



Australian Government

**Department of Communications,
Information Technology and the Arts**

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

REPORT

July 2004

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Key interactive gambling terminology

The following definitions are provided for convenience only. They are not exhaustive, nor are they to be considered legal definitions for the purposes of statutory construction.

<i>Interactive gambling</i>	Betting (in the ordinary meaning of the term) using a service provided over the Internet, a broadcasting or datacasting service, or any other content service. See ss.4 and 5 of the <i>Interactive Gambling Act 2001</i> (IGA).
<i>Gaming</i>	Gambling on games of chance, or mixed chance and skill, for example, card games and poker machines. Interactive forms of this type of gambling are prohibited under the IGA (s.6), except where provided in a public place (i.e. bar, club, or casino) (s.8B).
<i>Wagering</i>	Gambling on racing or sports events. With some exceptions, interactive forms of this type of gambling are permitted under the IGA (para. 6(3)(aa), subs. 8A(1)).
<i>Lotteries</i>	A service for the conduct of a lottery or a service for the supply of lottery tickets. Interactive forms of this type of gambling are permitted under the IGA (para. 6(3)(ae), subs. 8D(1)).
<i>Betting exchange</i>	Operate by providing an online brokerage service between two (or more) bettors on a particular event. The exchange levies a small commission on the players' net winnings. See section 3.1 below.
<i>Back</i>	Betting that the outcome of an event or contingency <i>will</i> occur. For example, one <i>backs</i> a horse to win a race. This is traditionally what a consumer does when placing a wager with a bookmaker, and is therefore what is normally considered to be betting.
<i>Lay</i>	Betting that the outcome of an event or contingency <i>will not</i> occur. For example, one <i>lays</i> against a horse to win an event. This is traditionally what a bookmaker does when a wager is placed.
<i>Continuous wagering</i>	Describes two related forms of wagering which enable bets to be placed after the commencement of an event; in-the-run betting and ball-by ball betting.
<i>In-the-run</i>	A form of continuous wagering whereby the bettor is able to wager on the outcome of a sporting event after that event has begun (e.g. betting on the outcome of a football match at half time). Interactive forms of this type of gambling are specifically prohibited under the IGA (para. 8A(2)(a)).
<i>Ball-by-ball</i>	A form of continuous wagering whereby the bettor is able to wager on the outcome of a specific event within a sporting contest (e.g. whether or not the next serve in a tennis match will be an ace). Interactive forms of this type of gambling are specifically prohibited under the IGA (para. 8A(2)(b)).

EXECUTIVE SUMMARY

This is the report of the review of the issues related to Commonwealth interactive gambling legislation, conducted by the Department of Communications, Information Technology and the Arts (the Department). The conduct of the review is a statutory requirement under s.68 of the *Interactive Gambling Act 2001* (IGA), which establishes a complaints-based legislative framework to address community concerns about the availability and accessibility of interactive gambling in Australia.

As required under subs. 68(1) of the IGA, the following matters have been considered by the review:

- the operation of the IGA
- the growth of interactive gambling services
- the social and commercial impact of interactive gambling services
- the effect of existing exclusions
- the effectiveness of the IGA in dealing with the social and commercial impact of interactive gambling services
- technological developments that are relevant to the regulation of interactive gambling services
- technological developments that may assist in dealing with problem gambling.

The review has also considered the feasibility of and capacity to regulate financial transactions associated with the provision of interactive gambling services.

The Department's background paper of February 2003 (at **Attachment B**) set out the operation of the IGA and invited submissions on the matters to be considered by the review. Forty-five submissions were received from a range of stakeholders including broadcasters, the racing industry, gambling providers, community organisations and interested members of the public (see **Attachment A**).

The Department contracted the Allen Consulting Group (ACG) to provide research and other supporting material on a number of the matters to be dealt with under the review. ACG undertook broad consultations with key stakeholders, analysed existing Australian and international research and engaged Roy Morgan Research to undertake a national survey of interactive gambling users and services. The ACG report is available online at www.dcita.gov.au/igareview.

The IGA establishes a complaints-based legislative framework to address community concerns about the availability and accessibility of interactive gambling in Australia. The objective of this legislation is to ensure new interactive gambling services do not exacerbate the level of problem gambling in Australia.

The IGA makes it an offence to provide interactive gambling services to customers physically located in Australia. This offence, which carries a maximum penalty of \$220 000 per day for individuals and \$1.1 million per day for corporations, applies to all interactive gambling service

providers, whether based in Australia or offshore, whether Australian or foreign owned. These prohibited services typically include online casino-style gaming services of chance or mixed chance and skill, such as roulette, poker, craps, online poker machines and blackjack. The IGA also makes it an offence to advertise interactive gambling services in Australia.

The offences of providing and advertising interactive gambling services do not apply to all interactive gaming and wagering services. The IGA provides for a limited number of exclusions as follows:

- a telephone betting service
- excluded wagering services including betting on a horse race, harness race, greyhound race or sporting event, or any other event, series of events or contingency, where the bet is placed prior to the event commencing
- excluded lottery services—which include most forms of lottery service, except for online instant and scratch lotteries and other highly repetitive or frequently drawn keno-type lotteries
- excluded gaming services provided to customers in a public place
- services that have a designated broadcasting or datacasting link, including:
 - a program or series of programs broadcast on a broadcasting service
 - programs or content transmitted on a datacasting service
- certain contracts (including options and futures contracts) that are exempt from gaming or wagering laws under the *Corporations Act 2001*
- any service declared exempt by the Minister.

The advertising prohibition under the IGA extends to all forms of media, both electronic and non-electronic, including advertising via the Internet, broadcast services, print media, billboards and hoardings, subject to certain exceptions. These exceptions include political advertising and incidental or accidental advertising. The prohibition does not extend to advertisements published in overseas media, such as magazines that are published overseas, or websites that are aimed at non-Australian audiences.

Growth of interactive gambling services

Global interactive gambling continues to grow, driven by strong consumer demand for both interactive gaming and sports betting services. Growth expectations have weakened, however, in light of an increasingly prohibitive stance toward the provision of Internet gambling services in the United States, which is the largest market for such services.

Relative to the global market, the Australian interactive gambling industry remains small and is dominated by a small number of larger providers with a strong export focus. Domestically, there has been some growth in the consumption of interactive gambling—predominantly for wagering on racing and sporting events. By contrast, there is no evidence to suggest an equivalent level of growth in the use of Internet gaming services that are prohibited under the IGA.

A large proportion of the growth in Internet-based sports and race betting is attributable to the substitution of Internet wagering from other (offline) methods. In line with international developments, the demand for sports betting products in Australia is expected to continue to grow, particularly for new wagering models such as betting exchanges.

The social and commercial impact of interactive gambling services

The likelihood of Internet gamblers being at risk of problem gambling is equivalent to comparable offline gambling services. However, as with offline services, the mode of interactive gambling does appear to influence the level of social harm potentially attributable to each category of gambling service.

Gaming services continue to present significant risks in terms of problem gambling, while lotteries and wagering services are less associated with incidences of problem gambling.

While providing a new business model for betting on racing and other sporting events, betting exchanges retain the basic characteristics of a wagering service and, at this stage, do not represent a significantly new form of gambling. Exchange operations do not appear to pose any greater risk of exacerbating problem gambling than traditional Internet wagering services permitted under the current legislative framework.

However, the use of interactive wagering services in Australia is growing and increased usage could potentially lead to a greater incidence of problem gambling.

Interactive wagering services can implement responsible wagering and consumer protection measures that are not as feasible offline.

Responsible interactive wagering regimes are already in place in some Australian jurisdictions. State and territory governments could consider requiring uniform and consistent online consumer protections of betting exchanges and other forms of interactive wagering services.

The operation of the IGA and the effect of existing exclusions

The main elements of the IGA, including the main offence provision and the complaints system, have curtailed development of the Australian interactive gaming industry and been associated with the minimal use of Internet gaming services by Australians.

The overwhelming majority of Australian Internet gambling consumers use services permitted under the IGA. The IGA has, therefore, broadly achieved its overall objective, which is to minimise the potential expansion of interactive gambling that may exacerbate problem gambling in Australia.

The Australian community remains concerned, however, about the potential for social harm resulting from access to new, interactive gambling services. In that context, there is continued support for the ongoing role of the current legislative framework.

A sufficient case has not been made for either the partial or full removal of the prohibition on continuous wagering which demonstrates features associated with a higher risk of problem gambling.

- Ball-by-ball betting (betting on a contingency after the commencement of a sporting event) has been found to demonstrate the repetitive, addictive qualities of gaming most likely to engender the risk of exacerbating problem gambling.
- While the potential harmful effects of in-the-run betting are less clearly demonstrated (betting on the outcome of a sporting event after it has commenced), the provision of such services in Australian homes may potentially normalise aberrant gambling behaviour and exacerbate the social harm associated with problem gambling.

Several submissions called for the wagering and lotteries exclusion to be limited to Australian-licensed providers, the review does not consider that a substantive case has been made for amendments to the IGA to this effect. Such amendments would be inconsistent with the intent of the IGA to limit services likely to be associated with an exacerbation of problem gambling, rather than their regulatory status in each of the eight Australian jurisdictions. They would also have the effect of extending the application of the legislative framework to matters which remain more appropriately matters for consideration by the states and territories, namely the licensing and regulation of gambling activities.

Gambling services licensed and regulated by the states and territories and provided in physical premises do not constitute new interactive gambling services. The current exclusion for offline gambling services that happen to use a communications link, such as TABs and poker machines connected between and possibly within licensed premises should be maintained under the IGA.

However, gaming services, and in particular poker machines, present clear risks in terms of problem gambling and therefore remain a significant policy concern for governments of all levels. These concerns are appropriately considered through cross-governmental bodies, such as the Ministerial Council on Gambling, and under relevant state and territory licensing and regulatory regimes.

Technological developments relevant to the regulation of interactive gambling services or capable of assisting in the management of problem gambling

While URL (uniform resource locator) and IP (Internet protocol) address-based filtering techniques appear to be more technically feasible than in 2001, filtering technologies have not advanced to a point where they might be suitable for mandatory blocking of prohibited Internet gambling content at an Internet service provider (ISP)-level. Based on current capabilities, PC (personal computer)-level filtering continues to be the most appropriate enforcement point for the application of the filtering products.

Geolocation technologies, which attempt to determine the location of end-users who access the Internet, have achieved greater commercial application since the commencement of the IGA. They remain, nevertheless, subject to a number of drawbacks that limit their capacity to accurately determine the location of online users.

Currently available player protection measures have the capacity to complement the framework established by the IGA, but not to replace it. Responsible gambling and consumer protection measures can potentially limit increased incidences of problem gambling in those forms of gambling that are legal under the IGA. There is no evidence to suggest that they would ameliorate problem gambling in high-risk gambling modes.

The feasibility of, and capacity to, regulate financial transactions associated with the provision of interactive gambling services

Regulations made in accordance with s.69A are unlikely to achieve the outcome intended by Parliament that was to discourage the provision of interactive gambling services to customers in Australia.

The likely result of regulations would be that Australian card-issuing financial institutions would be liable for any dishonoured gambling-related debts under either of the major credit card associations (MasterCard and Visa¹). Online casino operators would be under little pressure to wind back their operations to Australians, and consumers may be attracted by their capacity to repudiate any debt incurred by such gambling.

Australian card-issuing institutions would probably respond to the introduction of such regulations by blocking the use of their cards for all gambling-related transactions, including wagering and lottery services permitted under the IGA.

However, a range of potential circumventions would reduce the potential effectiveness of using the financial payments system to this end. These include the:

- failure on the part of gambling merchants to correctly code Internet gambling transactions
- use of online payment providers to ‘obscure’ the correct coding of transactions
- use of alternative (non-credit card) payment systems.

To achieve the purpose of s.69A, new regulatory mechanisms and additional information requirements in the card associations’ financial transaction authorisation request process would be required. There would be significant efficiency costs, processing delays, and other that would ultimately be borne by all Australian credit cardholders.

In view of these costs, and the low use of illegal interactive gambling services by Australians, a case has not been made to use the financial payments to regulate the provision of interactive gambling services.

¹ Credit cards provided by the major associations, namely MasterCard and Visa, continue to be the major payment method used to finance interactive gambling transactions.

1. INTRODUCTION—REQUIRED REVIEW AND PROCESS

1.1 The review

The *Interactive Gambling Act 2001* (IGA) establishes a complaints-based legislative framework to address community concerns about the availability and accessibility of interactive gambling in Australia. The objective of this legislation is to ensure new interactive gambling services do not exacerbate the level of problem gambling in Australia.

Subsection 68(1) of the IGA requires that, before 1 July 2003, the Minister for Communications, Information Technology and the Arts (the Minister) must cause to be conducted a review of issues relevant to the Australian Government's interactive gambling legislative framework. This subsection stipulates that the following matters be included in the review:

- the operation of the IGA
- the growth of interactive gambling services
- the social and commercial impact of interactive gambling services
- the effect of existing exclusions
- the effectiveness of the IGA in dealing with the social and commercial impact of interactive gambling services
- technological developments that are relevant to the regulation of interactive gambling services
- technological developments that may assist in dealing with problem gambling.

Subsection 68(4) of the IGA requires that services that are currently excluded under the IGA be considered by the statutory review. Consequently, the review has considered issues related to all forms of interactive gambling services, whether or not currently prohibited. In line with this requirement, 'interactive gambling services' for the purposes of the review shall refer to all interactive gaming and wagering services.

On 16 January 2003, the then Minister announced that he had instructed the Department of Communications, Information Technology and the Arts (the Department) to undertake the required review. In addition to the matters covered under subparagraph 68(1), the then Minister instructed the review to examine the feasibility of and capacity to regulate financial transactions associated with the provision of interactive gambling services.

1.2 Review process

On 26 February 2003, the then Minister released a background paper (**Attachment B**) setting out the operation of the IGA and inviting submissions on the matters to be considered by the review. Submissions were sought by 22 April 2003.

The Department received 45 submissions in response to the paper from a range of organisations

and interested parties. Copies of publicly available submissions were posted on the Department's webpage. A list of submitters is at **Attachment A**. A number of stakeholders also provided supplementary information to support their submissions that have been considered in the context of the review.

Following a competitive tender process, the Department contracted the Allen Consulting Group (ACG) to provide research and analysis for a number of the technical matters to be considered by the review. These matters included an assessment of:

- the growth of interactive gambling services
- the social and commercial impact of interactive gambling services
- technological developments relevant to the regulation of interactive gambling services, or any such developments which may assist with problem gambling
- the feasibility of and capacity to regulate financial transactions associated with the provision of interactive gambling services.

ACG undertook broad consultations with key stakeholders, analysed existing Australian and international gambling research, and engaged the Roy Morgan Research to undertake a national survey of interactive gambling users and services. The ACG report is available online under the 'Consultation' link at www.dcita.gov.au.

2. THE COMMONWEALTH'S INTERACTIVE GAMBLING LEGISLATIVE FRAMEWORK

2.1 Background

The legislative framework established under the IGA is part of the Australian Government's approach to preventing the escalation of the harmful effects of problem gambling on the Australian community.

On 16 December 1999, the Prime Minister released a report by the Productivity Commission entitled *Australian Gambling Industries*. A key finding the report was that the availability of gambling services on the Internet represents a 'quantum leap' in the accessibility of gambling, and has the potential to exacerbate problem gambling. In releasing the report, the Prime Minister proposed the establishment of a Ministerial Council on Gambling to provide national coordination on gambling policy.

Comprising Australian Government, state and territory Ministers and including representation from Norfolk Island, the Ministerial Council met for the first time on 19 April 2000 and agreed to the aims and objectives of a national approach to the negative impacts of problem gambling. It was agreed to exchange information on responsible gambling strategies, and to provide a forum for discussing common issues, with the objective of developing suitable regulatory approaches.

In November 2000, the Council of Australian Governments (COAG) considered the issues of problem gambling. It reached agreement on the immediate implementation of a set of harm minimisation measures by state and territory governments, mostly focused on electronic gaming machines, and agreed that the Ministerial Council on Gambling would consider a number of more far-reaching measures, including research and public awareness strategies. The Council most recently met on 2 July 2004.

The introduction of the IGA followed the imposition of a moratorium on the provision of interactive gambling services which was in effect from 19 May 2000 to 18 May 2001. During the moratorium period, the Government tasked the then National Office for the Information Economy (NOIE) with investigating the feasibility and consequences of banning the provision of interactive gambling services to Australian residents.

In line with previous inquiries, NOIE found the growth of interactive gambling has the potential for negative social consequences in Australia because of increased accessibility of gambling services. While noting difficulties with technological methods for implementing a ban on interactive gambling based on Internet content control, the NOIE report confirmed that the Commonwealth has clear constitutional and enforcement powers to ban interactive gambling within Australia. The report also noted that such an approach would be consistent with the Australian Government's e-commerce strategy, which calls for appropriate legal and regulatory measures to protect consumers.

In order to prevent the further spread of gambling through new and emerging communications technologies, the Parliament passed the IGA on 28 June 2001 and received Royal Assent on 11 July 2001.

2.2 Overview of the IGA

The IGA, which came into effect in August 2001, makes it an offence to provide interactive gambling services to customers physically located in Australia. This offence, which carries a maximum penalty of A\$220 000 per day for individuals and A\$1.1 million per day for corporations, applies to all interactive gambling service providers, whether based in Australia or offshore, and whether Australian or foreign owned. The prohibited services typically include online casino-style gaming services of chance or mixed chance and skill, such as roulette, poker, craps, online poker machines and blackjack. The IGA also makes it an offence to advertise interactive gambling services in Australia.

The offences of providing and advertising interactive gambling services do not apply to all interactive gaming and wagering services. Subsection 5(3) of the IGA provides for a limited number of exclusions as follows:

- a telephone betting service
- excluded wagering services including betting on a horse race, harness race, greyhound race or sporting event, or any other event, series of events or contingency, where the bet is placed prior to the event commencing
- excluded lottery services; which include most forms of lottery service, except for online instant and scratch lotteries and other highly repetitive or frequently drawn keno-type lotteries
- excluded gaming services that are provided to customers in a public place
- services that have a designated broadcasting or datacasting link, including:
 - a program or series of programs broadcast on a broadcasting service
 - programs or content transmitted on a datacasting service
- certain contracts (including options and futures contracts) that are exempt from gaming or wagering laws under the *Corporations Act 2001*
- any service declared exempt by the Minister.

The advertising prohibition under the IGA extends to all forms of media, both electronic and non-electronic, including advertising via the Internet, broadcast services, print media, billboards and hoardings, subject to certain exceptions. These exceptions include political advertising and incidental or accidental advertising. The prohibition does not extend to advertisements published in overseas media, such as magazines that are published overseas, or websites that are aimed at non-Australian audiences.

As part of the framework established by the IGA, the Australian Broadcasting Authority (ABA) administers a complaints scheme under which Australian residents or companies carrying on activities in Australia are able to complain to the ABA if they believe people in Australia can access prohibited Internet gambling content.

- The ABA is required to investigate the complaint and refer Australian-hosted prohibited Internet gambling content to the Australian Federal Police (AFP) or a state or territory police force if it considers the complaint should be so referred.
- If the prohibited Internet gambling content is hosted overseas, the ABA is required to notify the makers of filters listed in Schedule 1 to the Internet Industry—Interactive Gambling Industry Code (the Code).

The Code, which is provided for by the IGA, was developed by the Internet Industry Association and deals specifically with the issue of overseas sourced material. The Code requires ISPs to provide their customers with one of the approved filters listed in Schedule 1 of the Code with respect to certain prohibited Internet gambling content. The ABA may also refer overseas-hosted prohibited Internet gambling content to the AFP or a state or territory police force where it believes the material is hosted in a country of interest to that police force.

While the IGA currently makes it an offence only to provide interactive gambling services to people in Australia, the Minister has the power under the IGA to widen the offence to include the provision of such services to people in a ‘designated country’. This requires the government of that country to request a designation from the Minister, and for that country to have in force legislation that corresponds with the main offence provision of the IGA. No foreign country has been designated under this provision to date.

3. GROWTH OF INTERACTIVE GAMBLING SERVICES

Key findings—growth of interactive gambling services

Global interactive gambling continues to grow, driven by strong consumer demand for both interactive gaming and sports betting services. Growth expectations have weakened, however, in light of an increasingly prohibitive stance toward the provision of Internet gambling services in the United States, which is the largest market for such services.

Relative to the global market, the Australian interactive gambling industry remains small: dominated by a small number of larger providers with a strong export focus. Domestically, there has been some growth in the consumption of interactive gambling—predominantly for wagering on racing and sporting events. By contrast, there is no evidence to suggest an equivalent level of growth in the use of Internet gaming services that are prohibited under the IGA.

A large proportion of the growth in Internet-based sports and race betting is attributable to the substitution of Internet wagering from other (offline) methods. In line with international developments, it is expected that the demand for sports betting products will continue to grow in Australia, particularly for new wagering models such as betting exchanges.

3.1 Global developments

Accurate information on the size and development of the global interactive gambling industry is generally not available. Of the estimated 400 companies who provide interactive gambling services globally, more than 90 per cent are privately held; making operating figures generally difficult to obtain.²

Despite the lack of precise industry data, most analysts estimate that the global interactive gambling industry has grown substantially over recent years, albeit from a small base relative to offline services. Global Internet gambling revenue is estimated to have grown from around A\$3.1 billion in 2000 to around A\$5.6 billion in 2002, with revenues forecast to reach A\$17.6 billion in 2006.³

Expectations of continued, but moderating, growth for the global interactive gambling industry were generally noted in submissions to the review. In commenting on the expected industry growth, Lasseters noted:

In September 2002, US market analysts Bear Stearns and Co questioned growth in e-gaming and halved its 2002-2003 growth estimates to 20 per cent from 43 per cent predicting industry-wide revenues (as opposed to turnover) of US\$4.2 billion down from US\$5 billion.⁴

² M Balestra and A Cabot, *Internet gambling report*, 6th edn, The River City Group, Missouri, 2003, p.56, citing M Balestra and S Sinclair, *e-gambling: wagering on the Internet*, River City Group and Christiansen Capital Advisors, 2002.

