the National Policy on Match-Fixing in Sport are included in chapter 16 under discussion of the match-fixing amendments proposed as part of the Interactive Gambling and Broadcasting Amendment (Online Transactions and Other Measures) Bill 2011.

***Victorian Gaming and Racing Legislation Amendment (Sports Betting) Act 2007***

13.72 In 2007, Victoria passed the Gaming and Racing Legislation Amendment (Sports Betting) Act. This is currently Australia's only sports betting specific legislation:

It was designed to ensure that sports receive a financial benefit from the betting that takes place on their events and that they have the capacity to ensure that the integrity risks created by betting are appropriately managed. It gave sports controlling bodies the capacity to require wagering service providers to enter into agreements that make provision for the fees, if any, to be paid by the betting provider for the use of the sport's product and for sharing information that can be used to identify suspicious betting behaviour.<sup>75</sup>

13.73 The National Policy on Match-Fixing, announced in June 2011, will build nationally consistent legislative arrangements on Victoria's existing work in this area.<sup>76</sup> Major professional sports in the UK have also commended the Victorian Act as model legislation on sports betting regulation.<sup>77</sup>

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74 NSW Law Reform Commission, *Cheating at Gambling*, Report 130, August 2011, pp 29–30.

75 Victorian Government response to Gleeson Review of Sports Betting Regulation, 3 August 2011, p. 1,

[http://www.premier.vic.gov.au/images/stories/documents/mediareleases/2011/110803\\_Gleeson\\_Review\\_-\\_recommendations\\_and\\_Coalition\\_Govt\\_response.pdf](http://www.premier.vic.gov.au/images/stories/documents/mediareleases/2011/110803_Gleeson_Review_-_recommendations_and_Coalition_Govt_response.pdf) (accessed 7 September 2011).

76 Senator the Hon Mark Arbib, 'Federal Government welcomes VIC sports betting review', 3 August 2011, [http://www.dpmc.gov.au/sport/minister/media\\_releases/mr\\_20110803.cfm](http://www.dpmc.gov.au/sport/minister/media_releases/mr_20110803.cfm) (accessed 4 August 2011).

77 Australian Racing Board, *Submission 27*, p. 16.

13.74 COMPPS strongly supported the legislation, stating that its enactment had 'strengthened the sports' ability to monitor integrity issues and enabled sports to receive a small percentage of revenue from sports betting on their events'.<sup>78</sup>

13.75 COMPPS' Anti-Corruption Report recommended that the provisions of the Victorian Act be adopted in all states and territories so that:

...all events on which sports-betting is available are included and all betting providers are required to enter into Integrity and Product Fee agreements with sports to provide details of relevant information including suspicious betting activity and to pay a product fee.

It recommended that nationally consistent criminal legislation, specific to sport, creating an offence of "cheating in connection with sports wagering" be adopted.

It recommended that each sport should be given the power to prohibit certain types of exotic or unusual bets that present enhanced integrity risks.

It recommended that new regulation also address issues such as minimum standards for all betting agencies in relation to record-keeping, retention of data, disclosure of information to sporting bodies and reporting of suspicious bets, among other things.

We understand that the major betting operators would welcome dialogue in relation to these matters.

Our preference is that these legislative reforms are enacted through Federal rather than State and Territory legislation.<sup>79</sup>

13.76 Victoria's legislation was reviewed in March 2011 by Mr Des Gleeson, former Racing Victoria head steward.<sup>80</sup> The review found that the legislation had 'one major deficiency':

...namely the lack of provision for ongoing monitoring by the regulator. Information provided to the review suggests that the level of integrity assurance being undertaken by the sports controlling bodies varies. While some sports controlling bodies were able to demonstrate proactive and robust integrity procedures aimed at ensuring no breaches of codes of conduct, including education programs for participants, others appeared less diligent, with integrity processes only coming in to play after a breach had occurred. Whilst the VCGR [Victorian Commission for Gambling Regulation] considers whether a sporting body has adequate policies, rules, codes of conduct and other mechanisms designed to ensure integrity at the time of determining whether to approve an application for sports controlling

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78 COMPPS, *Submission 16*, p. 4.

79 COMPPS, *Submission 16*, p. 5.

80 Patrick Smith, 'National approach to eliminating sport graft not before time', *The Australian*, 9 June 2011.

body status, there is currently no provision for monitoring of adherence to such policies.<sup>81</sup>

13.77 As well as an amendment to the Act to ensure the VCGR has a proper monitoring role to ensure that sporting bodies are applying their integrity policies and processes, the review's 14 recommendations included proposals for enhanced integrity assurance and legislative amendments such as the following:

That the sports controlling bodies, either through COMPPS or some other mechanism, consider developing a model code of conduct and guidelines for the conduct of education programs that would act as a minimum standard for all sports...

That the sports controlling bodies be encouraged to negotiate agreements that include the power to ban betting on contingencies that raise reasonable integrity concerns...

That, in the event other Australian jurisdictions move to introduce sports betting legislation, Victoria grants reciprocal rights to out-of-state approved sports controlling bodies and encourages other jurisdictions to do likewise...<sup>82</sup>

13.78 Under 'matters requiring national action', the review also recommended:

That the Minister for Gaming place the issue of mirror sports betting legislation on the agenda of the COAG Select Council on Gambling Reform or other appropriate national forum.

That the Minister place the issue of retention and supply of betting information by sport betting providers on the agenda of the COAG Select Council on Gambling Reform or other appropriate national forum.

That the Minister place the issue of amending the Interactive Gambling Act 2001 to remove the ban on internet betting 'in the run' on the agenda of the COAG Select Council on Gambling Reform or other appropriate national forum.<sup>83</sup>

13.79 The Victorian Government responded to the review's findings in August 2011 and supported all recommendations, noting the work already underway as part of the National Policy on Match-Fixing, as well as the Commonwealth's review of the *Interactive Gambling Act 2001*.<sup>84</sup>

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81 Mr Des Gleeson, *Review of Sports Betting Regulation*, 31 March 2011, pp 3–4.

82 Mr Des Gleeson, *Review of Sports Betting Regulation*, 31 March 2011, p. 12.

83 Mr Des Gleeson, *Review of Sports Betting Regulation*, 31 March 2011, p. 13.

84 Victorian Government response to Gleeson Review of Sports Betting Regulation, 3 August 2011,

[http://www.premier.vic.gov.au/images/stories/documents/mediareleases/2011/110803\\_Gleeson\\_Review\\_-\\_recommendations\\_and\\_Coalition\\_Govt\\_response.pdf](http://www.premier.vic.gov.au/images/stories/documents/mediareleases/2011/110803_Gleeson_Review_-_recommendations_and_Coalition_Govt_response.pdf) (accessed 7 September 2011).

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***Interactive Gambling and Broadcasting Amendment (Online Transactions and Other Measures) Bill 2011***

13.80 The bill introduced by Senator Xenophon contains provisions in relation to match-fixing. It will be considered separately in chapter 16.

***Federal or nationally consistent legislation?***

13.81 The question of whether the legislative approaches outlined above should be enacted federally, or whether they should be left to states and territories, attracted a diversity of views.

13.82 The NSW LRC also posed the question in relation to its new offence provisions proposed to address corruption in sport:

An important consideration, in the Australian context, is whether the response to the problem requires the introduction, by each State and Territory, of a uniform criminal offence, or whether it should be left to the Commonwealth to enact an appropriate provision, by way of amendment of the *Criminal Code* (Cth).<sup>85</sup>

13.83 The LRC's view was in favour of enactment of a uniform offence by each state and territory:

...subject to the recognition that, if this does not occur, then Commonwealth intervention will be required.

The reasons for preferring a State and Territory based approach relate largely to the practicalities of investigation and enforcement, which will depend on co-operation between betting providers, local sports controlling bodies and State and Territory Police Forces.<sup>86</sup>

13.84 Victoria's Gleeson Review of Sports Betting Regulation stated that its most important finding was in relation to the need for a national approach and mirrored legislation:

As the only state with sports betting legislation, Victoria can rightly regard itself as a leader in this area, but for the regulatory regime to be fully effective, mirror legislation needs to be introduced by the other states. If all states moved to introduce such legislation, this would 'plug the gaps' in the current regime by ensuring that sports are legally entitled to receive product fees for games and matches played outside of Victoria. The current situation, where sports controlling bodies have differing ability to negotiate with sports betting providers depending on how many of their games are played in Victoria, is unsatisfactory.<sup>87</sup>

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85 NSW Law Reform Commission, *Cheating at Gambling*, Report 130, August 2011, p. 12.

86 NSW Law Reform Commission, *Cheating at Gambling*, Report 130, August 2011, p. 12.

87 Mr Des Gleeson, *Review of Sports Betting Regulation*, 31 March 2011, p. 28.

13.85 COMPPS also noted that the Victorian Act had limitations when observed by Australian sporting codes which are played across many jurisdictions:

While this Act is a step in the right direction and has given sports a framework in which to negotiate national arrangements with betting operators, it only requires for the agreements to be in place for sports events in Victoria.<sup>88</sup>

13.86 However, COMPPS' preference was for federal enactment of legislative reforms (modelled on the Victorian legislation) over state-based approaches.<sup>89</sup>

13.87 The Australian Internet Bookmakers Association (AIBA) questioned whether Victoria's legislation should be adopted as a model for other states and territories, arguing that betting agencies and sporting bodies have already made national efforts that have gone beyond the Victorian requirements:

The Victorian sports betting legislation has been put forward as a model for adoption by other States and Territories. In recognition of its deficiencies and in support of the integrity objectives, internet bookmakers and, subsequently other betting providers, negotiated agreements directly with the sports. These agreements had national reach (i.e. covered all events across the country), provided for the provision of information regarding suspicious bet types and expressly gave the power of approval of the bet types to the sports. In other words, the bookmakers and the sports jointly developed a national scheme which was more effective and more advanced than that provided by the Victorian sports betting legislation.<sup>90</sup>

13.88 The AIBA then outlined the two alternative approaches to regulation:

The first is for a Federal role to be exercised by the Federal government; the second is for greater coordination and cooperation between the States and Territories in such areas as the approval of bet types. For example, a simple mechanism for identifying bet types of concern is where the sports, having exercised a determination to approve or disapprove a particular bet type, notify all other State and Territory regulators (assuming the local regulator has given approval). Should any particular State or Territory have a significant concern over the propriety of the decision, it may raise this with the particular sport and the regulator of the particular betting provider. Any differences are therefore to be resolved by way of discussions and agreement, rather than the pre-emptory exercise of any purported regulatory power.<sup>91</sup>

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88 COMPPS, *Submission 16*, p. 4.

89 COMPPS, *Submission 16*, p. 4.

90 Australian Internet Bookmakers Association, *Submission 54*, p. 30.

91 Australian Internet Bookmakers Association, *Submission 54*, p. 31.

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*Committee view*

13.89 The committee welcomes the cooperative work being done at a national level to advance the new National Policy on Match-Fixing. It also acknowledges the comprehensive work that has been done in both NSW and Victoria to ensure regulation keeps pace with developments in the modern sports betting environment. The committee is supportive of the current work underway by Sports Ministers and Attorneys-General to pursue nationally consistent legislative measures to curb the threat of match-fixing in Australian sport. The committee urges betting agencies and sporting bodies to continue to cooperate fully with the work being done by governments in these important areas to safeguard the integrity of Australian sport.



## **Chapter 14**

### **Match-fixing and corruption: the role of sporting bodies and the risk of exotic betting**

14.1 This chapter will discuss the role of sporting bodies in addressing match-fixing and corruption, including self-regulation by sporting codes themselves and strategies to maintain player and participant integrity. The merits and risks of allowing exotic betting on sport will also be covered.

14.2 While governments have started to take national action in relation to match-fixing as outlined in the previous chapter, major Australian sporting bodies have already established their own self-regulatory measures and codes of conduct to preserve integrity within sport. However, sporting bodies have also welcomed further coordinated action with government to address the threat of corruption.

#### **Coalition of Major Professional and Participation Sports (COMPPS)**

14.3 The Coalition of Major Professional and Participation Sports (COMPPS), an industry representative group, was formally established on 21 May 2010 after several years of informal cooperation. Its members comprise the chief executives of: the Australian Football League (AFL), Australian Rugby Union (ARU), Cricket Australia, Football Federation Australia (FFA), National Rugby League (NRL), Netball Australia and Tennis Australia. COMPPS' Executive Director is Mr Malcolm Speed, former Chief Executive Officer (CEO) of the International Cricket Council, and the inaugural chair is Mr James Sutherland, CEO of Cricket Australia.<sup>1</sup>

14.4 At its first meeting, COMPPS agreed to 'share information on sports gaming integrity education, sports gaming disciplinary and code of conduct processes, and integrity processes'.<sup>2</sup>

14.5 COMPPS advised that its member sports already regulate sports betting to some degree:

These regulations are enforced by way of contract and include prohibitions on match fixing and corruption, on betting by participants and disclosure of inside information for betting purposes. To assist in the enforcement of such regulations, COMPPS members have information sharing agreements with betting agencies. Such agreements require agencies to disclose full

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1 Cricket Australia, 'Major sports unite to uphold integrity', 21 May 2010, (accessed 23 June 2011), <http://sportsaustralia.com/articles/news.php?id=7458>.

2 Cricket Australia, 'Major sports unite to uphold integrity', 21 May 2010, (accessed 23 June 2011), <http://sportsaustralia.com/articles/news.php?id=7458>.

details of their betting sheets to sports for the purpose of investigation [or] inquiry.<sup>3</sup>

14.6 COMPPS stated that all of its member sports, with the exception of Netball Australia, conduct matches on which betting takes place:

Australian sport has for many years provided high quality and popular domestic and international competition for which betting agencies have offered odds and taken profits through sports wagering...

Sports betting is a legitimate and legal pastime, the modern extension of the Australian tradition of betting on sporting events...

Initially, sports betting used the traditional cash-based systems. The emergence of interactive online technologies has increased the volume of betting on sport and provided new challenges in monitoring and policing. It has, however, also provided better options for sport and betting agencies to protect the integrity of sporting events where betting takes place.<sup>4</sup>

...Australian sport has responded well to the threat of corruption through sports betting given that we are a nation of sports lovers and active gamblers. Compared with many other countries, the internal processes that the sports have adopted and enforced have served them well. There is a strong and continuing commitment to protect and enhance the integrity of professional sport in Australia.<sup>5</sup>

14.7 While COMPPS said that it recognised the challenges posed to the integrity of sport from match-fixing and corrupt behaviour, it does not favour any prohibition of sports betting activity that is already legal:

One example that highlights the challenges that sport has faced in relation to betting occurred in the late 1990's when match-fixing in cricket was exposed. The captains of three of the nine test-playing countries were banned for life...The root of the problem was cash-based, unregulated, illegal betting in the Indian sub-continent. We do not believe that prohibition works as a regulatory framework. It will...drive betting underground or push Australian gamblers to off-shore online gambling agencies.<sup>6</sup>

14.8 The National Policy on Match-Fixing has been welcomed by COMPPS, including the move towards nationally consistent legislation:

New regulation may also address issues such as minimum standards for all betting agencies in relation to record-keeping, retention of data, disclosure of information to sporting bodies and reporting of suspicious bets, among other things. Importantly, and in order to protect the integrity of our sports,

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3 COMPPS, *Submission 16*, p. 6.

4 COMPPS, *Submission 16*, p. 2.

5 COMPPS, *Submission 16*, p. 7.

6 COMPPS, *Submission 16*, p. 5.

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COMPPS members believe that we each should be able to prohibit certain types of exotic or unusual bets that present enhanced integrity risks.<sup>7</sup>

14.9 At a hearing, Mr Speed explained the sporting codes' current arrangements with betting agencies on product fee agreements and information-sharing to ensure integrity, giving the example of a recent NRL case:

Typically, the sports can seek the betting records from the betting operators. If there is suspicious betting, as there was in the NRL case that is under review at the moment, then the operator in that case, NSW TAB, is under an obligation to alert the sport. It is in the betting operator's interest to have corruption-free betting. It is imperative for them that gamblers know they can go to them and know that everything is above board and that matches or parts of matches have not been fixed. When there was a suspicious betting pattern in relation to the first score in an NRL match, the operator alerted the NRL to that very quickly. The NRL put in place an investigator to carry out a preliminary investigation and very quickly passed that to the New South Wales police.<sup>8</sup>

14.10 Mr Speed pointed out the problem with not having nationally consistent legislation to deal with all such cases:

The issue that we face there is that, because that legislation only exists in Victoria, it only covers events that take place in Victoria. It has become a convention amongst the sports and the betting operators in other states to enter into those sorts of agreements, but it does not have legislative effect. So TAB and NRL were following the Victorian legislation; they had an agreement in place. Most of the big betting operators have agreements in place with the major sports—all of them in Victoria are required to, as a result of the legislation. What we are seeking to do is put that legislation in all states and territories for all the betting operators who are betting on sport, so that they are required to do that and so that no-one slips through the cracks.<sup>9</sup>

### ***Limits of sporting bodies' powers***

14.11 COMPPS also commented on the recent Pakistani cricket betting scandal uncovered by journalists and noted the limitations of sporting bodies' powers in addressing such instances of corrupt conduct:

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7 COMPPS, *Submission 16*, p. 4. On 16 November 2011, the government welcomed Cricket Australia's decision to set up an Anti-Corruption and Security Unit to oversee and maintain the integrity of Australia's domestic cricket competitions; see Senator the Hon Mark Arbib, 'Minister welcomes new cricket integrity measures', Media Release, 16 November 2011, [http://www.dpmc.gov.au/sport/minister/media\\_releases/viewItem.cfm?cid=27&id=281](http://www.dpmc.gov.au/sport/minister/media_releases/viewItem.cfm?cid=27&id=281) (accessed 21 November 2011).

8 Mr Malcolm Speed, COMPPS, *Committee Hansard*, 11 August 2011, p. 18.

9 Mr Malcolm Speed, *Committee Hansard*, 11 August 2011, p. 18.

**Mr Speed:** The criticism has been made that sports should be able to disclose that act of corruption. In an ideal world that would be the case. If the sport or a police force acted in that way, they would face the suggestion that they had acted as an agent provocateur. It is not my role to defend the ICC [International Cricket Council] as I am no longer associated with them, but for the ICC to do that they would have needed to have been able to pose as a journalist and to provide quite a lot of money in cash to film that event and then wait to see whether in fact the no-balls were delivered. They do not have that power. I understand that they were aware of these people and were suspicious of them and there was an investigation under way. To enable sports to carry out those investigations they would need far wider powers and to enable police forces to do that they would require far wider powers.

**Senator XENOPHON:** Given your expertise and experience, in order to get the bad guys, to put it colloquially, do you need those extra powers to deal with these issues effectively?

**Mr Speed:** I think it would assist if the sports had close relationships with police forces and police forces had those extra powers. It would be dangerous ground for sports to be given those powers to act unilaterally in matters such as that.<sup>10</sup>

14.12 Tennis Australia echoed COMPPS' view, emphasising that sporting organisations alone cannot police corrupt activities:

To effectively shut down the root cause of corrupt activity, legislation needs to be in place to ensure such activities are clearly defined as illegal activities, and that appropriate penalties are in place to deter such activities. It should be noted that this call for action via the criminal system is in no way an attempt by sport to abrogate our responsibilities in regard to policing corrupt activities where we can, but rather is an acknowledgement of the fact that the basis for corrupt activities starts with criminals who sit outside the sport system directly, and over whom a sport's code of conduct and associated penalties has no authority.<sup>11</sup>

## **Player and participant vulnerability**

14.13 Involvement in gambling can significantly damage the integrity of athletes and others closely associated with codes of sport. Many incidences of match-fixing and corrupt behaviour can be the direct result of players or officials with existing gambling debts being vulnerable to manipulation. For others, a 'betting culture' in certain clubs or sports exacerbates their problems.

14.14 Former AFL player and recovering gambling addict, David Schwarz, commented on SBS TV's *Insight* program that the option of gambling online was attractive to those with high profiles:

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10 Mr Malcolm Speed and Senator Nick Xenophon, *Committee Hansard*, 11 August 2011, p. 17.

11 Tennis Australia, *Submission 38*, p. 5.

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I think for someone in my position that did have a profile, you know, going down to the TAB was a bit of a hassle. Not having to go into the TAB or go to the races – it's hassle free. So for people playing professional sport it might be a bonus for them not to be seen. With the smart phone technology you're not being photographed. So for those punters it's hassle free and it's anonymity.<sup>12</sup>

- 14.15 Another former AFL player and coach, Daryn Cresswell, recently admitted to betting on his own games (at least 'once') and making money from these bets. He also said that he knew of other players who had done the same. Recently released from a Queensland prison for defrauding a bank to fuel his gambling addiction, he described the extent of his problems:

Everything I had I was trying to win back to pay people that I owed, to try pay. The rent try [to] pay, the cars, try [to] pay for the kids education and in the end...two attempts to try end it all.

I couldn't stop, I didn't know what I was doing. I was thirty years of age. I started gambling at thirty years of age, I had no prior knowledge or prior [sic] in horse racing. I didn't understand what I was doing but I was just doing it and I was just completely out of control. I couldn't stop.<sup>13</sup>

- 14.16 The Brisbane Broncos star player, Darren Lockyer, also recently admitted to beating a gambling problem during the 1990s:

As his bets kept increasing and he suffered a run of heavy losses in the thousands of dollars, Lockyer says he was left "just shattered".

"It took a run of outs for me to finally confront the fact that I had a bit of a problem which needed addressing before it spiralled out of control," he writes.

After a particularly bad run of losses, Lockyer went home, turned out all the lights in his house and sat in the dark with his head in his hands.

"I got home after the last time and was just shattered. I was a wreck, stressed out and angry and significantly out of pocket."

Lockyer was a punter before he joined the Broncos.

He walked into a betting culture at the club with a number of senior players, including former captain Allan Langer and Wendell Sailor known to love a bet.<sup>14</sup>

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- 12 David Scharwz, 'Online Gambling', *Insight*, SBS TV, 13 September 2011, <http://www.sbs.com.au/insight/episode/index/id/428/Online-Gambling#transcript> (accessed 11 October 2011).
- 13 Ross Coulthart, 'Daryn Cresswell's sporting shame', *Sunday Night*, Channel Seven, 16 October 2011, <http://au.news.yahoo.com/sunday-night/features/article/-/10461787/daryn-cresswells-sporting-shame/> (accessed 17 October 2011). See also Brett Stubbs, 'Footy legend deceived Tassie', *The Mercury*, 18 October 2011.
- 14 Wayne Heming, 'Lockyer admits to beating gambling problem', *Sydney Morning Herald*, 28 August 2011.

14.17 Despite the NRL's code of conduct prohibiting players from betting on their own sport, a poll of 100 players published in Rugby League Week magazine revealed that 20 per cent admitted they knew other players who were gambling on rugby league.<sup>15</sup>

14.18 To mitigate such activity, Sportsbet supported betting agencies and sporting bodies having agreements in place to provide 'insiders lists' to prevent certain persons from placing bets:

**Mr Sleep:** Our agreement with one of the major sporting bodies provides that they provide us with an insiders list and we can put that in a database so those persons cannot open accounts...