³ *Ibid*, p.50. Exchange rate conversion at 10 November 2003: USD 1.000 = AUD 0.7110.

⁴ Lasseters Corporation Ltd, submission to review, p.6.

These revised and generally more conservative revenue growth forecasts are at least partially attributable to continued uncertainty regarding the regulatory and legal status of interactive gambling services in a number of jurisdictions, particularly the United States. These developments are discussed in more detail in section 3.2 below.

The dominant forms of interactive gambling activity globally are Internet gaming and sports betting. ACG noted that together these two types of gambling account for more than 85 per cent of the global Internet gambling activity in terms of revenue, and 93 per cent of Internet gambling activity in terms of the number of sites.⁵

Driven by strong consumer demand, particularly in Europe, the global sports betting market is expected to continue to expand, underpinning the continued growth in global interactive gambling revenue. These trends were noted by Professor Jan McMillen in her submissions to the review:

Sports betting in particular has shown signs of potential growth. It is predicted that this trend will continue with the globalisation and telecasting of sports such as soccer, golf, tennis, motor racing, baseball etc.⁶

Foremost among the emerging sports betting products are betting exchanges, which operate by providing an online brokerage service between two (or more) bettors on a particular event. Driven by the growth of the UK-licensed betting exchange operator, Betfair, the development of betting exchange services has generated significant debate both internationally and in Australia. The impacts of betting exchanges in terms of the objectives of the Commonwealth's legislative framework are considered in more detail in section 4.1. An overview of the operation of betting exchange services is provided below.

An overview of betting exchange services

Betting exchanges or player-to-player (P2P) wagering services operate by providing an online brokerage service between two (or more) bettors on a particular event. The exchange levies a small commission on the players' net winnings, usually between two and five per cent. In contrast with conventional bookmaking services, betting exchanges:

- enable the bettor to wager both for and against a particular outcome
- generally offer better odds than traditional bookmaking services due to lower commissioned margins.

Exchange services vary in sophistication. 'Pure' P2P exchange services allow consumers to buy and sell bets on a given event with other players. 'Exchange wagering' is a more sophisticated form of pure P2P wagering, where bets can be partially matched and users can more precisely indicate how much to 'back' and 'lay'.

Cont.

⁵ Allen Consulting Group, *Final report on issues related to Commonwealth interactive gambling regulation*, report prepared for the Department of Communications, Information Technology and the Arts, Melbourne, p.37.

⁶ Professor Jan McMillen, submission to review, p.4.

With an estimated 90 per cent market share, Betfair is currently the largest global provider of betting exchange services. Licensed as a bookmaker under the *Betting, Gaming and Lotteries Act 1963* (United Kingdom), Betfair provides betting exchange services on a range of domestic (i.e. British) and international sporting and racing events. Within four years of operation, Betfair has reportedly increased its turnover to around A\$9 billion per annum, has growth of 25 per cent per month and an annual profit of A\$130 million. In February 2003, Betfair began offering exchange services on major Australian racing events, the National Rugby League and Australian Football League games.

Other smaller exchange providers include Betdaq, (Ireland), Parbet, (Scandinavia) and Spomaxx (Germany). Most recently, two new UK-licensed exchange operators have commenced operations, BackandLay and iBetX, with the latter reportedly targeting the United States market.

In addition to wagering services delivered via the Internet, the expected growth in sports betting has been linked with the development of emerging communications technologies, such as interactive broadcasting and wireless telecommunications services.

The commercial application of gambling services delivered via interactive broadcasting has been most notable in the United Kingdom. As part of its SkyDigital platform, BSkyB launched Sky Sports Active in August 1999,⁷ providing a range of sports betting services, including continuous wagering on sporting events after the commencement of play. The take-up of continuous wagering appears to be particularly strong, with a reported 40 per cent of bets placed on English Premier League games coming during the match itself.⁸

A number of third party vendors also provide interactive sports betting and wagering services via the SkyDigital platform, including Ladbrokes, Blue Square and the Racing Network. In March 2003, BSkyB launched SkyBet Vegas, which provides interactive gaming products such as simulated slot machines and keno.

The expected growth in the United Kingdom interactive television gambling market is forecast to account for more than a third of western Europe's interactive entertainment revenues in 2005.⁹ France, Italy and Spain also expect to achieve strong interactive television revenue growth over a comparable period.¹⁰ There have also been examples of the application of interactive television wagering outside Europe. In April 2003, Sky TV and New Zealand TAB began providing television betting on sports and racing utilising existing TAB accounts.¹¹

⁷ J Florsheim (Managing Director, Sky Interactive), *Interactive TV: learning from the first three years*, Speech to the Institute of Economic Affairs' Interactive TV Conference, 26 November 2002, viewed 23 October 2003, www.corporate-ir.net/ireye/ir_site.zhtml?ticker=BSY.UK&script=11969&item_id='mc_presentations.html.

⁸ Ibid.

⁹ Schema, *Interactive entertainment delivering revenues in the broadband era*, selected key findings, Schema, June 2001, viewed 13 December 2003, www.schema.co.uk/downloads/briefings/IEFindings.pdf.

¹⁰ P Wilding, *Prospect – cashing in on internet gaming: el dorado for the Channel Islands*, 2002, citing information prepared by Datamonitor, May 2001, viewed 13 December 2003, www.gamblingcontrol.org/docs/54.html.

¹¹ Allen Consulting Group, *Final report on issues related to Commonwealth interactive gambling regulation*, report prepared for the Department of Communications, Information Technology and the Arts, Melbourne, p.45.

While there are no interactive television gambling services currently operating in Australia, it is reasonably expected these services may begin to emerge with the uptake of digital pay television services.

As with interactive broadcasting, there are expectations that wireless devices, which include third-generation (3G) mobile phones, Internet appliances, palm pilots and web-enabled personal digital assistants, will emerge as mainstream delivery platforms for the provision of interactive gambling services:

- Alatto technologies have forecast that 4.5 per cent of global mobile users will gamble to some extent by 2006, corresponding with estimated sector revenues of €700 million by 2006.¹²
- Frost and Sullivan anticipate that global revenues generated from downloadable, message or web-based games will expand from an estimated US\$436 million in 2001 to US\$9.3 billion in 2008.¹³

A number of recently launched wireless gambling applications provide some support for the growth expectations noted above:

- In February 2003, casino gaming service provider, Codere, began to provide gaming and wagering services to enabled mobile and pocket PC devices throughout Latin America.¹⁴
- Irish betting exchange provider Betdaq, in partnership with technology provider, New Symphony, began trials of a wireless platform enabling customers to access exchange wagering services using mobile devices in August 2003.¹⁵
- In October 2003, UK-licensed company MLotto launched an interactive lotto, bingo and simulated slot machine service available through mobile devices.¹⁶

Further supporting expectations for wireless gambling growth, a number of mobile telecommunications manufacturers released a set of product specifications intended to address issues of portability and interoperability across mobile gaming technology platforms.¹⁷ The specifications would, if adopted by game developers, allow the development of mobile games across multiple game servers and wireless networks.

¹² K O'Connell, *Alatto offers short odds for mobile gambling*, media release, Alatto Technologies Limited, Dublin, 16 May 2002, viewed 31 October 2003, www.alatto.com/news24-gamblingreportpr.htm.

¹³ Interactive Gaming News, *Trade association induces mobile gaming standards*, Interactive Gaming News, 26 October 2002, viewed 4 November 2003, www.igamingnews.com.

¹⁴ K Smith, *Codere brings wireless gambling to Latin America*, Interactive Gaming News, 26 February 2003, viewed 5 November 2003, www.igamingnews.com.

¹⁵ K Smith, *Betdaq goes wireless*, Interactive Gaming News, 19 August 2003, viewed 4 November 2003, www.igamingnews.com.

¹⁶ B Vallerius, *UK lottery to go mobile*, Interactive Gaming News, 31 October 2003, viewed 4 November 2003, www.igamingnews.com.

¹⁷The Mobile Games Interoperability Forum (MGIF) was established in July 2001 by Ericsson, Motorola, Nokia and Siemens with the aim of specifying a global standard (for mobile game development) and to develop certification procedures to encourage wide adoption of the standard. The MGIF consolidated with the Open Mobile Alliance in February 2003. Information accessed from Open Mobile Alliance website www.openmobilealliance.org/mgif/about.html.

3.2 An evolving legal and regulatory framework

Internationally, the legal status of interactive gambling services varies considerably across jurisdictions. While an estimated 71 jurisdictions permit some form of interactive gambling,¹⁸ an increasing number of countries have, or are seeking to, constrain the provision of and/or access to these services, particularly from offshore gambling providers. These different national approaches to interactive gambling generally fall into one of three categories—prohibition, closed regulation and open regulation. These approaches are discussed in turn below.

Prohibition

The United States is a leading exponent of prohibition. With United States consumers comprising an estimated 43 per cent of the global interactive gambling market in 2003, developments in this jurisdiction have affected, and are likely to continue to affect, the global interactive gambling industry.¹⁹

Gambling regulation in the United States has traditionally been a matter for the state governments, with federal legislation generally enacted only to assist the states in enforcement of their own gambling laws.²⁰ Section 1084 of Title 18, United States Code (USC)²¹ commonly referred to as the Wire Act, is the federal statute most commonly used to prosecute federal Internet gambling cases.²²

The Wire Act prohibits gambling businesses from using interstate or international wires to knowingly receive or send certain types of bets or information that would assist in placing bets. The Act has been successfully used to prosecute gambling businesses through the Internet and has been generally established through case law to have extra-territorial application to offshore betting entities. This statute of itself does not preclude states from authorising interactive gambling within their own borders.

One of the more well-known cases is *United States v Cohen*, in which Jay Cohen, the owner of Antigua-licensed World Sports Exchange, was found guilty in February 2000 of having breached the Wire Act by the New York federal district court.²³ The federal district court's decision was subsequently upheld, on appeal, by the US Court of Appeals for the Second Circuit.

¹⁸ Internet gambling licence database, viewed 6 November 2003, www.gamblinglicenses.com/licensesDatabase.cfm. This figure includes states within national borders (Australia, United States). The UK Department of Culture, Media and Sport (DCMS) note that the number of countries which currently allow some form of Internet gambling is estimated at more than 50, DCMS, *The future regulation of remote gambling: a DCMS position paper*, UK Department of Culture, Media and Sport April 2003, p.5., viewed 27 October 2003, www.culture.gov.uk/global/publications/archive_2003/gamb_position_paper.htm.

¹⁹ M Balestra and K Smith, *US I-gaming policy report: what's at stake*, River City Group, Missouri, 23 September 2003, p.31., citing Christiansen Capital Advisers, *Geographic breakdown on Internet gambling players, 2000 to 2006*.

²⁰ M Balestra and A Cabot, *Internet gambling report*, 6th edn, The River City Group, Missouri, 2003, p.259.

²¹ Transcribed as 18 USC 1084.

²² W O Jenkins Jr. *Interim report on Internet gambling*, US GAO, Washington, 23 September 2002, p.2.

²³ M Balestra and A Cabot, *Internet gambling report*, 6th edn, The River City Group, Missouri, 2003, p.302.

Impetus for a more comprehensive federal legislative framework with respect to Internet gambling was provided with the release of the National Gambling Impact Study in May 1999.²⁴ The study recommended the federal prohibition of Internet gambling in the United States, and asked the Department of Justice to develop enforcement strategies including, but not limited to ISPs, credit card providers and money transfer agencies. The study also recommended:

the passage of legislation prohibiting wire transfers to known Internet gambling sites or the banks who represent them [and the] passage of legislation stating that any credit card debts incurred while gambling on the Internet are unrecoverable.²⁵

Following the release of the study, a number of bills have been introduced to the US federal legislature that generally seek to make illegal, or restrict the provision of, interactive gambling in the United States. To date, no federal legislation intending to prohibit or restrict interactive gambling has been passed into law. However, moves toward legislative prohibition have created increasing uncertainty regarding the status of Internet gambling in the United States. An outline of proposed US federal Internet gambling legislation is provided below.

²⁴ National Gambling Impact Study Commission (NGISC), *National gambling impact study*, NGISC, Washington, 18 June 1999. Refer to <http://govinfo.library.unt.edu/ngisc/index.html> for NGISC recommendations.

²⁵ *Ibid*, pp.5–12.

Proposed US federal Internet gambling legislation²⁶

Prohibition—‘extend the application of the Wire Act’.

March 1997, Internet Gambling Prohibition Act of 1997 (S 474 – Sen. Kyl)

- Sought to extend the Wire Act’s prohibition on interstate sports gambling conducted by telephone to newer forms of technological transmission, including the Internet.
- Included provisions for fines of at least \$20 000, and four years imprisonment for people operating Internet casinos. In addition, it required telephone companies and Internet service providers to terminate service to the Internet gambling operator.
- Passed by the Senate in August 1998. Subsequently introduced to the House of Representatives, where its penalties and its constitutionality were questioned, and as a result, a vote on its passing was deferred.

March 1999, Internet Gambling Prohibition Act of 1999 (S 692 – Sen Kyl and Bryan)

- In response to criticism of S 474, S 692 removed the liability for individual gamblers and provided exceptions for several types of gambling providers (including state lotteries and certain race wagering) and Internet service providers.
- S 692 was approved by the full Judiciary Committee in June 1999 and the Senate in November 1999. Failed to pass in the House prior to the end of the 105th Congress.

October 1999, Internet Gambling Prohibition Act of 1999 (HR 3125 – Rep. Goodlatte)

- Similar bill to S 692. Failed to pass a two-thirds vote in the House under suspension of the rules in July 2000.
- Reintroduced by Representative Goodlatte as the Combating Illegal Gambling Reform and Modernisation Act (HR 3215) in November 2001, which, as with HR 3125 introduced during the 106th Congress, sought to update the Wire Act to include Internet gambling as unlawful.
- In September 2002, HR 3215 was merged into the Unlawful Internet Gambling Funding Prohibition Act (HR 556) sponsored by Representative James Leach. The new merged bill (HR 556) was passed by the House of Representatives on 1 October 2002 but failed to pass in the senate prior to the end of the 107th Congress.

July 2000, Comprehensive Internet Gambling Prohibition Act of 2000 (HR 5020 – Rep Conyers and Cannon)

- Sought to extend Wire Act to prohibit Internet gambling without the exemptions for established gambling services provided by previous bills.
- Referred to the House Committee on the Judiciary but lapsed following the end of the 106th Congress.

²⁶ Information drawn from M Balestra and K Smith, *US I-gaming policy report: what’s at stake*, River City Group, Missouri, 23 September 2003; M Balestra and A Cabot, *Internet gambling report*, 6th edn, The River City Group, Missouri, 2003; Senate Select Committee on Information Technologies, *Netbets: a review of online gambling in Australia*, SSCIT, Canberra, March 2000; Productivity Commission, *Australia’s gambling industries*, Report no. 10, Ausinfo, Canberra, 26 November 1999.

Prohibition—‘prevent the extension of financial instruments to support Internet gambling’

May 2000, Internet Gambling Funding Prohibition Act of 2000 (HR 4419 – Rep Leach and LaFalce).

- Sought to ban the use of certain bank instruments, such as credit cards or electronic funds transfers, from being used for Internet gambling or betting activities. Amendment in the House Banking Committee in June 2000 limited the application of the prohibition to the situation where bets or wagers are unlawful under any applicable Federal or State law in the State in which the bet or wager in initiated, received or otherwise made. Bill failed to pass during the 106th Congress.
- As noted above, HR 556 was merged with the Goodlatte Bill (HR 3215) and was passed by the House on 1 October 2002, but failed to pass in the Senate prior to the end of the 107th Congress.
- Reintroduced in January 2003 as HR 21, the Leach Bill was reported favourably to the House Judiciary Committee by the Financial Services Committee in May 2003. The removal of exemption provisions by the House Judiciary Committee is reported to have halted the progress of HR 21.

July 2001, Federal Internet Gambling Payments Prohibition Act (HR 2579 – Rep. LaFalce)

- Similar to HR 4419. Referred to the House Judiciary Committee in July and to the Subcommittee on Crime in August 2001.

May 2003, Unlawful Internet Gambling Funding Prohibition Act of 2003 (HR 2143 – Rep Bachus)

- Like the Leach Bill, HR 2143 sought to make it illegal to use credit cards, wire transfers or other banking instruments to fund Internet gambling activities. Passed by the House of Representatives on 10 June 2003.

March 2003, Unlawful Internet Gambling Funding Prohibition Act (S 627 – Sen Kyl)

- Like the Bachus and Leach Bills, S 627 sought to prevent online gambling merchants from taking payments from Americans using credit cards. Bill provided an exemption for race betting only and, after consideration by the Senate Banking Committee in August 2003, no longer provided a exemption for states to regulate online gambling that takes place within their borders.

Non-prohibitive legislation

November 2002, To Create a Commission on Internet gambling licensing and Regulation Act (HR 5760 – Rep. Conyers)

- Critics of the prohibitive approaches being put forward by Representatives Leach and Goodlatte have also introduced legislation. HR 5760 would establish a five-member committee to study the feasibility and regulating Internet gambling in the United States. The Bill received little attention prior to the end of the 107th Congress. Representative Conyers reintroduced an amended version of HR 5760 in March 2003 and the Bill has subsequently been referred to the House Financial Services Committee.

One statute with application to the provision of financial payment services to the online gambling industry, although passed as an anti-terrorist measure, is 18 USC 1060, commonly referred to as the Patriot Act.²⁷ The Patriot Act extends United States jurisdiction to all banks that have corresponding accounts in the United States.²⁸ This would potentially enable United States authorities to seize the corresponding account of an offshore bank it believes is engaged in illegal activity, including housing the proceeds of an Internet gambling business.²⁹

In March 2003, online payment provider PayPal disclosed that the US Attorney's Office for the Eastern District of Missouri was conducting a federal grand jury investigation relating to the company's business, alleging that it had violated provisions of the US Patriot and Wire Acts by conducting business with illegal offshore and online gambling operators between October 2001 and November 2002.³⁰ In July 2003, the US Attorney for the Eastern District of Missouri announced that PayPal, and its parent eBay, had entered into a A\$10 million settlement agreement, constituting forfeitable proceeds derived by PayPal from the processing of the illegal gambling transactions, to settle allegations.³¹

At a state level, legislation applying to gambling and, where developed, Internet gambling, varies considerably. The US General Accounting Office (GAO) found that five states (Illinois, Louisiana, Oregon, Nevada and South Dakota) had enacted laws that specifically prohibit aspects of Internet gambling.³² Internet or other like gambling is generally prohibited in the remaining states through the operation of existing prohibitions on unauthorised or unlicensed gambling services, which to date have included most forms of Internet wagering or gaming. Two United States jurisdictions, Nevada and the Virgin Islands, have passed legislation that would legalise Internet gambling.³³ It would appear likely, however, that existing federal and state gambling laws will prevent the provision of licensed services from these two jurisdictions to other United States jurisdictions, particularly in the case of Nevada.

The Attorneys General in a number of United States jurisdictions, including New York, New Jersey, Missouri and Wisconsin, have initiated actions against Internet gambling entities and institutions providing financial services to interactive gambling entities.³⁴ The New York Attorney General has been most successful in curtailing the provision of financial services related to online gambling to residents of that state.

In settling an action brought by the New York Attorney General under New York General

²⁷ Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT Act) 2001.

²⁸ Greenburg Traurig, *Is I-gaming within biting distance of the PATRIOT Act*, Greenburg Traurig media coverage, citing Internet Gaming News, 28 March 2002, viewed 11 November 2003, www.gtlaw.com/pub/media/2002/obrienp02a.htm.

²⁹ M Balestra and A Cabot, *Internet gambling report*, 6th edn, The River City Group, Missouri, 2003, p.279.

³⁰ D Kawamoto, *PayPal charged with breaking Patriot Act*, CNET News.com, 31 March 2003, viewed 26 October 2003, <http://zdnet.com.com/2100-1105-994810.html>.

³¹ R W Gruender, *PayPal, Inc pays \$10 million to the Justice Department to settle forfeiture allegations involving Paypal's aiding illegal offshore gambling activities*, media release, United States Attorney's General Office, Eastern District of Missouri, 24 July 2003, viewed 22 August 2003, www.usdoj.gov/usao/moe/press%20releases/archived%20press%20releases/2003%20press%20release/july/paypal.html.

³² W O Jenkins Jr. *Interim report on Internet gambling*, US GAO, Washington, 23 September 2002, p.4.

³³ River City Group 2003, *Internet Gambling Report: Sixth Edition*, Missouri, p.296.

³⁴ *Ibid*, pp.284–288.

Obligations Law, financial services company, Citibank agreed to:

...block and decline authorisations for bankcard transactions that are coded and submitted to the Bank as online gambling transactions consistent with, and pursuant to, then-standard VISA and MasterCard rules and procedures for posting to bankcard accounts that are marketed to consumers in the United States.³⁵

In a similar agreement, online payment provider PayPal provided an assurance that, from no later than 1 September 2002, they would:

...cease processing any payments for online gambling merchants, where such payments involve PayPal's New York members, other than payments for gaming transactions that are expressly authorised under New York law.³⁶

These developments are notable because Citibank is the largest provider of credit cards in the United States, and PayPal is the largest global provider of intermediary payment services.