**Mr Barry:** In terms of having a national register for betting on sport, it would also be appropriate that sporting bodies provide a list of insiders who are on that register and that those people are not able to bet on their sports.<sup>16</sup>

14.19 Education is also a key element in successfully enforcing codes of conduct in sport. This was acknowledged by Tennis Australia:

It is imperative that appropriate education processes are in place to ensure all those persons who are subject to any code are fully educated as to the provisions of the code, and the penalties imposed by a breach of the code. Tennis Australia, via the international integrity unit, takes an active role in ensuring all relevant persons under our control are appropriately educated in regard to our integrity code and associated anti-corruption issues.<sup>17</sup>

14.20 Owen Craigie, a former NRL player who has admitted to overcoming a serious gambling addiction during his playing career, is now working as a gambling education officer for Mission Australia and has expressed a desire to assist the current generation of NRL players. He estimated that over 12 years of gambling, with his earnings of \$1.5 million from the NRL, he would have won about \$10,000 and lost more than \$1 million.<sup>18</sup>

14.21 Dr Jeffrey Derevensky told the committee that young sporting players on high salaries were particularly vulnerable:

We have been working with people from the National Football League in the United States. They found that many of their rookie athletes who are football players come out of college, typically quite poor students, and it is like they hit the lottery with all kinds of wealthy signing bonuses. They

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15 AAP, 'Rugby League Week poll reveals NRL players still keen to bet despite last year's betting scandal', *The Daily Telegraph*, 27 July 2011.

16 Mr Cormac Barry and Mr Ben Sleep, Sportsbet, *Committee Hansard*, 11 August 2011, p. 10.

17 Tennis Australia, *Submission 38*, p. 7.

18 James Hooper, 'Owen Craigie warns of gambling pitfalls', *The Sunday Telegraph*, 7 August 2011.

found over time that many of these people had very poor money management skills, that some of them were getting overly involved in gambling, some of them were getting overly involved in other risky behaviours, and, as a result, they have instituted a very specific training program and worked through their employee assistance programs with the various teams in order to help educate these young people.<sup>19</sup>

14.22 As discussed in the previous chapter, the new National Policy on Match-Fixing in Sport will ensure that sport controlling bodies provide appropriate education of players, officials and staff on their responsibilities under codes of conduct in relation to match-fixing.

### ***Committee view***

14.23 The committee welcomes the work being done under the auspices of the National Policy on Match-Fixing to ensure that sport controlling bodies properly educate players and participants about the risks of both gambling and involvement in match-fixing and penalties for breaching codes of conduct in relation to such activity.

### **Exotic bets**

14.24 As explained in chapter 10, exotic bets are a relatively recent bet type. The ability to bet on 'micro'-events and contingencies is a controversial practice. A 2008 study on the Risks to Integrity of Sport from Betting Corruption from the University of Salford explains both the allure and risks of exotic betting:

Greater competition for market share has induced the gambling industry to offer an increasing range of subjects beyond the traditional one of which player or team will win the match. These betting products are attractive partly because they make following an event more interesting and partly because they enable the bookmaker to cater for a variety of risk preferences. For example, football matches are typically played between fairly well matched teams, selected by past achievement to play in the same division. Win odds therefore seldom depart very far from evens. The event will not appeal to bettors with high risk preference who, for example, like to back horses at longer odds. Such bettors may however be attracted by betting on which footballer will score the first goal in a match since this market will feature a wide range of odds, similar to the pattern of odds in a typical horse race.

The large variety of aspects of a match on which it is now possible to bet, whatever the sport, is testimony to the creativity of the betting industry. But many of the new types of bet[s] available raise concerns for sport because they appear to offer more scope for fixing than bets on [the] final outcome. For example, they may relate to aspects of the game under the control of a small sub-set of players or officials (making it easier to arrange a fix) or they may relate to components of an event that are fairly marginal to final

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19 Dr Jeffrey Derevensky, *Committee Hansard*, 16 September 2011, p. 6.

outcome (tempting athletes because winning the bet need not involve losing the game).<sup>20</sup>

14.25 COMPPS was asked whether sporting codes could be said to have a conflict of interest in relation to permitting exotic betting, given that they receive a share of revenue from betting activity. However, Mr Speed responded:

The amounts that the sports receive by way of product fee are relatively minor in relation to their overall revenue streams. Their overriding concern is the integrity of their [sport], so if there is a concern about the integrity then I believe that the sports would seek to ban those spot bets that had particular integrity concerns. They would not be concerned about the loss of revenue.<sup>21</sup>

14.26 Mr Speed also acknowledged the risks of exotic betting and outlined the steps taken by the NRL to veto certain bet types in recognition of such dangers:

...there are some types of spot betting that have more potential to be corrupted than others. To take the Pakistan example—whether a ball will be a no-ball. One player can arrange that. Take a tennis example: that in the third game of a tennis match there will be a double fault. One player can fix that. If you have that player under your control, and he or she agrees to do that, one player can do that. Those sorts of things are matters that are of greater integrity concern than perhaps the overall outcome of a football match, where there are 18 players on the ground, or 11 in some other codes, at the one time and it is far more difficult to achieve that outcome. So the former group would be those that are easily corrupted.

The NRL has said to the betting operators that there are certain types of bets that it is not prepared to contemplate, so it has taken the veto unto itself, although the veto does not exist under the agreements at the moment. As I understand it, the NRL has said it will not allow betting on the first score in the second half and the last score in the second half...I think there would be others where the sports would sit with the betting operators and say, 'No, we do not want betting to occur on which player will be the 12th man in a cricket match or which player will start as the interchange player in an AFL match,' because lots of people will know about those decisions.<sup>22</sup>

14.27 Mr Andrew Twaits, CEO of Betfair, told the committee that the majority of bets that his company handled were not classified as 'exotic' and that any restrictions on such bet types would not have a significant effect on its business:

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20 David Forrest, Ian McHale and Kevin McAuley, *Risks to Integrity of Sport from Betting Corruption*, University of Salford, February 2008, p. 8, [http://www.epma-conference.net/Download/22012009/SalfordREPORT\\_Feb08.pdf](http://www.epma-conference.net/Download/22012009/SalfordREPORT_Feb08.pdf) (accessed 19 September 2011).

21 Mr Malcolm Speed, *Committee Hansard*, 11 August 2011, p. 14.

22 Mr Malcolm Speed, *Committee Hansard*, 11 August 2011, p. 17.

**Senator XENOPHON:** So in terms of your business model it would not be the end of the world if that was restricted.

**Mr Twaits:** Not really, for the most part. There are some exotic bet types that are more popular than others and have some promotional benefits, but the volume of that type of betting is quite small.<sup>23</sup>

14.28 Betfair also stated that it did not offer exotic betting on events 'open to manipulation' and said that sporting bodies were best placed to determine the availability of such betting on their sports:

...wagering operators must be sensible in the types of markets that are offered to customers. The reality—at least in Betfair's case—is that 95 per cent of the money wagered on most sporting events is on the actual outcome of a sporting event. As an approved wagering operator of all of Australia's major sporting bodies, Betfair seeks approval from the relevant governing body for all markets it intends to offer on a sporting event. Betfair does not offer markets or bet types without specific approval. The sports themselves are in the best position to determine whether a particular bet-type is liable to any form of corruption or manipulation. Accordingly, any decision should remain in the hands of the sporting bodies to reasonably determine the number and types of exotic markets that are offered on a particular event.<sup>24</sup>

14.29 The CEO of Sportsbet, Mr Cormac Barry, suggested betting limits on exotic bets as a way of mitigating risk:

**Senator XENOPHON:** Finally, could you put your hand on your heart and say you believe that microbetting, ball-by-ball betting, exotic betting, does not in any way increase the risk of corruption in sports?...

**Mr Barry:** I think there are two relevant points here. The vast majority of corruption and match-fixing betting is cash based, anonymous and occurs with illegal operators, which has been elaborated on by the head of the IOC and by Malcolm Speed. In terms of the specifics of exotics betting, as you may have seen in our proposal, we propose that there are limits on the betting that can take place on those bet types so as to remove the incentive for individuals to attempt to corrupt or alter the outcome of a match on that basis. If an individual can only win \$1,000 on those exotic bets, I think it removes the incentive to do that. I think if you ban them completely you drive recreational punters to access those bet types...

**Senator XENOPHON:** And strict winning limits? What would the limit be—\$1,000?

**Mr Barry:** To be decided in consultation, but I certainly think the amount a customer wins could be limited to \$1,000 or \$2,000, something of that nature. Typically these outcomes might be at 10 to one or 20 to 1, so you are looking to allow the recreational punter to have a \$50 bet, while

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23 Senator Xenophon and Mr Andrew Twaits, *Committee Hansard*, 11 August 2011, p. 33.

24 Betfair, *Submission 12*, p. 19.

simultaneously trying to remove the incentive for people to corrupt that outcome.<sup>25</sup>

- 14.30 However, Betfair disagreed with the concept of betting limits:

Having a transparent system in place where you know the identity of the punters and that information is available to the sports and law enforcement authorities...is the way to address it—not through putting limits on how much people can win. I can understand that approach in the cash based environment, where there is complete anonymity about who is putting the bets on, save for a CCTV inquiry. Once you have the account based system in place with proper verification, that should be the start and finish of it.<sup>26</sup>

- 14.31 The Australian Internet Bookmakers Association argued that the mechanisms in place to regulate exotic betting were already sufficient:

This is but *one area of risk* around betting related corruption. As international experience shows, any game or contest is at risk if there is a large betting market on it *whether legal or illegal*. This has an important consequence, in that increased controls over the local industry *would do nothing to lessen the threat*. If the market exists offshore, there will be a risk of corruption.

At the moment, it seems the boundary between fair “exotic bets” – where the outcome is a function of good play – and improper exotics bets – which encourage a player to underperform – is about right. There is still room for discussion, but the process is in place for those discussions to occur.

This Association suggests that there is no necessity for further action to be taken on bet types, in particular to ban all exotic bets. Sporting organisations, gaming regulators and betting providers are alive to the risks posed by certain bet types, and the mechanisms are in place to recognise and address those risks.<sup>27</sup>

- 14.32 However, the University of Sydney Gambling Treatment Clinic drew attention to the risks of exotic betting for gamblers who were having problems with excessive sports betting:

...the promotion of more “exotic” spot-betting has also been reported as problematic by our clients. These bet types, often promising a very large return on modest outlays, are very tempting for a gambler who is attempting to recoup money that had been lost previously.<sup>28</sup>

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25 Senator Xenophon, Mr Cormac Barry and Mr Ben Sleep, *Committee Hansard*, 11 August 2011, p. 10.

26 Mr Andrew Twaits, *Committee Hansard*, 11 August 2011, p. 34.

27 Australian Internet Bookmakers Association, *Submission 54*, p. 6.

28 University of Sydney Gambling Treatment Clinic, *Submission 9*, p. 4.

14.33 The Clinic's submission advocated 'further examination of the potential impacts of banning of spot-betting, with a view to eliminating more exotic bet types.'<sup>29</sup>

14.34 Dr Jeffrey Derevensky also explained the risks of this bet type to the committee:

We know that in Australia, as well as in other jurisdictions now, there are what we refer to as 'proportional bets'. So you no longer have to just bet on the final outcome of a game; you can actually bet on who is going to be in the starting line-up. You can wager on who the first person is going to be to get a goal. In fact, in some really outrageous internet gambling websites you can gamble on the colour of the blouse of the quarterback's girlfriend. So you can continuously bet on these various sporting events. We know that this is particularly insidious for young people. We also know that they wind up getting overly engaged in gambling because they believe they can predict the outcome of some of these games.<sup>30</sup>

14.35 The Social Issues Executive (SIE) of the Anglican Diocese of Sydney recommended a ban on all exotic betting or spot betting, arguing that it would protect players and sport from corruption and would not prevent consumers placing bets on the outcomes of sporting events.<sup>31</sup> The SIE also suggested that the nature of spot-betting and similar betting types had the potential to result in match-fixing and collusion of players to rig outcomes:

...there is the risk of a corrupting influence on players and on the sport itself. Although it is harder to corrupt an entire team than individuals within the team, proliferation of spot-betting may create incentives that invite the collusion of a whole team.<sup>32</sup>

14.36 The Interactive Gambling and Broadcasting Amendment (Online Transactions and Other Measures) Bill 2011 proposes to ban exotic bet types. Further consideration of the bill's provisions on this matter is covered in chapter 16.

### ***Committee majority view***

14.37 The committee majority holds some concern about exotic bets, noting in particular the evidence from the University of Sydney Gambling Treatment Clinic suggesting that the existence of exotic betting opportunities presents difficulties for problem gamblers. While recognising that exotic bet types make up a small portion of the overall sports betting market, the committee majority notes that the risks associated with exotic betting have the potential to be damaging to the integrity of Australian sport. The committee majority commends and supports the action taken by the AFL and NRL to eliminate certain exotic bet types. The committee majority

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29 University of Sydney Gambling Treatment Clinic, *Submission 9*, p. 4.

30 Dr Jeffrey Derevensky, *Committee Hansard*, 16 September 2011, p. 2.

31 Social Issues Executive, Anglican Diocese of Sydney, *Submission 17*, pp 3–4.

32 Social Issues Executive, Anglican Diocese of Sydney, *Submission 17*, p. 3.

considers that the work being undertaken by Sports Ministers is the appropriate forum in which to consider nationally consistent policies in relation to regulation of exotic betting, including providing sports with the right to veto bet types. Until such time as a national independent research institute on gambling (as recommended in chapter two and in the committee's previous report) can undertake this work, the committee majority suggests that research on the risks of exotic betting (both for those who bet and for sporting participants) and appropriate regulatory responses be commissioned under the existing work by Sports Ministers on the National Policy on Match-Fixing in Sport to assist sporting bodies with decisions in relation to veto power over bet types.

## **Part 4**

### **Interactive Gambling and Broadcasting Amendment (Online Transactions and Other Measures Bill 2011)**

This part of the report deals with the Interactive Gambling and Broadcasting Amendment (Online Transactions and Other Measures) Bill 2011. The provisions of the bill on financial protections for Australians who participate in interactive gambling are related to Parts 1 and 2 of the report and the remaining provisions of the bill are related to Part 3 (i.e. the provision of certain bet types; inducements to gamble; broadcasting of gambling advertising; and offences in relation to match-fixing).



# **Chapter 15**

## **Interactive Gambling and Broadcasting Amendment (Online Transactions and Other Measures) Bill 2011: Introduction and IGA amendments**

### **Background**

15.1 The Interactive Gambling and Broadcasting Amendment (Online Transactions and Other Measures) Bill 2011 (the bill) was introduced in the Senate on 20 June 2011 by Senator Xenophon and referred to the committee through the committee's resolution of appointment. 16 submissions were received on the bill.<sup>1</sup>

### **Purpose of the bill**

15.2 The bill covers a number of issues. It aims to prohibit certain bet types being offered by gambling operators; provide financial protections to Australians who participate in prohibited interactive gambling; place restrictions on gambling advertising during sports and G-rated television programs and on inducements to gamble; and create a criminal offence for match-fixing activity. Apart from the financial protections measure, the other issues have been introduced and covered in previous chapters. However, the committee comes to specific conclusions on the provisions of the bill in these chapters.

15.3 The bill comprises four schedules consisting of amendments to the *Interactive Gambling Act 2001* (IGA), the *Broadcasting Services Act 1992* (Broadcasting Act) and the *Criminal Code Act 1995* (Criminal Code):

- Schedule 1—amendments to the IGA relating to online transactions;
- Schedule 2—amendments to the IGA relating to inducements to gamble;
- Schedule 3—amendments to the Broadcasting Act relating to broadcasting about gambling; and
- Schedule 4—amendments to the Criminal Code about obtaining a financial advantage by deception in relation to a code of sport.

15.4 Clause 3 of the bill also prohibits gambling operators from offering specific types of betting services.

15.5 The issues raised by the bill will be dealt with over two chapters. After covering general concerns, the rest of this chapter will focus on the provisions in the bill relating to amendments to the *Interactive Gambling Act 2001*. The following

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1 Throughout chapters 15 and 16, submission numbers in footnotes refer to the submissions for the bill inquiry, except where otherwise specified.

chapter will focus on the bill's prohibition of certain bet types, restrictions on gambling advertising and the creation of match-fixing offences.

### ***General concerns***

15.6 Some submitters provided general comments on the bill as a whole. Betfair did not support the overall intent of the bill, stating that:

...it does not provide effective protections around problem gambling, offshore wagering operators and gambling related cheating and corruption in sport and fails to address many of the complex issues that are presently being considered by a number of committees and inquiries.<sup>2</sup>

...It is important for the Committee and the Federal Government to take advice and canvass views from all stakeholders in the gambling industry rather than pre-emptively introduce legislation. The Draft Bill appears to be largely at-odds with a majority of the submissions made to the Committee – including those submissions made by sports governing bodies and responsible gambling advocacy groups.<sup>3</sup>

15.7 Betfair's view was that the bill would be ineffective in addressing problem gambling, stating that its elements:

- adopt a broad-sweeping prohibition approach that is likely to encounter similar enforcement issues to the current IGA provisions and mean that Australia will be forced to remain reliant on overseas regulatory support to be successful, particularly in the online sector;
- do not address the key issues associated with problem gambling and will do little to reduce the prevalence of problem gambling in Australia;
- are discriminatory against corporations and place certain Australian wagering operators at a competitive disadvantage;
- have been introduced prematurely given the current work being done by a number of committees and inquiries; and
- are not grounded in a Constitutional Head of Power raising significant concern over the Federal Parliament's constitutional ability to enact such legislation.<sup>4</sup>

15.8 The Tasmanian Inter-Church Gambling Taskforce noted several issues in the bill that require further clarification, particularly given that many of the definitions are not contained in the primary legislation but left to be prescribed by regulations:

...the ultimate effects of this Bill would very much depend on the associated regulations. These would need to be carefully drafted to avoid unintended consequences. How, for example, would betting on a losing outcome be

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2 Betfair, *Submission 3*, p. 2.

3 Betfair, *Submission 3*, p. 3.

4 Betfair, *Submission 3*, p. 3.

distinguished from betting on a winning outcome in team or one-on-one sporting contests where for one side to win the other must inevitably lose? And could a sporting team that uses a confidential report that one of its players will be unfit to bring in another player it believes will maximise its chances of winning, thereby gaining a financial advantage in the form of winning payments, fall foul of the Act if it is so amended?<sup>5</sup>

## Schedule 1—Ability to suspend or cancel online gambling transactions

15.9 In an attempt to reduce losses resulting from interactive and online gambling, the bill establishes provisions to allow consumers to cancel regulated financial transactions to international gambling websites provided the transactions have not been completed.

15.10 A regulated transaction is defined in the bill as follows:

**regulated transaction** means a financial transaction effected using a regulated payment system, and includes but is not limited to:

- (a) extending credit, or proceeds of credit, to or on behalf of a person, including through the use of credit card;
- (b) an electronic fund transfer from or on behalf of a person;
- (c) a transaction of a kind prescribed by the regulations for the purpose of this definition.<sup>6</sup>

15.11 Theoretically, this would enable individuals to cancel 'incomplete' financial transactions made to interactive gambling service providers by credit, EFTPOS or another form of transaction via telecommunications services, including the internet and phone. It is not clear whether payments via financial intermediaries like PayPal would also be considered 'regulated transactions', although the regulations could in theory apply to such payments.

15.12 The bill also amends the IGA to provide protections for financial providers so they would not be liable for suspended or cancelled payments to international online gambling operators resulting from the above amendments.<sup>7</sup>

15.13 In the Second Reading Speech, Senator Xenophon predicted that the ability for gamblers to cancel transactions in this manner would 'most likely lead [overseas] sites to ban Australian gamblers, because they know if they lose they won't pay up'.<sup>8</sup>

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5 Tasmanian Inter-Church Gambling Taskforce, *Submission 7*, p. 3.

6 Interactive Gambling and Broadcasting Amendment (Online Transactions and Other Measures) Bill 2011, Schedule 1, pp 3–4.

7 Interactive Gambling and Broadcasting Amendment (Online Transactions and Other Measures) Bill 2011, Schedule 1, p. 4.

8 Senator Xenophon, Second Reading Speech, *Journals of the Senate*, 20 June 2011, p. 3272.

### ***Issues raised with the committee***

15.14 Submitters put forward different views on this provision, some of whom supported the amendments as a worthwhile step to limit problem gambling and enhance consumer protection. Others rejected the idea, arguing that there were serious practical impediments to such a measure and that it could even have the perverse effect of encouraging more reckless gambling behaviour.

15.15 The Responsible Gambling Advocacy Centre stated that such legislation would help problem gamblers:

Giving the consumer the option to prevent future transactions from particular websites could also prove instrumental in preventing problem gamblers from spending excessive amounts of time and/or money on interactive online gambling websites.<sup>9</sup>

15.16 The Social Issues Executive, Anglican Diocese of Sydney, also strongly supported the proposed amendments, stating that allowing the cancellation of gambling transactions would provide a major disincentive for overseas gambling providers to offer services to Australians:

We applaud the proposed amendments to the *Interactive Gambling Act 2001* providing that customers may request a financial transaction provider to suspend or cancel an interactive gambling payment. We note with approval the further amendment that financial transaction providers will not be held liable for such cancellations. These measures may surprise uninformed observers, and attract complaint from ideologues committed to complete freedom of the market. Even so, we urge our political representatives not to resile from them. We note that they are completely consonant with the intention of the *Interactive Gambling Act 2001* to prohibit online gaming services in Australia. Cessation of payment, and protection for financial service providers, is the most effective means to provide a disincentive to illicit gambling providers. In addition, it will provide a welcome 'circuit breaker' for problem gamblers.<sup>10</sup>

### *Financial transaction controls in the United States*

15.17 As covered in greater detail in chapter five, section 5363 of the United States' *Unlawful Internet Gambling Enforcement Act of 2006* (UIGEA) makes it a crime for a financial transaction provider to 'knowingly accept' credit, electronic fund transfers, cheques, or other forms of financing as payment in connection with the participation of another person in unlawful internet gambling.<sup>11</sup>

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9 Responsible Gambling Advocacy Centre, *Submission 4*, p. 5.

10 Social Issues Executive, Anglican Diocese of Sydney, *Submission 9*, p. 1.

11 US Treasury Department, *Unlawful Internet Gambling Enforcement Act*, Examination Handbook, Section 770, May 2010, [http://www.ots.treas.gov/\\_files/422372.pdf](http://www.ots.treas.gov/_files/422372.pdf) (accessed 27 September 2011), p. 770.1.

15.18 However, in the US, the laws around financial transaction controls make the financial institutions liable if they process transactions that are outlawed under the UIGEA. This is not what is proposed in the amendment before the committee.

15.19 FamilyVoice Australia supported the amendment, noting the US legislation and stating that the bill 'takes a modest step towards preventing overseas purveyors of online gambling from preying on Australians'.<sup>12</sup>

15.20 The Australian Racing Board acknowledged the effectiveness of the US financial transaction controls and argued that similar controls in Australia would be an effective consumer protection and prevention measure for gamblers. Its submission supported the amendments and also suggested that the Australian Prudential Regulatory Authority be empowered 'to require Australian financial institutions to not facilitate transactions with known unauthorised gambling service providers'.<sup>13</sup>

15.21 Giving evidence to the committee, Mr Andrew Harding, Chief Executive Officer of the Australian Racing Board, argued that the US controls had been 'demonstrably effective':

It is not a cost on government; the financial houses are responsible for complying with the legislation and not facilitating wagering and gambling that is not permitted. The business of the companies that were providing illegal gambling to American citizens dried up. There is some level of it—it is not being suggested that it is going to be 100 per cent efficacious—but it dropped like a stone in the US. We know the Australian Bankers' Association think it is inconvenient and they would not embrace the idea of doing it, but it simply cannot be said that this cannot be done. The US has done it and is doing it, and it is working.<sup>14</sup>

15.22 At the hearing, Mr Harding was questioned as to why such an approach should be pursued:

**Mr CIOBO:** ...What about financial transactions controls? Even though the bulk of transactions occur with PayPal and, for example, use front organisations, should we still pursue those even though they are highly ineffective?