The assurances provided by Citibank and PayPal follow the voluntary decision by a number of United States card-issuing banks, including Bank of America, Fleet, Direct Merchants Bank, MBNA and Chase Manhattan, to prevent the use of their cards for online gambling transactions.³⁷ More recently, the US GAO found that issuing member banks, representing more than 80 per cent of the purchase volume of cards issued by Visa and MasterCard in the United States, had implemented policies to deny payment authorisation for Internet gambling transactions coming through their automated systems.³⁸ In August 2003, nearly all North American-based credit card companies are reported to have specific policies prohibiting the use of their cards for online gambling.³⁹

The withdrawal of payment services in the United States, particularly credit cards, is generally acknowledged to have had an adverse impact on interactive gambling revenue. Gaming analysts Bear Stearns made the following assessment of interactive gambling market in September 2002:

Overall, we have become increasingly cautious in our outlook for the e-gaming market, given the challenges that have some the fore within the past six months. In our view, all signs point to declining business levels of most Internet gaming operators, due to the credit card issue combined with an increasingly competitive environment, which has led to higher consumer acquisition costs.⁴⁰

In addition to the restriction on the provision of payment services by United States financial institutions, the uncertain legal status of interactive gambling in the United States has led some

³⁵ Office of New York State Attorney General Eliot Spitzer, *Financial giant joins fight against online gambling*, media release, Office of New York State Attorney General Eliot Spitzer, 14 June 2002, citing *Citibank assurance of discontinuance*, p.4., viewed 13 June 2003, www.oag.state.ny.us/press/2002/jun/jun14a_02.html.

³⁶ Office of New York State Attorney General Eliot Spitzer, *Agreement reached with Paypal to bar New Yorkers from online gambling*, media release, Office of New York State Attorney General Eliot Spitzer, 21 August 2002, citing *PayPal Assurance of Discontinuance*, p.6, viewed 14 June 2003, www.oag.state.ny.us/press/2002/aug/aug21a_02.html.

³⁷ Office of New York State Attorney General Eliot Spitzer, *Financial giant joins fight against online gambling*, media release, Office of New York State Attorney General Eliot Spitzer, 14 June 2002, viewed 13 June 2003, www.oag.state.ny.us/press/2002/jun/jun14a_02.html.

³⁸ W O Jenkins Jr. *Internet gambling: an overview of the issues*, US GAO, Washington, 2 December 2002, p.24.

³⁹ K Smith, 'Visa, MasterCard target of PATRIOT Act suit', *Interactive Gaming News*, 11 August 2003, viewed 12 August 2003, www.igamingnews.com.

⁴⁰ J Kelly, 'Electronic payment systems: what's next?', *Interactive Gaming News*, 31 December 2002, citing Bear Stearns and Co, 'E-gaming: a giant beyond our borders', 2002, viewed 22 March 2003, www.igamingnews.com.

offshore providers to curtail the provision of their services to United States residents. Most established British bookmakers, for example, generally utilise existing technologies to identify US residents and prevent access from American consumers to their websites.⁴¹

Outside the United States, a number of jurisdictions have also sought to prohibit the provision of gambling services to their own citizens. In May 2002, the Hong Kong Legislative Council passed the Gambling (Amendment) Ordinance (HK), which came into effect on 1 July 2002.⁴² With regard to online gambling, this law extends the existing offences relating to the provision of gambling services and creates a new offence of knowingly promoting or facilitating bookmaking or betting with a bookmaker.⁴³ It remains legal, however, for the Hong Kong Jockey Club to offer services online to Hong Kong residents.⁴⁴

On 30 July 2002, the Greek Parliament passed Greek Law 3037, which prohibits, among other matters, electronic games with 'electronic mechanisms and software' from public and private places.⁴⁵ The law has application to both domestic and offshore providers.

Closed regulation

A number of jurisdictions, particularly European Union (EU) member states, have adopted a closed regulation approach to the supply of interactive gambling services. This approach generally seeks to limit the supply of interactive gambling to domestic providers and to ensure, to some extent, that gambling revenues remain within national borders.

In May 1998, the Gaming Regulators European Forum adopted a preliminary position statement on Internet gaming, expressing the view that the regulation of gambling should be a matter for the competence and jurisdiction of individual countries, in the light of their particular social, cultural and economic conditions.⁴⁶ The position statement also noted:

Gambling offered should be restricted to residents of the jurisdiction concerned and residents of such other jurisdiction with whom there are co-operative or reciprocal arrangements.⁴⁷

European law generally supports the restriction of cross-border gambling supplies between member countries. The EU Electronic Commerce Directive established that EU companies are, in principle, only subject to the laws of the country in which they are established.⁴⁸ This country-of-

⁴¹ M Balestra and A Cabot, *Internet gambling report*, 6th edn, The River City Group, Missouri, 2003, p.362.

⁴² 'Existing technologies' include geolocation technologies that use IP addresses associated with online customers in order to determine the geographic location of an online customer.

⁴³ Ibid, p.510.

⁴⁴ W O Jenkins Jr. *Internet gambling: an overview of the issues*, US GAO, Washington, 2 December 2002, p19.

⁴⁵ Ibid

⁴⁶ R Goodwines and M Loney, 'In Greece, use a GameBoy, go to jail', *CNET News.com*, 3 September 2002., viewed 21 July 2003, <http://news.com.com/2100-1040-956357.html>.

⁴⁷ Gambling Regulators European Forum, *Position statement on gambling on the Internet*, released 15 May 1998, viewed 21 November 2003, www.gref.net/statements.html.

⁴⁸ Ibid.

⁴⁸ The European Parliament and the Council Of The European Union, *Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on Electronic Commerce')*, adopted on 8 June 2000, viewed 21 November 2003, http://europa.eu.int/smartapi/cgi/sga_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=en&numdoc=32000L0031&

origin principle is not, however, applicable to gambling supplies, which are excluded from the scope of the directive. The implication, noted by Vlaemminck and De Wael, is that:

EU member states are entitled to stop or restrict the cross-border provision of Internet gambling services, even if these services are provided by a gaming operator, established in another member state, and duly licensed in that member state.⁴⁹

This principle was supported by the Dutch district court of Arnhem in a case involving UK-licensed bookmaker Ladbrokes and De Lotto, who hold the exclusive license to offer sports betting in the Netherlands.⁵⁰ De Lotto claimed that Ladbrokes had violated relevant Dutch legislation by accepting bets from consumers residing in the Netherlands. In its decision of 27 January 2003, the Dutch court ruled in favour of De Lotto, ordering Ladbrokes to block Dutch consumers from gambling at its website.⁵¹ The case is subject to appeal in the Dutch courts in several courses of action.⁵²

This decision has been followed by a number of similar rulings by Dutch courts in which both European and non-European sports betting and gaming providers have been ordered to block access to their gambling sites by Dutch residents.⁵³

The European Court of Justice has also ruled that national restrictions are in principle compatible with the European Community Treaty, provided they are not discriminatory, are proportionate and that the restrictions are intended to protect the consumer and maintain order in society.⁵⁴

More recently, the European Court of Justice has provided a ruling relevant to the consideration of the cross-border supply of gambling services between EU member states.⁵⁵ In ruling on the case C-243/01 (known as the Gambelli case) the European Court found that the conditions imposed by Italian legislation (Article 4 of Law No 401/89) constituted a restriction on the freedom of establishment and the freedom to provide services, set out under Articles 43 and 49 of the European Community Treaty (the Treaty) respectively.⁵⁶

While Articles 45 and 46 of the Treaty provide for exceptional measures for reasons of overriding general interest (namely moral, religious and cultural factors, and the morally and financial harmful consequences for the individual and society associated with gaming and betting), the

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⁴⁹ M Balestra and A Cabot, *Internet gambling report*, 6th edn, The River City Group, Missouri, 2003, p.354.

⁵⁰ H Wright, *Ladbrokes agree to put a block on Dutch punters*, Racingpost.co, 31 January 2003.

⁵¹ M Balestra and A Cabot, *Internet gambling report*, 6th edn, The River City Group, Missouri, p.355.

⁵² B Vallerius, *Far from Over*, Interactive Gaming News, 8 June 2004, viewed 15 June 2004,

www.igamingnews.com.

⁵³ B Vallerius, *Foreign operators brace for 'real war' in Holland*, Interactive Gaming News, 24 November 2003, viewed 2 December 2003, www.igamingnews.com. R van der Gaast, *Dutch court rules against Betfair*, Interactive Gaming news, 13 February 2004, viewed 15 February 2003, www.igamingnews.com.

⁵⁴ M Balestra and A Cabot, *Internet gambling report*, 6th edn, The River City Group, Missouri p.358, citing G Straetmans, *Towards a European public order: comments on Laara and Zenatti*. C.M.L Rev., 2000, 991–1005.

⁵⁵ European Court of Justice, *Judgment of the Court of Justice in case C-243/01 - criminal proceedings against Piergiorgio Gambelli and 137 others*, European Court of Justice, 6 November 2003, viewed 13 December 2003, <http://curia.eu.int/en/actu/communiqués/index.htm>.

⁵⁶ *Ibid.*

European Court found in the Gambelli case that it is for the national (i.e. Italian) court to decide whether the restrictions on the freedoms noted above meet the conditions established for such restrictions under previous case law. These conditions include the requirement that any restrictions:

be justified by imperative requirements in the general interest, be suitable for achieving the objective which they pursue and not go beyond what is necessary in order to attain it. They must in any event be applied without discrimination.⁵⁷

Concerns regarding existing restrictions on the cross-border supply of gambling services across Europe were noted by the European Commission in its report on the Electronic Commerce Directive, released on 21 November 2003. In releasing the report, the European Commission noted that:

Online gambling, which is currently outside the scope of the Directive, is a new area in which action may be required because of significant Internet Market Problems—see for example Case C-243/01s of the European Court of Justice [the Gambelli case], concerning criminal proceedings in Italy against persons collecting Internet bets on behalf of a bookmaker legally licensed in the UK.⁵⁸

The Commission also noted that it will examine the need for and scope of possible new EU initiative and that it is also examining a number of complaints it has received concerning cross-border gambling activities.⁵⁹

Open regulation

The most prominent jurisdiction supporting the open regulation of interactive gambling is the United Kingdom. Following the release of the Gambling Review Body report (the Budd report) in July 2001, the United Kingdom Government initiated a process of legislative reform, aimed at opening up the regulation of gaming services and reforming existing licensing and regulatory arrangements for wagering and betting services.⁶⁰

This reform process included the proposed regulation of remote gambling services, defined to include gambling delivered via the Internet, interactive television or any other remote access device.⁶¹ The United Kingdom Government's noted intention was to enable the UK industry to establish itself as a world leader in the provision of remote gambling services.⁶²

On 19 November 2003 the Department of Culture, Media and Sport released a draft gambling bill for pre-legislative scrutiny and public consultation. The draft bill would consolidate existing gambling legislation (except the National Lottery) and establish a new regulator, the Gambling

⁵⁷ Ibid, para. 65.

⁵⁸ European Commission, *e-commerce: EU law boosting emerging sector*, media release, European Commission, Brussels, 21 November 2003, viewed 13 December 2003, http://europa.eu.int/rapid/start/cgi/guesten.ksh?p_action.gettxt=gt&doc=IP/03/1580|0|AGED&lg=EN.

⁵⁹ Ibid.

⁶⁰ UK Department of Culture, Media and Sport (DCMS), *A safe bet for success: modernising Britain's gambling laws*, DCMS, March 2002., viewed 22 August 2003, www.culture.gov.uk/global/publications/archive_2002/safe_bet_for_success.htm.

⁶¹ DCMS, *The future regulation of remote gambling: a DCMS position paper*, paragraph 11, viewed 21 November 2003, www.culture.gov.uk/global/publications/archive_2003/gamb_position_paper.htm.

⁶² Ibid., para.107.

Commission, with broader functions and powers than the existing Gaming Board.⁶³

The draft bill proposes to establish operating and personal licences enabling the provision of gaming, lottery and betting activities provided by remote means.⁶⁴ The Bill also included a specific licence category for betting intermediaries, which would permit the licensed provision of betting exchange services.⁶⁵

The draft gambling bill has been subject to a public consultation process and has been considered by a Joint Committee of both houses of Parliament. The United Kingdom Government agreed to 121 out of 139 recommendations contained in the Joint Committee's report of 7 April 2004. The draft bill, taking account of these recommendations, is expected to be introduced to Parliament in late 2004.

Other jurisdictions have also moved towards an open regulatory model. The Isle of Man and Alderney have established regulatory frameworks for the provision of licensed interactive gambling services, including to offshore jurisdictions. Following a report commissioned in 1999, the South African National Gambling Board recommended the government consider the regulated provision of interactive gambling in South Africa, with the specific focus on exported services.⁶⁶ The regulatory model proposed by the National Gambling Board is yet to be implemented in South Africa.⁶⁷

A number of Caribbean and Central American jurisdictions also permit the provision and export of interactive gambling services, including Antigua and Barbuda, Dominica, Costa Rica, Belize, Jamaica, Nicaragua and the Netherlands Antilles.⁶⁸ While these jurisdictions license a substantial number of the estimated 400 global interactive gambling companies, the regulatory standards imposed are generally considered to be lower than those in more established jurisdictions.⁶⁹

3.3 The Australian industry

Primary aggregated statistical data on the Australian interactive gambling industry is limited to two sources: the ABS periodic report *Gambling Industries, Australia* and the Tasmanian Gaming Commission (TGC) annual publication, *Australian Gambling Statistics*.⁷⁰ Information drawn from these publications indicates that the Australian industry remains small—both in terms of global interactive market share and the total Australian gambling industry.

⁶³ DCMS, *Draft gambling bill: the policy*, DCMS, November 2003, viewed 13 December 2003, www.culture.gov.uk/gambling_and_racing/gambling_bill.htm.

⁶⁴ Ibid, para.3.16.

⁶⁵ Licensed UK betting exchanges are currently issued with a bookmakers permit under the Betting, Gaming and Lotteries Act 1963 (UK).

⁶⁶ M Balestra and A Cabot, *Internet gambling report*, 6th edn, The River City Group, Missouri, p.581.

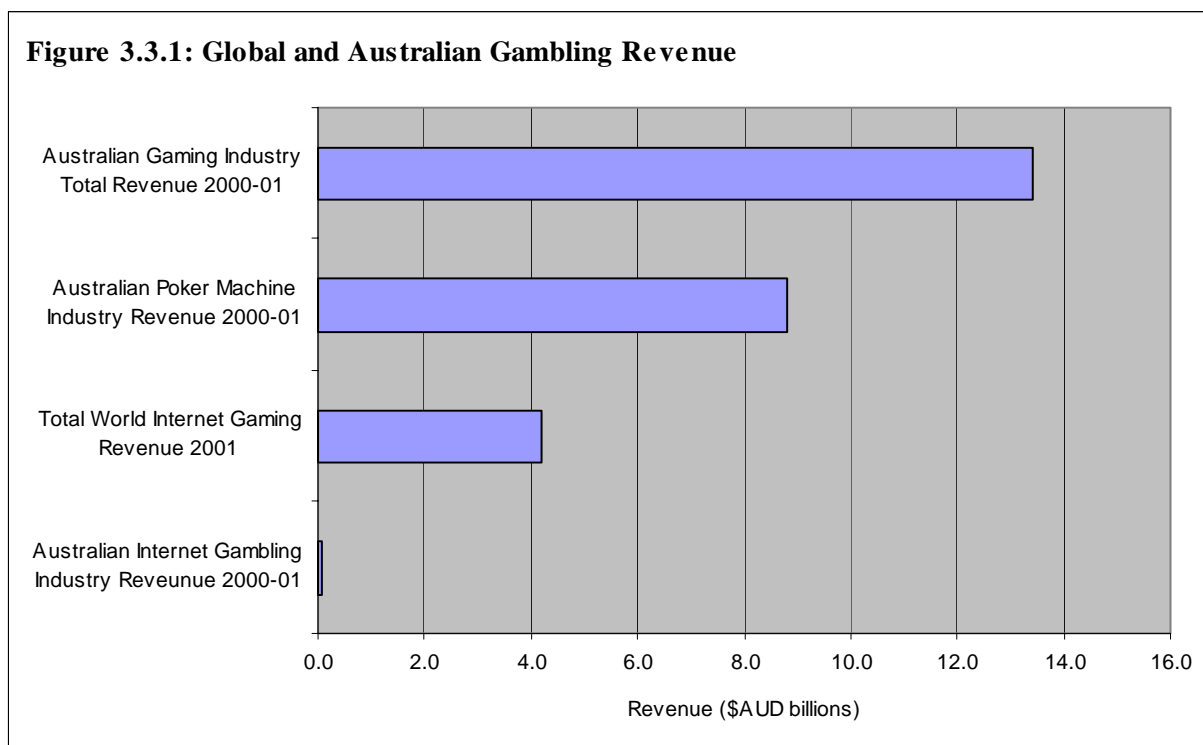
⁶⁷ M Balestra, *From the editors chair*, Interactive Gaming News, 6 October 2003, viewed 12 November 2003, www.igamingnews.com.

⁶⁸ M Balestra and A Cabot, *Internet gambling report*, 6th edn, The River City Group, Missouri, pp.527–538

⁶⁹ Ibid.

⁷⁰ Both the ABS and TGC statistics are based on information provided by Australian interactive gambling service providers and as such, include revenue earned from overseas consumers (exports) and exclude consumption of overseas services by Australians (imports). The most recent ABS release (2000–01) estimates gambling revenue received over the Internet, but does not provide any breakdown by categories (race and sports wagering, gaming and lotteries). The TGC publication includes a category of interactive gaming, but does not provide information about other forms of interactive gambling.

Australian Internet gambling service providers earned A\$73.1 million in revenue in 2000–01.⁷¹ This figure represents less than 1.7 per cent of the estimated global Internet gaming revenue of A\$4.2 billion in 2001, and 0.5 per cent of Australia’s total gambling revenue of A\$13.3 billion in 2000–01.⁷² The relative size of the domestic Internet gambling industry is illustrated in figure 3.3.1 below.



Source: Australian Bureau of Statistics, *Gambling industries, Australia*, cat no. 8684.0, ABS, Canberra, 2002; M Balestra and A Cabot, *Internet gambling report*, 6th edn, The River City Group, Missouri, 2003.

Despite the relatively small size of the Australian Internet gambling industry, the revenue earned by Australian major Internet gambling providers increased rapidly in 2001–02, as noted in Table 3.3.1 below.

⁷¹ Australian Bureau of Statistics, *Gambling industries, Australia*, cat no. 8684.0, ABS, Canberra, 2002. The Allen Consulting Group have, in discussions with the ABS, confirmed that the stated revenue figure of A\$763.8 million in 2000-01 refers to turnover. The correct revenue figure is A\$73.1 million.

⁷² Ibid. M Balestra and A Cabot, *Internet gambling report*, 6th edn, The River City Group, Missouri, 2003, p.56, citing M Balestra and S Sinclair, *E-Gambling: Wagering on the Internet*, River City Group and Christiansen Capital Advisors, 2002 *Wagering on the Internet*, The River City Group, Christiansen Capital Advisors, 2002.

Table 3.3.1: Major Australian Internet gambling service providers

	Revenue (A\$m)	Revenue (A\$m)	Revenue (A\$m)	Export share
Provider (product)	2000–01	2001–02	2002–03	Dec 2002 (%)
Lasseters (gaming)	14.8	17.1	18.4	100
Centrebet (wagering)*	18.4	28.7	N/A	86
IASBet (wagering)	9.8	27.7	21.9	40
Canbet (wagering)**	1.5	8.2	10.8	97

N/A not available. * In October 2003, Centrebet was purchased by the SportsOdds Group. SportsOdds is Australia's largest, privately owned sports betting company. **Canbet is no longer based in Australia, having relocated to the United Kingdom in April 2003.

Source: Allen Consulting Group, *Final report on issues related to Commonwealth interactive gambling regulation*, report prepared for the Department of Communications, Information Technology and the Arts, Melbourne, p, 44.

In addition to revenue growth, Table 3.3.1 illustrates that in 2002 Australian Internet gambling providers relied heavily on export revenue. ACG estimates that over 40 per cent of Australian industry revenue was sourced from overseas customers in 2000–01.⁷³ Available 2002–03 annual reports for these providers also indicate an expectation that overseas markets will continue to support the growth of their operations.

3.4 The consumption of interactive gambling services

The Productivity Commission's *National Gambling Survey* indicated that in the 12 months to April 1999 nearly 90 000 Australians gambled on the Internet (including casino games, sports betting and racing)—or about 0.6 per cent of Australian adults.⁷⁴

Comparable studies conducted at this time revealed similar, if not lower levels, of Internet gambling participation in some Australian jurisdictions.

- A survey of gambling patterns in Victoria indicated that only 0.1 per cent of Victorians had engaged in Internet gambling activities in the 12 months to September 1998.⁷⁵
- Using a modified version of the survey questionnaire employed by the Productivity Commission, a study commissioned by the ACT Gaming and Racing Commission found that, in the 12 months to April 2001, 0.5 per cent of ACT adult residents placed bet on a horse or greyhound via the Internet, while only 0.2 per cent played an Internet casino game.⁷⁶

⁷³ Allen Consulting Group, *Final report on issues related to Commonwealth interactive gambling regulation*, report prepared for the Department of Communications, Information Technology and the Arts, Melbourne, p.38.

⁷⁴ Productivity Commission, *Australia's gambling industries*, Report no. 10, Ausinfo, Canberra, 26 November 1999, p.18.9.

⁷⁵ Victorian Casino Gaming and Racing Authority, *Sixth survey of community gambling patterns and perceptions: project report*, report prepared by Roy Morgan Research, VCGRA, Melbourne, April 1999.

⁷⁶ Australian Capital Territory Gambling and Racing Commission, *Survey of the nature and extent of gambling and problem gambling in the ACT*, report prepared by the Australian Institute of Gambling Research, ACTGRC, Canberra, July 2001.