**Mr Harding:** They will make it inconvenient, and that, together with criminalising the conduct and criminalising the advertising of the offering—this basket of measures—is the stick which is the companion to the carrot of giving the tick of approval to those who elect to do the right thing.

...If I can again look to the US experience, one arrest sent a powerful message. One Gibraltar based gambling operator being arrested while

12 FamilyVoice Australia, *Submission 11*, p. 2.

13 Australian Racing Board, *Submission 5*, p. 3.

14 Mr Andrew Harding, *Committee Hansard*, 19 August 2011, p. 5.

travelling through America had a powerful impact within the gambling industry. It said, 'Sure, with these criminal measures they are not going to come to Gibraltar and arrest us, but if we ever travel through America then we have a serious problem.' So I accept that the AFP is not going to devote enormous resources to try to prosecute people based in Vanuatu, but the criminalisation of this conduct does have some impact.<sup>15</sup>

15.23 The Australian Racing Board also noted that there was a lack of clarity in the bill around legal requirements applying to financial transaction providers:

The bill exempts the financial transaction provider from any liability in proceedings brought against it by the unpaid gambling operator.

...We note in passing that the clause 15B (2) provides that:

*"the customer...may request a financial transaction provider giving effect to the transaction to suspend or cancel the transaction."* (our emphasis)

The bill does not make any provision for what a financial transaction provider should do upon receiving such a request. It is likely that market forces will influence financial transactions providers to act on such requests. Even so consideration might be given to going further than the bill does at present and spelling out the legal requirements that apply to financial transaction providers where a request is made pursuant to clause 15B.<sup>16</sup>

15.24 Its submission also noted that the bill's provisions should apply not only to interactive gambling services but also to wagering operators (which are currently exempt from the IGA).<sup>17</sup>

15.25 Critics of these amendments argued that similar financial control measures overseas had not been proven to work effectively. Also the ability for customers to suspend or cancel gambling transactions raised concerns about 'moral hazard' and the risk that such measures may actually encourage gambling, as the perceived risk of losing money could be decreased. Other criticisms of the bill's provisions were that the measures were not targeted well enough at protecting problem gamblers and that such restrictions may adversely affect Australians making financial transactions who were not even involved in gambling.

15.26 Betfair argued that the proposed amendments were actually 'contrary to the promotion of responsible gambling and may even create a new wave of problem gamblers':

By allowing Australian residents to cancel deposits to an interactive gambling provider, the Draft Bill is effectively encouraging Australians to participate in these activities under the mis-apprehension that there is no

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15 Mr Steven Ciobo MP and Mr Andrew Harding, *Committee Hansard*, 19 August 2011, p. 7.

16 Australian Racing Board, *Submission 5*, p. 4.

17 Australian Racing Board, *Submission 5*, p. 4.

risk of suffering losses. This scenario is clearly contrary to the intention of the Draft Bill which is to reduce the incidence of problem gambling amongst Australian residents.

We also note that the relevant financial transaction provider is not compelled under the Draft Bill to cancel or suspend the transaction. This, in addition to being a significant cause of uncertainty to the practical operation of the provision, may also cause Australians to gamble more than they can afford to lose because they believe that the transaction will be cancelled. In circumstances where the financial transaction provider does not cancel the transaction, individuals are likely to suffer significant losses as a direct result of this legislation.<sup>18</sup>

15.27 The Australian Bankers' Association (ABA) also alluded to what was seen as a heightened risk of 'moral hazard':

...if Australians felt that they were able to cancel a transaction having entered into it and having actually gambled on a site, potentially it actually makes it less risky for you: if you win then you take the money and if you lose then you seek to have the transaction voided.<sup>19</sup>

15.28 iBus Media, an online poker media company, was sceptical that the amendments would have a positive effect, suggesting that ways to evade the restrictions would be easily found:

These measures, which target interactive gambling payments, will have limited effect. It is easy to evade a number of these controls. Indeed, some of the controls which currently exist through credit cards and other means of payment, for example age verification, limits on the amounts which may be paid, will be removed as a result of these forms of prohibitions and may have the effect, inadvertently, of potentially exacerbating any harm that may result.<sup>20</sup>

15.29 Mr Jamie Nettleton, appearing on behalf of iBus Media, elaborated further during a public hearing on how such restrictions would be circumvented:

**Senator XENOPHON:** ...your submission, with respect to the bill, notes that the financial transaction regulation proposed in the bill would be reduced by the failure of gambling merchants to code internet gambling transactions correctly. Could you elaborate on that? And are you in fact suggesting that this would be deliberate by internet gambling operators?

**Mr Nettleton:** This is a comment which comes out from the review of the Interactive Gambling Act that was conducted back in 2004. At that time, a finding was made by the department that one of the issues which could be faced in respect of the feasibility of these forms of transactions was the ability and the suggestion that certain operators code transactions

18 Betfair, *Submission 12*, p. 7.

19 Mr Steven Munchenberg, *Committee Hansard*, 16 September 2011, p. 23.

20 Mr Jamie Nettleton, *Committee Hansard*, 19 August 2011, p. 10.

incorrectly to ensure payments are received. That is much more likely the case in respect of the rogue operators, and by that I am talking about the ones which are not regulated in a First World jurisdiction where those sorts of issues would give rise to concern under the licence under which they operate. The point to make here is that, in connection with a number of the transactions which occur over the e-commerce, initially they may not in fact be a gambling transaction and there is a question mark about whether or not they fall within the gambling categorisation, so those obviously are a separate issue.<sup>21</sup>

15.30 During the hearing, iBus Media also argued that the experiences in both the US and Norway to undertake similar controls had been unsuccessful:

**Senator XENOPHON:** What knowledge do you have of what has occurred in the US and/or Norway? There are other commentators who believe that it has, as imperfect as the US regulations are, acted as a fetter to the larger expansion of online gambling.

**Mr Nettleton:** ...The position in respect of Norway is perhaps quite illustrative. It is a country which has specific financial controls in respect of online gambling. At the time financial controls in relation to online gambling were introduced, they were resisted strongly by the financial institutions in Norway, and a lot of that would be a matter of public record that can be accessed by the committee. What has occurred in practice has had limited effect, as you will see in one of the submissions, I think, from the Australian Internet Bookmakers Association. A report has come out from the regulators in Norway in respect of the amount of wagering. Fifty per cent of wagering is taking place with offshore operators. And that activity is targeted by the financial controls which are in place under the law. In other words, despite the best efforts of the law, it has not had any impact on the practice of Norwegian customers accessing offshore wagering sites and using means of payment to settle a transaction.

**Senator XENOPHON:** Are you basing your views on empirical data about the growth of online gambling in Norway and the US or on anecdotal evidence from those involved in the industry there?

**Mr Nettleton:** The reference I was making has come from information from the Norwegian regulator. So it is not empirical data which I have to hand, even though it is in second-hand, it is from the report of the actual regulator, who obviously conducted their own industry research to come to that view.<sup>22</sup>

15.31 The ABA summed up its overall objection to the amendment, citing technological costs and the impracticality to be imposed on banks and financial institutions:

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21 Senator Xenophon and Mr Jamie Nettleton, *Committee Hansard*, 19 August 2011, p. 11.

22 Senator Xenophon and Mr Jamie Nettleton, *Committee Hansard*, 19 August 2011, p. 11.

The ABA believes that it is unclear whether the substantial technology and payments infrastructure changes and the consequent costs involved in technology and system changes across the payment system, software development, operational implementation and administration by banks and financial institutions would deliver the benefits being sought to address concerns with interactive gambling. Even if a customer had restrictions placed on their use of an interactive gambling website, these restrictions would not necessarily apply uniformly. It should be recognised that it is unreasonable and impractical for banks and financial institutions to implement restrictions on electronic transactions made to interactive gambling services.<sup>23</sup>

15.32 Explaining that electronic transactions involve various parties, the ABA argued that there was simply no practical window of time in which to request a reversal of a transaction:

The processing of an electronic transaction can involve at least five parties:

- the customer (cardholder);
- the institution that issues the card to the cardholder (card issuer);
- the institution that acquires the transaction (acquirer);
- the company that facilitates the processing of data and the settlement of transactions (card scheme); and
- the company that supplies goods and services (merchant).

...There are around 4.15 billion transactions conducted using a debit or credit card each year. Obviously, the vast majority of these transactions are unrelated to online gambling (or being made to an interactive gambling service). Electronic transactions are authorised by the cardholder and cleared within seconds by the merchant – therefore, there is no opportunity for a customer to subsequently suspend or cancel an electronic transaction.<sup>24</sup>

15.33 The ABA's submission also detailed the practical difficulties with the provisions:

There are no processes for a card issuer to suspend/cancel an electronic transaction after it has been authorised by the cardholder. Depending on the transaction (debit and credit), it may take between 1 and 3 business days for the transaction to appear on the cardholder's statement. When the transaction is transmitted to the cardholder is dependent on when the merchant settles with their acquirer. However, the authorisation and the obligations for payment between the parties are generally instantaneous – that is, a merchant will process the transaction immediately, and therefore there is no opportunity to void the transaction or intercept an individual transaction.

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23 Australian Bankers' Association, *Submission 15*, p. 8.

24 Australian Bankers' Association, *Submission 15*, p. 3.

...If a card issuer “declined authorisation”, based on a flag to identify a transaction as associated with a certain merchant category code, the issuer would be at risk of legal action from the merchant (and possibly other parties for failure to comply with payment obligations and their individual contractual obligations). Additionally, it is likely that an issuer would need to direct resources away from core business activities and system monitoring (i.e. fraud detection) to investigate these declined transactions.<sup>25</sup>

15.34 The ABA also noted that it was unclear how third party payment methods such as PayPal would be affected:

There are no processes for a third party payment method or “e-wallet” to suspend/cancel a transaction after it has been authorised. There is no reversal after the transaction has occurred, unless agreed by the merchant or alternatively guaranteed by a facility which acts as an intermediary between the transactions (e.g. as part of its service agreement with users, E-Bay will reverse the transaction in certain circumstances, i.e. if the goods or services are found to be inauthentic as provided to a buyer by a E-Bay seller). (We note that it is unclear how (legally and practically) other transactions/payments might be caught within the proposed legislation, including international telegraphic transfers, electronic funds transfers conducted via money remitters (e.g. Western Union), third party payment methods and “e-wallets” (e.g. BPay, Pay-Pal, Clickandbuy, Neteller, FirePay), alternative payment currencies (e.g. Google money, Facebook credits, etc), and cheques).

There are no processes for a direct electronic funds transfer or direct debit (e.g. ‘BillPay’, ‘Pay Anyone’) transaction to be suspended/cancelled after it has been authorised. Following authorisation by the customer of a direct electronic funds transfer, payment is made instantaneously. If a customer has a BSB and account number it is possible for a payment to be made to an online gambling service provider. There is no reversal, unless agreed by the merchant.<sup>26</sup>

15.35 A submission from VISA also noted that this provision of the bill 'rests on several false understandings of how the payments system works and the role played by transacting consumers within it'.<sup>27</sup>

15.36 The ABA also raised a number of questions 'left unanswered by the bill':

...around things like what happens if a customer does request that the bank cancel a transaction but, for whatever reason, the bank does not act in time to stop that transaction once the process has already started—is the bank liable there? Notwithstanding the bill declaring that the bank will not be liable for blocking any of these transactions, we still believe there is a risk of litigation overseas against Australian banks. Courts overseas, particularly

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25 Australian Bankers' Association, *Submission 15*, p. 4.

26 Australian Bankers' Association, *Submission 15*, p. 4.

27 VISA, *Submission 16*, p. 1.

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in the US, are not averse to passing judgment on Australian banks and then seeking to have those judgments enacted.<sup>28</sup>

... We are not sure, based on the legislation before the committee, whether the attempt in there to indemnify us from legal action would necessarily provide us with perfect indemnification around the world.<sup>29</sup>

15.37 However, despite raising practical, technical and legal objections to the amendment, the ABA did concede that such a system would not be impossible to design:

If intervention in the banking and payments system was deemed appropriate, it would be necessary for the Government to: (1) designate (and clearly define the criteria for designation) certain sites to be restricted from use by Australian residents ("illegal sites"); (2) maintain a list of "illegal sites" and provide that list to all financial transaction providers; (3) monitor, correlate and update data and codes (based on existing codes and protocols) on "illegal sites" and provide that list to all financial transaction providers so systems can be set to approve or decline based on designation and codes; and (4) provide statutory protection for financial transaction providers from breaches whereby the designation and/or codes lists provided to financial transaction providers are found to be incomplete, inaccurate or somehow deficient.<sup>30</sup>

15.38 This alternative model was discussed during the ABA's evidence at the committee's public hearing.

#### *An alternative model – blacklisted merchant numbers*

15.39 When Mr Steven Munchenberg, Chief Executive Officer of the ABA, spoke to the committee, an alternative model emerged. Instead of enabling the customer to reverse an authorised transaction, an alternative approach would involve the government maintaining and updating a 'blacklist' of merchant numbers and providing the list to financial institutions to enable them to block transactions to those numbers. Mr Munchenberg summarised how such a system would work in practice for direct payments involving financial institutions and credit card providers:

**Mr Munchenberg:**...the process is that a customer gets a credit card from a bank; that bank is referred to as the issuing bank. The customer goes online and they provide their credit card details. The merchant—the provider of the online service—then puts that into the payment system. It goes back to the issuing bank, and then at that point the issuing bank has the opportunity to decline the transaction, which you can do for all sorts of reasons—if I have a \$5,000 limit on my card and I am trying to make a \$20,000 purchase, it is going to get knocked back at that point. At that point, as I

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28 Mr Steven Munchenberg, *Committee Hansard*, 16 September 2011, p. 23.

29 Mr Steven Munchenberg, *Committee Hansard*, 16 September 2011, p. 24.

30 Australian Bankers' Association, *Submission 15*, p. 7.

understand it, the bank will be able to say, 'No, we're not allowed to transact with that merchant, because the numbers raise a red flag.' So the bank will then decline that transaction. The merchant then goes back to the customer and says, 'Your transaction was declined.' That can all happen in a matter of seconds. So in that situation the Australian customer is blocked from accessing that site or making payments to that site so long as that site uses a black-listed merchant number to try to get that authorisation through.

**CHAIR:** But why wouldn't such legislation be better directed at the credit card provider rather than the financial institution?

**Mr Munchenberg:** ...Again, my understanding is that really the role of Visa and MasterCard is reconciling all of these transactions between financial institutions, so it is not up to Visa or MasterCard to approve or not approve a transaction; it is up to the issuing bank.<sup>31</sup>

15.40 Mr Munchenberg also acknowledged that, conceptually, the 'blacklist' system proposed was not 'necessarily different from an international anti-terror organisation becoming aware that a terrorist organisation is funding itself through a certain vehicle', with regulators then alerting financial institutions to prohibit transactions through that vehicle.<sup>32</sup> He noted that Australian financial institutions already undertake to block transactions in relation to terrorism, organised crime and money-laundering activities.<sup>33</sup>

15.41 However, the ABA did stress that the 'blacklist' system proposed, despite being an improvement on the approach in the bill, could never be considered 'failsafe' as merchant identification numbers could be changed:

**Mr Munchenberg:** If the government were to provide us with a list of merchant identifiers and said in a regulation to your legislation—or however it would be done—that payments to these were prohibited my understanding is that that would be a relatively straightforward thing to deal with. But they are merchant identification numbers; they are not necessarily corporate or entity identifiers. An entity may have multiple or ever-changing ones. That would become an exercise, then, in trying to catch up. If there were a number of large global players that saw Australia as a relatively small market on a global scale and who therefore would not go to the trouble of trying to constantly change their merchant identifications just to get around the law then it may well have an impact. If an overseas provider of gambling services, for want of a better term, was determined to target the Australian market and therefore had an interest in constantly reinventing its identity in the payments system then they would be able to relatively easily get around that sort of scheme.

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31 Mr Andrew Wilkie MP and Mr Steven Munchenberg, *Committee Hansard*, 16 September 2011, pp 29–30.

32 Mr Steven Munchenberg, *Committee Hansard*, 16 September 2011, p. 29.

33 Mr Steven Munchenberg, *Committee Hansard*, 16 September 2011, p. 29.

**Senator XENOPHON:** You could presumably catch up with them within a 24-hour period. They presumably would not change their merchant numbers every 24 hours. You would be able to establish—

**Mr Munchenberg:** My understanding is that we see the merchant numbers. We do not have to know or necessarily understand who is behind those numbers. The whole system works around number identification.<sup>34</sup>

15.42 Mr Munchenberg also emphasised to the committee that such a system could never perfectly capture all transactions to 'blacklisted' merchant numbers and would require the cooperation of international third party payment companies in cases of 'indirect payments'. For example, when customers use financial intermediaries such as PayPal and Western Union to transfer money, these companies act as a screen or 'black box' to guard the security of the purchaser's banking details. Under the 'blacklist' system, banks would not be able to determine the vendor's details (i.e. the online gambling provider) so in the case of international third party payment companies, the responsibility for identifying merchant numbers would have to fall to the financial intermediaries themselves.<sup>35</sup>

15.43 The ABA summed up its preference for the 'blacklist' model discussed during the committee's hearing instead of the model proposed in the bill:

I think there is a distinction to be drawn between [customers requesting reversal of transactions] and what is potentially a relatively straightforward model where the bank is dealing directly with an overseas merchant and we have a list of black-listed merchant numbers. On the surface, at least, that seems a relatively straightforward and manageable proposition. Move much beyond that and I think we run into all sorts of complexities around the adequacy of the systems to deliver in a timely way, because do not forget we are dealing with transactions that fly around the world, almost instantaneously in some cases, and a mismatch might arise between a customer's expectations and what the payment system's technology is able to deliver as well.<sup>36</sup>

15.44 The Tasmanian Inter-Church Gambling Taskforce noted that the proposed amendments on suspending and cancelling transactions were 'perhaps the most contentious in the bill' and also put forward an alternative approach, similar to that outlined by the ABA:

Their aim seems to be to foil any attempt to offer illegal interactive gambling services to Australians by allowing the gamblers to back out of uncompleted transactions to pay for their losses. In principle, they seem to mean that gamblers could collect any winnings but would have an avenue to avoid full payment of any debts they incur. We believe that a better

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34 Senator Xenophon and Mr Steven Munchenberg, *Committee Hansard*, 16 September 2011, p. 25.

35 Mr Steven Munchenberg, *Committee Hansard*, 16 September 2011, p. 27.

36 Mr Steven Munchenberg, *Committee Hansard*, 16 September 2011, p. 28.

approach would be a blanket prohibition on financial transaction providers making payments to the providers of prohibited online gambling services.

Once a gambling service had been identified as inconsistent with Australian law its operators would then know that they could not gain access to gamblers' funds through Australian financial transaction providers and would presumably take steps to ensure that Australians did not access that service.<sup>37</sup>

### ***Committee majority view***

15.45 The committee majority believes that the bill's amendment to allow customers who play on interactive gambling websites to suspend or cancel their transactions presents a number of impracticalities. These include the fact that electronic transactions involving multiple parties are conducted in a matter of seconds, making a request to suspend or cancel them unfeasible. The committee majority also has concerns about the element of moral hazard inherent in this proposal. Allowing gamblers to bet large amounts of money on websites, knowing that if they lose they can request a reversal of the transaction, may well lead to greater risk-taking and more reckless gambling behaviour.

15.46 Regarding the alternative model proposed during the committee's public hearing and discussed with the Australian Bankers' Association, the committee majority does not believe that such a scheme is worth pursuing. Setting up a system to monitor and block financial transactions to deter people from accessing overseas-based interactive gambling websites would never be completely effective, as those customers most determined to circumvent the system would be likely to do so using other methods. The committee also notes the difficulty in gaining cooperation from international financial intermediaries such as PayPal to comply with such a system were it to be introduced under Australian law. As discussed in chapter seven, given the limited effectiveness of current enforcement mechanisms to prevent Australians accessing online gambling websites, the committee believes that a total ban cannot be achieved and devoting additional resources to keep track of changing merchant identification numbers on a blacklist would not be worth the expense and effort.

15.47 In summary, the committee majority does not support the introduction of any form of financial transactions or payment controls.

15.48 Additional comments on this issue have been provided by the Chair and Senator Xenophon, which follow this report.

### **Schedule 2—Inducements to gamble**

15.49 Schedule 2 of the bill amends the IGA, making it an offence to offer customers an inducement to gamble.

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37 Tasmanian Inter-Church Gambling Taskforce, *Submission 7*, p. 3.

15.50 The amendments define a game as an 'inducement to gamble' if the game is a game of chance, or a game of mixed chance and skill, and where the game is provided with the intention of inducing a customer to gamble.<sup>38</sup>

15.51 A game is considered to be an inducement to gamble if:

- the game is provided by a person who also provides a gambling service; or
- the game contains elements encouraging or inviting the customer to use a gambling service; or
- a feature of the way the game is provided invites a customer to use a gambling service; or
- any feature of the service for the conduct of the game provides direct or indirect links to a gambling service.<sup>39</sup>

15.52 The amendment establishes that a game is an inducement to gamble regardless of whether it is played for money or anything else of value, or regardless of whether the customer agrees (or agrees to give consideration) to play the game.<sup>40</sup>

15.53 In practice, this amendment will prohibit gambling service providers offering customers incentives to gamble, including free games and links to online gambling websites. This would include websites or phone applications which offer 'practice' sites where people can participate without winning or losing money (as discussed in chapter nine).

### ***Issues raised with the committee***

15.54 Submitters put forward divergent views on whether inducements to gamble should be prohibited. Arguments for and against inducements to gamble are also covered in greater detail in chapters nine and 12. However, it should be noted that the bill's amendments would apply only to interactive gambling services regulated under the IGA. Sports betting and wagering services are exempt from the IGA and are currently regulated by state and territory legislation.

15.55 In a submission to the reference inquiry, Betchoice stated that the term 'inducement' is too broad, covers a range of standard business practices and may disadvantage gambling operators:

38 Interactive Gambling and Broadcasting Amendment (Online Transactions and Other Measures) Bill 2011, Schedule 2, p. 5.

39 Interactive Gambling and Broadcasting Amendment (Online Transactions and Other Measures) Bill 2011, Schedule 2, pp 5–6.

40 Interactive Gambling and Broadcasting Amendment (Online Transactions and Other Measures) Bill 2011, Schedule 2, p. 5.

A prohibition on all inducements would, if taken literally, extend to preventing operators from lowering prices to respond to competitive pressures or to pass on production savings. It makes no sense in a liberalised environment, such as wagering, to prevent so broad a range of standard business practices.<sup>41</sup>

15.56 Betfair argued similarly that the offering of inducements was commonplace in business and should not be restricted:

Wagering operators, like any other legal business, have the right to advertise their services responsibly. The offering of inducements is common place and legitimate for all types of businesses and as such, operators should be permitted to offer inducements to attract customers – provided such offerings are responsible.