More recent research has revealed that Internet gambling usage has increased since the time of the Productivity Commission's report. Using a comparable survey methodology to the Productivity Commission, ACG found that, over the 12 months to April 2003, the proportion of the adult population gambling for money on the Internet was 1.2 per cent, or approximately 176 000 adult Australians.⁷⁷

Similarly, data from Roy Morgan's *Internet Monitor* indicated that Australian Internet gamblers as a proportion of the adult population increased from around 0.4 per cent in 1999 to 0.8 per cent by the end of 2002.⁷⁸

The estimated use of Internet gambling services by these surveys appears to be broadly similar to participation rates in comparable nations. ACG noted overseas studies which report interactive gambling participation rates of one per cent of British adults (2002), 0.4 per cent of adult Canadians (1999) and one per cent of New Zealand's adult population (2000).⁷⁹

A number of Internet monitoring services suggest, however, higher levels of Australian Internet gambling participation than the studies noted above.

- *Nielsen Netratings* estimated that 700 000 Australians gambled online in 2002, or approximately four per cent of the adult population.⁸⁰

Internet monitoring services such as Hitwise⁸¹ provide information on access to a particular websites; they do not provide comprehensive information on the nature of that access. As noted by Gary Banks, Chairman, Productivity Commission:

...a recent survey conducted for the Australian Casino Association (ACA 2002) reportedly shows that Australians are still accessing online gaming sites (mostly offshore, but including Australian sites). But what does such Internet traffic data really tell us? It could be picking up online wagering, which is legal under the Act, or website hits from people who are merely 'browsing'.⁸²

Information concerning Internet activity, while relevant to the consideration of access to interactive gambling services, needs to be considered in the context of other measures that more specifically assess the consumption patterns of Internet gambling by Australians. These measures include the surveys noted previously.

ACG found that the majority of Australian Internet gambling consumers used services permitted under the IGA, namely Internet wagering on racing and sporting events (for a detailed

⁷⁷ Allen Consulting Group, *Final report on issues related to Commonwealth interactive gambling regulation*, report prepared for the Department of Communications, Information Technology and the Arts, Melbourne, p.53. The 95 per cent confidence level for this estimate is 0.8–1.6 per cent or approximately 116 000 to 236 000 adult Australians. The Allen Consulting Group advises that the sample sizes for the estimates of gambling behaviour and responses of certain groups or respondents are relatively small and that caution should be used when interpreting the results based on such samples.

⁷⁸ Ibid.

⁷⁹ Ibid.

⁸⁰ G Jacobsen, 'Online Gambling facing a Credit Card Ban', *Sydney Morning Herald*, 2 August 2002.

⁸¹ See Allen Consulting Group, *Final report on issues related to Commonwealth interactive gambling regulation*, report prepared for the Department of Communications, Information Technology and the Arts, Melbourne, p. 57.

⁸² G Banks, *The Productivity Commission's gambling inquiry: 3 years on*, Presentation to the 12th Annual Conference of the National Association of Gambling Studies, Melbourne, 21 November 2002.

explanation, see section 2.2). ACG found that wagering on racing events had risen from the Productivity Commission's estimate of 0.12 per cent of the Australian adult population in 1999 to an estimated 0.86 per cent of the Australian adult population in the 12 months to April 2003.⁸³ Similarly, sports wagering was found to have increased from 0.12 per cent of the Australian adults in 1999 to 0.55 per cent of Australian adults in the 12 months to April 2003.⁸⁴

These findings are consistent with information provided by the major Australian TABs.

- TAB Limited indicated in its submission to the review that its combined sales for parimutual⁸⁵ racing and sports betting via the Internet increased from around A\$22 million in 1998–99 to more than A\$204 million in 2001–02.⁸⁶
- Similarly, TABCORP indicated that Internet wagering turnover has increased as a proportion of total wagering account sales over the same period.⁸⁷

The growth in Internet wagering, and race wagering in particular, was found by ACG to be strongly correlated with substitution from traditional (offline) gambling. ACG found that approximately 72 per cent of Internet wagering on racing events is substituted from more traditional gambling forms. However, the growth of Internet sports wagering was found by ACG to comprise both substitution from traditional (offline) gambling as well as new gambling activity. ACG found that approximately 50 per cent of Internet wagering on sports events (excluding racing) is substituted from more traditional gambling forms.⁸⁸

This finding is consistent with research being conducted by Professor Jan McMillen, made available to ACG, which indicated that most wagering activity on racing, particularly activity with TABs, represents substitution from previous agency or phone betting activity.⁸⁹ Information provided in industry submissions to the review also supported this finding.⁹⁰

Professor McMillen's research also indicated that although there is likely to be a degree of substitution associated with sports betting, the Internet also appears to be capturing a share of the growth of this relatively new market.⁹¹

Growth in the sports wagering market in Australia is consistent with international developments, noted in section 3.1. above, and the growth in revenue of major Australian Internet wagering providers, noted in Table 3.3.1.

⁸³ Allen Consulting Group 2003, *Final Report on Issues Related to Commonwealth Interactive Gambling Regulations*, Melbourne, p.59.

⁸⁴ Ibid.

⁸⁵ i.e. totalisator agency betting.

⁸⁶ TAB Limited, submission to review, p.11.

⁸⁷ TABCORP Holdings Limited, submission to review, p.2.

⁸⁸ Allen Consulting Group, *Final report on issues related to Commonwealth interactive gambling regulation*, report prepared for the Department of Communications, Information Technology and the Arts, Melbourne, p.66.

⁸⁹ Ibid, p.59.

⁹⁰ See also submissions from TAB Limited, p.11, TABCORP Holdings Limited, p.2.

⁹¹ Ibid p. 65, citing information provided by Professor Jan McMillen.

In contrast with Internet wagering services, ACG found relatively few Australians are engaging in Internet gaming activities prohibited under the IGA.⁹² ACG found that only 0.12 per cent, or approximately 18 000 Australian adults, used the Internet to access gaming services in the 12 months to April 2003.⁹³

This estimate compares with the Productivity Commission's assessment that in the 12 months to April 1999, over 58 000 Australian adults, about 0.41 per cent of Australian adults, had played casino games.⁹⁴

Across the various Internet gambling modes, the Productivity Commission found in 1999 that Internet gamblers tend to be much younger and have higher personal incomes than other adults.⁹⁵

...53 per cent [of Internet gamblers were] aged 18 to 24 years (compared with only 13 per cent of other adults). Their mean age was 33 years compared with 44 years for other adults. They also had significantly higher personal income, at \$39 000 compared with \$32 000 for other adults.⁹⁶

Recent research tends to confirm that gender and income continue to have an impact on Internet gambling participation. Results of the Roy Morgan *Internet Monitor* indicate that those aged 18 to 24 tend to be 69 per cent over-represented as Internet gamblers relative to the adult population, reflecting the group's relatively higher use of the Internet.⁹⁷ People with high discretionary income were found to be 125 per cent over-represented as Internet gamblers relative to the adult population.⁹⁸

⁹² Note, however, that respondents, in answering questions about engagement in activities prohibited by the IGA, may provide misleading responses,

⁹³ Ibid, p.64.

⁹⁴ Productivity Commission, *Australia's gambling industries*, Report no. 10, Ausinfo, Canberra, 26 November 1999, p.18.9.

⁹⁵ Ibid.

⁹⁶ Ibid, p.18.10.

⁹⁷ Allen Consulting Group, *Final report on issues related to Commonwealth interactive gambling regulation*, report prepared for the Department of Communications, Information Technology and the Arts, Melbourne, p.55, citing Roy Morgan Research, *Internet Monitor*, various eds.

⁹⁸ Ibid.

4. THE SOCIAL AND COMMERCIAL IMPACT OF INTERACTIVE GAMBLING SERVICES

Interactive gambling involves a broad array of impacts; affecting individual gambling consumers, their families, the gambling industries and the Australian community at large. In order to provide a useful assessment of these impacts, the review has examined those benefits and costs associated with interactive gambling relevant to consideration in the public policy context.

In this regard, the review has given particular consideration to relevant negative externalities associated with interactive gambling; namely the magnitude of problem gambling attributable to these services.⁹⁹ The review has also given consideration to the consumer and producer-related benefits attributable to interactive gambling services in Australia.

Key findings—social and commercial impact of interactive gambling services

The likelihood of Internet gamblers being at risk of problem gambling is equivalent to comparable offline gambling services. However, as with offline gambling services, the type and circumstance of interactive gambling does appear to influence to level of social harm potentially attributable to each category of gambling service.

Gaming services continue to present significant risks in terms of problem gambling. Lotteries and wagering services are less associated with incidences of problem gambling.

While providing a new business model for betting on racing and other sporting events, betting exchanges retain the basic characteristics of a wagering service and, at this stage, do not represent a significantly new form of gambling. Exchange operations do not appear to pose any greater risk of exacerbating problem gambling than traditional Internet wagering services permitted under the current legislative framework.

However, the use of interactive wagering services in Australia is growing and increased usage could potentially lead to a greater incidence of problem gambling.

Interactive wagering services can implement responsible wagering and consumer protection measures that are not as feasible offline.

Responsible interactive wagering regimes are already in place in some Australian jurisdictions. State and territory governments could consider requiring uniform and consistent online consumer protections of betting exchanges and other forms of interactive wagering services.

⁹⁹ ‘Negative externalities’ refer to costs borne by individuals who were not party to the decision to undertake the activity. Negative externalities constitute one type of social costs, the existence of which generally provides sufficient grounds for consideration of government intervention to improve on market outcomes.

4.1 Social impact

Problem gambling

Problem gambling generally refers to a gambler's lack of control over their gambling behaviour or adverse personal, economic and social impacts that result from a gambler's actions (particularly the financial losses relative to the gambler's means).¹⁰⁰

Problem gambling produces a shortfall in value-for-money that results from an excessive level of spending on interactive gambling services. This results in a net loss in consumer benefits derived from the gambling activity. Discussion of this shortfall in consumer benefit is provided in the following section.

In addition to the loss in terms of consumer benefits, problem gambling is considered different from recreational gambling because it incurs social costs beyond the costs of producing the gambling services.¹⁰¹ The Productivity Commission reported that the social costs of problem gambling arise as a result of the potential:

- personal and psychological effects—heightened incidences of ill-health, guilt, control problems, co-morbidities, anxiety, depression, and, in extreme cases, thoughts of suicide or attempted suicide
- interpersonal relations—adverse impacts on others (particularly partners and children) through heightened incidences of financial stress, mistrust, neglect of family, relationship breakdown, and domestic or other violence
- impacts on work and study—adverse impacts on work performance through heightened incidences of absenteeism, poor performance and job changes and losses
- impacts on finance—adverse impacts on asset and debt levels, creating financial hardship (due to the higher ratio of gambling expenditure to income among problem gamblers)
- legal problems—misappropriation of money, passing of bad cheques and criminal behaviour, which may result in court appearances and prison sentences
- other problems—financial burdens that spill over into family and friendship networks, businesses (through unrecoverable debts) and the non-profit sector.¹⁰²

The Productivity Commission used a variant of the South Oaks Gambling Screen (SOGS) to assess gambling behaviours in the 12 months to April 1999.¹⁰³ Relevantly, this included an

¹⁰⁰ Productivity Commission, *Australia's gambling industries*, Report no. 10, Ausinfo, Canberra, 26 November 1999, p.6.2.

¹⁰¹ National Office for the Information Economy, *The benefits and costs of banning interactive gambling*, report prepared by Econtech Pty Ltd, NOIE, Canberra, 24 October 2000.

¹⁰² Productivity Commission, *Australia's gambling industries*, Report no. 10, Ausinfo, Canberra, 26 November 1999, p.6.4.

¹⁰³ The South Oaks Gambling Screen (SOGS) is set of questions about a person's experience of gambling and some of the harmful impacts that may arise from their gambling. SOGS is the most widely used and validated test of problem gambling prevalence. However, as with all screening instruments, the SOGS has a number of limitations, including identifying some people as having severe problems when they do not (false positives), while missing others who do have severe problems (false negatives). The screen is also recognised as not working as well for all cultural groups in the population. While acknowledging these limitations, the Productivity Commissions considered

estimate of the percentage of the Australian adult population ‘at risk’ of suffering from gambling-related difficulties, denoted by a SOGS score of 5+. At risk refers to gamblers who may experience harms from gambling, not at levels which justify individual interventions, but which are of concern for public health reasons.¹⁰⁴

The Productivity Commission found that 15.4 per cent of all regular non-lottery gamblers were at risk of becoming problem gamblers. Adopting a similar methodology, ACG found that 9.6 per cent of all Internet gamblers (Australian adults who have used the Internet to gamble for money in the 12 months to April 2003) were at risk of suffering from gambling-related difficulties.¹⁰⁵ Comparison between regular non-lottery problem gamblers—that is, the proportion of regular gamblers who gamble on more than just lotteries—and Internet gamblers is relevant because the Internet gamblers surveyed by ACG were also found to be regular non-lottery gamblers.

The results of the two surveys indicate the likelihood of Internet gamblers being at risk of problem gambling tends to be comparable to offline gambling services. Other survey evidence tends to be equivocal about the severity of problematic interactive gambling compared with problems associated with traditional forms of gambling.

- The first United Kingdom study of Internet gambling in 2001 found no evidence of problem gambling behaviour associated with the Internet.¹⁰⁶
- A survey of 305 Internet-enabled employees and 250 human resource managers indicated that 25 per cent of employees admitted to having become ‘addictive or compulsive’ in their use of the Internet. Online gambling was rated as the fifth most addictive activity (by eight per cent of respondents) behind shopping (24 per cent), news (23 per cent) and pornography (18 per cent), and ahead of auctions (six per cent). Further, only two per cent of respondents indicated that they accessed gambling services in the workplace.¹⁰⁷
- A University of Connecticut Health Centre surveyed the gambling behaviours of 389 people seeking free or reduced-cost dental or health care at the university’s health clinics.¹⁰⁸ Results showed that nearly 11 per cent were found to be problem gamblers and over 15 per cent met the criteria for pathological gamblers. Although Internet gambling was the least common gambling activity of the study’s participants, the study found that a majority of those with

the SOGS can be legitimately used for to assess the prevalence of gambling problems which do not require individual intervention, but which are of concern for public health reasons. Use of the SOGS also enables comparison with other estimates using the same methodology. More detail of the SOGS is provided in: Productivity Commission, *Australia’s gambling industries*, Report no. 10, Ausinfo, Canberra, 26 November 1999, cpt.6. Allen Consulting Group, *Final report on issues related to Commonwealth interactive gambling regulation*, report prepared for the Department of Communications, Information Technology and the Arts, Melbourne, p.78.

¹⁰⁴ Productivity Commission, *Australia’s gambling industries*, Report no. 10, Ausinfo, Canberra, 26 November 1999, p.6.37.

¹⁰⁵ Allen Consulting Group, *Final report on issues related to Commonwealth interactive gambling regulation*, report prepared for the Department of Communications, Information Technology and the Arts, Melbourne, p.79.

¹⁰⁶ M Griffiths, ‘Internet gambling: preliminary results of the first UK prevalence study’, *e-Gambling: the Electronic Journal of Gambling Issues*, vol. 5, p.6, 2001, viewed on 21 November 2003, www.camh.net/egambling/issue5/research/griffiths_article.html.

¹⁰⁷ Harris Interactive Inc, *Web@work survey 2002: cyber addiction in the workplace*, Harris Interactive Inc, New York, 2002, view 15 September 2003, www.websense.com/company/news/research/webatwork2002.pdf, Accessed 15 February 2003.

¹⁰⁸ G T Ladd and N M Petry, ‘Disordered gambling among university-based medial and dental patients: a focus on Internet gambling’, *Psychology of Addictive Behaviours*, vol. 16, no. 1, 2002, pp.76–79.

Internet gambling experience had the most serious levels of gambling behaviours, known as level 2 (problematic) and level 3 (pathological) gambling. Only 22 per cent of the participants without any Internet gambling experience were level 2 or 3 gamblers, compared with 74 per cent of participants with Internet gambling experience.

In commenting on these and other studies, ACG noted that these survey results are difficult to transpose to the Australian context, given the different historical patterns of gambling, different social drivers and so on.¹⁰⁹

While Australians who gamble online appear no more or less likely to suffer gambling-related harms than those using similar offline services, the mode of gambling appears to influence the level of potential social harm associated with the particular service.

The Productivity Commission considered the use of gaming machines and casino table games to be the most problematic forms of gambling in relation to the development of gambling harms.¹¹⁰ This concern regarding the potential social harm associated with gaming services was extended to equivalent online services.

As in their physical counterparts, such continuous forms of gambling [online gaming] present substantial risks for problem gambling – especially as there also tend to be the more popular forms of gambling.¹¹¹

The ACG *Internet Gambling Survey* found that the incidence of problem gambling among users of sports betting and wagering is relatively low compared with the incidence among users of interactive poker machines/casino games.

The broad pattern of problem gambling by gambling mode also found in the survey is consistent with the findings by the Productivity Commission, which estimated the share of Internet gamblers are problem gamblers (based on SOGS scores of 5+) to be:

- 13.3 per cent for users of casino games
- zero for betting on the races
- zero for punters on sports betting.

Both the ACG and Productivity Commission statistical data on the breakdown of problematic interactive gambling by gambling mode is subject to a relatively high incidence of standard error. This is attributable to small sample size resulting from the generally low incidence of interactive gambling use among the Australian adult population.

These broad patterns of gambling-related harm associated with particular interactive gambling modes have been replicated in comparable studies of the incidence of problem gambling among offline services.

¹⁰⁹ Allen Consulting Group, *Final report on issues related to Commonwealth interactive gambling regulation*, report prepared for the Department of Communications, Information Technology and the Arts, Melbourne, p.77.

¹¹⁰ Productivity Commission, *Australia's gambling industries*, Report no. 10, Ausinfo, Canberra, 26 November 1999, p.6.53.

¹¹¹ *Ibid*, p.18–19.

- An Australian Institute of Gambling Research study, commissioned by the ACT Gaming and Racing Commission, found that in the 12 months to April 2001 gaming machines continue to be associated with the highest prevalence of problem gambling and harm incident rates among regular gamblers in the Australian Capital Territory.¹¹²
- A study conducted in South Australia by the Centre for Population found that most problem gamblers identified in this study, some 90.6 per cent, played poker or gaming machines.¹¹³

While available evidence supports the finding that gaming services continue to present risks in terms of problem gambling, the evidence about other modes of interactive gambling is more contested. In assessing the relative merits of banning Internet wagering and traditional lotteries relative to gaming technologies, the Productivity Commission noted that:

The case for banning Internet wagering (sports betting and racing) or traditional lotteries are weaker, reflecting likely lower risks and the fact that the other mediums for making these gambles, such as phone-betting, are close substitutes for the Internet.¹¹⁴

As noted in section 3.4 above, ACG found the growth in Internet wagering, and race wagering in particular, to be strongly correlated with substitution from traditional (offline) gambling. ACG found that approximately 72 per cent of Internet wagering on racing events is substituted from more traditional gambling forms.

In previous inquiries, the Australian racing and wagering industry have argued that the inherent characteristics of wagering distinguish this form of gambling from gaming services, and engender an inherently lower potential for problem gambling behaviour.¹¹⁵ These arguments were re-stated in a number of submissions to the review.¹¹⁶

In summary, while interactive gaming tends to involve continuous play, interactive lotteries and wagering occur periodically, with a temporal interval between bet placement and the determination of winners. Moreover, gaming on racing, sports and traditional lottery draws relies on the outcome of an independent contingency, and wagering incorporates an element of skill not present with gaming.

While interactive wagering provides a medium for the transfer of phone and retail betting, sports betting, in particular, is generating some additional gambling activity in Australia. As noted in section 3.4 above, ACG found that in the 12 months to April 2003, approximately 50 per cent of

¹¹² ACT Gambling and Racing Commission, *Survey of the nature and extent of gambling and problem gambling in the ACT*, report prepared by the Australian Institute of Gambling Research, ACTGRC, Canberra, July 2001.

¹¹³ Department of Human Services, *Gambling patterns of south Australians and associated health indicators*, report prepared by Centre for Population Studies in Epidemiology, Strategic Planning and Policy Division, Department of Human Services, Adelaide, May 2001.

¹¹⁴ Productivity Commission, *Australia's gambling industries*, Report no. 10, Ausinfo, Canberra, 26 November 1999, p.18.54.

¹¹⁵ Senate Environment, Communications, Information Technology and the Arts Legislation Committee, *Interactive Gambling Bill 2001*, SECITAC, Canberra, May 2001.

¹¹⁶ Refer to submissions by Australian Bookmakers' Association Pty Ltd, Australian Racing Board, Australian Harness Racing Council Inc, Australian New Zealand Greyhound Association Inc, Centrebet Pty Ltd, IASbet Limited and TAB Limited.

Internet wagering on sports events (excluding racing) was substituted from more traditional gambling forms.¹¹⁷

Given the relatively recent growth in interactive wagering in Australia, there is little data to assess the impact of these services in terms of problem gambling. However, ACG findings provide early indications that the incidence of problem gambling among users of sports betting and wagering is relatively low compared with the incidence among users of interactive poker machines/casino games.

The Australian National University (ANU) Centre for Gambling Research has conducted surveys, the results of which apparently suggest that early signs of gambling problems may be beginning to emerge with Internet wagering.¹¹⁸ Other studies of traditional wagering provide some support:

- A study conducted by the Centre for Population Studies in Epidemiology found that 12.3 per cent and 43.2 per cent of South Australian adults identified as problem gamblers had bet on a sporting event or bet on a horse or greyhound races respectively in the 12 months to March 2001.¹¹⁹
- An Australian Institute of Gambling Research study, commissioned by the ACT Gaming and Racing Commission, found that 3.77 per cent of ACT gamblers who identified betting of the races as their preferred gambling mode were identified as problem gamblers in the 12 months to April 2001.¹²⁰

The incidence of problem gambling associated with wagering services in these studies remains substantially lower, however, than that for electronic gaming machines and, to a lesser degree, casino table games.