Gambling related inducements are presently regulated on a state-by-state basis and Betfair welcomes the proposed nationally consistent approach. However the draft provision in the Bill is both confusing and limited in its application. Betfair implores the Committee to reject this provision and to develop a coherent national framework for the offering of inducements by wagering operators, which reflects both the wagering operators' right to advertise and the importance of promoting gambling in a responsible manner.<sup>42</sup>

15.57 Other submitters, such as the Responsible Gambling Advocacy Centre, the Tasmanian Inter-Church Gambling Taskforce and FamilyVoice Australia<sup>43</sup> supported the amendment to the IGA:

An offer of 'free gambling' up to a certain monetary or time limit often draws the consumer in and prompts them to continue to play beyond the inducements. Inserting 'inducement to gamble' as a gambling service into the Act is supported by the Centre.<sup>44</sup>

...We strongly support the inclusion of a measure such as is incorporated in Schedule 2. Online inducements to gamble, which are accessible to all including children, should not be permitted. The inclusion of 'inducement to gamble' as a gambling service would ensure that a site which offered such inducements and provided a link to a gambling site could not escape the prohibition on the grounds that it was not itself a gambling service.<sup>45</sup>

...Particularly invidious inducements can be found on 'freeplay' sites that offer unrestricted access to anyone (including children) to play EGMs with all the features of the real ones except that 'credits' are used in place of real

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41 Betchoice, *Submission 43* to the Inquiry into Interactive and Online Gambling and Gambling Advertising, p. 15.

42 Betfair, *Submission 3*, p. 7.

43 FamilyVoice Australia, *Submission 11*, p. 2.

44 Responsible Gambling Advocacy Centre, *Submission 4*, p. 6.

45 Tasmanian Inter-Church Gambling Taskforce, *Submission 7*, p. 3.

money. Players may be enticed with free credits to get started. As well as all the usual appealing features these sites may have the odds heavily loaded in the player's favour so that, directly contrary to what happens when playing with real money, it is virtually impossible to lose. They may then provide a link to a site where one can play with real money, contrary to the existing provisions of the Act. Their clear intention is to entice players into believing that if they can achieve large wins with credits only then they ought to be playing with real money. We can be confident that once they did so the odds would be dramatically reversed. It is crucial to ensure that such deceitful inducements do not become more widespread.<sup>46</sup>

### ***Committee majority view***

15.58 As discussed in detail in chapter nine, the committee is particularly concerned about the practice of prohibited interactive gambling service providers offering inducements. The committee agrees that inducements to gamble such as: free games; offering credit; free credit; free money to play; deposit matching to recruit new customers; and practice sites encourage people to gamble, to gamble for longer and in some cases, beyond their means. It agrees that the IGA should be strengthened in order to ensure that along with advertising, inducements for a prohibited interactive gambling service are banned.

15.59 The committee majority therefore supports the intent of the amendment to the *Interactive Gambling Act 2001* proposed in the bill to prohibit inducements to gamble. It notes, however, that there is still some work to do around clarification of what would be defined as an inducement, which providers would be targeted and whether there would be any exclusions. The committee majority recommends that consideration of this amendment be deferred until the government's review of the IGA has been completed. The amendment could then be considered along with any amendments proposed by the government arising from the review.

### **Recommendation 18**

**15.60 The committee majority recommends that consideration of the amendment to the *Interactive Gambling Act 2001* (IGA) in relation to inducements be deferred until the review of the IGA being undertaken by the Department of Broadband, Communications and the Digital Economy is completed. This would allow the amendment to be considered along with any further amendments proposed by the government arising from the review.**

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46 Tasmanian Inter-Church Gambling Taskforce, *Submission 7*, p. 4.



# **Chapter 16**

## **Interactive Gambling and Broadcasting Amendment (Online Transactions and Other Measures) Bill 2011: Amendments relating to sports betting**

16.1 This chapter covers the issues raised by:

- the clause in the bill prohibiting gambling operators from offering specific types of betting services; and
- the schedules in the bill relating to amendments to the *Broadcasting Services Act 1992* (Broadcasting Act) and the *Criminal Code Act 1995* (Criminal Code).

### **Clause 3—Prohibitions on corporations offering gambling services**

16.2 Clause 3 of the bill prohibits gambling service providers from offering spot betting (also known as 'micro' or exotic betting), in-play betting or any similar form of betting. For example, these could include betting on the first penalty or the first goal during a football game, the first duck in a cricket match or the first yellow card in soccer or rugby. It also prohibits operators offering players the option of betting on losing outcomes.<sup>1</sup>

16.3 These bet types are defined and discussed in detail in previous chapters. Betting on losing outcomes and 'in-play' betting are covered in chapter 11. Exotic bets are also covered in chapter 14.

16.4 The maximum penalty established by the bill for offering these forms of gambling is 10,000 penalty units which is approximately \$1,100,000.<sup>2</sup>

16.5 By prohibiting these forms of gambling, the bill attempts to address what is thought to be a riskier form of betting for problem gambling as well as match-fixing resulting from bets on 'micro'-events and bets on losing outcomes.<sup>3</sup> In the Second Reading Speech, Senator Xenophon noted that the National Rugby League (NRL) had recently banned some exotic betting options following a match-fixing scandal in 2010 and that the Australian Football League (AFL) had also banned exotic betting on

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1 Interactive Gambling and Broadcasting Amendment (Online Transactions and Other Measures) Bill 2011, *Explanatory Memorandum*, p. 1.

2 Interactive Gambling and Broadcasting Amendment (Online Transactions and Other Measures) Bill 2011, *Explanatory Memorandum*, p. 1.

3 Senator Xenophon, Second Reading Speech, *Journals of the Senate*, 20 June 2011, p. 3272.

things such as the last goal in a game, tribunal verdicts and 'the first coach to be sacked'.<sup>4</sup>

### ***Issues raised with the committee***

16.6 Some submitters supported an outright ban on the offering of certain bet types as proposed in this clause of the bill. For example, the Tasmanian Inter-Church Gambling Taskforce supported the principle of prohibiting the unorthodox bet types proposed by the bill, noting that they have:

...the potential for corrupt gamblers to entice players into rigging outcomes with a view to profiting from the proceeds of gambling. This can compromise the integrity of the sport, undermine public confidence in performances and put pressure on sports people who may get caught up in it, possibly leading to the destruction of their careers...Although such prohibitions are most relevant to online gambling we believe that, in principle, they ought to apply to all methods of gambling.<sup>5</sup>

16.7 Others, such as Tabcorp, argued that these bet types did not pose an integrity problem and that any consideration of regulatory changes to such bet types ought to be undertaken by state and territory governments with a view to national consistency:

...exotic and other similar bets placed with Australia's TAB pose no greater risk to sports integrity than head to head contests because suspicious betting activity on all bet types is monitored and reported by the TABs. If exotic bets were to be prohibited, then consumers would either discontinue their betting activity or such activity would be driven underground, either to illegal domestic or offshore operators...

With respect to spot betting, exotic betting, in play betting and betting on losing outcomes that occurs through non-online channels, Tabcorp's position is that these are matters for the consideration of state and territory governments. There is a role for the Commonwealth in encouraging national consistency in the regulation of such matters.<sup>6</sup>

### ***Definitions of bet types***

16.8 The bill establishes that the definitions for betting on losing outcomes, exotic betting, in-play betting and spot betting be prescribed by the regulations.<sup>7</sup> This results in ambiguity about which types of gambling will be prohibited under the bill. The use of this broad definition may be a result of the vast number and continuing development of betting options offered to consumers and the risk of ruling out

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4 Senator Xenophon, Second Reading Speech, *Journals of the Senate*, 20 June 2011, p. 3273.

5 Tasmanian Inter-Church Gambling Taskforce, *Submission 7*, p. 3.

6 Tabcorp, *Submission 10*, p. 2.

7 Interactive Gambling and Broadcasting Amendment (Online Transactions and Other Measures) Bill 2011, Clause 3, p. 2.

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particular types of gambling by being overly specific when considering which bet types to prohibit.

16.9 FamilyVoice Australia supported the clause but also noted that leaving the definitions to be specified by the regulations was a 'drafting deficiency':

...it would appear that if no such regulations are made then the terms would have no meaning and the offence could not be prosecuted.

It would be better for the bill to be amended to provide definitions for these terms while allowing for regulations to add to the definitions. This would be desirable as in a rapidly changing field new problems may emerge which could be suitably addressed by means of regulation rather than requiring the amendment of the statute.<sup>8</sup>

16.10 The Australian Racing Board was generally supportive of the clause in the bill but also noted that consultation with sporting and racing bodies would be required on the drafting of the regulations, 'recognising their capacity to provide useful advice on the types of bets which have potential to cause integrity problems'.<sup>9</sup>

16.11 The Senate Scrutiny of Bills Committee also noted that it would be preferable for the 'gambling services' to be defined in the primary legislation, not in the regulations:

...subclause 3(2) provides that a number of key terms which define the offence are to have their meaning 'prescribed by the regulations', raising the question of whether this is an appropriate delegation of legislative power. The explanatory memorandum does not address the reasons for this approach. In general, it is preferable that offences be dealt with in primary legislation.<sup>10</sup>

#### *Applicability to corporations*

16.12 Betfair noted that a deficiency in the bill was that the proposed prohibition applied only to wagering service providers and not to bookmakers:

The Draft Bill seeks only to prohibit corporations from accepting bets on the Prohibited Offerings, which will allow bookmakers operating as sole-traders or in partnership to continue to offer these bet types to Australian residents. Accordingly, the proposed prohibition fails to prevent Australian punters from being able to place wagers on the Prohibited Offerings. The target of the legislation has clearly been missed.

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8 FamilyVoice Australia, *Submission 11*, p. 1.

9 Australian Racing Board, *Submission 5*, p. 3.

10 Senate Standing Committee for the Scrutiny of Bills, *Alert Digest No 7 of 2011*, 6 July 2011, p. 15.

Further, Betfair considers that any prohibition that applies only to wagering service providers which are corporations is discriminatory in nature and places certain Australian licensed operators on an uneven playing field.<sup>11</sup>

#### *Betting on losing outcomes*

16.13 Betfair, Australia's only licensed betting exchange, strongly rejected the concept of prohibiting betting on losing outcomes:

There is a misapprehension that the only betting platform on which a punter can lay horses is a betting exchange. This is not the case. It has long been possible to oppose horses through "traditional" channels and technology has made it even easier. It can be achieved via a bookmaker or the TAB, simply by backing all other selections in the race and this has become even easier with automated bet placement technology.<sup>12</sup>

...As outlined earlier in this submission, racing and sporting industry bodies have embraced the betting exchange model as an effective tool in the detection and prevention of gambling related corruption. There is no evidence to suggest that since Betfair's arrival in Australia, allowing punters to place lay bets has been the cause of any gambling related corruption in Australian racing or sport.<sup>13</sup>

16.14 The Tasmanian Department of Treasury and Finance commented on the bill's likely effect on the operation of Betfair, which is licensed in that state, and defended the integrity of the betting exchange's business operations in Australia since 2006:

Of particular concern is the restriction on betting on losing outcomes. As the meaning of key definitions in this clause are to be set out in regulations, it is not yet clear which types of bets and which gambling services will be captured by the provision.

Nevertheless, it would appear that the legislation is likely to prevent a betting exchange from operating its business in Australia.

To bet on a losing outcome is a fundamental feature of a betting exchange. A betting exchange enables registered players to bet against each other on events hosted on the betting exchange operator's website. The operator acts as a broker, matching bets between backers that a participant in an event will win and those that take the opposing position. The opposing position is a 'lay bet' - betting to lose.

Australia's only betting exchange, Betfair Pty Ltd, was licensed in Tasmania in February 2006 under the Gaming Control Act.

Betfair has a highly transparent wagering system where all players must register with Betfair and have their identification verified. It has robust audit trails that enable every bet placed to be traced back to the customer.

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11 Betfair, *Submission 3*, p. 4.

12 Betfair, *Submission 3*, p. 5.

13 Betfair, *Submission 3*, p. 6.

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Betfair has information-sharing agreements with racing and sports industry bodies in Australia and worldwide to provide sporting bodies with access to relevant wagering data to ensure the integrity of their sports.<sup>14</sup>

### ***Committee majority view***

16.15 The committee majority noted in chapter 11 that Australia's only licensed betting exchange, Betfair, has been operating in the Australian market since 2006, and that no significant concerns about its operation have come to light. However, the committee majority also noted the risks inherent in being able to bet on losing outcomes and supports betting exchange providers working closely with governing bodies, as Betfair has done, to mitigate the risk to the integrity of the sporting or racing product on which lay bets are placed. Therefore, the committee majority does not support the bill's proposed prohibition on betting on losing outcomes.

### ***Exotic betting***

16.16 Most submitters to the bill inquiry did not support an outright ban on exotic betting.

16.17 The Responsible Gambling Advocacy Centre (RGAC) argued that while exotic bet types were problematic, prohibition would not be effective:

Firstly, these types of interactive gambling have led to corruption in sports. Where there is an element of participation, there is potential for exploitation ...Secondly, they are more attractive to gamblers because of seemingly better odds. Prohibition of such bets is likely to result in these types of bets going 'underground', which would make it more difficult to track and could result in a greater amount of corruption.<sup>15</sup>

...The Centre is of the opinion that while it is sometimes in the best interest of the consumer to prohibit the availability of certain types of betting, prohibition would be ineffective in this context.<sup>16</sup>

16.18 Instead of a blanket ban on exotic bets, the RGAC recommended mechanisms such as compulsory pop-ups, links to gamblers' help websites and telephone help lines, compulsory breaks in play and easily accessible pre-commitment schemes to enable consumers to block themselves or their children from certain websites.<sup>17</sup>

16.19 A number of submissions also suggested that sporting bodies be granted the power to veto specific types of bets where the integrity of the event may be compromised.

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14 Tasmanian Department of Treasury and Finance, *Submission 8*, p. 2.

15 Responsible Gambling Advocacy Centre, *Submission 4*, p. 4.

16 Responsible Gambling Advocacy Centre, *Submission 4*, p. 5.

17 Responsible Gambling Advocacy Centre, *Submission 4*, p. 5.

16.20 The Coalition of Major Professional and Participation Sports (COMPPS) supported such an option:

The COMPPS sports do not oppose spot-betting per se. They do, however, seek support for a power of veto over types of spot-bets that may be offered by betting operators on their sports where they have serious integrity concerns over the type of bet that is being offered.<sup>18</sup>

16.21 The veto power (discussed in greater detail in chapter 13) was also supported by COMPPS' member sports:

Netball Australia supports the notion of the right of veto for sports over types of “spot betting”; and strongly discourages any bets on scenarios that could be open to breaches of integrity.<sup>19</sup>

16.22 Betfair also supported the sporting codes having veto power over bet types and argued that prohibition would simply encourage Australians to bet offshore:

(a) the sports themselves are in the best position to determine whether a particular bet-type is liable to any form of corruption or manipulation and any decision should remain in the hands of the sporting bodies to reasonably determine the number and types of exotic markets that are offered on a particular event; and

(b) as with all forms of prohibition in an increasingly borderless world, the Bill will not be successful in preventing Australian residents from continuing to wager on exotic bets; it will simply encourage Australians to bet with offshore operators who will continue to evade Australian legislative and licensing requirements and often do not afford the appropriate player protection and responsible gambling measures.<sup>20</sup>

16.23 However, the Social Issues Executive of the Anglican Diocese of Sydney argued that a ban as proposed in the bill was 'more straightforward and understandable to the community than COMPPS' proposal for specific veto of various particular kinds of exotic betting'.<sup>21</sup>

### ***Committee majority view***

16.24 As already stated in chapter 14, the committee majority holds some concern about exotic bets, noting in particular the evidence from the University of Sydney Gambling Treatment Clinic suggesting that the existence of exotic betting opportunities presents difficulties for problem gamblers. While recognising that exotic bet types make up a small portion of the overall sports betting market, the committee

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18 Coalition of Major Professional and Participation Sports (COMPPS), *Submission 16* to the Inquiry into Interactive and Online Gambling and Gambling Advertising, p. 7.

19 Netball Australia, *Submission 5* to the Inquiry into Interactive and Online Gambling and Gambling Advertising, p. 2.

20 Betfair, *Submission 3*, p. 5.

21 Social Issues Executive, Anglican Diocese of Sydney, *Submission 9*, p. 3.

majority notes that the risks associated with exotic betting have the potential to be damaging to the integrity of Australian sport. The committee majority commends and supports the action taken by the AFL and NRL to eliminate certain exotic bet types. The committee majority considers that the work being undertaken by Sports Ministers is the appropriate forum in which to consider nationally consistent policies in relation to regulation of exotic betting, including providing sports with the right to veto bet types. Until such time as a national independent research institute on gambling (as recommended in chapter two and in the committee's previous report) can undertake this work, the committee majority suggests that research on the risks of exotic betting (both for those who bet and for sporting participants) and appropriate regulatory responses be commissioned under the existing work by Sports Ministers on the National Policy on Match-Fixing in Sport to assist sports' with decisions in relation to veto power over bet types.

### *'In-play' betting*

16.25 As outlined in chapter 11, 'in-play' betting is currently permitted via the phone or in person (e.g. at a TAB) but not online. However, Australian residents are able to use overseas wagering providers to take part in online 'in-play' betting.

16.26 Betfair argued that a prohibition of 'in-play' betting would be detrimental and noted that a recent UK review had identified no specific risks posed by such betting to problem gambling:

In March 2009 the UK Gambling Commission conducted an exhaustive review of in-play betting across Europe, where it has been used by punters for a number of years. The Commission concluded that in-play betting doesn't require special regulatory treatment – that is, treatment in isolation of other types of betting which occurs before an event begins. Furthermore, the Commission found no evidence to suggest that in-play betting posed a specific, identifiable risk to problem gambling.

A blanket ban on in-play betting will merely exacerbate the current situation as Australian residents will continue to wager with offshore operators who are likely to continue ignore Australian laws in a similar vein as they are presently ignoring the *Interactive Gambling Act*. The key concern from a responsible gambling perspective is that Australian punters who seek to bet offshore will not be afforded the protections relating to security of customers' funds and identities, problem gambling and sporting integrity that can be offered by Australian regulated operators.<sup>22</sup>

16.27 However, FamilyVoice Australia argued that there were significant risks to 'in-play' betting:

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22 Betfair, *Submission 3*, p. 4.

In-play betting is likely to induce problem gamblers caught up in the excitement of a match from betting inappropriate amounts on the spur of the moment.<sup>23</sup>

### ***Committee majority view***

16.28 'In-play' betting is currently permitted via the telephone and in person and the committee majority does not support the bill's provision to restrict forms of 'in-play' betting that are currently legal. In chapter 11, the committee majority recommended that the current prohibition on the provision of online 'in-play' betting should remain in place. When the IGA was introduced, 'in-play' betting online was restricted due to concerns about new technology providing a platform for excessive betting 'in the heat of the moment' during a sporting match. While some argued that this prohibition is anachronistic, the risks associated with rapid 'in-play' betting at the touch of a button and its attraction to young people remain of concern to the committee majority.

16.29 Given that the effects of the convergence of new technologies in this area are not yet well understood, the committee majority would support the government commissioning research on the risks and effects of online 'in-play' betting as part of the current review of the IGA. The committee majority has made a recommendation on this in chapter 11.

### **Schedule 3—Advertising**

16.30 Schedule 3 of the bill amends the Broadcasting Act to prohibit advertising of betting venues and online gambling sites during G classified programs and all sport or sport related programs. The bill requires the Australian Communications and Media Authority to ensure all commercial television, commercial radio and subscription television broadcasting licence holders adhere to these provisions.<sup>24</sup>

16.31 This schedule also prevents licence holders from broadcasting betting odds where there is a commercial arrangement between the licensee and the betting agency providing these odds.<sup>25</sup>

### ***Views of submitters***

16.32 Some submitters were strongly in favour of the amendments, arguing that they would properly restrict the promotion of gambling to children and young people. Betting agencies, however, were not supportive and argued that such provisions could affect sponsorship and partnership agreements between gambling providers and broadcasting licensees or sporting teams.

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23 FamilyVoice Australia, *Submission 11*, p. 2.

24 Interactive Gambling and Broadcasting Amendment (Online Transactions and Other Measures) Bill 2011, *Explanatory Memorandum*, p. 2.

25 Interactive Gambling and Broadcasting Amendment (Online Transactions and Other Measures) Bill 2011, *Explanatory Memorandum*, p. 2.

16.33 As discussed in detail in chapter 12, the government has announced that it will work with sporting bodies and the betting industry to reduce the promotion of live odds during sports coverage through amendments to their existing industry codes. If satisfactory amendments are not in place by the end of June 2012, the government has stated that it will consider the need for legislation.

16.34 The Tasmanian Inter-Church Gambling Taskforce strongly supported these amendments:

We believe that gambling services are a dangerous product and their advertising should therefore be restricted to a context where they are least likely to attract interest from vulnerable people, especially children, who may not be fully aware of the risks involved. This means excluding such advertising from all children's viewing times, all G classified programs and all sports related programs of interest to children.

The prohibition of broadcasting odds where there is a commercial arrangement between the licensee and the betting agency concerned is a wise precaution to prevent the broadcasting of what are, in effect, paid advertisements masquerading as news, commentary or information.<sup>26</sup>

16.35 The Royal Australian and New Zealand College of Psychiatrists (RANZCP) also praised the proposed restrictions on broadcasting of gambling advertising:

The RANZCP is fully supportive of these amendments, which are in line with our previous submission calling for tighter regulations to monitor the advertising of gambling to reduce the impact it can have on vulnerable groups and problematic gamblers. Recommendations included that commentators not be allowed to discuss or talk about any odds on offer at any point in time, and that display of odds on television screens during broadcast should be limited. The RANZCP is pleased that the proposed amendments to the Bill appear to prohibit these activities.<sup>27</sup>

16.36 FamilyVoice Australia also strongly supported the amendments but noted that, as far as possible, key terms should be defined in the primary legislation:

Schedule 3 should be supported subject to it being amended to provide definitions of each of the relevant terms, while also allowing expansion of the definitions by regulation.<sup>28</sup>

16.37 The Senate Scrutiny of Bills committee also raised the matter of definitions in the regulations:

Schedule 3, item 1, of the bill requires the ACMA to impose certain conditions on commercial television broadcasting licences. The key terms

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26 Tasmanian Inter-Church Gambling Taskforce, *Submission 7*, p. 4.

27 Royal Australian and New Zealand College of Psychiatrists, *Submission 12*, p. 2. See also Social Issues Executive, Anglican Diocese of Sydney, *Submission 9*, p. 2.

28 FamilyVoice Australia, *Submission 11*, p. 3.

of the conditions that are to be imposed, are left to be defined in the regulations. The explanatory memorandum does not address the reasons for this approach.

The same issue arises in relation to items 2 and 3 of the Schedule, which relate to conditions to be imposed on radio broadcasting licences and subscription television broadcasting licences, respectively.

In general, it is preferable that important information is included in primary legislation.<sup>29</sup>

16.38 The RGAC said that the proposed amendments could go further, with penalties for breaches required:

Penalties are important to include in order to deter potential breaches of this section. The lack of penalties in the Act has often meant abiding by it is not always paramount to those who offer interactive gambling services.

There is potential to broaden this section because advertising has been recognised as a major inducement to gamble. Profits indicate that online advertising is proving very successful for interactive gambling providers and regulation in this area would be valuable. With a dramatic increase in online use, including watching sport and other entertainment online, it would be timely to introduce advertising restrictions now.<sup>30</sup>

16.39 Betfair, however, rejected the proposed advertising restrictions, arguing that they pre-empted work already underway between government and industry:

On Friday 27 May 2011, the Federal Government announced that it would take measures to reduce and control the promotion of live odds during sports broadcasts. In first instance the Federal Government is permitting the broadcasting industry a 12 month period to establish an industry code of conduct to control this type of advertising. Betfair is committed to engaging in this process to ensure that all of its advertising is presented in a socially responsible manner.

On the basis of the above approach, which has been embraced by a broad range of stakeholders, legislation should not be considered until such time that the wagering and broadcasting industries have had an opportunity to develop an appropriate framework for gambling advertising.<sup>31</sup>

16.40 COMPPS did not state outright its view on these amendments but noted the potential for a decrease in sponsorship from gambling operators were they to become law:

**Senator BILYK:** Do you have concerns regarding the bill's proposal to prohibit advertising at certain times and during certain programs? Is there

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29 Senate Standing Committee for the Scrutiny of Bills, *Alert Digest No 7 of 2011*, 6 July 2011, p. 15.

30 Responsible Gambling Advocacy Centre, *Submission 4*, p. 6.

31 Betfair, *Submission 3*, p. 8.

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any concern about the potential to affect sponsorship and partnership agreements that your member sports might have in place with betting agencies?

**Mr Speed:** The sports generally welcome the opportunity to consult on advertising, sports betting advertising, in relation to their matches and their teams. They will engage on that, as requested, over this 12-month period. There is the potential, if the regime for advertising were changed significantly, for there to be a diminution in sponsorship, but I think that is one of the factors that will be taken into account.<sup>32</sup>

16.41 Betfair also told the committee of its concerns about the proposed advertising restrictions and their likely impact on sponsorship agreements:

**Senator BILYK:** Do you have any concerns about the [bill's] proposal to prohibit advertising during certain times and programs?

**Mr Twaits:** Yes. Our submission deals with that and, as I said, we are happy to cooperate with regulators and broadcasters et cetera to find a workable solution, but I guess the point we would make is that the wagering industry is already highly regulated. We think we represent the high-water mark in acting responsibly with regard to harm minimisation and integrity management. We do not see any reason for severe limitations on the times or locations that we can advertise. I would point out that the effect of the restrictions on—

**Senator BILYK:** Do you not think that you should not advertise through kids' prime-time television, for example, or—

**Mr Twaits:**... To the extent that we would advertise during the cricket, if it is a one-dayer starting at 10.30 in the morning I do not think there should be any restrictions on that provided the nature of the advertising is not designed for or likely to appeal to under-18s.

**Senator BILYK:** Do you think it has the potential to affect sponsorship or partnership agreements that you might have in place?

**Mr Twaits:** Definitely, if we cannot advertise we would not have sponsorship agreements in place or they would be severely limited.<sup>33</sup>

#### *Exemption for the racing industry*

16.42 The Australian Racing Board stated its broad support for the amendments but emphasised the need for explicit exemptions for the racing industry. Its submission argued that the restrictions on broadcasting of betting odds should not apply to race betting odds, nor should restrictions on advertising of betting venues apply to racecourses:

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32 Senator Bilyk and Mr Malcolm Speed, Executive Director, COMPPS, *Committee Hansard*, 11 August 2011, p. 16.

33 Senator Bilyk and Mr Andrew Twaits, Chief Executive Officer, Betfair, *Committee Hansard*, 11 August 2011, p. 30.

For example, for many years now the major racing carnivals conducted in Melbourne and Sydney have been broadcast on commercial television. It will be readily accepted that these broadcasts could not feasibly be made excluding broadcasting of the betting odds relating to those race meetings. It will also be understood that one or more of the betting agencies generating the betting odds may have a commercial arrangement with the television broadcasting licensee (either to place an advertisement or endorsement within or during a race broadcast, or to advertise at some other time slot). What has been described here has occurred for many years and is not of the same nature and complexion as the recent developments involving betting odds being promoted in cricket, football and other sport. The bill should not destroy these opportunities for iconic Australian sporting events, such as the Melbourne Cup, to be broadcast on commercial television.

...If the regulations defined 'betting venue' to include racecourses then an advertisement encouraging people to attend a race meeting could not be shown during any sports program or sports-related program. Preventing such advertising taking place would not further the objectives of the bill.<sup>34</sup>

16.43 The Australian Racing Board also noted an inconsistency between the Explanatory Memorandum and the bill itself:

The Explanatory Memorandum says that schedule 3:

*"requires ACMA to enforce conditions to require commercial television, radio and subscription television broadcasting licencees not to broadcast betting odds where there is a commercial arrangement between the licensee (i.e. presenter) to provide betting odds."* (our emphasis)

However, the drafting in items 1, 2 & 3 goes beyond this. For example, item 1 says that the ACMA must impose a condition:

*"that has the effect of requiring the licensee of a commercial television broadcasting licence not to broadcast betting odds in relation to a matter if there is a commercial arrangement between the licensee or an agent of the licensee and the betting agency providing the betting odds"*

This casts a wider net than is suggested by the Explanatory Memorandum. A commercial arrangement to provide the betting odds is not required. Instead it is enough that there is a commercial arrangement between the broadcaster and the betting agency. On a plain reading this could be any type of commercial arrangement; indeed it may be a commercial arrangement between other divisions of the two parties and have no connection with betting.

This is not intended to suggest opposition to the bill's intended objective of winding back the recent trend of broadcasts of cricket, football and other sporting fixture[s] becoming filled with exhortations to gamble. However

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34 Australian Racing Board, *Submission 5*, p. 5.

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the drafting approach that the bill employs to achieve this might be further considered.<sup>35</sup>

### ***Committee view***

16.44 Advertising of gambling services and products was a key issue raised with the committee throughout the inquiry—see chapters nine and 12 for detailed discussion. In relation to gambling on sport, much of the concern focused on the broadcasting of live odds during sporting matches. However, the concern went further to the amount of gambling advertising that children in particular are exposed to during sporting matches and how this may affect their view of sport.

16.45 In earlier chapters, the committee has already noted its concern about the effects of gambling advertising, particularly on young people. In the context of online advertisements, the committee heard how research has shown that young people are particularly vulnerable to and are highly influenced by the messages in gaming advertising. Researchers stressed the need to protect children and adolescents from being exposed to such advertisements. The committee considers that research findings about the susceptibility of youth to gambling advertising are equally applicable to sports betting advertising. The committee also heard of research to indicate that the earlier people start gambling, the more likely they are to continue gambling, and the more they continue gambling, the probability of developing gambling problems increases.

16.46 As already stated in chapter 12, the committee welcomes the government's recent announcement to work with industry to reduce and control the promotion of live odds. This is a step in the right direction and picks up on the understandable degree of community concern about the infiltration of gambling into sport and sports coverage.

16.47 However, the committee believes this does not go far enough and notes that the undertaking to reduce live odds promotion by mid-2012 does not appear to be a commitment to a total ban, is based on self-regulation by industry and is not underpinned by legislation. The committee has recommended that there should be a total ban on the promotion of live odds which should be enforced by legislation.

### ***Committee majority view***

16.48 The committee believes that live odds are not the only area requiring attention. It considers that the restrictions on the times for gambling advertising as proposed in the bill are necessary to protect children from viewing sport through the prism of gambling.<sup>36</sup> However, the committee majority notes the need to address definitional issues in Schedule 3 of the bill. The committee majority therefore

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35 Australian Racing Board, *Submission 5*, pp 5–6.

36 Dr Samantha Thomas, *Committee Hansard*, 11 October 2011, p. 2.

supports the general intent of the amendment to the *Broadcasting Services Act 1992* proposed in the bill to prohibit advertising of betting venues and online gambling sites during G classified programs, i.e. when children are likely to be watching.

16.49 The committee majority believes that any sport and sport related programs that are broadcast during periods when children are likely to be viewing should not include any form of gambling advertising. The committee majority therefore supports an amendment to the Broadcasting Services Act to prohibit advertising of gambling during periods when children are likely to be watching. In practice, this would still permit advertising of gambling during sport or sport-related programs that are broadcast during late night viewing times (i.e. when children are not likely to be watching). Additional comments from Senator Xenophon on this schedule of the bill follow this report.

### **Recommendation 19**

**16.50 The committee majority recommends that the *Broadcasting Services Act 1992* be amended to prohibit gambling advertising during times when children are likely to be watching.**

### **Schedule 4—Obtaining a financial advantage by deception, in relation to a code of sport**

16.51 Schedule 4 of the bill inserts a provision into the Criminal Code, making it an offence to participate in match-fixing, establishing a maximum penalty of 10 years imprisonment and/or 10,000 penalty units. This penalty would apply to players, referees, persons associated with players, match officials and persons associated with a code of sport who attempt to fix a match by deception.<sup>37</sup>

16.52 Deception would be defined as:

- conduct by a person that contrives the outcome of a sporting match or the occurrence of micro-event during a sporting match;
- deliberate underperformance by a player during a sporting match that achieves a particular result in the sporting match;
- contriving the withdrawal of a player during a sporting match to achieve a particular result in the sporting match;
- use by a person of confidential information in relation to a code of sport, to which the person has access because of that person's association with the code of sport, before that information is publicly available;
- making a deliberately incorrect refereeing or like decision during a sporting match to influence the outcome of the sporting match;

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<sup>37</sup> Interactive Gambling and Broadcasting Amendment (Online Transactions and Other Measures) Bill 2011, *Explanatory Memorandum*, pp 2–3.

- deliberate interference before a sporting match with the equipment or playing surface to be used during the sporting match;
- offering a bribe or making a threat, or engaging in any other coercive behaviour, against a person to achieve a particular result in a sporting match;
- any other conduct prescribed by regulations.<sup>38</sup>

### *Views of submitters*

16.53 While the broad intent of this amendment was generally supported, much of the commentary on the bill, particularly from COMPPS and wagering providers, noted current national work underway on a national match-fixing policy as well as recent work by the NSW Law Reform Commission (LRC) in this area. This work is discussed in detail in chapter 13.

16.54 Mr Malcolm Speed, Executive Director of COMPPS, explained that the bill cut across work being undertaken by Sports Ministers and Attorneys-General on nationally consistent legislation:

Over the last 12 months, and perhaps a little longer for the coalition, we have had our working party in place and we have been working through these issues. We have had great support from government. The Minister for Sport, Senator Arbib, has taken a leading role in this. The Australian Olympic Committee has been very supportive and has taken a similar view. The state sports ministers and attorneys-general have all come into this issue and are enthusiastically endorsing recommendations for legislation. We are looking at civil legislation, which would be a duplication of the Victorian legislation. Our view is that we would like to finish that process and that the legislation that is proposed in the bill is premature. Our preference would be to continue the discussions that are underway with the federal government and the states before we achieve legislation.<sup>39</sup>

16.55 Betfair's submission also noted its support for a maximum 10 year penalty proposed by the NSW LRC and stated that this framework provided a 'much stronger and more coordinated framework for reform' than that proposed in the bill:

The NSW LRC position should be preferred because:

- (a) in order to trigger an offence under the Draft Bill, the participant must both engage in the "deception" and themself obtain the financial advantage, whereas the NSW LRC draft provision extends to third parties who gain a financial advantage as a result of the deceptive conduct.
- (b) the draft provision prescribes certain conduct that constitutes deception in the relevant sense but does not cover cheating or corruption that may

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38 Interactive Gambling and Broadcasting Amendment (Online Transactions and Other Measures) Bill 2011, *Explanatory Memorandum*, pp 2–3.

39 Mr Malcolm Speed, *Committee Hansard*, 11 August 2011, p. 15.

occur for reasons other than gambling, which is effectively covered in the NSW LRC draft provision.

(c) the wording in the proposed s135A.3 is difficult to follow and should be simplified by stating that person is guilty of an offence if:

a. the person obtains a financial advantage from any other person; and

b. the deception takes place in, or the financial advantage is obtained in, a Territory.

(d) as appears to be tacitly accepted by the drafter of the provision (see the existence of a “Constitutional basis for Division” in s135A.2 and the clumsy wording in s135A.3), there exists significant doubt over the constitutional basis upon which the Federal Parliament could enact these provisions.

For these reasons, the Committee should advocate that each of the States and Territories enact nationally consistent legislation that mirrors the Victorian Sports Betting Act and the NSW LRC draft cheating provision.<sup>40</sup>

16.56 Netball Australia also supported existing work underway at the national level over the approach proposed in the bill:

Netball Australia acknowledges the recommendations in the NSW Law Reform Commission’s report into Cheating at Gambling, March 2011 and draws particular reference to the need for a nationally consistent approach, specific statutory cheating offence and penalties in relation to sporting and other events.

Accordingly, Netball Australia welcomed the announcement of 10 June 2011 by the Sport and Recreation Minister’s Council of a National Policy on Match-Fixing in Sport to provide the foundation for all Australian governments to work with sports and betting companies to deter and deal with corruption in sport.

A critical aspect of the National Policy is the agreement to pursue nationally consistent legislative arrangements. It is preferable that this Legislation is Federal, specific to sport, creating a criminal offence of “cheating in connection with sports wagering”.<sup>41</sup>

16.57 The Tasmanian Government also commented that the amendment pre-empted the National Policy on Match-Fixing in Sport.<sup>42</sup>

16.58 The Australian Racing Board stated support for the amendments in the bill but suggested that the term 'sporting match' should be defined in the regulations to include a horse race:

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40 Betfair, *Submission 3*, pp 8–9.

41 Netball Australia, *Submission 6*, p. 2.

42 Tasmanian Department of Treasury and Finance, *Submission 8*, p. 1.

Racing faces at least the same level of risk of its integrity being undermined for gambling-related purposes as other sports. Accordingly the protection that is given to sport by this new criminal offence should apply also to racing events.<sup>43</sup>

16.59 The Senate Scrutiny of Bills Committee also pointed out that it was preferable for certain definitions to be included in the primary legislation, not left to the regulations:

Schedule 4, item 1 would insert proposed section 135A.3 in the *Criminal Code Act*. This provision makes it an offence for a person to obtain financial advantage in relation to a ‘code of sport’ by deception. The meaning of ‘code of sport’ is to be determined by the regulations and the meaning of deception (a central element of the offence) is defined to include ‘any other conduct prescribed in the regulations’ (see proposed section 135A.1). The penalty for the offence is imprisonment for 10 years or 10000 penalty units or both. Unfortunately the explanatory memorandum does not address this issue. As noted above, in general it is preferable that important information is included in primary legislation.<sup>44</sup>

#### *Other issues in relation to Schedule 4*

16.60 A submission from Ms Juliette Overland of the University of Sydney drew attention to the need for a number of clarifications in the drafting of the amendment to the Criminal Code. Ms Overland raised three principal questions:

- (i) Why has liability been limited to people who have an “association with the code of sport”?
- (ii) What is meant by the term “confidential information”? What is meant by the term “publicly available”?
- (iii) Why is there no requirement that the information be “material”?<sup>45</sup>

16.61 Ms Overland's area of research interest and expertise is insider trading and her submission to this inquiry focused on the proposed definition of the term 'deception' in the bill and its similarities to insider trading offences under the Corporations Act:

The Explanatory Memorandum to the draft Bill states that deception is considered, amongst other things, to be “use by a person of confidential information in relation to a code of sport, to which the person has access because of that person's association with the code of sport, before that information is publicly available.” This concept, which essentially amounts to “insider gambling”, is similar, but not identical, to the prohibition on insider trading which applies in relation to certain financial products under the Corporations Act. The Corporations Act prohibits any person in possession of information which they know, or ought reasonably to know,

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43 Australian Racing Board, *Submission 5*, p. 7.

44 Senate Standing Committee for the Scrutiny of Bills, *Alert Digest No 7 of 2011*, 6 July 2011.

45 Ms Juliette Overland, *Submission 14*, p. 2.

is price-sensitive non-public information from trading, or procuring trading, in relevant financial products.<sup>46</sup>

16.62 She suggested that liability should not only be limited to those who have 'an association with the code of sport', but to anyone who possesses 'inside information':

It is not explained in the Explanatory Memorandum or elsewhere why liability should be limited to people who have an "association with the code of sport."

This is in contrast to the position under ordinary insider trading laws. The prohibition on insider trading under the Corporations Act applies equally to all persons who possess inside information, so that there is only a requirement for what [is] known as an "information connection" rather than a "person connection." All who possess information which they know, or ought reasonably to know, is inside information are prohibited from trading in relevant financial products, regardless of their status, relationships or how they came to possess the information.

If a person possesses "confidential information" in relation to a code of sport, which they exploit for their own purposes (for example, by using the information when placing bets on a relevant sporting event) why should it matter if they have any particular association with that code of sport? Additionally, would the proposed offence be intended to apply to people who have no connection with the relevant code of sport but who acquire information from others – for example, if a person with an association to a code of sport passes information onto their spouse, or friend, or other unrelated parties, who then use the information to place bets on a sporting event, is it intended that those person would not have any liability under the draft "insider gambling" offence? Under the current drafting, it would seem that no such liability would exist. It is suggested that the most important issue should be preventing the misuse of information, rather than focusing on the role or position of the person who possesses that information.<sup>47</sup>

16.63 Ms Overland also argued that the terms 'confidential information' and 'publicly available' need to be defined clearly in the bill, as they are in the Corporations Act:

Whilst at times, the meaning of these terms has been contentious and the subject of significant judicial consideration in a number of insider trading cases, the inclusion of definitions at least provides some scope and context for the relevant offence. It is recommended that consideration be given to including definitions for the "confidential information" and "publicly available" for the offence of "insider gambling" as well.

Issues which need to be considered before appropriate definitions can be drafted:

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46 Ms Juliette Overland, *Submission 14*, pp 1–2.

47 Ms Juliette Overland, *Submission 14*, pp 2–3.

- (i) Why is an obligation of confidence required? If the information is not publicly available, is it necessary that the information also have a requirement of confidentiality?
- (ii) Who needs to have knowledge of or access to the information before it would be considered to be publicly available? Does it need to be known or available to the general public, or only those who have a connection with the relevant code of sport?<sup>48</sup>

16.64 Ms Overland also suggested there should be a requirement in the bill that information should be 'material':

Why should an offence be created if the information is unlikely to be sensitive in nature? The offence of insider trading only exists in respect of information which is likely to have a material effect on the price or value of relevant financial products.<sup>49</sup>

### ***Committee majority view***

16.65 The committee majority supports the intent of the amendments relating to fraudulent conduct in a code of sport, as did most submitters. However, as noted in chapter 13, the committee majority welcomes the cooperative work being done at a national level to advance the new National Policy on Match-Fixing. It also acknowledges the comprehensive work that has been done in both NSW and Victoria to ensure regulation keeps pace with developments in the modern sports betting environment. The committee majority is supportive of the current work underway by Sports Ministers and Attorneys-General to pursue nationally consistent legislative measures to curb the threat of match-fixing in Australian sport.

### **Conclusion**

16.66 The committee majority has formed the view that the bill should not be passed.

16.67 The committee majority does not support the bill's amendments to the IGA (covered in chapter 15) to make online transactions with international gambling websites voidable by consumers. Nor does it support the alternative model proposed during the committee's public hearing to establish and maintain a 'blacklist' of merchant identification numbers to which financial institutions would be required to block transactions.

16.68 The committee majority is particularly concerned about the practice of interactive and online gambling services offering inducements to gamble. Therefore, the committee majority supports the intent of the amendment to the IGA to prohibit inducements to gamble. However, the committee majority has recommended that the

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48 Ms Juliette Overland, *Submission 14*, p. 3.

49 Ms Juliette Overland, *Submission 14*, p. 4.

bill's amendments to the IGA in relation to inducements not be considered until the current review of the IGA has been completed. This would allow them to be considered alongside any other amendments to the Act proposed by the government that arise from the review.

16.69 In this chapter, the committee majority does not support prohibiting the offering of certain bet types, including betting on losing outcomes, 'in-play' and exotic betting as proposed in Clause 3 of the bill. The committee majority believes that the risks around betting on losing outcomes can be adequately mitigated by existing regulation around the operation of betting exchanges. As noted in earlier chapters, the committee majority takes a precautionary approach to 'in-play' (chapter 11) and exotic betting (chapter 14). The committee majority believes that the current arrangements for 'in-play' betting should remain in place. However, the committee majority supports further research on the risks of 'in-play' betting online. Until such time as a national independent research institute on gambling can undertake this work, the committee majority has recommended that such research be commissioned as part of the current review of the Interactive Gambling Act. On exotic betting, the committee majority considers that further research on the possible risks of this bet type should also be commissioned. Again, until such time as a national independent research institute on gambling can undertake this work, it should be commissioned under the existing work by Sports Ministers on the National Policy on Match-Fixing in Sport.

16.70 Throughout the inquiry, the committee heard how research has shown that children and young people are particularly vulnerable to and are highly influenced by the messages in gambling advertising. The committee believes that any sport or sport related programs that are broadcast during periods when children are likely to be viewing should not include any form of gambling advertising. The committee majority therefore supports an amendment to the Broadcasting Services Act to prohibit advertising of gambling during periods when children are likely to be watching (whether programs are sports related or not).

16.71 While the committee welcomes the commitment by government and industry to reduce and control the promotion of live odds during sports coverage, it believes that more must be done in this area. As noted in chapter 12, the committee believes that the government should legislate a total ban on live odds promotion at venues and during broadcasts, including during pre-match coverage. However, the committee majority notes the need to provide an exemption for the racing industry.

16.72 Finally, while the policy intent of the match-fixing amendment in this bill is supported in-principle, the committee majority considers that work already underway by Sports Ministers on the National Policy on Match-Fixing in Sport is the most suitable forum in which to pursue reform.

**Recommendation 20**

**16.73 The committee majority recommends that the Interactive Gambling and Broadcasting Amendment (Online Transactions and Other Measures) Bill 2011 not be passed.**

**Mr Andrew Wilkie MP**

**Chair**



# **Chair's additional comments**

## **Interactive Gambling Act**

1.1 Although I support the vast majority of the report, there is one issue where I take a different view from the committee majority. This is how to address the deficiencies in the *Interactive Gambling Act 2001* (IGA), particularly the lack of ability to stop Australians accessing potentially dangerous overseas websites to play casino-type games. The committee heard how the IGA has been particularly effective in preventing the provision of interactive gambling services by Australian-based providers. So currently, Australians wishing to access interactive gambling services that are prohibited by the IGA must do so via overseas websites as domestic providers are prohibited from providing such gambling services.

1.2 Although under the IGA overseas websites are prohibited from targeting Australians, the ability to enforce this appears limited. The mechanism relies on complaints to the Department of Broadband, Communications and the Digital Economy which refers investigations to the Australian Federal Police (AFP). The AFP in turn has to rely on overseas enforcement agencies. Where the gambling service is being provided legally in the overseas country, the ability for enforcement action to be taken is problematic and limited.