- The Centre for Population Studies in Epidemiology study revealed that 90.6 per cent of South Australian adults identified as problem gamblers played poker or gaming machines in the 12 months to March 2001.¹²¹
- The Australian Institute of Gambling Research study found that found that 8.08 per cent and 4.74 of ACT gamblers who identified gaming machines and casino table games respectively as their preferred gambling modes were identified as problem gamblers in the 12 months to April 2001.¹²²

¹¹⁷ Allen Consulting Group, *Final report on issues related to Commonwealth interactive gambling regulation*, report prepared for the Department of Communications, Information Technology and the Arts, Melbourne, p.66.

¹¹⁸Submission by Professor Jan McMillen, p.5.

¹¹⁹ Department of Human Services, *Gambling patterns of south Australians and associated health indicators*, report prepared by Centre for Population Studies in Epidemiology, Strategic Planning and Policy Division, Department of Human Services, Adelaide, May 2001, p. 98.

¹²⁰ Australian Capital Territory Gambling and Racing Commission, *Survey of the nature and extent of gambling and problem gambling in the ACT*, report prepared by the Australian Institute of Gambling Research, ACTGRC, Canberra, July 2001, p.79.

¹²¹ Department of Human Services, *Gambling patterns of south Australians and associated health indicators*, report prepared by Centre for Population Studies in Epidemiology, Strategic Planning and Policy Division, Department of Human Services, Adelaide, May 2001, p.98.

¹²² Australian Capital Territory Gambling and Racing Commission, *Survey of the nature and extent of gambling and problem gambling in the ACT*, report prepared by the Australian Institute of Gambling Research, ACTGRC, Canberra, July 2001, p.79.

Moreover, these survey results generally conform with the Productivity Commission's assessment of the gambling modes preferred by problem offline gamblers.

- In the 12 months to April 1999, 9.27 per cent of problem gamblers preferred electronic gaming machines, compared with 5.23 per cent for betting on racing events and 3.59 per cent for casino table games.¹²³

There is no evidence to suggest that the pattern of problem gambling prevalence by gambling mode in offline services is likely to be substantially different for equivalent online services. While online wagering services are associated with some degree of problem gambling, the level of social harm associated with these services is likely to remain less than that associated with online gaming and casino table games.

Supporting this finding, ACG has found that the social costs of problem gambling on interactive services are unlikely to be any different from the social costs of gambling on traditional (offline) services.¹²⁴

Betting exchanges

A number of submissions to the review indicated concern about the potential social harms attributable to emerging sports betting products, particularly betting exchange services which are becoming increasingly popular.

Many of the concerns expressed in submissions and supporting argumentation related specifically to the operations of United Kingdom betting exchange operator, Betfair. As noted in section 3.1 above, Betfair began offering exchange services on major Australian racing events, the National Rugby League and Australian Football League games in February 2003.

The NSW Department of Gaming and Racing noted:

Betting exchanges...tend to expand the opportunities for gambling and therefore the potential for adverse social consequences, and their online form has developed without adequate regard to the social consequences or appropriate threshold regulatory controls.¹²⁵

Wagering and racing industry submissions to the review generally provided little direct comment on the potential social impact of betting exchanges, instead focusing to a greater or lesser extent on the possible effects of these services on the industries themselves.

In response to these developments, the Australian Racing Ministers Conference established the Betting Exchange Task Force to report to relevant racing ministers on a range of matters relating to the establishment of betting exchange services in Australia. The Task Force report was

¹²³ Productivity Commission, *Australia's gambling industries*, Report no. 10, Ausinfo, Canberra, 26 November 1999, 6.54.

¹²⁴ Allen Consulting Group, *Final report on issues related to Commonwealth interactive gambling regulation*, report prepared for the Department of Communications, Information Technology and the Arts, Melbourne, p.91.

¹²⁵ NSW Department of Gaming and Racing, submission to review, p.1. See also submissions by Australian Racing Board, Australian Harness Racing Council Inc, Australian New Zealand Greyhound Association Inc, TAB Limited (additional information provided to review).

released publicly in July 2003. The report discussed betting exchanges in terms of responsible wagering practices. It noted that:

From the Task Force's observations of existing betting exchange models in Britain, and in light of their predominantly Internet and account-based mode of operation, a betting exchange would have the capacity to implement a range of worthwhile responsible wagering measures. Further, risks associated with credit betting should be manageable.¹²⁶

While noting the characteristics of betting exchanges that may support responsible wagering, the report also found that:

...on the basis of available information...Australians are potentially exposed in areas such as the undetected use by minors and potentially excessive losses. The current overseas location of betting exchanges on Australian racing places them beyond the jurisdiction of the responsible wagering regimes applicable in Australian states and territories.¹²⁷

The recommendations of the Betting Exchange Task Force were not unanimously supported. The Northern Territory took a dissenting position, noting that, in the case of responsible wagering, a properly regulated Australian betting exchange would overcome the concerns noted above.¹²⁸

ACG has provided an assessment of the impacts of betting exchanges with a particular focus on consumer protection. While noting the arguments put in a number of submissions to the review, ACG found no compelling evidence to suggest betting exchanges pose particular consumer protection problems. In fact, betting exchanges appear to be more attractive to sophisticated gamblers, who make informed decisions about the gambling products they purchase.¹²⁹

In this regard, ACG noted that Betfair, as the largest global provider of betting exchange services, proposes to heighten consumer protection measures and has indicated its preparedness to comply with local regulatory requirements. Betfair has also indicated publicly, and in information provided to the review, its intention to seek appropriate licensing arrangements with a relevant Australian state or territory government, that would include measures to address any potential problem gambling risks.¹³⁰

The review recognises that betting services provided online are capable of implementing responsible wagering and consumer protection measures that may not be as feasible offline. The United Kingdom organisation GamCare,¹³¹ in conjunction with the United Kingdom Interactive Gaming, Gambling and Betting Association (IGGBA), has developed a Code of Practice for Player Protection and Social Responsibility.¹³² This Code provides that measures be adopted by

¹²⁶ Australasian Racing Ministers' Conference, *Report of the betting exchange task force*, ARMC, Sydney, 10 July 2003, conclusions and recommendations, p.3.

¹²⁷ Ibid.

¹²⁸ Ibid, p.6.

¹²⁹ Allen Consulting Group, *Final report on issues related to Commonwealth interactive gambling regulation*, report prepared for the Department of Communications, Information Technology and the Arts, Melbourne, pp. 49, 60.

¹³⁰ Betfair, submission to the review.

¹³¹ GamCare is 'the national centre for information, advice and practical help in relation to the social impact of gambling in the UK'—GamCare, *Annual Report 2002-2003*, viewed 11 March 2004, www.gamcare.org.uk/pdfs/anreport1.pdf.

¹³² *Player Protection and Social Responsibility: IGGBA/GamCare Code of Practice for Remote Platforms* 12 October 2003, viewed 11 March 2004, www.iggba.org.uk/flash/graphics/code_of_conduct2.pdf.

IGGBA members to advocate responsible gambling practices. These include harm minimisation measures, such as betting limits, self-exclusions, and links to gambling support services.

Pursuant to the Code, each member's site is subject to an independent annual review by an organisation such as GamCare and, if the auditor is GamCare, the site may carry GamCare's certification logo. Betfair carries the GamCare logo and, as an organisation that has adopted such practices, already employs many of the consumer protection measures required by the various Australian jurisdictions.

While providing a new mode by which to bet on a racing event, exchanges appear to retain the inherent characteristics of a wagering service permitted under the IGA. In view of the point made above that responsible wagering and consumer protection measures are more feasible in the online environment, the review considers that betting exchanges are unlikely to have more harmful effects in terms of problem gambling than traditional wagering services.

While evidence suggests less incidence of problem gambling associated with wagering than gaming activities, all gambling carries an inherent risk of social harm. Consequently, increased use of interactive wagering services is a valid concern for Australian governments, as suggested by the ANU Centre for Gambling Research surveys.

As noted above, online wagering services can potentially implement responsible wagering and consumer protection measures that are not as feasible offline. The sorts of measures that are supported by GamCare in the United Kingdom, and already exist in some Australian jurisdictions, could appropriately be formalised uniformly in Australia with respect to interactive wagering.

The most appropriate means to achieve this would be through state and territory licensing frameworks and administrative structures that are for the purpose of, and have the expertise to deliver, responsible wagering regimes. State and territory governments could consider requiring uniform and consistent online consumer protections of betting exchanges and other forms of interactive wagering services. It would be important that such measures are applied across all online wagering services to avoid the potential for unintended competitive impacts.

Lotteries

There is also no evidence that traditional lottery products, including those distributed via the Internet, have led to an exacerbation of gambling harms in the Australian community. This finding is consistent with the findings of previous inquiries and reports. The Productivity Commission noted that lottery products present low risks for problem gambling, and that:

Problem gamblers account for a much lesser share of expenditure in lotteries...Indeed, conventional lotteries appear to be like most other consumer goods and do not appear to present an significant hazards for players.¹³³

¹³³ Productivity Commission, *Australia's gambling industries*, Report no. 10, Ausinfo, Canberra, 26 November 1999, p.7.44.

The Report of the Senate Select Committee into the *Interactive Gambling Bill 2001* also acknowledged that lotteries were quite different from other forms of gambling, accepting that there is likely to be minimal harm from the sale of lottery tickets over the Internet.¹³⁴

The Australian Lotteries Industry submission to the review provided information on the uptake of Internet-distributed lottery facilities in Australia. Tattersall's, the only licensed lottery organisation selling products on the Internet, has indicated that Internet lottery sales currently represent only around one per cent of total weekly lottery turnover, with 66 per cent of this player base comprised of traditional, terrestrial players who cannot easily access retail outlets.¹³⁵

Access by minors

Urban Seed, the Victorian Local Governance Association, Communities Against the Pokies Plague and the Inter-Church Gambling Task Force joint submission expressed concern that the combination of Internet use and gambling potentially creates risks in terms of problem gambling amongst minors:

...improvements in bandwidth, accessibility and processor technology will give rise to new opportunities for the creation of gambling products. As early adopters of digital technology, young people may be particularly attracted to using high-tech gambling products. This may create a new population of gamblers and, possibly, problem gamblers.¹³⁶

This concern was foreshadowed in the explanatory material accompanying the IGA, which observed that:

Households with children have been early adopters of new interactive technology such as the Internet... While parents may take reasonable precautions to prevent their children from accessing gambling within the home ... it is possible that parental gambling within the home may encourage children to learn and rehearse gambling activities and behaviours.¹³⁷

It also noted:

Young people are early adopters of digital technology and may be particularly attracted to using high-tech gambling products. This may create a new population of problem gamblers.¹³⁸

According to the Productivity Commission, however, 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.¹³⁹ Further, methods are available to exclude minors from participating in interactive gambling that are not available to onsite gambling, such as age verification software.

¹³⁴ Senate Environment, Communications, Information Technology and the Arts Legislation Committee, *Interactive Gambling Bill 2001*, SECITAC, Canberra, May 2001.

¹³⁵ Australian Lotteries Industry, submission to review, p.11.

¹³⁶ Urban Seed, the Victorian Local Governance Association, Communities Against the Pokies Plague and the Inter-Church Gambling Task Force, submission to review, p.4.

¹³⁷ Explanatory Memorandum to the *Interactive Gambling Act 2001*, p.4.

¹³⁸ Regulatory Impact Statement accompanying the *Interactive Gambling Act 2001*, p.5.

¹³⁹ Productivity Commission, *Australia's gambling industries*, Report no. 10, Ausinfo, Canberra, 26 November 1999, p.18.22.

Social benefits

Using a similar approach to the Productivity Commission, the ACG provided an estimate of the social benefits arising from the consumption of interactive gambling services in Australia. This involved an estimate of the consumer surplus derived by ‘recreational’ interactive gambling consumers, adjusted for both taxation revenue and the net loss in terms of value for money attributable to excessive consumption by ‘problem gamblers’.¹⁴⁰

Adjusted consumer surplus figures are provided in the Table 4.1.1 below.

Table 4.1.1: Adjusted consumer surplus

	Surplus amount (A\$ millions)
Recreational gamblers’ consumer surplus	11.6–18.8
Problem gamblers’ consumer loss	9
Tax, license fees and contributions	8.3
Adjusted consumer surplus	10.9–18.1

Source: Allen Consulting Group

Using the Productivity Commission’s assessment of the costs attributable to offline problem gambling, ACG has estimated problem gambling in interactive gambling services to be approximately A\$7.7–A\$24 million per year.

The net impact estimates for the interactive gambling industry in Australia, ranges from a net cost of A\$13.1 million to a net benefit of A\$10.4 million (Table 4.1.2).

Table 4.1.2: Measured net impact of interactive gambling

	Low consumer surplus (A\$m)	High consumer surplus (A\$m)
Low social cost	3.2	10.4
High social cost	-13.1	-5.9

Source: Allen Consulting Group

¹⁴⁰ For detail of the methodological approach, including the differential treatment of problem gamblers in the estimates of consumer surplus, see Productivity Commission, *Australia’s gambling industries*, Report no. 10, Ausinfo, Canberra, 26 November 1999, chapters 4–6 and appendix C and Allen Consulting Group, *Final report on issues related to Commonwealth interactive gambling regulation*, report prepared for the Department of Communications, Information Technology and the Arts, Melbourne, chapter 5 and appendix B.

However, estimates of consumer surplus and social cost attributable to problem interactive gambling are generally of limited use in the development of public policy. As noted by the Productivity Commission, net impact figures tend to omit several of the impacts of gambling, principally on the cost side.¹⁴¹ As a result, the Productivity Commission concluded that net impact figures can not, in and of themselves, guide policies relating to incremental changes or the appropriate regulatory environment for the industry.¹⁴²

4.2 Commercial impact

The commercial impact of interactive gambling services is mixed and generally depends on the strategic position of individual firms and the industry.

At the corporate level, interactive gambling clearly provides the potential for efficiency gains through less intensive capital and overhead requirements and reduced operational costs. The potential for efficiency gains was noted during the Senate Select Committee's consideration of the IGA:

The very nature of Internet wagering—that is keyboard entry as opposed to an operator voice service—allows service providers to service their customers at a reduced cost. This is surely in line with the Government and Productivity Commission's aim of reducing costs and improving productivity within Australia.¹⁴³

Submissions to the review have not quantified these efficiency gains. However, Professor Jan McMillen noted that lower capital intensity and reduced operating costs have produced cost savings and increased profitability. In this regard, Internet wagering provides a significant commercial opportunity for Australia's wagering providers:

Licensed Australian providers have encouraged clients to migrate from phone betting to Internet gambling, thus producing major cost savings and thus increasing profit margins.¹⁴⁴

ACG estimated that the operational cost reductions are likely to be comparable to those of other online financial transactions. Indicatively, the impact of Internet transactions on financial distribution costs is detailed in Table 4.2.1 below.

¹⁴¹ Productivity Commission, *Australia's gambling industries*, Report no. 10, Ausinfo, Canberra, 26 November 1999, p.11.5.

¹⁴² Ibid.

¹⁴³ Northern Territory Government submission to review, page 1, Senate Environment, Communications, Information Technology and the Arts Legislation Committee, Interactive Gambling Bill 2001, SECITAC, Canberra, May 2001.

¹⁴⁴ Professor Jan McMillen, submission to review, p.4.

Table 4.2.1: The impact of e-commerce on financial distribution costs

	Banking (US\$/transaction)	Bill payment (US\$/transaction)
Traditional system	1.08	2.22–3.32
Phone-based system	0.54	
Internet-based system	0.13	0.65–1.10
Savings	89%	67–71%

Source: Organisation for Economic Cooperation and Development 1999, *The Economic and Social Impacts of E-Commerce: preliminary Findings and Research Agenda*, Paris, p63, report by Allen Consulting Group.

As noted in section 3.4, Internet gambling consumption has been found to have grown moderately since the time of the Productivity Commission report. The degree to which this growth in Internet gambling consumption will affect existing suppliers will depend on the extent of substitution of expenditure towards interactive gambling services and away from non-interactive gambling modes.

In turn, the degree of substitution term will depend on the extent to which the attributes of Internet gambling are intrinsically new, drawing increasing expenditure on gambling, and on whether the Internet represents a more convenient access to games that are widely available in physical form.

As noted in section 3.4 above, a high degree of substitution was found with regard to Internet wagering, particularly betting on racing events. This pattern of substitution was also noted with regard to lottery products by the Australian Lotteries Industry in its submission to the review:

Sales results for Tattersall’s online lottery facility indicate that, while the Internet provides an alternative distribution channel for lottery players, its impact on terrestrial sales is minimal.¹⁴⁵

While race wagering and lottery products appear to involve a high degree of substitution to domestic providers, a number of industry submissions to the review suggested that new Internet wagering providers, particularly those located in offshore jurisdictions, represent a substantial threat to their revenue base. TAB Limited noted in its submission to the review:

Should this trend of increasing offshore provider access continue, Tab Limited predicts that along with returns to local wagering licensees, the revenues accruing to Australian Racing Industries and Australian Governments will also commence to fall.¹⁴⁶

Members of the Australian racing industry also raised similar concerns regarding the ‘leakage’ of industry fees and contributions resulting from the provision of offshore wagering services on Australian racing events. The NSW Harness Racing Club stated that:

¹⁴⁵ Australian Lotteries Industry, submission to review, p.3.

¹⁴⁶ TAB Limited, submission to review, p.16. See also submissions by TOTE Tasmania Pty Ltd, Australian Bookmakers’ Association Pty Ltd, New South Wales Department of Gaming and Racing.

Overseas operators come in and take the product for free and do not pay a fee to the Racing Industry. This leaves the Racing Industry to pay for all expenses and receive no income. It should be noted that all profits the Racing Industry generates are returned to the participants in the form of prizemoney and in effect race clubs and non-profit organisations.¹⁴⁷

A number of submissions to the review noted the commercial impact of UK-licensed betting exchange operator, Betfair, in particular. The findings of the Betting Exchange Task Force report, while publicly released following the completion of the review's submission process, broadly summarised many of the industry concerns regarding the commercial impact of betting exchanges in Australia. The report noted that:

Betting exchanges on Australian racing would pose a serious threat to current betting turnover levels of the three categories of licensed wagering operator in Australia—TABs, traditional bookmakers and corporate bookmakers.¹⁴⁸

The report noted that an 'authorised' (i.e. Australian-licensed) betting exchange operating on Australian racing would result in:

...over the medium term (5 years), transfers of racing betting turnover from existing licensing Australian wagering operators...as high as 20% in the case of the TABs and traditional bookmakers, rising to 30 % in the case of corporate bookmakers.

The findings of the Betting Exchange Task Force with regard to the commercial impact of offshore exchange providers of the Australian racing and wagering industry are not uncontested. As noted in section 4.1 above, the Northern Territory Government provided a dissenting view, indicating that:

The cross-border betting issue provides no conclusive evidence that the Australian racing industry suffers from loss of revenue. In actual fact both Bookmakers and TAB turnovers continue to grow, with subsequent returns to the industry.¹⁴⁹

A number of wagering providers, both domestic and offshore and including Betfair, have also questioned the methods by which the Betting Exchange Task Force estimated the adverse impact of exchange operations.

It is notable that in subsequent information provided to the review, the Australian Racing Board (ARB) provided qualified support for the licensing of betting exchanges in Australia. In dismissing the option of a blanket ban on betting exchanges, the ARB stated that :

The [Australian Racing Industry] believes that the better course is to explore all avenues for the appropriate licensing of betting exchange operators in order to meet the probity and integrity objectives and to provide a commercial return to the industry.¹⁵⁰

¹⁴⁷ NSW Harness Racing Club Limited, submission to review, p.1. See also submissions by the Australian Jockey Club, Australian Racing Board, Australian Harness Racing Council Inc, Australian and New Zealand Greyhound Association Inc.

¹⁴⁸ Australasian Racing Ministers' Conference, *Report of the betting exchange task force*, ARMC, Sydney, 10 July 2003, conclusions and recommendations, p.2.

¹⁴⁹ Ibid, p.6.

¹⁵⁰ Australian Racing Board, *Supplementary submission to the review of issues related to Commonwealth interactive gambling regulation*, p.3.

In consultations with ACG, Betfair has indicated a preparedness to comply with local licensing and regulatory requirements, including negotiations with the ARB for the payment of an appropriate rights fee for the coverage of Australian racing.¹⁵¹

Offshore exchange wagering providers that offer gambling services to Australian consumers in relation to Australian racing may divert revenue otherwise payable to the Australian wagering and racing industry. However, there is no evidence that an Australian-licensed exchange provider would be unable to provide an adequate return to the industry.

¹⁵¹ Allen Consulting Group, *Final report on issues related to Commonwealth interactive gambling regulation*, report prepared for the Department of Communications, Information Technology and the Arts, Melbourne, p.48.

5. THE OPERATION OF THE IGA AND THE EFFECT OF EXISTING EXCLUSIONS

Key findings—the operation of the IGA and the effect of existing exclusions

The main elements of the IGA, including the main offence provision and the complaints system, have curtailed development of the Australian interactive gaming industry and been associated with the minimal use of Internet gaming services by Australians.

The overwhelming majority of Australian Internet gambling consumers use services permitted under the IGA. The IGA therefore has broadly achieved its overall objective, which is to minimise the potential expansion of interactive gambling that may exacerbate problem gambling in Australia.

The Australian community remains concerned, however, about the potential for social harm resulting from access to new, interactive gambling services. In that context, there is continued support for the ongoing role of the current legislative framework.

The existing prohibition on continuous wagering services remains consistent with the object of the IGA, which is to ensure new interactive gambling services do not exacerbate the level of problem gambling in Australia.

The existing wagering and lotteries exclusion remains consistent with the object of the IGA. The case has not been made that limiting its effect to Australian-licensed providers would be consistent with the objects of the IGA.

The lack of appropriate investigative powers in respect of the advertising prohibition in Part 7A of the IGA potentially impacts on the operation of the prohibition.

5.1 Ongoing role for the current legislative framework

Access to interactive gambling opportunities

The IGA aims to prevent the potential exacerbation of problem gambling associated with the expansion of interactive gambling in Australia.¹⁵² The concern that underpins the IGA is that new communications technologies, including the Internet, have the potential to greatly increase the accessibility to gambling and exacerbate problem gambling among Australians.