1.3 The evidence of the lack of ability to enforce the IGA in relation to interactive gambling service providers overseas is the over 2,000 overseas gambling websites that Australians can easily access. Despite the IGA prohibiting overseas websites from targeting Australians, the committee heard about websites such as Casino.com, which obviously targets Australians with the display of the Australian flag in the background and lists of Australian winners. Clearly this enforcement mechanism is not working.

1.4 Although there is an element of risk in accessing overseas websites, this will be a greater deterrent for some people more than others. As the Productivity Commission (PC) points out, this is more likely to deter responsible players than problem gamblers.

...in essence, the legislation attempts to dissuade people from gambling online by making it more dangerous. This will have the biggest deterrent effect on responsible gamblers who are more likely to react by avoiding online gaming altogether, thereby forfeiting the unique benefits of the medium. The IGA will be least effective on problem gamblers whose behaviour means they may not respond appropriately to the riskier online gaming environment the IGA facilitates.<sup>1</sup>

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1 Productivity Commission, *Gambling*, Commonwealth of Australia, Canberra, 2010, pp 15.19-15.20.

1.5 The current arrangements leave problem gamblers who prefer to gamble online with casino-type games with minimal protection and at risk of exploitation. As the PC noted, 'the extent of harm minimisation features varies greatly from website to website, and generally falls short of best practice'.<sup>2</sup> This was confirmed in evidence to the committee from Dr Sally Gainsbury:

It is also a very diverse form of gambling. There are multiple operators and multiple sites that range from those that appear one moment and disappear shortly thereafter to well-established operators who are regulated in jurisdictions that do have quite stringent requirements...<sup>3</sup>

1.6 In addition, the current situation leaves Australians on their own should they experience any difficulties in the online environment. The committee heard the personal story of an individual who lost a large sum of money through his use of Casino.com through unauthorised transactions and of his difficulty in addressing the situation through the regulator in Gibraltar where the company is licensed.<sup>4</sup>

1.7 I think we have to recognise the reality. Australians already gamble on overseas websites. They wish to do so and will continue to do so. Currently the sites they can access vary greatly in terms of reliability, harm minimisation and consumer protection measures and probity. Some are highly regulated and enforced and others are not and it can be very difficult for an individual to know the difference.

1.8 My overriding concern is putting in place appropriate harm minimisation and consumer protection measures for individuals who wish to gamble online. As we cannot ensure the quality of overseas online gambling websites, I agree with the recommendation of the PC to allow online poker to be offered by Australian-based providers. These providers could then operate under legislation and regulations that ensure high standards for harm minimisation and consumer protection.

## The view of the Productivity Commission

1.9 The PC told the committee that in its view, Australia currently has the worst possible model:

If you introduce managed liberalisation, you have the ability to have registered Australian operators. So you can do whatever you like with that particular group and regulate that particular group in the way that you believe is desirable. At the moment, we do not have that capacity, so effectively everyone else is outside, subject to various regulations or no regulation at all. So you are right: the sites that the person is looking at at the moment are a mixture of regulated and unregulated sites over which we as a nation have almost no control. That is the danger we have at the

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2 Productivity Commission, *Gambling*, vol. 2, Commonwealth of Australia, Canberra, 2010, p.15.18.

3 Dr Sally Gainsbury, *Committee Hansard*, 16 September 2011, p. 33.

4 *Committee Hansard*, 16 September 2011, pp 55–59.

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moment. The question is whether you go to a model that says, 'In addition to those sites we have Australian regulated [sites], and they work together' or, alternatively, your hybrid model where you introduce the Australian regulated sites and try to extinguish or prohibit these other sites by some means. But we actually have the worst of all at the moment. The person is sitting there, exactly like you have indicated, spending fairly substantial sums of money, but there is no way we can influence that.<sup>5</sup>

1.10 The PC recommended 'managed liberalisation' of online gaming, starting with online poker. It argued that the effects of this change should then be evaluated before further liberalisation is considered.<sup>6</sup> It emphasised that managed liberalisation should be subject to a regulatory regime that mandates:

- strict probity standards; and
- high standards of harm minimisation, including:
  - prominently displayed information on account activity, as well as information on problem gambling and links to problem gambling support;
  - automated warnings of potentially harmful patterns of play;
  - the ability to pre-commit to a certain level of gambling expenditure, with default settings applied to new accounts, and the ability for gamblers to set no limit on their spending as one of the system options (with periodic checking that this remains their preference); and
  - the ability to self-exclude.<sup>7</sup>

1.11 Mr Gary Banks, Chairman, Productivity Commission, explained why the PC took this approach:

...we thought that there would be merit in introducing such a managed liberalisation approach with a precautionary element in that particular area, subject to the sorts of protections and harm minimisation arrangements that we thought would need to be best practice regardless.<sup>8</sup>

1.12 The PC recommended that the government should monitor the effectiveness of these harm minimisation measures, as well as the performance of the regulator overseeing the national regulatory regime. In addition, the government should also evaluate whether: the provision of online poker card games should continue to be

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5 Mr Robert Fitzgerald, *Committee Hansard*, 16 September 2011, p. 46.

6 Productivity Commission, *Gambling*, vol. 2, Commonwealth of Australia, Canberra, 2010, pp 15.34–15.35.

7 Productivity Commission, *Gambling*, vol. 2, Commonwealth of Australia, Canberra, 2010, p.15.35.

8 Mr Gary Banks, *Committee Hansard*, 16 September 2011, p. 43.

permitted and whether liberalisation should be extended to other online gaming forms.<sup>9</sup> The PC emphasised to the committee that it recommended contingent liberalisation where an evaluation would look at the operation of liberalised online poker, but if it found there were significant problems, consideration would then be given as to whether it should continue to be permitted.<sup>10</sup> Dr Ralph Lattimore, Assistant Commissioner, Productivity Commission, explained what is meant by contingent liberalisation:

So not only would the evaluation look at the experiences associated with liberalised online poker but if it found that there were significant problems it would be possible to turn it back. We explicitly say that you would examine whether it should continue to be permitted. There is quite a contingency attached to liberalisation here which is quite different from any other liberalisation measures where you say, 'Let's liberalise something'—you do not suggest that it is possible that you may in the future reregulate it.<sup>11</sup>

### ***Why treat online poker differently?***

1.13 iBus media highlighted the increased popularity of poker both online and at land-based venues:

It is clear that poker is a popular form of entertainment and that there is great consumer demand for poker services. There can be no doubt that increasing numbers of Australians are playing poker online despite the prohibition on online poker services contained in the *Interactive Gambling Act 2001*(the **IGA**).<sup>12</sup>

1.14 The PC outlined why it believed that online poker could be liberalised:

- it has a different character to poker machines;
- it is seen as a game of skill;
- there is no evidence that players experience the trance like states that occur when playing EGMs;
- there is a social dimension in that you are playing against other people so it is very interactive;
- other games can be played much more quickly and the stakeholder for other games is the casino;

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9 Productivity Commission, *Gambling*, vol. 2, Commonwealth of Australia, Canberra, 2010, p. 15.35.

10 Dr Ralph Lattimore, *Committee Hansard*, 16 September 2011, p. 44.

11 Dr Ralph Lattimore, *Committee Hansard*, 16 September 2011, p. 44.

12 iBus Media, *Submission 42*, p. 3.

- the ground rules that apply, with players competing for a pot of money to which they contribute, limit losses.<sup>13</sup>

1.15 Mr Banks explained:

...It is a game of skill, you have a bunch of people, you put money in the pot—you are kind of locked into that site for some period of time unless you are so brilliant you can have two screens going with two tournaments operating simultaneously. That is why we felt it was pretty safe territory really. The character of it and the relationships with the machine and other people is quite different. It is more like a real game than other forms of gambling which are described as gaming.<sup>14</sup>

1.16 Dr Gainsbury agreed that poker has an element of skill:

Poker is somewhat different to some of the other forms of gambling in that there is an element of skill involved. That is not to say that all poker players are skilled or that you cannot have problem gamblers using poker and spending excessive amounts. That is certainly also the case.<sup>15</sup>

## **Advantages**

### ***Increased harm minimisation and consumer protection***

1.17 The recommendations of the PC received support. Professor Alex Blaszczynski explained why he agreed with the PC recommendation:

My view would be to support the Productivity Commission's recommendations from the perspective that there is evidence that Australians already gamble on overseas sites, which then exposes them to risk of exploitation et cetera. My view is that it is a sensible approach to regulate it and ensure that the Australian community are aware that they can gamble through legitimate, well-regulated, well-policed and well-monitored sites. From that perspective one has a control over the responsible gambling measures as well as protecting the Australian community from exploitation.<sup>16</sup>

1.18 Dr Gainsbury also supported this view on the basis of consumer protection:

If people already are playing there should be an option for them to play on a site where they can be protected, both in terms of ensuring that they do have somewhere to go if they experience any cheating or fraud, and that any site that is regulated should be required to have quite stringent responsible gambling features in place.<sup>17</sup>

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13 Mr Gary Banks, *Committee Hansard*, 16 September 2011, pp 45–46.

14 Mr Gary Banks, *Committee Hansard*, 16 September 2011, p. 47.

15 Dr Sally Gainsbury, *Committee Hansard*, 16 September 2011, p. 33.

16 Professor Alex Blaszczynski, *Committee Hansard*, 16 September 2011, p. 33.

17 Dr Sally Gainsbury, *Committee Hansard*, 16 September 2011, p. 33.

1.19 Expanding on the responsible gambling features that could be put in place, Dr Gainsbury continued:

There is some evidence that these can be implemented on internet sites in some cases even more effectively than those in land-based venues, because you can track players consistently and look at individual behaviour.<sup>18</sup>

1.20 Betfair expressed its view that:

By permitting Australian based operators to offer online poker and gaming, we are of the view that Australians will migrate towards Australian companies because of better customer service, security of engaging with an Australian based company and superior product offerings. An important additional benefit of a regulated environment is that responsible gambling initiatives could be enforced on Australian based operators, as well as a requirement for licence fees and taxes to be paid.<sup>19</sup>

1.21 While acknowledging that it is an unusual position for a consumer organisation to take, Ms Penny Wilson from the Responsible Gambling Advocacy Centre said it favoured regulation:

We have noted that it is an unusual position for a consumer organisation, to say that whilst it is more regulation it is opening up a market, but we feel that then at least some of the inadequacies of what is being offered by online gambling could be addressed. For instance, you can have compulsory pop-ups, or you can make it a requirement of the regulations that access to self-limiting mechanisms such as limits on the amount of money or time spent is available from the first screen, not buried somewhere in the back of the website or not available at all. It gives you some scope for that, but we do acknowledge that that is an unusual position...<sup>20</sup>

1.22 Professor Blaszczynski told the committee that in his view the sensible approach would be to offer Australian-based highly regulated sites:

...with appropriate auditing and monitoring of regulated sites, you can ensure that the players are not playing against robots or software and that the game itself is fair. You can ensure that underage gambling is prevented or restricted. You have got the checks and balances in place. Again, it is a balance between opening up the Australian community to unfettered gambling opportunities and recognising the reality that there is an increase in legalised gambling online that comes from a variety of international sources, some of which are regulated and highly policed while others are the fly-by-nighters. My view essentially is that, if there is the opportunity for online gambling, then I think the sensible approach basically is to ensure that there are highly regulated and safe sites. The example there is

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18 Dr Sally Gainsbury, *Committee Hansard*, 16 September 2011, p. 33.

19 Betfair, *Submission 12*, p. 13.

20 Ms Penny Wilson, *Committee Hansard*, 11 August 2011, p. 37.

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the online lottery and online sports betting within Australia. That has quite a high degree of community acceptability simply because they know it is regulated. There are avenues for complaints and complaints are dealt with sensitively and sensibly.<sup>21</sup>

1.23 He added:

...Given the liberalisation of gambling overseas—in Canada, Ontario and Quebec have introduced online gambling, and in Europe there are the examples of Gibraltar, Alderney and so forth—I think the reality is that internet gambling is with us and it is going to increase, particularly with the advent of mobile phones, iPads and other mobile devices that allow people to stream in videos et cetera. My view, essentially, is that we are not going to prevent online gambling under the current circumstances, and therefore it is a matter not of introducing new forms of gambling but of putting in steps to ensure that the Australian community is protected.<sup>22</sup>

1.24 iBus media submitted that the experience in overseas jurisdictions shows that online poker can be regulated effectively:

...and the most appropriate regulatory outcome is for a local licensing regime (incorporating effective harm minimisation measures) to be developed. Indeed, effective harm minimisation measures are easily and widely utilised by online poker operators, both voluntarily and as a requirement of licence conditions.<sup>23</sup>

1.25 Dr Ralph Lattimore, Assistant Commissioner, PC, elaborated on necessary safeguards:

We raised a number of them already, and many of them are a current feature of the existing online sites that are legal in Australia. In some respects it was online gambling sites in Australia that led the way in harm minimisation back before the IGA came into play. But strict probity standards go without saying. That probably applies currently across all gambling forms that are legal in Australia. Prominently displayed information, account activity, information on problem gambling, links to problem gambling support, automated warnings if your behaviour looks like it is running into risky areas—all of these are very easily achieved in an online environment because each transaction is recorded. I believe Betfair gave evidence to you and cited a case of someone who wanted their account to go up to \$70,000. They immediately queried that strange aspect of behaviour given past account behaviour by that person. That is the sort of thing you can do in an online environment. Clearly the precommitment and self-exclusion arrangements we discussed earlier. We envision all of those

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21 Professor Alex Blaszczynski, *Committee Hansard*, 16 September 2011, p. 34.

22 Professor Alex Blaszczynski, *Committee Hansard*, 16 September 2011, p. 38.

23 iBus media, *Submission 42*, p. 3.

as a feature of the online environment, whereas some of these features remain controversial in the terrestrial context.<sup>24</sup>

1.26 Mr Robert Fitzgerald, Commissioner, PC, added:

...One of the things that we said both in the 1999 report and in the 2010 report in relation to interactive gambling is that you can build a whole range of consumer protection mechanisms into those systems including—as in the 2010 report—precommitment, which can be mandatory if that is the approach that you take. So that certainly can be built in. The difficulty with that is that people can move easily to another site. The danger is that they can move from a mandatory precommitment on an Australian regulated site to another site that does not have precommitment. So it would probably be a little less effective but...if they value a trustworthy Australian regulated site they are more likely to maintain gambling on that site. We would see absolute precommitment on these internet sites being not only available but part of the design features that you would have if you were in fact to allow Australian sites and regulate them.<sup>25</sup>

1.27 The committee heard that currently people can gamble online from home under the influence of alcohol or drugs and any harm minimisation measures to assist them would depend on which website is accessed. Professor Blaszczynski told the committee that online gambling algorithms could be used to monitor gambling behaviour and identify changes or dangerous gambling behaviour:

...So if a person is on some occasions completely inebriated and gambling excessively in episodes of binges, that pattern of behaviour would be identified more readily than if the person is slightly inebriated and regularly going to a land based venue, slipping under the radar but nevertheless exhibiting impaired control over their judgement over a longer period. When we talk about gambling, apart from the lotteries with Australia, any form of gambling could potentially be seen as incurring some degrees of problems. The question is: what level of harm are we prepared to accept in terms of the government liberalising gambling legislation within Australia?<sup>26</sup>

1.28 The opportunity to identify risky gambling behaviour was also emphasised by Dr Gainsbury:

If there is a prohibition policy, something needs to change because it is not working at the moment. You can go online and gamble. If that is not going to be enforced, perhaps legalisation and regulation would create a safer playing environment for people. If someone wants to gamble in a problematic way, they probably will be able to in some way, shape or form, but there at least will be some options and there will be efforts made to

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24 Dr Ralph Lattimore, *Committee Hansard*, 16 September 2011, p. 46.

25 Mr Robert Fitzgerald, *Committee Hansard*, 16 September 2011, p. 44.

26 Professor Alex Blaszczynski, *Committee Hansard*, 16 September 2011, p. 34.

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protect people from developing problems and to look after those who appear to have risky behaviours.<sup>27</sup>

1.29 Currently Australians have over 2,000 overseas-based interactive gambling websites at their fingertips. However, there are no consistently mandated requirements in the form of harm minimisation measures to protect players and particularly vulnerable individuals. I believe that allowing Australian-based interactive gambling service providers to offer online poker presents the opportunity to identify and put in place appropriate harm minimisation and customer protections measures as the starting point for developing regulation.

***Would this attract new gamblers?***

1.30 When asked whether this liberalisation of online poker would attract new gamblers, Mr Banks responded:

As to whether there would be more people attracted to online poker card games, I suspect there would be. Would that be a harmful activity per se? That did not appear to us to be the case relative to other forms of gambling and, in particular, gaming—poker machines as opposed to poker card games.<sup>28</sup>

1.31 He added:

That is happening currently. I suppose what you are saying is that things could be worse and that the people who are encouraged into this activity through its domestic liberalisation would also be the sorts of people who were almost indifferent to whether they were doing it domestically or internationally. We were arguing that the people who might enter into it would feel more secure in an Australian environment and that is why they had not actually been doing it before on those international sites. There is a degree of speculation and that is why, on balance, as Ralph said, we had a very precautionary approach and a contingent approach where, subject to review, it could be stopped. But I agree; there are judgments that need to [be] brought to bear on those things.<sup>29</sup>

1.32 Professor Blaszczynski expressed his view that:

...what we are essentially arguing here is not so much that we are introducing a new form of gambling, because internet gambling currently exists. We are really looking at imposing a proper regulatory system to protect the Australian community.<sup>30</sup>

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27 Dr Sally Gainsbury, *Committee Hansard*, 16 September 2011, p. 35.

28 Mr Gary Banks, *Committee Hansard*, 16 September 2011, p. 43.

29 Mr Gary Banks, *Committee Hansard*, 16 September 2011, p. 44.

30 Professor Alex Blaszczynski, *Committee Hansard*, 16 September 2011, p. 36.

## Additional requirements

### *Education*

1.33 Dr Gainsbury suggested that this model should be supplemented with education to increase awareness of regulated and unregulated sites and the potential risks and harms:

If people are playing online then having a regulated site would offer player protections, but I would want to look at a more balanced model and also at increasing awareness of the difference between regulated and unregulated sites, putting consumer protections on the sites and advertising at a community level that poker play can result in harm as well.<sup>31</sup>

### *Advertising*

1.34 While FamilyVoice Australia did not agree that online poker should be allowed on Australian-hosted sites, it did advise that should this occur, it should be accompanied by restrictive advertising rules that limit the times and the nature of the advertising. There should also be a requirement to provide accurate information about potential losses.<sup>32</sup>

1.35 Regardless of the model used, the PC spoke about the need to address the regulation of advertising:

Going back to your advertising question, one of the things that we were talking about earlier in the day was, if you were to introduce, for example, managed liberalisation of poker game playing, what would you allow in relation to advertising there? You might take the approach of, 'We'll allow it, but we won't allow advertising.' You might also take the approach of, 'What we would do is we'd allow advertising that this is a registered, regulated site so that people are encouraged to go there.' Even in that area, whether you would allow advertising is one question and the nature of the advertising is another. From my point of view you would want to look at the risks that you are trying to deal with, relative to a game.<sup>33</sup>

1.36 I agree with both these ideas. Educating consumers will be essential to increase awareness of the dangers of overseas sites. It is also the case that gambling is not without risk even in a well regulated environment and people need to be aware of the potential risks and harms as well as the tools and resources to assist them. In addition, restricting advertising not only for overseas but domestic providers is necessary to avoid repeating the situation we now have with the proliferation of sports betting advertising.

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31 Dr Sally Gainsbury, *Committee Hansard*, 16 September 2011, p. 33.

32 FamilyVoice Australia, *Submission 4*, p. 3.

33 Mr Robert Fitzgerald, *Committee Hansard*, 16 September 2011, p. 54.

## Would Australians prefer Australian-based sites?

1.37 The committee heard that many Australian gamblers are likely to prefer using Australian-based websites and a safer domestic market (see discussion in chapter three). The PC considered that while the evidence is not clear that Australians, particularly young Australians, would choose to use a better regulated Australian site over an overseas site, at least some would. It added that education could play a part in steering people towards better regulated Australian sites.<sup>34</sup>

1.38 Dr Gainsbury also indicated that evidence shows at least some people would move to a domestic site but the sites would have to be competitive:

I would certainly say that it is a very competitive market and liberalising and regulating some sites in Australia will not necessarily reduce the number of offshore competitors. Evidence from other jurisdictions that have liberalised and implemented their own sites suggests that they do capture, in some cases, a minority. Sweden, for example, has only 30 per cent of the poker market on its state-based site. So sites have to be competitive, which is going to have implications for how much you can tax sites so they can offer attractive rates to players and the various advertising rights that they have. So certainly the regulatory model would have to ensure that any liberalised and legalised site would be competitive in an international market. Absolutely, if it is going to be a model where there is a liberalisation, there will have to be efforts to reduce the attractiveness of competitor sites. That might be by restricting advertising or providing incentives for sites. So there would have to be a dual approach to protect the licensees.<sup>35</sup>

## What about overseas sites?

1.39 As long as unregulated overseas sites are available and present an attractive alternative, individuals will still be able to gamble in a manner that could cause significant harm. I favour a hybrid approach where, following the recommendations of the PC, we liberalise the Australian online poker market, appropriately regulate it and put in place safeguards. However, in addition, we implement measures to encourage people to use these well regulated sites.

1.40 This dual approach was supported by Professor Blaszczynski:

I would support your perspective on that...What we are attempting to do here, basically, is firstly to recognise that internet gambling is currently available to the Australian community. Regulating sites will assist in preventing, but clearly not eliminating, all the problems. Making it difficult

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34 Mr Robert Fitzgerald, *Committee Hansard*, 16 September 2011, pp 49–50.

35 Dr Sally Gainsbury, *Committee Hansard*, 16 September 2011, pp 37–38.

for Australians to gamble on unregulated sites is, I think, one of the key initiatives that I would strongly support.<sup>36</sup>

1.41 The PC thought the approach had merit:

If you believe there is any scope at all for addressing overseas sites then you can do that in a hybrid model as well. The question is the capacity to do that. There are ways around internet filtering but, of course, if it is present and there are available domestic sites then incentives to get around it are reduced.<sup>37</sup>

1.42 However, Dr Lattimore of the PC cautioned the committee about an issue to be aware of:

However, perhaps one of the bigger problems is that if there were an overseas site that offered identical services to an Australian site and you barred it because of its overseas location then you would probably be in breach of WTO rules.

...Antigua took the US to court on the basis that they were offering a form of gambling that was also offered in the United States. There were two hearings in relation to that matter and Antigua won.

...The key issue would be whether it was legitimate to have a standard harm minimisation. If there were the potential for you to say that an overseas site did not meet those harm minimisation guidelines then it might not breach the WTO rules. But in this instance it did, so it would have to be a consideration in blocking overseas sites.<sup>38</sup>

## Payment controls

1.43 I favour using payment controls to encourage individuals to use domestic sites and steer away from unregulated overseas providers. I realise this is not a perfect solution. The most determined individuals would work on circumventing such controls. But they would provide a barrier for most people most of the time, helping to protect them particularly from impulsive gambling episodes. Even for those who find a way around such a mechanism it would mean they are making a much more conscious decision to use those overseas websites. Dr Gainsbury agreed it would not be a perfect solution:

...people can generally find a way around any sort of blocking measures. They have to have the technological know-how, so the majority of people might not be able to, but a minority will.<sup>39</sup>

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36 Professor Alex Blaszczynski, *Committee Hansard*, 16 September 2011, p. 38.

37 Dr Ralph Lattimore, *Committee Hansard*, 16 September 2011, p. 45.

38 Dr Ralph Lattimore, *Committee Hansard*, 16 September 2011, p. 45.

39 Dr Sally Gainsbury, *Committee Hansard*, 16 September 2011, p. 38.

1.44 She stressed that such a model would need to include restricted advertising for unlicensed sites and increasing education for consumers:

I think one effort that might be encouraged is restricting advertising rights for unlicensed sites and also having a dual campaign of actually educating players about the difference between unregulated and regulated sites, because I really think that in Australia people actually do not know that, for example, poker sites are illegal and they do not know the risks that are involved. So a mixed approach of enforcing prohibition and encouraging and educating consumers about the importance of playing on a regulated site is important.<sup>40</sup>

1.45 I agree with this approach.

1.46 Payment controls are discussed in detail in chapter 15. The Interactive Gambling and Broadcasting Amendment (Online Transactions and Other Measures) Bill 2011 suggested one form of financial transaction control, involving consumers being able to suspend or cancel incomplete transactions to overseas gambling websites. However, during the hearing a more straightforward process was suggested.

1.47 In essence, this would involve the government maintaining a 'blacklist' of merchant numbers belonging to overseas gambling providers and providing the list to financial institutions to enable them to block transactions to those numbers. The Australian Bankers' Association (ABA) gave evidence on this model at a public hearing:

**Mr Munchenberg:**...if we the industry were to be provided with blacklisted merchant identifiers then we could block payments to those merchant identifier numbers. So, if someone sets up a gambling website in wherever, has a merchant number which, for argument's sake, is 1234 and the Australian government decide that they do not want Australians transacting with that merchant and proscribe 1234, we can block payments to 1234. If that online gambling site then became aware that those payments were being blocked and got a new merchant number, 1235, then we would not be able to block payments to that until such time as the Australian government identified that that had happened and sent it back to us. As I understand it, that would only relate to direct payments: credit card payments and possibly direct debit and EFT payments.

**CHAIR:** So it could be done if you were provided with the information; it is possible.

**Mr Munchenberg:**...I think we probably already do that in other areas such as terrorism, organised crime and anti-money-laundering areas. It would potentially provide an improvement but it would fall well short of

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40 Dr Sally Gainsbury, *Committee Hansard*, 16 September 2011, p. 38.

preventing Australians from gambling online through overseas based entities.<sup>41</sup>

1.48 Like the ABA, I acknowledge that such an approach could never completely prevent or prohibit the use of overseas sites by Australians, but I believe that such controls would dissuade the majority of gamblers. In having to investigate methods to circumvent these controls, a person would be making a much more conscious decision to gamble in a riskier environment overseas and the additional time this would take may give a person time to think and reconsider his or her actions.

1.49 The government should investigate in detail the merits and practicalities of a system of financial controls along the lines suggested by the ABA. In order to achieve this, I suggest that it be included in the current Review of the Interactive Gambling Act (IGA) being undertaken by the Department of Broadband, Communications and the Digital Economy. This work should include close consultation with the industry.

### **Recommendation 1**

**1.50 I recommend that as part of the current review of the *Interactive Gambling Act 2001* being undertaken by the Department of Broadband, Communications and the Digital Economy, the government further investigate the method of payment controls which involves maintaining a 'blacklist' of merchant numbers of overseas gambling providers and supplying them to financial institutions.**

### **Conclusion**

1.51 In summary, I believe that while the IGA has been effective in limiting the provision of interactive gambling websites by Australian providers, the reality is that Australians continue to gamble on unregulated overseas websites. This exposes Australian consumers to risks. A better, safer alternative would be to allow a well regulated domestic market to operate and provide services to Australians.

1.52 I support the recommendation of the Productivity Commission to allow 'managed liberalisation' of online poker websites. An Australian domestic industry should be developed carefully with effective harm minimisation measures for online play as well as robust consumer protection measures.

1.53 In the model I support, if Australian providers were to be permitted to provide certain forms of online interactive gambling services, I believe that financial transaction barriers on overseas sites should also be put in place. Measures to block payments to overseas websites would be likely to steer most people towards the safer, well-regulated domestic sites. I recognise that such measures are not likely to achieve

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41 Mr Steven Munchenberg and Mr Andrew Wilkie MP, *Committee Hansard*, 16 September 2011, p. 30.

a total prohibition on Australians' access to overseas gambling websites, but would be likely to dissuade all but the most determined.

**Mr Andrew Wilkie MP**

**Chair**



# **Coalition committee members' additional comments**

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

1.1 Australia currently regulates the provision of online gambling services through the *Interactive Gambling Act 2001* (IGA), which was enacted by the Howard Government in 2001.

1.2 The Coalition recognises ongoing concern in the community about Australians being able to access casino-type games online. There is a risk for people accessing these sites. The sites are based overseas and there is no guarantee of authenticity, probity or recovery of winnings. The sites can be accessed by minors and problems gamblers and there is also no guarantee of responsible gambling practices such as counselling and self-exclusion. These overseas providers do not pay tax nor create employment in Australia.

1.3 Coalition committee members heard concerns raised during the inquiry that the current IGA legislation is not adequately enforced. Given the effectiveness of the IGA is to be examined by a Coalition policy committee, Coalition members of the Gambling Reform Committee have not yet formed a conclusive view on the operation of the IGA.

1.4 In November 2011, the Coalition launched a policy discussion paper on gambling reform and established a working group to consult with industry, state and territory governments, experts and the wider community to investigate policy options that effectively address problem gambling. Online gambling is included in this process and the Coalition is seeking comment on the effectiveness of current legislation, whether to strengthen legislation and whether changes to legislation will assist problem gamblers to overcome their addiction. The Coalition will complete this process before reaching a final position on any changes to current gambling laws to assess the effectiveness of the legislation and the effect of any changes on Australian consumers. It is expected that the Working Group will report back to the Leader of the Opposition by the end of February 2012.

### ***Financial transaction controls***

1.5 As noted in the Coalition policy discussion paper, views and comment are being sought on the capacity of lawmakers to cooperate with financial institutions as a way of better enforcing the current prohibitions regarding overseas online gambling sites.

### **Prohibiting the offering of credit to gamblers**

1.6 During the inquiry, the committee heard about a recent case involving a customer of a betting agency with a mental illness who was provided with credit

worth tens of thousands of dollars. Only later did it become evident that he was unable to repay the debt.<sup>1</sup>

1.7 As part of the policy discussion paper and working group launched in November 2011, the Coalition is currently seeking stakeholder comments on the Commonwealth prohibiting gambling providers offering credit in any form to gamblers.

1.8 As part of this consultation, the Coalition believes there should be an exemption for traditional bookmakers to continue to allow 'credit betting' (i.e. 'laying off') as this is often part of a bookmaker's professional business practice. In addition, current arrangements for VIPs in Australian casinos would be permitted.

### **Advertising of gambling products**

1.9 Coalition committee members believe that while gambling is a legitimate industry, there should be fair and reasonable limits to the advertising of gambling.

1.10 The practice of promoting 'live odds' during the broadcast of sporting events is a recent development of concern. The committee heard how the increasing promotion of live odds exposes vulnerable groups, such as those with a gambling problem or children, to gambling products.

1.11 As part of the policy discussion paper and working group launched in November 2011, the Coalition is seeking comments on the prohibition of the promotion of live odds during the broadcast of a sporting event while that event is in play. However, live odds updates could still be given during half-time or breaks in play. This would ensure that legitimate advertising of betting services would still be permitted but at the same time, promotional activity would not interfere with the enjoyment of a sporting event.

1.12 Due to their fundamental link with wagering, the Coalition believes the thoroughbred, harness and greyhound racing industries should be exempt from such measures.

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1 See *Committee Hansard*, 11 August 2011, p. 3. See also Richard Willingham, 'Betting agency settles over man's \$80,000 debt', *The Age*, 26 July 2011.

## **Conclusion**

1.13 The Coalition will reach a final position on any changes to gambling laws following completion of the working group process.

**Mr Josh Frydenberg MP**

**Mr Steven Ciobo MP**

**Senator Chris Back**



## **Additional comments by Senator Xenophon**

1.1 While I agree with much of the committee's report, I do not believe that sufficient action is being taken to address the risks and harms of online gambling which have already emerged, and have the potential to increase exponentially.

1.2 Online gambling will create the next big wave of gambling addiction unless urgent action is taken to improve the current regulatory framework. Australia already has difficulty dealing with the harm caused by poker machines in the community because of their rapid liberalisation, and we should learn from this experience. I do not believe that now is the time to open up the industry further, as doing so will inevitably lead to more problems.

1.3 I note that the committee heard about people experiencing problems with overseas gambling websites as well as domestic sites.

### **There are already problems to address**

#### *Overseas gambling websites*

1.4 In evidence which raised a number of issues, the committee heard from an individual who got into severe financial difficulties through accessing an overseas gambling website.

1.5 In the first instance, he accessed this website in response to an advertisement on a social networking site which offered an opportunity to make extra money each week. The advertisement took him to Casino.com, which the committee heard is a site hosted in Singapore but licensed in Gibraltar. It has an Australian flag in the background and lists of Australian winners, and takes bets in Australian currency. This individual had the impression the website was secure. He started with A\$250 on his credit card and received a bonus A\$250. After three hours he had won A\$6,000 and tried to withdraw it. However, he soon discovered that the free \$250 was conditional on playing certain games which he did not wish to play. The conditions also included that he had to wager 1,000 times his 'investment' amount before he could withdraw money.<sup>1</sup>

1.6 After having this explained the company offered him the option of resetting the balance to \$250. However, he felt like he had lost \$6,000 so after a week or so he started again. Within about 30 days he was up \$41,000 but found it difficult to withdraw because of a five day waiting period and a \$20,000 a month limit on withdrawals. So he continued to play, and in two months he was up \$90,000. Then he

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1 Committee Hansard, 16 September 2011, p. 56.

started to lose and lost the \$90,000 he had won. At one point, he lost \$50,000 in a day.<sup>2</sup>

1.7 In the meantime he was being sent free gifts, such as an iPod, laptop and iPhone4, and free trip to anywhere in the world plus \$5,000 spending money. He was being referred to as a VIP customer.<sup>3</sup>

1.8 The website then made \$90,000 in unauthorised transactions from his credit cards. He made official complaints to three banks which have now reversed the transactions. His total loss still stands at \$120,000.<sup>4</sup>

1.9 This case illustrates that the potential for harm with overseas sites is great and the regulatory framework in some of these countries is grossly inadequate. However, I do not believe that bringing these sites onshore is the answer. Australia already has a saturated gambling market, as evidenced with the recent growth in online sports betting, and the committee has heard that there are a growing number of people experiencing gambling problems from using domestic betting websites. How many more opportunities do Australians need to gamble, particularly on forms of gambling where the risk of harm and addiction is significant?

### ***Domestic online sports betting websites***

1.10 The growth in online sports betting is a major area for concern, as it has led to more people presenting with problem gambling from using domestic sites. This was reported by the University of Sydney Gambling Treatment Clinic (GTC):

In the past five years, as regulation around sports betting has been loosened, there has been an increase in the number of clients presenting to the clinic with problematic sports betting. Indeed, from representing less than 5% of our clients in the 2006-2007 financial year, problem gamblers with sports betting problems now represent 15-20% of new clients in the current financial year. Thus, whilst still representing a minority, reported problems with sports betting are rising, and rising rapidly.<sup>5</sup>

1.11 The GTC emphasised that these clients are not gambling on overseas but on domestic websites:

The vast majority of our sports betting clients are primarily gambling on Australian-based, legal sports betting operators. Whilst we would not want to dismiss the existence nor seriousness of illegal activity in either local or

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2 Committee Hansard, 16 September 2011, pp 56–57.

3 Committee Hansard, 16 September 2011, p. 57.

4 Committee Hansard, 16 September 2011, p. 58.

5 University of Sydney Gambling Treatment Clinic, *Submission 9*, p. 2.

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overseas sports betting markets, this issue does not appear to be a major contributing factor in the stories of the majority of our clients.<sup>6</sup>

1.12 The expansion of this domestic market along with the associated expansion in advertising and inducements to gamble are a significant concern. These areas must be addressed before any consideration is given to opening up the market for more gambling opportunities.

### **The risks of opening up the gambling market**

1.13 Liberalisation, or allowing domestic websites to provide online gambling services currently only available from websites overseas, is not the answer. It carries a significant number of risks. Liberalisation would carry the message that the government has sanctioned this activity and people will think that it is safe. However, the committee has heard that online gambling is not a safe environment.

#### ***Accessibility increases levels of problem gambling***

1.14 It is already very easy to gamble online, and the options available to online gamblers are far greater than those available to people who choose to gamble ‘in person’. Opening the gambling market will increase accessibility, which in turn will lead to more people participating. More people gambling will inevitably lead to more people developing gambling problems. This was even acknowledged by Professor Alex Blaszczynski:

There is certainly greater opportunity. Where there are greater opportunities, more people are exposed to gambling; where more people are exposed to gambling, the higher the levels of consumption; where there are higher levels of consumption, the greater is the number of people who develop problems. That is the same with alcohol consumption and distribution.<sup>7</sup>

1.15 It was also acknowledged by the Productivity Commission (PC):

Greater access could increase the prevalence of problem gambling and its associated harms.<sup>8</sup>

1.16 The evidence for this can be seen in Western Australia, where poker machines are only available at the Burswood Casino. Western Australia’s rate of problem gambling is lower than other jurisdictions,<sup>9</sup> demonstrating that increased liberalisation and access leads to higher levels of problem gambling. This also occurred in South

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6 University of Sydney Gambling Treatment Clinic, *Submission 9*, p. 2.

7 Professor Alex Blaszczynski, *Committee Hansard*, 16 September 2011, p. 34.

8 Productivity Commission, *Gambling*, vol. 2, Commonwealth of Australia, Canberra, 2010, p. 15.7.

9 Productivity Commission, *Gambling*, vol. 1, Commonwealth of Australia, Canberra, 2010, p. 5.20, 5.26, vol. 2 Appendix F.

Australia with the introduction of poker machines, particularly into hotels and clubs. This is also evident in other states.

### ***Internet appears riskier for problem gamblers***

1.17 It is already known that the online environment can exacerbate risky gambling behaviour, and research is showing increased rates of problem gambling. After reviewing the evidence of problem gambling rates in the online environment, the PC concluded that people who have gambled online tend to have higher rates of problem gambling than people who have not gambled online:

...while none of the studies so far are adequate, they tend to point towards higher rates of problem gambling from people who operate in the online environment. Why that is, is not so clear. There may be a selection bias that people who have problems tend more likely to go into the online as first adopters, but we just do not know. The evidence at the moment is that there appear to be some high risks in the online environment.<sup>10</sup>

1.18 The PC acknowledged the internet could exacerbate risky behaviour:

While the risks associated with online gambling are likely to be overstated, the relatively high prevalence of problem gamblers is still a cause for concern. At the very least, it indicates that the internet is very attractive to this group and, though the evidence is weak, gambling online may exacerbate already hazardous behaviour...<sup>11</sup>

### ***Protecting vulnerable individuals***

1.19 The ease of access and the ability to gamble at any time on anything makes online gambling problematic. In addition, if an individual is intoxicated, taking drugs or they have a mental health issue, this makes them vulnerable, and this not readily apparent in the online environment.

1.20 I do not agree with the PC that there are some features of gambling online at home which can mitigate the risks, such as family who may intervene. Online gambling has been identified as an attractive option for people who wish to hide their gambling so family members may not necessarily be aware of it. With mobile devices people can take their gambling anywhere.

1.21 The committee has heard that there is the potential to put in place methods of tracking and identifying risky gambling behaviour in the online environment.<sup>12</sup> However, because these methods are only possibilities at this stage and have not been mandated, they cannot be relied on to ‘solve’ the problems with online gambling.

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10 Dr Ralph Lattimore, *Committee Hansard*, 16 September 2011, p. 52.

11 Productivity Commission, *Gambling*, vol. 2, Commonwealth of Australia, Canberra, 2010, p. 15.15.

12 Professor Alex Blaszczynski, *Committee Hansard*, 16 September 2011, p. 34.

### **Taxation not assured**

1.22 Those arguing for liberalisation of online gambling point to the potential for tax revenue and jobs. The PC has said that the amount of tax that could be expected from such liberalisation would be uncertain:

On the tax side, though, our view was that this is not an area where you would be seeking significant tax revenue. You could not, precisely because of the capacity to move across borders—unlike physical poker machines, for example, where that capacity does not genuinely exist. The tax rates that you could achieve would be lower and we have also warned generally of the allure of tax revenue in this area.<sup>13</sup>

1.23 This was supported by Dr Mark Zirnsak of the Victorian InterChurch Gambling Taskforce:

...normally where gambling has been regulated or authorised within a jurisdiction the state looks at a cost-benefit analysis where there are the costs of the problem gambling and the harm is being caused, and that is seen to be balanced in some way by the benefit of collecting tax. But the problem with the online environment appears to be that often that tax revenue does not flow, so the benefit side is much reduced in an online environment compared to a land based gambling provider if you are doing that kind of analysis.<sup>14</sup>

### **Portability of business model**

1.24 The extent of job creation is also uncertain. Overseas experience has shown that providers tend to gravitate to regulatory environments where they pay less tax and have fewer licence conditions imposed on them. The portability of this online business model makes it easy to move. The committee also heard about the possibility of a gambling provider setting up in Australia but then moving overseas to take advantage of less regulation and more favourable tax rates, and therefore taking customers with them to a less regulated environment:

Potentially, the offshore provider is going to be able to offer much better deals to gamblers to, once they are gambling in the Australian environment, attract them into the offshore environment. So you have built the market through funnelling people into firms regulated in the Australian market and then having the offshore providers picking them off and shifting them over. And you may even have Australian companies do that. Tatts currently operate an online gambling facility out of Malta, so you could imagine Tatts setting up an Australian business that gets people in to play on a regulated Australian provider and then moves them to the Malta one. I do not want to cast aspersions on that particular company, but you could imagine a situation in which a company has an operation running out of Australia and an operation running out of somewhere else that markets

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13 Dr Ralph Lattimore, *Committee Hansard*, 16 September 2011, p. 44.

14 Dr Mark Zirnsak, *Committee Hansard*, 11 August 2011, p. 42.

from that operation to their offshore operation, which would be operating in a secrecy jurisdiction in which they do not pay any tax.<sup>15</sup>

## Conclusion

1.25 The possible benefits of liberalisation are at best uncertain, but it is clear that liberalisation would lead to more people developing gambling problems. I believe it would be unwise to liberalise other forms of online gambling such as casino-type games. This could be seen as giving it the seal of approval from the government, and could lead people to think it is safe when it is not:

**Senator XENOPHON:** But just going back to that: do you acknowledge that if you liberalise forms of gambling and say, 'This is approved by the state; it will be regulated, audited and all those things,' people still lose. The nature of the gambling transaction is that the house will always win—that is the case, is it not?

**Prof. Blaszczynski:** That is the case, absolutely.<sup>16</sup>

1.26 I agree with the committee view that the *Interactive Gambling Act 2001* (IGA) should be strengthened to improve its effectiveness. I support the current review being conducted by the Department of Broadband, Communications and the Digital Economy. It should look closely at the loopholes identified in the IGA through this inquiry, and put forward appropriate amendments to address them along with others they may uncover.

1.27 In addition to strengthening the IGA in order to make it more effective, I believe that specific measures are necessary to deter people from using overseas websites to gamble. In addition to the provisions suggested in the bill, which would allow customers to cancel financial transactions to international gambling websites, I also support the option which was raised during the inquiry, and which is outlined in chapter 15 and supported by the Chair.

1.28 This would involve the government maintaining a 'blacklist' of merchant identification numbers to enable financial institutions to prohibit transactions to certain vendors.

1.29 While not a perfect solution, I believe that such restrictions on online gambling transactions would go a considerable way to curbing problem gambling behaviour, and would also protect Australians from scam websites. Blocking direct payments would be likely to deter gamblers from making impulsive decisions to chase losses using quick credit card transactions. Even though there may be ways around such systems, such restrictions would force some gamblers to make a more conscious decision to deposit money into an account instead of making rapid direct payments.

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15 Dr Mark Zirnsak, *Committee Hansard*, 11 August 2011, p. 42.

16 Professor Alex Blaszczynski, *Committee Hansard*, 16 September 2011, p. 36.

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1.30 I support the recommendation of the Chair that, as part of the current review of the Interactive Gambling Act (IGA), the government should investigate in detail the merits and practicalities of a system of financial controls along these lines.

## Advertising

1.31 Advertising is a particular concern in relation to both overseas and domestic providers. I agree with the recommendation to strengthen the IGA to close the loopholes currently being exploited by overseas providers.

1.32 The proliferation of sports betting advertising shows one possible outcome of liberalisation. Unless specifically restricted, liberalisation would be likely to bring an avalanche of advertising for online casino-type games to attract new customers.

1.33 The current amount of sports betting advertisements is overwhelming. This goes beyond the issue of live odds, which have already attracted a significant amount of criticism. This level of advertising is increasing the normalisation of gambling – the 'gambification' of sport – which is a major concern not just for problem gamblers and those engaging in risky gambling behaviours, but particularly for young men and the next generation who will grow up viewing sports through the prism of gambling.<sup>17</sup> Further, the exposure of children to gambling advertising at sports events is an increasing community concern.

1.34 While the government's recent announcement to reduce and control the broadcasting of live odds is a step in the right direction, there are concerns about how effective this scheme will be. The fact that it will be regulated by the industry is not appropriate, and the government needs to understand that legislation is the only avenue that will ensure proper controls are in place.

1.35 While I support the committee's comments in relation to the intent of Schedule 3 of the Interactive Gambling and Broadcasting Amendment (Online Transactions and Other Measures) Bill 2011, I do not believe the committee majority's recommendation in relation to this goes far enough. While the committee majority has recommended that the Broadcasting Services Act be amended to prohibit gambling advertising during times when children are likely to be watching, this would mean that sport or sport or sports related programs broadcast late at night would still permit gambling advertising. However, this would not address the problem of children being exposed to gambling advertising at sporting grounds.

1.36 In addition to addressing live odds and broadcasting of gambling advertisements, I welcome the recommendations to achieve national consistency in a number of important areas to ensure more effective protection for consumers, noted below.

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17 Dr Samantha Thomas, *Committee Hansard*, 11 October 2011, p. 2.

## Inducements

1.37 The committee has heard that the regulation of inducements is inconsistent. Some gambling providers are able to offer credit and are able to pay commissions to third parties. As the University of Sydney Gambling Treatment Clinic told the committee, inducements to gamble have the potential to hinder the recovery efforts of existing problem gamblers:

I have a client, who I saw this week, for example, who was trying to cut down and then the gambling site gave him a free \$50 and that got him into a spiral where he ended up losing considerably more than that. While it might not contribute to someone becoming a problem gambler it definitely exacerbates the problem of already existing problem gamblers.<sup>18</sup>

### *Using credit to bet*

1.38 The committee heard of a case where a vulnerable man with a mental illness ran up \$80,000 in debts with Sportsbet. He was originally attracted by the offer of \$5,000 in free bets. He then accepted thousands of dollars worth of credit to continue betting.<sup>19</sup> I do, however, acknowledge the approach taken by Sportsbet when approached by myself and Mr Alan Tudge MP. Fortunately the transactions were eventually reversed, and Sportsbet acted promptly to reverse the man's bankruptcy and loss of property. Their prompt action deserves acknowledgement.