The Productivity Commission expressed concern regarding the accessibility of gambling services and the prevalence of problem gambling in the Australian community. While acknowledging the difficulty in assessing all of the dimensions of accessibility, which include proximity, mass appeal, ease of use, conditions of entry and initial outlay (among a number of dimensions) the Commission concluded that:

¹⁵² Explanatory Memorandum to the *Interactive Gambling Act 2001*, p.1.

There is sufficient evidence from many different sources to suggest a significant connection between greater accessibility—particularly to gaming machines—and the greater prevalence of problem gambling.¹⁵³

The Productivity Commission expressed particular concern regarding the characteristics of Internet gambling, which predominantly relate to accessibility. These include:

- increased access to gambling, in terms of both time and the number and variety of gambling opportunities
- the penetration of gambling into the home with the uptake of new technology, particularly with relevance to younger gamblers
- ease of use, with few physical, cultural or behavioural barriers to entry
- the potential for increased continuity of play, particularly in the case of high frequency, low payoff forms such as gaming machines and roulette.¹⁵⁴

Representing a quantum leap in accessibility, the Productivity Commission concluded that online gambling posed significant new risks for problem gambling.¹⁵⁵ Other studies have also expressed similar concern regarding the accessibility of gambling provided via interactive means. Janower notes that:

More people simply become addicted as more people are exposed; according to psychiatrists, this is because a substantial part of the population has a latent susceptibility to compulsive gambling and different individuals get hooked by different gambling opportunities. Making gambling widely available to everyone with a computer and modem, and making it available in people's living rooms, will clearly draw out much of this latent addiction. Moreover, video gambling, because of its instant feedback mechanism, is known to addict gamblers faster than other forms of gambling; hence, sociologists and psychiatrists widely refer to it as the 'crack-cocaine of gambling addiction'.¹⁵⁶

Similarly, Griffiths and Delfabbro observe that:

The more gambling industry infrastructure that is established (e.g., new venues), the larger the range of gambling products (e.g., through the application of new technologies), and the greater the industry's marketing efforts, the more likely people will be to gamble in the first place.¹⁵⁷

Some submissions to the review have called for the legislative framework established under the IGA to be amended or repealed, based on claims that the IGA has been ineffective in preventing access to potentially harmful interactive gambling services Australians. For example, the Northern Territory Treasury stated:

¹⁵³ Productivity Commission, *Australia's gambling industries*, Report no. 10, Ausinfo, Canberra, 26 November 1999, p.18.1.

¹⁵⁴ Ibid. See also Senate Select Committee on Information Technologies, *Netbets: a review of online gambling in Australia*, SSCIT, Canberra, March 2000, National Gambling Impact Study Commission (NGISC), *National gambling impact study*, NGISC, Washington, 18 June 1999.

¹⁵⁵ Productivity Commission, *Australia's gambling industries*, Report no. 10, Ausinfo, Canberra, 26 November 1999, p.18.1.

¹⁵⁶ C R Janower, 'Gambling on the Internet', *Journal of Computer-Mediated Communication*, vol. 2, no. 2, Part 2 of a special issue, 1996, p. 3.

¹⁵⁷ M Griffiths and P Delfabbro, 'The biopsychosocial approach to gambling: contextual factors in research and clinical interventions', *eGambling: The Electronic Journal of Gambling Issues*, vol. 5, p. 4. 2001, viewed 26 November 2003, www.camh.net/egambling/issue5.

The Commonwealth's current regime for regulating interactive gambling has not restricted access by Australians to interactive gambling – rather it has forced Australians toward foreign operated sites which are often unregulated.¹⁵⁸

Other submissions to the review have also questioned the capacity for the prohibitive approach adopted under the IGA to achieve its stated objectives. Professor Jan McMillen, in her submission to the review, noted:

I remain unconvinced that efforts to prevent access by Australians to interactive gambling services will be effective.¹⁵⁹

The review has found no substantive evidence to support the claims that the IGA should be amended or repealed on the basis that the legislative framework has been ineffective in preventing access to interactive gambling services. Rather, the review has found that the introduction of the IGA has had the effect of, and been associated with (respectively), the closure of all but one interactive gaming operator licensed in Australia and the minimal use of offshore gaming services by Australian consumers. These two findings are discussed in turn below.

Closure of Australian Internet-gaming operations

The IGA is targeted at those interactive gambling services found, through the process of legislative development noted in section 2 above, to be likely to exacerbate the prevalence of problem gambling in the Australian community. These gambling services typically include online electronic gaming machines and casino-style games of chance or mixed chance and skill, together with wagering and lottery games that display the same inherent characteristics as online gaming.

The review has found that the introduction of the IGA has contributed to the closure of all but one interactive gaming operator licensed in Australia. As noted by Professor Jan McMillen in her submission to the review:

The IGA has undoubtedly achieved its objective of preventing the proliferation of additional internet gaming licenses based in Australia. Lasseters Online Casino remains the only approved Australian online gaming provider. Other commercial operators which had expressed interest in using Australia as their base have either abandoned their proposals or moved offshore (e.g. CrownCasino.com).¹⁶⁰

Industry reports also confirm that the IGA has had a substantial effect in curtailing the provision of gambling services from Australia. GOCORP Limited, Australia's first Internet-only casino, stated that:

Unfortunately, the Australian Federal Government's retrospective bill, the Interactive Gambling (Moratorium) Bill 2000 has been enacted. Based on legal advice, the Directors of GOCORP (GOCORP is the public company that operates AusVegas Casino) have formed a view that the Bill is so broad in its

¹⁵⁸ Northern Territory Treasury, submission to review, p.1. See also submissions by the ACT Government, the Australian Casinos Association and Lasseters Corporation Limited.

¹⁵⁹ Professor Jan McMillen, submission to review, p.6. See also submissions by the Interactive Gambling Council, Centrebet Pty Ltd, Convergent Communications Research Group.

¹⁶⁰ Ibid, p.4.

interpretation, that key aspects of our Casino business will be directly impacted. It would therefore be unwise for AusVegas Casino to continue to operate in its current form given the risks associated with any breach of this legislation.¹⁶¹

More recently, and following the introduction of the IGA, other Australian interactive gaming providers have ceased operation, citing the introduction of prohibitive legislative measures in both Australia and in offshore jurisdictions as key factors underlying these decisions.

- In January 2003, Tatts.com Pty Ltd, an online gaming service run by Tattersall's, ceased operations. In commenting on this decision, one Tattersall's official is reported to have commented:

The legislative environment for this business has always been difficult with federal legislation preventing the operation on online casinos and certain forms of sports betting and lotteries for Australian players.¹⁶²

- In May 2003, Publishing and Broadcasting Limited (PBL) opted to close its online casino, CrownGames.com following the launch on this Vanuatu-based service in February 2002. The CrownGames website indicated the decision to close the operation:

...follows a review of our operations in response to a number of legal and financial changes affecting the online gambling industry worldwide. In many countries, legislative amendments to gambling laws have created a very 'grey' area for online gaming and bookmaking. CrownGames, which draws from the prestige of Australia's largest and most prestigious casino—Melbourne's Crown Casino—was and is still not prepared to 'work around' the rules to be competitive.¹⁶³

In addition to contributing to the closure of Australian-licensed online gaming sites, some submissions to the review also noted that the IGA has caused significant expenditure diversion:

With the introduction of the Interactive Gambling Bill, our business declined significantly in [in play betting]. Should the prohibition on 'in play betting' be removed we would expect that business to return and increase.¹⁶⁴

Minimal use of offshore Internet gaming by Australians

In addition to curtailing the proliferation of Internet gaming operations in Australia, the introduction of the IGA is associated with the minimal use of offshore gaming services by Australian consumers. As noted in section 3.4 above, ACG found that relatively few Australians are engaging in Internet gaming activities prohibited under the IGA. ACG found that only 0.12 per cent, or approximately 18 000 Australian adults, used the Internet to gamble for money on gaming services in the 12 months to April 2003.

¹⁶¹Gamingfloor.com, *AusVegas.com closes the pouch*, 19 December 2000, viewed 6 June 2003, www.gamingfloor.com/pressrel/Press_AusVegas_closure.htm.

¹⁶²K Smith *Tattersall's Moves Away from Online Gambling*. Interactive Gaming News, 31 January 2003, citing John Mortimore, General Manager of tatts.com, viewed 23 November 2003, www.igamingnews.com.

¹⁶³CrownCasino.com website, viewed 23 November 2003, <http://crowngames.com>.

¹⁶⁴SportsOdds Systems Pty Ltd, submission to review, p.2.

This estimate compares with the Productivity Commission's assessment that in the 12 months to April 1999, more than 58 000 Australian adults had played casino games—or about 0.41 per cent of Australian adults.¹⁶⁵

Moreover, while survey data indicate some growth in the overall consumption of Internet gambling services by Australians in the four years since the Productivity Commission report, the majority of the growth has been in legal sports wagering services.

The review has also found evidence indicating a reasonable awareness of the IGA in the Australian community, particular among Internet gamblers. The ACG *Internet Gambling Survey* revealed 34 per cent of those surveyed were aware of the Commonwealth's legislative framework.¹⁶⁶ This figure rose to 63 per cent of those respondents that indicated they had gambled for money on the Internet in the 12 months to April 2003.¹⁶⁷

Continued concerns regarding accessibility

Several submissions to the review expressed concern about continued access to interactive gambling services. Urban Seed, the Victorian Local Governance Association, Communities Against the Pokies Plague and the Inter-Church Gambling Taskforce commented that:

Increasing internet penetration rates and the take up of products such as ADSL and digital television have the potential to massively increase accessibility to gaming products and services unless such access is significantly restricted. Such an increase in accessibility would lead to another quantum leap in the level of problem gambling in the community and the associated social and economic costs. Online gaming will also be more attractive to a younger generation, significantly increasing problem gambling among this demographic.¹⁶⁸

The Hon Nick Xenophon MLC expressed similar concern in his submission to the review:

The potential for online gambling, and its inherent accessibility in Australian homes and mobile telephone...poses a most serious risk of exponentially increasing gambling losses and problem gambling in Australia.¹⁶⁹

Role for the current legislative framework

As noted previously, the introduction of the IGA has been associated with the reduction in the domestic provision and minimal consumption of Internet gaming services in Australia.

- A number of interactive gaming providers have ceased operations following the introduction of the IGA, citing the introduction of prohibitive legislative measures in both Australia and in offshore jurisdictions as key factors underlying these decisions.
- The number of Australian adults gambling for money using Internet gaming services has

¹⁶⁵ Productivity Commission, *Australia's gambling industries*, Report no. 10, Ausinfo, Canberra, 26 November 1999, p.18.9.

¹⁶⁶ Allen Consulting Group, *Final report on issues related to Commonwealth interactive gambling regulation*, report prepared for the Department of Communications, Information Technology and the Arts, Melbourne, p.71.

¹⁶⁷ *Ibid.*

¹⁶⁸ Urban Seed, the Victorian Local Governance Association, Communities Against the Pokies Plague and the Inter-Church Gambling Taskforce, submission to review, p.1.

¹⁶⁹ Nick Xenophon MLC, submission to review, para.4.3.

fallen from the Productivity Commission's assessment of 58 000 in the 12 months to April 1999, to an estimated 18 000 Australian adults in the 12 months to April 2003.

Despite the association of the introduction of the IGA with a reduction in the take-up of Internet gaming services, continued growth in Internet access in Australia continues to present risks in terms of increased access to gambling services. Similarly, developments in interactive broadcasting and wireless telecommunications applications, while yet to achieve substantial market penetration, may provide a platform for the expansion of new gambling opportunities in Australia.

These developments provide ongoing support for the continued operation of the current legislative framework.

5.2 General operation of the IGA

The offence of providing an interactive gambling service

As outlined in section 2.2 above, the IGA makes it illegal to provide an interactive gambling service to customers physically located in Australia. Relevantly, subs. 15(1) of the IGA states that a person is guilty of an offence if:

- (a) the person intentionally provides an interactive gambling service; and
- (b) the service has an Australian-customer link (see section 8).¹⁷⁰

This offence carries a maximum penalty of A\$220 000 per day for individuals and A\$1.1 million per day for corporations. Subsection 15(3) provides that subs. 15(1) does not apply if the person (the provider of the interactive gambling services) did not and could not, with reasonable diligence, have ascertained, that the service had an Australia-customer link.

The exception in subs. 15(3) recognises that providers of interactive gambling services are required to use reasonable diligence (including reasonable monitoring systems) to ascertain whether the service is being provided to persons who are physically present in Australia.

In the period 11 July 2001 (the date of commencement of s.15) to 31 December 2003, one alleged breach of the offence provision had been referred to the AFP for further investigation. As at 11 March 2004 the AFP's investigation of the matter remained ongoing.

A number of submissions to the review criticised the approach toward interactive gambling services provided for through the operation of s.15. For example, the Australian Capital Territory Government stated that the offence provisions of the IGA have had little effect in achieving the legislation's stated objectives:

¹⁷⁰ A gambling service has an 'Australian-customer link' if, and only if, any or all of the customers of the service are physically present in Australia (s.8.).

The offence provisions ... are ineffective deterrents for two reasons. First, there is very little pro-active policing for any breaches of the Act. Given the enormity of the Internet and the sheer impracticality—if not impossibility—of ensuring compliance, the task, once properly targeted requires a collaborative approach. Second, the enforcement provisions do not, as it intended, prohibit Australians from gambling via the Internet, it being the supply that is unlawful as opposed the consumption.¹⁷¹

Expressing broad criticism of the prohibitive approach toward the provision of interactive gambling services, Centrebet stated that:

Apart from being wrong in principle, prohibition is a ‘one shot’ response. If it fails, the IGA offers no alternative forms of support for problem gambling. And the IGA will increasingly fail because—in the face of the internet, increasing consumer demand and the difficulties of enforcing its controls—it presents no real limit on Australians accessing online gaming.¹⁷²

The review does not consider that these submissions have made a substantive case for the amendment or repeal of the main offence provision of the IGA. As noted in section 5.1 above, the review has found that the introduction of the IGA has curtailed the development of the Australian interactive gaming industry. Together with the closure of all interactive gaming operators licensed in Australia providing services to domestic consumers, the introduction of the Commonwealth Government’s legislative measures have also been associated with the minimal use of Internet gaming services by Australians.

Interactive gaming services continue to present risks in terms of problem gambling. As noted in section 4.1 above, the ACG *Internet Gambling Survey* found that the incidence of problem gambling among users of sports betting and wagering is relatively low compared with the incidence among users of interactive poker machines/casino games.

This finding is broadly consistent the Productivity Commission’s findings.

As in their physical counterparts, such continuous forms of gambling [online gaming] present substantial risks for problem gambling – especially as there also tend to be the more popular forms of gambling.¹⁷³

As reported in section 4.1 of this report, studies by the Australian Institute of Gambling Research and the South Australia by the Centre for Population confirm these patterns of gambling-related harm associated with particular interactive gambling modes.

A number of submissions called for the extension of the prohibition under the IGA to include those services currently excluded from the definition of an ‘interactive gambling service’, including (among other forms of gambling) interactive wagering and lottery services. Consideration of the possible extension of the offence of providing an interactive gambling service to include these services is in section 5.3 below.

¹⁷¹ ACT Government, submission to review, p.3.

¹⁷² Centrebet Pty Ltd, submission to review, p.2. See also submissions by Convergent Communications Research Group; Interactive Gaming Council, Lasseters Corporation Limited; WWWagering and Gaming Consultants and the Australian Casino Association.

¹⁷³ Productivity Commission, *Australia’s gambling industries*, Report no. 10, Ausinfo, Canberra, 26 November 1999, pp.18–19.

In addition to prohibiting the provision of interactive gambling services to consumers present in Australia, the IGA also includes an additional offence of providing an Australian-based interactive gambling service to customers in a 'designated country'. This offence, in s.15A, contains similar provisions to those found in the general offence in s.15, which is discussed above.

As noted in section 2.2 above, a foreign country may be declared a designated country for the purposes of the IGA by the Minister.¹⁷⁴ As at 11 March 2004, no foreign country has been designated under this provision to date.

A limited number of submissions to the review questioned the equity of Australian interactive gambling service providers offering Internet gaming services to consumers in offshore jurisdictions. According to Professor Jan McMillen:

There are inherent ethical contradictions in this Act. It is morally indefensible to imply that Australians should be protected from this form of gambling [gaming] yet Australian operators can profit from the harm created in other countries.¹⁷⁵

These submissions have not made a substantive case for the extension of the offence provision to the export by Australian-based interactive gambling service providers of interactive gambling services to all consumers in other countries. As noted in section 3.2 above, internationally there are a number of approaches to interactive gambling. The review considers that a case has not been made to amend the IGA in order to prohibit the provision of services to customers in countries in which the provision of such services is legal.

The designated country provision allows those countries whose parliaments have taken a similar approach to interactive gambling services to that of the Australian Parliament to limit the provision of potentially harmful services to consumers present in their countries.

The operation of the complaints system

Parts 3 to 7 of the IGA establish a complaints system for dealing with prohibited Internet gambling content and set out the obligations on the Internet industry in dealing with designated Internet gambling matters. This co-regulatory framework enables the Internet industry to develop codes of practice to deal with such matters, which are underpinned by more explicit legislative measures.

¹⁷⁴ Under subs. 9A(3), this requires the government of that country to request a designation from the Minister, and for that country to have in force legislation that corresponds with the main offence provision of the IGA (section 15).

¹⁷⁵ Professor Jan McMillen, submission to review, p.6. See also submission by Convergent Communications Research Group. The Danish Ministry of Taxation expressed concern about the export of Australian interactive wagering and lottery services.

Under Part 3 of the IGA, the ABA administers a complaints scheme under which Australian residents or companies trading in Australia are able to complain to the ABA if they believe that Australians can access prohibited Internet gambling content.¹⁷⁶ The ABA's online Complaints Hotline is accessible at: *www.aba.gov.au*.

The ABA is required to investigate the complaint and, under para. 20(3)(b), to refer Australian-hosted prohibited Internet gambling content to the AFP or a state or territory police force if it considers the complaint should be so referred.

If the prohibited Internet gambling content is hosted overseas, under subparas. 24(1)(a)(i) and 24(1)(a)(ii) the ABA is required to notify the makers of filters listed in Schedule 1 to the Internet Industry—Interactive Gambling Industry Code. The ABA may, under para. 24(1)(a), refer the matter to the AFP or a state or territory police force if the ABA considers the content should be so referred. The scheme has been in effect since 11 January 2002.

Part 4 of the IGA provides for the development of a self-regulatory industry code by bodies or associations that represent ISPs. The code is required to deal with the designated Internet gambling matters, which include the formulation of a designated notification scheme, together with procedures an ISP must follow when notified by the ABA of prohibited Internet gambling content hosted outside Australia under para. 24(1)(b) or s.26.

On 13 December 2001, the ABA registered the Internet Industry—Interactive Gambling Industry Code developed by the Internet Industry Association, on behalf of the Australian Internet industry. Included in the Code is the mechanism for dealing with prohibited Internet gambling content hosted outside Australia. As noted previously, when the ABA receives a complaint about such content, details of the content are notified to the makers of filter software products listed in Schedule 1 to the Code. The Code requires ISPs to provide their subscribers one of the filter products listed in the Schedule, who then have the option to 'opt-in' to a filtering product or service under the Code.

In the period 11 January 2002 to 31 December 2003, the ABA received 27 complaints under the IGA. At 31 December 2003, nineteen investigations had been completed. Seven investigations were terminated because the ABA had insufficient information on which to base a decision (usually because the content concerned could not be located, or the ABA was otherwise unable to acquire sufficient information to determine whether the content was prohibited).

¹⁷⁶ Prohibited Internet gambling content refers to Internet content that is accessed, or available for access, by an end-user in the capacity of customer of a prohibited Internet gambling service (s.4.).

A prohibited Internet gambling service(s.6.) is a gambling service, where:

- (a) the service is provided in the course of carrying on a business
- (b) the service is provided to customers using an Internet carriage service
- (c) an individual who is physically present in Australia is capable of becoming a customer of the service.

Excluded from the definition of a prohibited a prohibited Internet gambling service are those forms of gambling excluded from the definition of an interactive gambling service (refer to section 22 above), excepting a telephone betting service.

At 11 March 2004, one investigation was current. This investigation relates to a complaint alleging that a service, located outside Australia, is a prohibited Internet gambling service as it allows users to participate in casino-style games.

Of the 19 completed investigations, ten resulted in location of prohibited Internet gambling content. All of these were located outside Australia and have been notified to the makers of filter software in accordance with the ISP code of practice registered under the IGA. The remaining nine investigations resulted in location of content that was not prohibited.

Of the ten investigations resulting in location of prohibited content, the ABA has referred one to the AFP for further investigation of a possible breach of the offence provisions contained in the IGA (specifically, provision of an interactive gambling service to Australian end-users and publication in Australia of an interactive gambling service advertisement). The service concerned allowed users to place bets on certain sporting events after they had commenced.

The complainant also alleged that they had received an email advertisement for the service. The matter was referred to the AFP following receipt of information that persons connected with the service may be present in Australia. The AFP has advised the ABA that it has accepted the matter for investigation.

The IGA also covers some interactive gambling services that may be provided using a broadcasting service. To date, the ABA has not received any complaints about such services.

Few submissions to the review provided specific comment on the operation of the complaints system.¹⁷⁷ Those submissions providing comment either indicated general support for the system, or expressed reservation about making further comment without additional information.

The principle concern underpinning the introduction of the IGA was the potential for interactive gambling services to lead to an exacerbation of problem gambling in Australia. However, the legislative objectives noted in the explanatory material accompanying the IGA expressed the Government's concern not to impose undue burden on Australia's communications industries.¹⁷⁸

To this end, the complaints system established a co-regulatory framework for dealing with prohibited Internet gambling content, within which the Internet industry were provided with a means to develop appropriate procedures to prevent access to prohibited sites. This system was modelled on the Online Content Co-regulatory Scheme, established under Schedule 5 of the *Broadcasting Services Act 1992* (BSA), which is designed to address community concerns about the accessibility of illegal and offensive content.

The self-regulatory tier of the IGA's complaints system is underpinned by stronger legislative measures should it be found that the industry codes are not providing appropriate community safeguards in relation to the designated Internet gambling matters. These measures include the capacity for the ABA to direct an ISP to comply with an industry code (s.42) and to determine an industry standard if there is no industry code or if an industry code is deficient, compliance with which is mandatory (subs. 44–48).

¹⁷⁷ See submissions by Centrebet Pty Ltd, the Australian Casino Association, Dr Rohan Miller.

¹⁷⁸ Explanatory Memorandum to the *Interactive Gambling Act 2001*, p.7.

A person is guilty of an offence under the IGA should they fail to comply with either a direction to comply with an industry code, an industry standard, or a standard or special access-prevention notice issued by the ABA. This offence carries a maximum penalty of A\$5500 for an individual and A\$27 500 in the case of a body corporate (s.55).

As noted above, the ABA registered the Internet Industry—Interactive Gambling Industry Code on 13 December 2001. In the period from 13 December 2001 to 31 December 2003, the ABA has not deemed it necessary to issue either a direction that an ISP comply with the Code nor determine an industry standard. In this regard, the procedures developed in the Code appear to enable the Internet industry to meet its obligations as set out in the IGA.

While relatively few complaints concerning potentially prohibited Internet gambling content have been made to the ABA since the commencement of the scheme, the level of complaint remains broadly consistent with the minimal use of Internet gambling services by Australians.

- As noted in section 3.4, ACG estimated that only 1.2 per cent of the Australian adult population had gambled for money on the Internet in the 12 months to April 2003, with the majority of these gamblers using legal Internet-based sports and race wagering.¹⁷⁹
- Only 0.12 per cent of Australian adults were estimated to have used prohibited Internet gaming services over the same period.¹⁸⁰

The offence of advertising an interactive gambling service

As outlined in section 4.2 above, Part 7A of the IGA makes it an offence to publish, broadcast or datacast an interactive gambling service advertisement in Australia subject to certain exceptions. This offence, which carries a maximum penalty of A\$13 200 for individuals and A\$66 000 for corporations, extends to all forms of media, both electronic and non-electronic, including advertising via the Internet, broadcast services, print media, billboards and hoardings. Some examples of the types of advertising which are not prohibited are set out below.

- Incidental or accidental advertising is permitted and is not covered by the offence provisions in Part 7A (ss.61DB and 61ED).
- Political advertising is excluded from the meaning of an interactive gambling service advertisement for the purposes of Part 7A and consequently is not included in the advertising ban (s.61BB).
- A number of gambling services are excluded from the definition of an ‘interactive gambling service’—for example excluded wagering and excluded lottery services. The advertising ban does not apply to such excluded services (subs. 5(3)).

¹⁷⁹ Allen Consulting Group, *Final report on issues related to Commonwealth interactive gambling regulation*, report prepared for the Department of Communications, Information Technology and the Arts, Melbourne, p.53.

¹⁸⁰ *Ibid*, p.59.

- The prohibition does not extend to advertisements published in overseas media outside Australia, such as overseas magazines that are not principally intended for distribution or use in Australia, or websites that are aimed at non-Australian audiences (s.61EB and subs. 61EA(3)).¹⁸¹

Part 7A is modelled broadly on the *Tobacco Advertising Prohibition Act 1992* (TAPA), which imposes a general ban on the broadcasting and publishing of tobacco advertisements. Like the TAPA, the IGA does not assign administrative responsibility for the receipt and investigation of complaints about possible breaches of the advertising prohibition. In the absence of a specified administrative body, the Department has taken responsibility for this aspect of the legislation, including the receipt and initial assessment of complaints made concerning potential breaches of Part 7A.

In the period 8 August 2001 (the date of commencement of the Part 7A) to 31 December 2003, the Department received seven complaints concerning potential breaches of Part 7A. Three of these complaints were referred to the AFP. As at 31 December 2003, two complaints, were found not to have constituted a breach of Part 7A while a further two complaints, received in December 2003, are being assessed by the Department.

The AFP has advised that it does not intend to take further action with regard to two of the three complaints referred by the Department. In declining to pursue further investigation, the AFP indicated that the referred complaints had been assessed as not having sufficient priority relative to the other demands on the AFP's investigational resources and (in the case of the second complaint) that it would be unlikely that a successful outcome would be achieved. The AFP indicated it intended to investigate the third of the three referred complaints. At 11 March 2004, its investigation of this complaint remained ongoing.

Only one submission to the review provided specific comment on the operation of Part 7A, indicating broad support for the operation of the advertising prohibition.¹⁸² Notwithstanding the lack of specific comment on this aspect of the legislation, two issues relevant to the operation of the advertising ban have emerged in the conduct of the review. These relate to the receipt and investigation of complaints concerning the advertising of interactive gambling services and the application of the IGA to the advertising of financial spread betting products. These issues are discussed in turn below.

As noted previously, the Department taken responsibility for the receipt and investigation of complaints concerning interactive gambling advertisements in the absence of an administrative body specified in the legislation. Whilst it is legally possible for the Department to investigate complaints, it is not empowered to compel persons to provide information or documents to assist its investigation. There are also no penalties for non-compliance with a Department request for information or documents.

¹⁸¹ Explanatory Memorandum to the *Interactive Gambling Act 2001* provides a detailed outline and explanation of Part 7A.

¹⁸² Urban Seed, the Victorian Local Governance Association and Communities Against the Pokies Plague and the Inter-Church Gambling Taskforce, submission to review, p.6.

By contrast the ABA, as a statutory body with investigative powers under the BSA, is empowered to summon a person to attend before a delegate of the ABA in order to answer questions or to provide documents considered to be relevant to an ABA investigation.

The ABA may also conduct hearings in relation to the exercise of any of its functions and powers (s.182 of the BSA). The ABA may summon a person to give evidence at a hearing or to produce a document (s.195). Failure to comply with a requirement to give evidence or produce documents is a criminal offence that has a maximum penalty of imprisonment of one year (s.202).

Further, there is a significant evidentiary burden required in order for a matter under the IGA to be referred to the Commonwealth Director of Public Prosecutions (DPP). As set out in the Prosecution Policy of the Commonwealth, this requires more than a bare prima facie case.¹⁸³ Given the difficulties faced by the Department in requiring the provision of evidence, the Department currently refers the complaints to the AFP for further investigation.

The review considers the lack of appropriate investigative powers and the difficulties in obtaining evidence necessary by the Department potentially undermine the effective operation of the advertising prohibition. Further consideration may be given to assessing alternative administrative options for the receipt and investigation of complaints concerning potential breaches of the advertising prohibition.

The review considers that, as the ABA has responsibility for receiving complaints and investigating potentially prohibited gambling services, and as it has investigative powers, measures should be considered that would make it the body responsible for administering the complaints process under Part 7A of the IGA.

Financial spread betting

A second issue in relation to the operation of Part 7A, is the application of the IGA to the advertising of financial spread betting products, also known as index betting. Financial spread betting involves taking a position on the future level or price of an underlying asset, which may include shares, currencies, commodities, options or stock indices.

The former Minister for Communications, Information Technology and the Arts instructed the review to consider issues relating to the advertising of financial spread betting products, in order to address concerns raised by the Queensland Government regarding the advertising by IG Index (Australia) Pty Ltd (IG Index) of financial spread betting services as a form of gambling.

The Australian Government Department of Treasury has advised that spread betting on financial markets has been the subject of a Departmental examination. It advises that:

- the IG Index is licensed by the Australian Securities and Investment Commission (ASIC) under the *Corporations Act 2001* on the basis that a spread betting contract constitutes a 'derivative', which is a category of 'a financial product'; the provision of which requires an Australian Financial Services Licence

¹⁸³ Commonwealth Director of Public Prosecutions, *Prosecution policy of the Commonwealth: the decision to prosecute*, DPP, viewed 18 January 2004, www.cdpp.gov.au/Prosecutions/Policy/Part2.aspx.

- IG Index is subject to the comprehensive regulatory framework for the licensing, disclosure and ongoing conduct of financial services products under the *Corporations Act 2001*. This framework includes the capacity for ASIC to impose conditions on the holder of a license if there is any specific evidence of harm resulting from the product, or if IG Index is marketing the product in such a way that it targeted consumers inappropriately.

Financial spread betting services are considered likely to fall within the exclusion provided under para. 5(3)(b) for certain contracts (including options and futures contracts) that are exempt from gaming or wagering laws under the *Corporations Act 2001*. Relevantly, s.9 of the IGA sets out that:

A reference in this Act to contracts that, under the Corporations Law, are exempt from the a law relating to gaming or wagering is a reference to any of the following:

- (a) option contracts covered by subsection 778(1) of the Corporations Law;
- (b) relevant agreements covered by subsection 778(2) of the Corporations Law;
- (c) futures contracts covered by subsection 1141(1) of the Corporations Law;
- (d) Chapter 8 agreements covered by subsection 1141(2) of the Corporations Law.

According to the explanatory material accompanying the IGA, the contracts and agreements noted in s.9 above may involve speculation on whether the price of a share may rise or fall or on what level of a Stock Exchange Index a share may be at a particular time in the future.¹⁸⁴

Given the likely effect of para. 5(3)(b) (excluding financial spread betting from the operation of the prohibition), the review has considered the case for broadening the offence provisions of the IGA to include the advertising of financial spread betting services. The review has found no evidence to suggest that financial spread betting services represent a new gambling service associated with problematic gambling behaviours, or likely to lead to an exacerbation of the problem gambling in Australia.

Further, financial spread betting services such as those provided by IG Index fall within the definition of a financial product. They are, accordingly, regulated under the *Corporations Act 2001* and are subject to the consumer protections contained in that legislation referred to above.

In the absence of specific evidence indicating that financial spread betting services have the potential to exacerbate the level of problem gambling in Australia, such services should continue to be subject to the licensing and regulatory arrangements established under the *Corporations Act 2001*.

¹⁸⁴ Explanatory Memorandum to the *Interactive Gambling Act 2001*, p.49.

5.3 The effect of existing exclusions

As noted in section 2.2 above, the IGA provides that the offences of providing and advertising interactive gambling services do not apply to all interactive gaming and wagering services. Relevantly, subs. 5(3) provides for the following exclusions:

- excluded wagering services (para. 5(3)(aa))
- excluded gaming services (para. 5(3)(ab))
- services that have a designated broadcasting or datacasting link (paras. 5(3)(ac) and 5(3)(iv))
- excluded lottery services (para. 5(3)(ae)).

These services are also excluded from the complaints system administered by the ABA.

The review has considered the effect of these existing exclusions with particular reference to the social and commercial impact of the services to which they apply. The review has also assessed the merits of any possible amendments to the existing exclusions and how any such amendments might contribute to the achievement of the objectives of the Commonwealth's legislative framework.

Excluded wagering services

Section 8A provides a definition of an 'excluded wagering service', which refers to those services excluded from the offence provisions and complaints system of the IGA under paras. 5(3)(aa) and 6(3)(aa). These excluded wagering services include betting on a horse race, a harness race, a greyhound race, a sporting event, or any other event, series of events or contingency.

The issues raised about the wagering exclusion in the conduct of the review broadly fall into one of two categories—those associated with either the removal or maintenance of the exclusion, and those associated with its amendment. These issues are discussed in turn the following sections.

Removal/maintenance of the wagering exclusion

The wagering exclusion has had a clear impact on the provision and consumption of interactive wagering services in Australia. As noted in section 3.4, ACG found that the majority of Australian Internet gambling consumers used legal sports and racing wagering services.

- ACG found that wagering on racing events had risen from the Productivity Commission's estimate of 0.12 per cent of the Australian adult population in 1999 to an estimated 0.86 per cent of the Australian adult population in the 12 months to April 2003.¹⁸⁵
- Similarly, sports wagering was found to have increased from 0.12 per cent of the Australian adults in 1999 to 0.55 per cent of Australian adults in 2003.¹⁸⁶

¹⁸⁵ Allen Consulting Group, *Final report on issues related to Commonwealth interactive gambling regulation*, report prepared for the Department of Communications, Information Technology and the Arts, Melbourne, p.59.

¹⁸⁶ *Ibid.*

These findings are consistent with information provided by the major Australian TABs.

- TAB Limited indicated in its submission to the review that their combined sales for parimutual racing and sports betting via the Internet increased from around A\$22 million in 1998–99 to over A\$204 million in 2001–02.¹⁸⁷
- Similarly, TABCORP indicated that Internet wagering turnover has increased as a proportion of total wagering account sales over the same period.¹⁸⁸

Reflecting the importance of the current wagering exclusion to Australian wagering providers, the majority of wagering and racing industry submissions to the review called for the maintenance of the current provision.¹⁸⁹ In supporting this position, wagering providers contended the Internet was simply a new communication channel to an existing form of gambling. For example, the Australian Racing Board, the Australian Harness Racing Council and the Australian and New Zealand Greyhound Association stated:

...the effect of allowing internet wagering has been to see a gradual transfer by bettors to this distribution channel in keeping with the general community trend in transferring from telephone to the internet as a telecommunications channel.¹⁹⁰

Consistent with the representations made by the Australian racing and wagering industry to previous gambling inquiries, many of the industry submissions to the current review contended that the characteristics of wagering engender an inherently lower potential for problem gambling behaviour.¹⁹¹ In summary, it was argued that interactive wagering tends to occur periodically, rather than providing for continuous play, provides a temporal interval between bet placement and the outcome of the event, is based on the outcome of an independent contingency and incorporates an element of skill as opposed to chance.

In contrast with the broadly held position of the wagering and racing industry, a number of submissions made by community and church groups called for the removal of all exclusions under the IGA, including wagering services. For example, in indicating support for the continuation of the Australian Government ban of Internet gambling activity, the South Australian Heads of Church Gambling Task Force stated:

...we see no reason for the continuation of exclusions for other betting and gambling services...The increase in internet gambling in these services carries all of the social and economic costs outlined above.¹⁹²

¹⁸⁷ TAB Limited, submission to review, p.11

¹⁸⁸ TABCORP Holdings Limited, submission to review, p.2.

¹⁸⁹ See submissions by the Australian Jockey Club, Australian Racing Board, Australian Harness Racing Council Inc, Australian and New Zealand Greyhound Association Inc, Betfair, NT Treasury, NSW Department of Gaming and Racing, TAB Limited, TABCORP Holdings Limited, TAB Agents' Association of New South Wales, TOTE Tasmania Pty Ltd, WA Department of Racing, Gaming and Liquor.

¹⁹⁰ Australian Racing Board, Australian Harness Racing Council Inc, Australian and New Zealand Greyhound Association Inc, submission to review, p.1. See also submissions by the Australian Bookmakers' Association, IASbet Limited, NSW Department of Gaming and Racing, SportsOdds Systems Pty Ltd, TABCORP Holdings Limited.

¹⁹¹ See submissions by the Australian Bookmakers' Association, Australian Racing Board, Australian Harness Racing Council Inc, Australian and New Zealand Greyhound Association Inc, Centrebet Pty Ltd, TAB Limited and TABCORP Holdings Limited.

¹⁹² South Australian Heads of Church Gambling Task Force, submission to review, p.13. See also submissions by:

The review has considered the arguments for both the maintenance of the existing wagering exclusion and the removal of this exclusion from the legislation on the basis of the assessment of the social and commercial impacts of attributable to these services.

Internet wagering clearly provides a significant commercial opportunity for Australia's wagering providers. As noted by Professor Jan McMillen in her submission to the review:

Licensed Australian providers have encouraged clients to migrate from phone betting to Internet gambling, thus producing major cost savings and thus increasing profit margins.¹⁹³

The review has found the available evidence supports the view that the exclusion for interactive wagering services provided by the IGA has permitted Australian wagering consumers to migrate from offline to online equivalents. As noted in section 3.4, ACG found the growth in Internet wagering, and race wagering in particular, to strongly correlate with substitution from traditional (offline) gambling.

ACG also found that approximately 72 per cent of Internet wagering on racing events is substituted from more traditional gambling forms.¹⁹⁴ Information provided in industry submissions to the review also supports this finding.¹⁹⁵ A similar, although weaker, pattern of migration was found with Internet sports (excluding racing) wagering, with approximately 50 per cent of Internet wagering on sports events substituted from more traditional gambling forms.¹⁹⁶

As noted in section 4.1, the review has found that the mode of gambling appears to influence the level of potential social harm associated with the particular service. The ACG *Internet Gambling Survey* found that the incidence of problem gambling among users of sports betting and wagering is relatively low compared with the incidence among users of interactive poker machines/casino games.

This finding is broadly consistent with estimates drawn from the Productivity Commission's *National Gambling Survey*¹⁹⁷ and studies by the Australian Institute of Gambling Research and the Centre for Population Studies in Epidemiology¹⁹⁸ reported in sections 4.1 and 5.2.

the Hon Nick Xenophon MLC; and Urban Seed, the Victorian Local Governance Association, Communities Against the Pokies Plague and the Inter-Church Gambling Taskforce. Submission by Convergent Communications Research Group also indicated reservation that the current exclusion provided under the Act were 'hard to reconcile (on in-principle grounds as opposed to protection of pre-existing vested interests)'.

¹⁹³ Professor Jan McMillen, submission to review, p.4.

¹⁹⁴ Allen Consulting Group, *Final report on issues related to Commonwealth interactive gambling regulation*, report prepared for the Department of Communications, Information Technology and the Arts, Melbourne, p.66.

¹⁹⁵ See submissions from TAB Limited (p, 11) and TABCORP Holdings Limited (p, 2).

¹⁹⁶ Allen Consulting Group, *Final report on issues related to Commonwealth interactive gambling regulation*, report prepared for the Department of Communications, Information Technology and the Arts, Melbourne, p.66.

¹⁹⁷ The Productivity Commission advise caution in relying on these estimates given the high associated standard errors. Productivity Commission, *Australia's gambling industries*, Report no. 10, Ausinfo, Canberra, 26 November 1999, p.18.9.

¹⁹⁸ Department of Human Services, *Gambling patterns of south Australians and associated health indicators*, report prepared by Centre for Population Studies in Epidemiology, Strategic Planning and Policy Division, Department of Human Services, Adelaide, May 2001, p. 98.

On the basis of the available information, there is no case for the removal of the wagering exclusion.

Amendment to the wagering exclusion

Several submissions to the review called for the amendment of the wagering exclusion to permit the placing of bets after the commencement of an event and to limit the current exclusion to Australian-licensed wagering providers. These issues are discussed, in turn, below.

While most forms of wagering are excluded from the offence provisions and complaints system, continuous wagering is a prohibited service under the IGA. Continuous wagering describes two related forms of wagering which enable bets to be placed after the commencement of an event; in-the-run betting and ball-by ball betting.

- ‘In-the-run betting’ refers to a form of wagering whereby the bettor is able to wager on the outcome of a sporting event after that event has begun (eg betting on the outcome of a football match at half time).
- ‘Ball-by-ball betting’ refers to a form of wagering whereby the bettor is able to wager on the outcome of a specific event within a sporting contest (eg whether or not the next serve in a tennis match will be an ace).

The continuous wagering prohibition does not apply to services provided via telephone. Paragraph 5(3)(a) excludes from the offence provisions a gambling service provided wholly by way of voice calls made using a standard telephone service.¹⁹⁹

Several submissions to the review called for the amendment of the wagering exclusion to permit the provision of continuous wagering services, based on claims that the current exclusion inhibits the development of digital television services in Australia, and that it undermines the competitiveness of the Australian wagering industry. For example, with regard to digital television take-up, PBL stated:

It is PBL’s view that the restrictions contained in the *Interactive Gambling Act 2001* (the Act) have the potential to limited the ability of Australian television companies to offer attractive services to viewers through digital television. Given the experience in the UK it is our view that this will be counter-productive to the encouragement of digital television in Australia.²⁰⁰

Centrebet, in commenting on the commercial implications of the current provision, stated that:

¹⁹⁹ Section 8A also provides some additional limitations on the prohibition on continuous wagering services:

- Wagering on a non-sporting event, such as the weather, even after it has commenced is not prohibited.
- Wagering on a ‘series of sporting events’ after the series has commenced is not subject to the offence provisions and complaints scheme of the Act. For example, betting on the winner of a tennis tournament after the tournament has commenced would be allowed, as the tournament is considered to be a ‘series of sporting events’ (i.e. individual matches).

²⁰⁰ Publishing and Broadcasting Limited, submission to review, p.1. See also submissions by Commercial Television Australia, Australian Subscription and Radio Association and Sports Investments Australia Pty Ltd.

It is necessary to repeal the ‘the betting in the run’ restriction to maintain the national and international competitiveness of local operators. It is an exciting form of betting which has captured the imagination of punters around the world.²⁰¹

Submissions to the review have also noted that the prohibition on continuous wagering does not apply to services provided by telephone, which are excluded from the operation of the offence provision through the operation of para. 5(3)(a). Many of these submissions considered this to be an inappropriate inconsistency with respect to the provision of licensed continuous wagering services via telephone. For example, SportsOdds expressed the opinion that:

... the existence of a distinction in the legal treatment of these services [continuous wagering], between those services which are provided by telephone (being permitted), and those services which are provided over the Internet or some other form of interactive means (being prohibited), is illogical.²⁰²

The review has considered the arguments for the partial and total removal of the prohibition on continuous wagering services with specific reference to how any such amendments might contribute to the achievement of the objectives of the Commonwealth’s legislative framework. In this context, there is no case for the removal of the continuous wagering prohibition.