1.39 With a high-risk product such as a gambling service, inducements such as 'free bets' or the provision of credit can lead to significant financial problems, as shown in the aforementioned case. Regulations covering such practices are inconsistent between jurisdictions, allowing providers to use loopholes to their advantage.

### *Third party commissions*

1.40 This case also uncovered the practice of betting agencies paying commissions to third parties to introduce new clients to their services. These third parties then receive an 'affiliate share' of the gambler's losses:

**Mr Barry:** In this case, the client was referred to us by a third party. There are a number of third-party agents who would network within racing clubs and professional gambling circles. He was referred to us on the basis—

**Senator XENOPHON:** Sorry—let's go back a step. When you get a referral from a third party, and you have your Facebook page where people share tips and things like that, do you provide any credits, any inducements or any reward for third parties introducing customers to you?

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18 Mr Christopher Hunt, University of Sydney Gambling Treatment Clinic, *Committee Hansard*, 16 September 2011, pp 21–22.

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

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**Mr Barry:** Yes. Those third parties can be on a finders fee or they could gain a share of the revenue from the customer—an affiliate share.

**Senator XENOPHON:** If the punter loses \$10,000 and they were introduced by a third party, that third party could be getting a share of that?

**Mr Barry:** Absolutely.

**Senator XENOPHON:** Is that disclosed to the punter?

**Mr Barry:** Not necessarily, but it would not be in any way deliberately hidden.<sup>20</sup>

1.41 The nature of the gambling product was discussed and the fact that the more a person loses, the more the person who introduces them stands to receive:

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

**Senator XENOPHON:** But isn't this a little bit different? The bigger the person's loss, the more the referrer gets.

**Mr Barry:** It is often the case that when a third party refers someone to you they would get a share of the benefit. I do not think it is any different.

**Senator XENOPHON:** But given that you are dealing with an unusual product—you are dealing with a product that you acknowledge in your very comprehensive submission has a risk of harm and you have items on your website to deal with problem gambling—don't you see that offering those sorts of inducements could fuel problem gambling? The third party that introduces the punter to you might have an incentive to encourage that person to keep playing.

**Mr Barry:** Typically an affiliate would be something like a racing forum, an information site or that type of thing and those people would have links to our site. They refer a customer through that means. So typically that is a reward for the affiliate and the affiliate has an ongoing relationship with that customer.<sup>21</sup>

1.42 Sportsbet indicated that it paid out around \$3.5 million in commissions each year.<sup>22</sup> While this practice is disclosed in Sportsbet's terms and conditions listed on their website, a greater level of transparency is required. This should include mandatory disclosure laws similar to those relating to commissions paid for financial service referrals.

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20 Senator Xenophon and Mr Cormac Barry, Sportsbet, *Committee Hansard*, 11 August 2011, p 5.

21 Senator Xenophon, Mr Cormac Barry and Mr Ben Sleep, Sportsbet, *Committee Hansard*, 11 August 2011, p 5.

22 Senator Xenophon, Mr Cormac Barry and Mr Ben Sleep, Sportsbet, *Committee Hansard*, 11 August 2011, p 5.

1.43 The Queensland Government noted that there has been discussion of a national approach to inducements to bet for some years, but no agreement has yet been reached.<sup>23</sup> As a result, I support the recommendation of the committee for the COAG Select Council on Gambling Reform, in consultation with the COAG Legislative and Governance Forum on Consumer Affairs, to develop nationally consistent standards for tighter controls on the practice of credit betting and greater transparency around the practice of paying third party commissions by betting agencies. This work would feed into the work recommended in the next chapter for a national code of conduct for wagering providers addressing a number of business practices, including advertising.

1.44 However, I believe this approach should be included in legislation, with appropriate penalties for breaches, rather than an industry code and a nationally consistent approach through federal legislation is preferred to outlaw such practices. There is no question the Commonwealth has the constitutional power to legislate comprehensively in this area, using a combination of the corporations, banking and telecommunications, and taxation heads of power in the Constitution.

## **Conclusion**

1.45 The committee has heard how easy it is to gamble online. To quote Tim Costello: “online gambling allows you to lose your home without even leaving your home”.<sup>24</sup>

1.46 In relation to allowing online poker to be provided in Australia, I acknowledge the intent of regulation to ensure probity and protect consumers. However, the message this would send to the community would be one of normalising the activity, and it would create an impression of safety. But it would not be safe. More people will be attracted to such sites, more will lose money, and more will end up as problem gamblers. Furthermore, they could still choose to gamble on unregulated overseas sites that would offer inducements to do so. Problem gamblers would be more likely to choose unregulated overseas sites when confronted with any domestic consumer protection measures.

1.47 I am also concerned that opening up the market would create more access and generate more demand. It would result in a much bigger gambling industry in Australia. The more accessible forms of gambling are, the greater the degree of likely problems. This is the downside of the PC proposal—the more accessible you make a form of gambling, more people will participate in it, which will inevitably result in more problem gamblers.

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23 Queensland Government, *Submission 55*, p. 15.

24 Information available from:  
[http://sgp1.paddington.ninemsn.com.au/sunday/political\\_transcripts/article\\_473.asp?s=1](http://sgp1.paddington.ninemsn.com.au/sunday/political_transcripts/article_473.asp?s=1)  
(accessed 15 November 2011)

1.48 We need to be able to regulate effectively the forms of gambling that are already legal in Australia before we consider opening up the gambling market even further. This inquiry has shown the serious loopholes that exist in Australia's laws and regulations (including the gambling products offered), and these issues need to be addressed as a matter of urgency.

1.49 The rapid liberalisation and increased availability of poker machines has resulted in great harm in the community, and we are still trying to address that adequately. Harm minimisation measures have been catching up but they are clearly insufficient as new technology, inducements and features work against safety for consumers.

1.50 There are also lessons to learn from the growth in online sports betting, driven by persistent advertising on the part of gambling agencies. The committee has heard how people are now presenting to gambling clinics with online sports betting addiction, and that these numbers are growing. It is only now, when live odds announcements have reached saturation point, that some action to address it has been initiated. The government should learn from these gambling experiences and those overseas.

1.51 Through the current IGA review process, the Government should commission research to better understand and minimise the risks from online gambling, regardless of the eventual policy decisions regarding regulation.

1.52 All governments, the industry and other stakeholders should first turn their attention to better regulating the gambling services already legally available. Until appropriate and effective harm minimisation measures are made consistent and mandatory across jurisdictions, the community risks online gambling becoming the new growth area for problem gambling. This includes appropriate restrictions placed on advertising to avoid the normalisation of gambling and to reduce the exposure for children and other vulnerable people in the community. This should be the current focus. Until these areas are adequately addressed, Australian regulation should not be expanded to other gambling forms.

### **Interactive Gambling and Broadcasting Amendment (Online Transactions and Other Measures) Bill 2011**

1.53 In relation to the provisions of the bill the issues raised have been detailed earlier in the report.

#### **Schedule 1 —Ability to suspend or cancel online gambling transactions**

1.54 In an attempt to reduce losses resulting from interactive and online gambling, the bill establishes provisions to allow consumers to cancel regulated financial transactions to international gambling websites provided the transactions have not been completed.

1.55 As already indicated, I support an additional alternative method put forward during the hearings. This involves the government maintaining a 'blacklist' of merchant identification numbers to enable financial institutions to prohibit transactions to certain vendors.

1.56 In conjunction with strengthening the Interactive Gambling Act, this would deter gamblers from accessing overseas gambling websites. I recognise there will be some who find technical ways to avoid these measures, but it should protect the majority of gamblers, and would ensure those who circumvent the measures make a much more conscious decision to do so.

1.57 While I support the Chair's recommendation that this issue should be further investigated as part of the current review of the IGA, I believe it should result in an amendment which requires that a blacklist of prohibited sites be used by financial institutions to prohibit online gambling transactions.

## **Schedule 2—Inducements to gamble**

1.58 Schedule 2 of the bill amends the IGA, making it an offence to offer customers an inducement to gamble.

1.59 As indicated above, inducements to gamble can be harmful to those who already have or who are at risk of developing gambling problems. This is particularly the case when the inducements, coupled with advertising, give the impression that it is easy to win. Gambling is a product with inherent dangers, and should not be treated like any other product. This already exists in the case of land-based gambling venues, although these regulations should also be improved.

1.60 I note the committee majority's decision to wait until the review of the IGA has been concluded so that a package of amendments can be considered. Given that the review is not due to report until mid 2012, and further consideration will have to be given to the findings before legislation is drafted, I believe this issue needs to be addressed now rather than waiting for another year at least. I stress the importance of moving quickly on this issue to address inducements and links to online gambling websites which are currently loopholes.

## **Prohibitions on corporations offering gambling services —Clause 3**

1.61 Clause 3 of the bill prohibits gambling service providers from offering spot betting (also known as 'micro' or exotic betting), in-play betting or any similar form of betting.

1.62 The bill attempts to address what is considered to be a riskier form of betting for problem gambling, as well as the greater potential for match-fixing resulting from bets on micro-events and bets on losing outcomes.<sup>25</sup> The National Rugby League

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25 Senator Xenophon, Second Reading Speech, *Journals of the Senate*, 20 June 2011, p. 3272.

(NRL) has recently banned some exotic betting options following a match-fixing scandal in 2010, and the Australian Football League has also banned exotic bets such as the last goal in a game, tribunal verdicts and 'the first coach to be sacked'.<sup>26</sup>

1.63 The committee majority has agreed to maintain the status quo for in-play betting and spot betting, instead opting for further research.

1.64 However, I note that increasing concerns in relation to spot betting are being raised around the world, most recently by Lord Paul Condon. Lord Condon, who set up and led the International Cricket Council's anti-corruption unit from 2000, has stated that "spot-fixing is the name of the game" when it comes to corruption in cricket.<sup>27</sup>

1.65 Lord Condon's comments came after three Pakistani cricket players were jailed after being found guilty of conspiracy to cheat and conspiracy to accept corrupt payments during the 2010 tour of England.

1.66 An article by the *Brisbane Times'* Phil Lutton, published in July this year, stated that 19 per cent of NRL footballers know of players who have bet on games.<sup>28</sup> Dr Jack Anderson, an Irish expert on sports law and corruption, is quoted in the article as saying:

You see in the NRL and Australian Rules, certain players doing specific things that facilitate gambling. It's about the integrity in sport. Do you believe what is being done on the field is being done for the right reasons or for gambling reasons?

1.67 The ability to place spot bets means that the temptation for players is greater than ever. Getting an entire team to throw a match is no longer necessary; with spot betting, one player's actions are all that need to be influenced. However, this is not always the case. In an interview, with the *New York Times'* soccer blog, sports corruption expert and author of *The Fix*, Declan Hill states:

There was a case in Asia that I looked at when researching my book where they fixed all the players on one team, all the players on the other team, the coaches, the substitutes, the referee and the linesmen. They had everyone.<sup>29</sup>

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26 Senator Xenophon, Second Reading Speech, *Journals of the Senate*, 20 June 2011, p. 3273.

27 Telegraph UK, 'Lord Condon: every international cricket team, at some stage, was involved in illegal match fixing', 15 November 2011. Online: <http://www.telegraph.co.uk/sport/cricket/international/8891998/Lord-Condon-every-international-cricket-team-at-some-stage-was-involved-in-illegal-match-fixing.html>

28 'Footballers gambling? You can bet on it', *Brisbane Times*, 28 July 2011 (<http://www.brisbanetimes.com.au/sport/footballers-gambling-you-can-bet-on-it-20110727-1i02z.html>)

29 Declan Hill, *New York Times Goal*, 27 November 2009. Online: <http://goal.blogs.nytimes.com/2009/11/27/q-a-on-match-fixing-with-declan-hill-author-of-the-fix/>

1.68 It is vital that action is taken on this issue before a major Australian sporting code becomes irrevocably damaged by betting-induced corruption.

### **Schedule 3—Advertising**

1.69 Schedule 3 of the bill amends the Broadcasting Act to prohibit advertising of betting venues and online gambling sites during G classified programs and all sport or sport related programs. I have previously outlined my concerns with the committee majority's recommendation on this issue, although I support their stance in general.

1.70 Evidence of the pervasive and intrusive nature of gambling advertising raises issues of the need to require effective remedial advertising to deal with gambling addiction. In the absence of an outright ban on gambling advertising, there ought to be a requirement for advertisers to fund on a dollar for dollar basis advertisements promoting the reduction of harm and gambling help services. Such monies should not be administered by the industry, but rather by government with input from independent experts.

### **Schedule 4—Obtaining a financial advantage by deception, in relation to a code of sport**

1.71 Schedule 4 of the bill inserts a provision into the Criminal Code, making it an offence to participate in match-fixing, establishing a maximum penalty of 10 years imprisonment and/or 10,000 penalty units.

1.72 I note the work underway to advance the new National Policy on Match-Fixing, and I encourage the government to progress this issue as a matter of urgency. I refer to my comments earlier in relation to my concerns on this matter.

### **Additional information**

1.73 I would also like to raise concerns about an issue that has come to my attention in the last few days as the committee finalised this report. I hope to be able to discuss this further with the committee in the near future.

1.74 It has recently come to my attention that some games that can be played through websites such as Facebook are considered to be 'excluded gaming services' under Section 8B of the *Interactive Gambling Act 2001*.

1.75 However, a constituent has raised concerns with me about a particular game, where players are encouraged to buy chips with real money. These chips are then gambled, and players either win or lose. However, there is no way to convert the chips back into real currency and therefore cash out winnings. When players contact the website to complain, they do not receive a reply and their account is shut down.

1.76 I have been informed by the Australian Communications and Media Authority that this game is not considered a 'prohibited internet gambling service' because it is

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not possible to win ‘money or anything else of value’ and is therefore considered an ‘excluded gaming service’ under the Act<sup>30</sup> – even though money can be lost.

1.77 This demonstrates a clear loophole in the Act, which must be addressed as a matter of urgency. It is reasonable to assume that a game which relies on purchasing chips and then gambling these chips in casino games would then allow a player to cash out their winnings. The fact that this game is able to operate within the current law in Australia simply highlights the urgent need for reform in this area.

#### **Recommendation 1**

**1.78 That the bill be passed with amendments to require that a blacklist of prohibited sites be used by financial institutions to prohibit online gambling transactions.**

#### **Recommendation 2**

**1.79 That the loophole identified in relation to the matters raised in 1.73 to 1.77 be the subject of urgent legislative amendment.**

**NICK XENOPHON**

**Independent Senator for South Australia**

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<sup>30</sup> ACMA, email to office of Senator Nick Xenophon, 25 November 2011, additional information received by the committee 1 December 2011.



## **Appendix 1**

### **Submissions received for the inquiry into interactive and online gambling and gambling advertising**

#### **Submission No.**

1. Dr Declan Hill
2. Wesley Mission
3. Dr Jeffrey Derevensky
4. FamilyVoice Australia
  - 4a. Supplementary Submission
5. Netball Australia
6. Anglicare Tasmania
7. Dr Sally Gainsbury and Professor Alex Blaszczynski
8. Australian Crime Commission
9. University of Sydney Gambling Treatment Clinic
10. The Royal Australian and New Zealand College of Psychiatrists
11. NSW Bookmakers' Co-operative Ltd
12. Betfair Pty Ltd
13. QiLynx Systems
14. Relationships Australia Inc
15. WA Department of Racing, Gaming and Liquor
16. The Coalition of Major Professional and Participation Sports
17. Social Issues Executive, Anglican Diocese of Sydney
18. Australian Bookmakers' Association Pty Ltd
19. Gaming Technologies Association Limited
20. Free TV Australia

21. Australian Christian Lobby
22. Tabcorp Holdings Limited
23. Telstra
24. Clubs Australia
25. Department of Families, Housing, Community Services and Indigenous Affairs
26. TAS Department of Treasury and Finance
27. Australian Racing Board Limited
28. Department of Broadband, Communications and the Digital Economy
  - 28a. Supplementary Submission
29. Responsible Gambling Advocacy Centre
30. Clubs WA
31. Victorian InterChurch Gambling Taskforce
  - 31a. Supplementary Submission
32. Dr John McMullan
33. Gambling Commission (Great Britain)
34. Mr James McNeill
35. Regis Controls Pty Ltd
36. Mr Bill Barton
37. RSL and Services Clubs Association
38. Tennis Australia
39. Squash Rackets Association of SA Inc.
40. Leagues Clubs Australia
41. Greyhounds Australasia
42. iBus Media Limited
43. Betchoice Corporation Pty Ltd
44. Sportsbet Pty Ltd

45. Department of Prime Minister and Cabinet, Office for Sport
  - 45a. Supplementary Submission
46. Gambling Impact Society (NSW) Inc.
47. Alderney Gambling Control Commission
48. Australian Athletes Alliance
49. Australian Federal Police
50. Racing and Wagering Western Australia
51. Northern Territory Racing Commission
52. Harness Racing Australia
53. Mr Paul Aalto
54. Australian Internet Bookmakers Association
55. QLD Department of Justice and Attorney-General
56. NSW Government
57. Ms Heather Coyne
58. Mr Jack Winchester
59. George's story
60. Name Withheld
61. Confidential
62. Responsible Gaming Networks Pty Ltd

## **Submissions received for the Interactive Gambling and Broadcasting Amendment (Online Transactions and Other Measures) Bill 2011**

### **Submission No.**

1. The Coalition of Major Professional and Participation Sports
2. Sportsbet Pty Ltd
3. Betfair Pty Ltd
4. Responsible Gambling Advocacy Centre
5. Australian Racing Board Limited
6. Netball Australia
7. Tasmanian Inter-Church Gambling Taskforce
8. TAS Department of Treasury and Finance
9. Social Issues Executive, Anglican Diocese of Sydney
10. Tabcorp Holdings Limited
11. FamilyVoice Australia
12. Royal Australian and New Zealand College of Psychiatrists
13. iBus Media Limited
14. Ms Juliette Overland
15. Australian Bankers' Association Inc.
16. VISA

## **Additional Information Received**

1. Additional Information from the Australian Federal Police received 19 August 2011
2. Additional Information from the Australian Federal Police received 19 August 2011
3. Correspondence from Senator Nick Xenophon to the Gambling Commissioner in Gibraltar
4. Response from the Gambling Commissioner in Gibraltar to Senator Nick Xenophon
5. Correspondence from Senator Nick Xenophon to the Chief Minister for Gibraltar
6. Correspondence from Senator Nick Xenophon to the Northern Territory Licensing Commission
7. Response from the Northern Territory Licensing Commission to Senator Nick Xenophon
8. Additional information provided by the Coalition of Major Professional and Participation Sports on 11 August 2011
9. Additional information from the Responsible Gambling Advocacy Centre, received 4 November 2011
10. Correspondence from Senator Nick Xenophon to ACMA, received 1 December 2011
11. Response from ACMA to Senator Nick Xenophon, received 1 December 2011

## **Answers to Questions on Notice**

1. Answers to questions on notice provided by Responsible Gambling Advocacy Centre on 22 August 2011
2. Answers to questions on notice provided by Betfair Pty Ltd on 23 August 2011
3. Answers to questions on notice provided by Professor Jeffrey Derevensky on 26 September 2011
4. Answers to questions on notice provided by Sportebet Pty Ltd on 6 October 2011

## **Correspondence**

1. Correspondence from the Liquor and Gambling Commissioner (SA) received 15 September 2011
2. Correspondence from the Tasmanian Gaming Commission received 16 September 2011
3. Correspondence from the Victorian Commission for Gambling Regulation received 20 September 2011
4. Correspondence from the ACT Gambling and Racing Commission received 22 September 2011
5. Correspondence from the Independent Gambling Authority received 12 September 2011
6. Correspondence from the WA Department of Racing, Gaming and Liquor received 30 September 2011
7. Correspondence from the NSW Office of Liquor, Gaming and Racing received 5 October 2011
8. Correspondence from the QLD Office of Liquor and Gambling Regulation received 21 September 2011

## **Appendix 2**

### **Public Hearings and Witnesses**

**Thursday, 11 August 2011 – Melbourne, VIC**

#### **Sportsbet Pty Ltd**

Mr Cormac Barry, Chief Executive Officer

Mr Ben Sleep, Chief Financial Officer

#### **Coalition of Major Professional and Participation Sports**

Mr Malcolm Speed, Executive Director

#### **Betfair Pty Ltd**

Mr Andrew Twaits, Chief Executive Officer

Mr Josh Blanksby, Director, Legal and Corporate Affairs

#### **Responsible Gambling Advocacy Centre**

Ms Penny Wilson, Chief Executive Officer

#### **Victorian InterChurch Gambling Taskforce**

Dr Mark Zirnsak, Chair

Mr Denis Fitzgerald, Catholic Social Services Victoria

Major Brad Halse, Salvation Army

Rev Brent Lyons-Lee, Victorian Baptist Church

Mr Graham Reynolds, Committee Member

**Friday, 19 August 2011 – Canberra, ACT**

**Australian Federal Police**

Mr Ramzi Jabbour, National Manager Crime Operations

Mr Peter Sykora, Manager Crime Operations

Mr Peter Whowell, Manager, Government Regulations

**Australian Racing Board**

Mr Andrew Harding, Chief Executive

Mr Robert Bentley, Chairman

**iBus Media Limited**

Mr Damon Rasheed, Chief Consultant

Mr Jamie Nettleton, Partner, Addisons Lawyers

**Australian Internet Bookmakers Association**

Mr Tony Clark, Executive Officer

**Gambling Impact Society (NSW)**

Ms Kate Roberts, Chairperson

Mr Ralph Bristow, Committee Member

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

Mr Richard Windeyer, First Assistant Secretary, Digital Economy Strategy Division

Ms Ann Campton, Assistant Secretary, Broadcasting and Switchover Policy Branch

**Australian Communications and Media Authority**

Ms Jenny Allen, Senior Investigator

Ms Jennifer McNeill, Acting General Manager, Content, Consumer and Citizen Division

Ms Elizabeth Press, Manager, Broadcasting Standards Section

**Friday, 16 September 2011 – Canberra, ACT****Dr Jeffrey Derevensky**

Co-Director, International Centre for Youth Gambling Problems and High Risk Behaviours, McGill University

**Australian Bookmakers' Association**

Mr Peter Fletcher, Chief Executive Officer

Mr Mick Rolfe, Vice Chairman

**University of Sydney Gambling Treatment Clinic**

Mr Christopher Hunt, Counsellor

**Australian Bankers' Association**

Mr Steven Münchenberg, Chief Executive Officer

**Professor Alex Blaszczynski****Dr Sally Gainsbury****Productivity Commission**

Mr Gary Banks, Chairman

Mr Robert Fitzgerald, Commissioner

Dr Ralph Lattimore, Assistant Commissioner

**Tuesday, 11 October 2011 – Canberra, ACT****Dr Samantha Thomas****Associate Professor Colin McLeod**