In limiting the exclusion for wagering services, the Government was concerned that continuous wagering by interactive means demonstrated the repetitive, addictive qualities of gaming and was therefore associated with a higher likelihood of gambling problems. It also expressed concern that the domestic context of gambling on the Internet or through interactive digital television would potentially normalise aberrant gambling behaviour and exacerbate the social harm associated with problem gambling.²⁰³

As noted in section 5.1 above, the link between accessibility of gambling services and the prevalence of problem gambling is generally acknowledged in most studies of gambling and the incidence of associated harms. With regard to problem gambling, the Productivity Commission noted an association between the continuity of play and the likelihood of potential gambling harms.

Online casino games ... are continuous forms of gaming, with high frequency low payoffs. As in their physical counterparts, such continuous forms of gambling present substantial risks for problem gambling—especially as these also tend to be the more popular forms of gambling. Online sports betting, at least as currently operating, is less likely to involve problem gambling (18.19).

These services, particularly ball-by-ball betting, potentially replicate the repetitive, addictive qualities of gaming which, as noted in section 4.1, have been found to present the greatest risks in terms of exacerbating problem gambling.

²⁰¹ Centrebet Pty Ltd, submission to review, p.12. See also submissions by SportsOdds Systems Pty Ltd, Cricketbet, WWWagering and Gaming Consultants.

²⁰² SportsOdds Systems Pty Ltd, submission to the review, para.26. See also submissions by Western Australian Department of Racing, Gaming and Liquor, the Northern Territory Treasury, TAB Limited, TABCORP Holdings Limited, TOTE Tasmania Pty Ltd, Betfair, IASbet Limited, Publishing and Broadcasting Limited and Sports Investments Australia Pty Ltd.

²⁰³ Australia, Senate, *Debates*, 28 June 2001, p.25336.

While the review considers ball-by-ball betting services to possess the characteristics found to be most likely to engender the risk of exacerbating problem gambling, it is considered that the potentially harmful effects of in-the-run betting are less clearly demonstrated. For example, services which involve betting on the outcome of a game once the game has commenced which take place over an extended period (e.g. cricket which is held over several days) do not appear to involve the same elements of rapid, continuous play as betting on the outcome of a specific events within a sporting event (e.g. the next player to serve an ace in a tennis match).

Nevertheless, the review considers that valid concerns remain that, if permitted, in-the-run services would increase the prevalence and acceptability of gambling activity in the home. The explanatory material accompanying the IGA noted the concern regarding the presence of gambling in the home.²⁰⁴ On balance, therefore, and in view of the objectives of the IGA to minimise the incidence of problem gambling, the existing exclusions are most likely to achieve that objective.

In addition to the issue of continuous wagering, a number of submissions to the review expressed the view that the current wagering exclusion should be narrowed to cover only Australian-licensed interactive wagering providers. This view has been reiterated in additional information presented to the review by a number of interested parties.

Arguments that offshore wagering providers represent a threat to the revenue base of the incumbent Australian providers and generate a 'leakage' of industry fees and contributions from the Australian racing industry were noted in section 3.2.2 above.

In addition to these matters, submissions and additional information provided to the review also raised a number of additional concerns in support of calls for the coverage of the wagering exclusion to be limited. These included the concern that offshore wagering providers were not subject to the same probity and regulatory standards as Australian wagering providers, as noted by TAB Limited in its submission to the review:

Offshore wagering operators who do not hold an Australian Government jurisdiction licence can not be adequately monitored and controlled to ensure appropriate levels of integrity, probity, commercial soundness or responsible gambling standards.²⁰⁵

Many of the concerns expressed in submissions and supporting argumentation with regard to offshore wagering providers related specifically to the operations of United Kingdom betting exchange operator, Betfair. As noted in Section 3.1, Betfair began offering exchange services on major Australian racing events, the National Rugby League and Australian Football League games in February 2003.

In response to these developments, the Australian Racing Minister Conference established the Betting Exchange Task Force to report to relevant racing Ministers on a range of matters relating to the establishment of betting exchange services in Australia. The Task Force report was released publicly in July 2003. In addition to many of the concerns expressed with regard to offshore-wagering providers, the Task Force report also considered that the establishment of

²⁰⁴ Regulatory Impact Statement accompanying the *Interactive Gambling Act 2001*, p.4.

²⁰⁵ TAB Limited, submission to review, p.16. See also submissions by TABCORP Holdings Limited, TAB Agents' Association of New South Wales and the TOTE Tasmania Pty Ltd.

betting exchanges in Australia is likely to put at risk the integrity of the Australian racing industry. As noted in the report:

The State and Territory controlling bodies of racing ... generally opined that betting exchange operations give rise to serious potential threats to racing's actual and perceived integrity...Central to many of the concerns are the heightened risks of racing participants profiting from the defeat of their own runners, or mere perceptions on the part of punters that these risk may be exacerbated by betting exchange operations on racing.²⁰⁶

Among other recommendations, the Task Force report recommended racing Ministers approach the Commonwealth to provide a prohibition on the offering to Australians of betting exchange services on racing and sporting events unless:

- formal consent has been obtained of both the State and Territory Government where the punter is located and the club conducting the event
- the exchange is operating in accordance with certain strict licensing and operational criteria established by the States and Territories.

On 23 July 2003, racing Ministers from New South Wales, Victoria, South Australia, Western Australia and the Australian Capital Territory wrote to the former Minister for Communications, Information Technology and the Arts seeking amendment of the wagering exclusion to prevent the provision of betting exchange services, in line with the recommendations of the report of the Betting Exchange Task Force.

The position of the states and territories is not unanimous. The Northern Territory rejected the primary recommendation of the Task Force report for prohibition of betting exchanges, indicating that appropriate regulation would address integrity issues and enable an acceptable revenue stream to be negotiated.²⁰⁷

Moreover, the claims concerning the adverse commercial impact of betting exchange services in Australia are not uncontested. As noted in section 3.3.2 above, a number of wagering providers, both domestic and offshore, have brought into question the conclusion that exchange services would not provide an acceptable rate of return for the Australian racing industry.

The review has considered the issue of whether the wagering exclusion should be narrowed to Australian-licensed wagering providers and whether that would contribute to the objective of the IGA.

More particularly, the review has assessed the concerns regarding betting exchanges with specific reference to the social and commercial impacts found, in sections 4.1 and 4.2, to be associated with exchange operations.

Through the operation of the offence provisions, the IGA prohibits the provision and advertising of those interactive gambling services considered, during the development of the legislation, to present the most significant risk in terms of problem gambling. These services typically include

²⁰⁶ Australasian Racing Ministers' Conference, *Report of the betting exchange task force*, ARMC, Sydney, 10 July 2003, conclusions and recommendations, p.1.

²⁰⁷ Ibid, p.5.

online casino-style gaming services of chance or mixed chance and skill, such as roulette, poker, craps, online poker machines and blackjack.

As noted in sections 5.1 and 5.2., the review has found support for the continued application of the offence provisions and complaints system to these services. While the prohibition also extends to cover those forms of wagering whose attributes closely replicate gaming services (i.e. continuous wagering services) the exclusion provided under para. 5(3)(aa) permits the provision of most forms of wagering.

The operation of the exclusion arguably *assists* the domestic racing and wagering industry by ensuring that Australian punters have the opportunity of using Australian interactive wagering sites. It is not clear, however, that it was intended to *protect* the domestic industry from offshore competition. Indeed, the competitive position of the Australian wagering and racing industries with respect to international providers does not appear to have been the primary concern addressed by the IGA. Rather, the legislative framework focuses on those interactive gambling services likely to exacerbate the incidence of problem gambling in the Australian community.

Many of the issues raised by submissions to the review concerned the impact of betting exchanges in Australia. While legitimate concerns for the submitters, such concerns are not relevant to the objectives of the IGA. They include the commercial return to the domestic wagering providers, racing industry fees and contributions, probity standards, the integrity of racing and sporting events and licensing issues more broadly.

The review considers that these issues are more appropriately matters for consideration by state and territory governments and relevant sports administrative bodies. Responsibility for the licensing and regulation of gambling services, which include matters such as racing and wagering industry return, probity standards and integrity, remains primarily a state and territory concern.

In this regard, the operation of the relevant laws of the states and territories are specifically provided for under the IGA. Section 69 provides that the IGA is ‘not intended to exclude or limit the operation of a law of a State or Territory to the extent that that law is capable of operating concurrently’ with the IGA. In other words, a service that is exempt under the Commonwealth Interactive Gambling Act is not necessarily exempt from state or territory law.

In this context, the issue to be addressed in assessing the operation of the wagering exclusion is whether exchange operations constitute a new interactive gambling service likely to lead to the exacerbation of problem gambling in Australia. This issue is discussed in section 4.1 above.

Wagering and racing industry submissions to the review provided little direct comment on the potential social impact of betting exchange services, instead focusing to a greater or lesser extent on the possible effects of these services on the industries themselves.

Excluded gaming services

Section 8B provides a definition of an ‘excluded gaming service’, which refers to those services excluded from the offence provisions and complaints system of the IGA under paras. 5(3)(ab) and 6(3)(ab). These excluded gaming services include a service for the conduct of a game, otherwise covered by the definition of a ‘gambling service’ in s.4 of the IGA, provided to customers who are in a public place.

Subsection 8B(2) defines a ‘public place’ to mean a place, or a part of a place, to which the public or a section of the public ordinarily has access, whether or not by payment or by invitation.²⁰⁸ Examples of public places are casinos, bars and clubs.

One submission to the review called for the maintenance of the current public place exclusion. In commenting on the operation of the provision, Clubs Australia and New Zealand stated:

CANZ supports the retention of section 8B of the Act – the ‘public place’ exemption for gaming services ... This exemption protects ‘offline’ services traditionally offered by clubs, especially the game of Keno and linked gaming machine jackpots.²⁰⁹

While not directly providing comment on the public place exclusion, a number of submissions made by community and church groups called for the removal of all exclusions under the IGA.²¹⁰ One submission provided specific comment on linked jackpots poker machines in clubs, bars and clubs.

Gambling behaviour, particularly problem gambling behaviour, is influenced by the magnitude of the potential winnings. As a result, we believe that linked jackpots should be prohibited across Australia ... we believe that such a reform should be initiated by the Commonwealth Government pursuant to its constitutional communications power.²¹¹

The review has considered the arguments for both the maintenance and amendment to the public place exclusion with specific reference to how any amendment (if any) to the provision might contribute to the achievement of the objectives of the Commonwealth’s legislative framework.

Most studies of the incidence of gambling-related social harm have generally acknowledged that poker machines represent a significant threat in terms of problem gambling. In commenting on the prevalence rates of problem gambling, the Productivity Commission commented that:

Gaming machines loom much larger as a source of problems, with one in ten of those for whom this is the favourite form scoring 5 or more on the SOGS.²¹²

²⁰⁸ Subsection 8B(2) defines ‘section of the public’ to include members of a particular club, society or organisation, but does not include a group consisting of only persons with a common workplace or a common employer.

²⁰⁹ Clubs Australia and New Zealand, submission to review, p.3.

²¹⁰ See submissions made by: the Hon Nick Xenophon MLC; the South Australian Heads of Churches Gambling Task Force; and Urban Seed, the Victorian Local Governance Association, Communities Against the Pokes Plague and the Inter-Church Gambling Taskforce.

²¹¹ Communities Against the Pokes Plague, the Inter-Church Gambling Taskforce, Urban Seed and the Victorian Local Governance Association submission to review, p.12.

²¹² Productivity Commission, *Australia’s gambling industries*, Report no. 10, Ausinfo, Canberra, 26 November 1999, p.6.9.

These potential risks associated with poker machines have been confirmed in studies by the Australian Institute of Gambling Research and the Centre for Population Studies in Epidemiology reported in sections 4 and 5 above.

The focus of the IGA is on preventing the further spread of gambling through new and emerging online technologies that have the potential increase accessibility to gambling services.

The review does not consider that gambling services that happen to use communications links, such as TABs and poker machines connected between and possibly within licensed premises, represent a new type of interactive gambling service. While these services may happen to utilise a communications service, the regulation and licensing of such services are legitimately the concern of the states and territories.

Nevertheless, the potential social harms attributable to gaming services, including poker machines, remain a significant policy concern for all levels of government that necessitates a nationally coordinated response. In this regard, the review notes that the Australian Government, via the Department of Family and Community Services, established the Ministerial Council on Gambling.

The Council's role is to implement a National Strategic Framework on Problem Gambling, which has been agreed by all the states and territories. Following the meeting of the Council in November 2003, Senator the Hon Kay Patterson announced the establishment of the National Gambling Research Program.²¹³ The Program, jointly funded by the Australian Government and state and territory governments, will support research into the nature of gambling and the consequences surrounding problematic gambling. This information will be used to develop future strategies to help problem gamblers and provide effective early intervention and prevention measures for those at risk.

Services that have a designated broadcasting or datacasting link

Section 8C provides for definitions of a 'designated broadcasting link' and a 'designated datacasting link'. Services have a designated broadcasting link if either:

- the service is expressly and exclusively associated with a particular program, or a particular series of programs or content on a broadcast or datacasting service

or

- the sole purpose of the gambling service is to promote goods or services (other than gambling services) that are the subject of advertisements on a broadcasting or datacasting service, and the gambling service is associated with those advertisements.

The effect of s.8C, in combination with paras. 5(3)(ac) and (ad) and paras. 6(3)(ac) and (ad), is to exclude a service with a designated broadcasting or datacasting link from the offence provisions and complaints system. An excluded service would, for example, include a television game show that involved some elements of interactivity, such *Classic Catches* or *Big Brother*, that involve viewers voting for prizes. Excluded services would also include promotions (other than for

²¹³ Senator the Hon Kay Patterson, *Promoting research and discussion into gambling activities*, media release, Senator the Hon Kay Patterson, Canberra, 27 November 2003.

gambling services) that are included in televised advertisements, including prize draws conducted through an advertising campaign where a person enters a prize draw through the purchase of a product.

Several submissions to the review made by, or on behalf of, the broadcasting industry called for the maintenance of the existing exclusion for services with a designated broadcasting or datacasting link. For example, in indicating support for the current exclusion, Commercial Television Australia (now known as Free TV Australia) stated:

The exemption is necessary to allow competitions, game shows and other services currently provided by broadcasters using a range of delivery mechanisms including 1900 phone calls, SMS and the internet. In the future these services may also be provided through digital set top boxes.²¹⁴

The explanatory material to the IGA indicated that these types of broadcast and datacast services were not intended to be covered by the operation of the legislation. Notwithstanding, the Senate debate of the exclusion drew specific reference to its examination during the current review process.²¹⁵ A key concern is that the existing exclusion may be used as a platform for the significant extension of gambling in the home environment.

The review has found no evidence to suggest that the current broadcasting exclusion has allowed for the provision of gambling services which may exacerbate the level of problem gambling in the Australian community. While a range of services which fall within the exclusion provided for under these paragraphs are currently broadcast, there is no evidence to suggest that these present any particular problems with regard to problem gambling. The review has therefore found that the current exclusion provided for services with a broadcasting or datacasting link as designated in the legislation should continue to operate in its current form.

Excluded lottery services

Section 8D of the IGA provides a definition of an ‘excluded lottery service’, which refers to those services excluded from the offence provisions and complaints system of the IGA under paras. 5(3)(ae) and 6(3)(ae). These excluded lottery services include a lottery or a service for the supply of lottery tickets.

Subsection 8D(2) provides that the lottery exclusion does not extend to the provision of an electronic form of scratch lottery or other instant lottery. These products refer to lotteries where the result and prize is not determined by an independent or separate draw held some time after the time of purchase. Examples would include an ‘online’ scratch lottery ticket, which is provided to the customer in a virtual form after the customer accesses an ‘online scratchies’ Internet site.

As noted in section 4.1 above, the review has found no evidence to suggest that traditional lottery products, including those distributed via the Internet, have led to an exacerbation of gambling harms in the Australian community. This finding is consistent with the findings of previous

²¹⁴ Commercial Television Australia, submission to review, p.1. See also submissions by Australian Subscription Television and Radio Association and Publishing and Broadcasting Limited.

²¹⁵ Australia, Senate, *Debates*, 28 June 2001, p.25447.

inquiries and reports. For example, the Productivity Commission noted that lottery products present low risks for problem gambling, and that:

Problem gamblers account for a much lesser share of expenditure in lotteries...Indeed, conventional lotteries appear to be like most other consumer goods and do not appear to present an significant hazards for players.²¹⁶

The Report of the Senate Select Committee into the Interactive Gambling Bill 2001 also acknowledged that lotteries were quite different from other forms of gambling, accepting that there is likely to be minimal harm from the sale of lottery tickets over the Internet.²¹⁷

The Productivity Commission and Senate Select Committee findings in relation to lottery products were noted in submissions to the review made by, or on behalf of the Australian Lotteries Industry. For example, in noting the Commission's assessment that the sale of traditional lottery products over the Internet represents a new medium by which gambling may take place rather than a new form of gambling, the Australian Lotteries Industry submission expressed the view:

It is acknowledged that harm minimisation and consumer protection were the Federal Government's prime motivators for the introduction of the legislation. On this basis, the sale of lottery products over the Internet should remain exempt from the *Interactive Gambling Act 2001*.²¹⁸

The review has considered the operation of the wagering exclusion with specific reference to how the current provision contributes to the achievement of the objectives of the legislative framework. As noted previously in section 4.1, the Productivity Commission found that conventional lotteries did not appear to present any significant hazards for players.²¹⁹ Moreover, their sale over the Internet represents a new mechanism by which gambling may take place, rather than a new form of gambling.²²⁰

Consistent with the Productivity Commission's assessment, the review has found no evidence to suggest the sale of traditional lottery products, including over the Internet, presents any particular problems with regard to problem gambling. There would appear to be less incidence of problem gambling associated with the availability of traditional lottery products on the Internet, than with any other type of interactive gambling service. On this basis, the current lottery exclusion should be maintained.

In additional information provided to the review, the Australian Lotteries Industry has asked that consideration be given to limiting the lottery exclusion to Australian-based and licensed providers. The review considers that the arguments previously noted with respect to the wagering exclusion apply equally to the case of lotteries. That is, if the current exclusion from the prohibition for lotteries was limited in operation to only Australian-licensed providers, it would

²¹⁶ Productivity Commission, *Australia's gambling industries*, Report no. 10, Ausinfo, Canberra, 26 November 1999, p.7.44.

²¹⁷ The Senate Environment, Communications, Information Technology and the Arts Legislation Committee, *Interactive Gambling Bill 2001*, SECITAC, Canberra, May 2001.

²¹⁸ Australian Lotteries Industry, submission to review, p.11. See also submissions by Golden Casket Agents' Association Limited and Lottery Agents' Association of Victoria.

²¹⁹ Productivity Commission, *Australia's gambling industries*, Report no. 10, Ausinfo, Canberra, 26 November 1999, p.6.53.

²²⁰ *Ibid*, p.18.5.

draw the current legislative framework into the licensing and regulation of gambling activities. As noted previously, the licensing and regulation of gambling activities remains primarily a state and territory responsibility. In light of the focus of the IGA on the services themselves, rather than their regulatory status, the review does not consider that a sufficient case has been made to amend the IGA to this effect.

6. Technological developments relevant to the regulation of interactive gambling services or capable of assisting in the management of problem gambling.

Technology underpins the provision of interactive gambling services, providing the opportunity for gambling providers to increase the size and accessibility of the gambling industry in Australia. Technology may also provide the opportunity to regulate interactive gambling services and to assist in dealing with problem gambling.

Key findings—technological developments

Filtering technologies have not advanced to a point where they might be suitable for mandatory blocking prohibited Internet gambling content at an ISP-level. PC-level filtering continues to be the most appropriate enforcement point for the application of the filtering products.

Geolocation technologies, which attempt to determine the location of end-users with access the Internet, have achieved greater commercial application since the IGA was introduced. However, they are still subject to a number of limitations that limit their capacity to accurately determine the location of online users.

Currently available player protection measures have the capacity to complement the framework established by the IGA, but not to replace it. Responsible gambling and consumer protection measures can potentially limit increased incidences of problem gambling in those forms of gambling that are legal under the IGA. There is no evidence to suggest that they would ameliorate problem gambling in high risk gambling modes.

6.1 Developments in filtering technologies

Filtering technologies can limit the content that end-users access on the Internet, by preventing or blocking access to particular types or specified pieces of content. The following sections provide an overview of filtering products and the development of these products both prior to and following the introduction of the IGA.

Filtering levels and techniques

Filtering can be performed at four enforcement points or locations within the Internet infrastructure:

- the end-user's PC
- a server at the ISP-level²²¹
- a firewall

²²¹ An ISP web server is a computer which provides a 'service' on the Internet (e.g. hosting web pages and web applications).

or

- a network device (i.e. router).²²²

Filtering techniques broadly fall into one of two categories, *analysis* filtering and *index* filtering. Analysis filtering products, which assess the content of a webpage prior to providing access to the page, fall into five broad categories:

- file type to block all files of one format (e.g. all JPEG image files or all MPEG audiovisual files)
- text type to ‘read’ the content of a page for occurrences of specified words or phrases
- link type to assess the pages that are linked or referenced on the requested webpage
- image type to ‘read’ pictures for sexual content (e.g. occurrence of skin tones)
- profile type to compare a page against the common characteristics of pages which typically would be blocked.

Index filtering technologies, which underpin all web-filtering products, are based on blocking access to pre-determined ‘black lists’ of URLs (uniform resource locators—alpha-numeric web addresses) and/or IP addresses (Internet protocol addresses—32-bit numbers identifying points on the Internet). Index filtering techniques may also be used to permit access to only those URLs and/or IP addresses on a pre-determined ‘white list’.

Filtering technologies prior to the introduction of the IGA

The application of technical measures to prevent access to interactive gambling services hosted overseas was assessed in the development of the current legislative framework. As noted in section 2.1 above, NOIE conducted a study into the feasibility and consequences of banning the provision of interactive gambling services to Australian residents. This included an assessment of technical options for banning interactive gambling content, which refers to the mandatory blocking of prohibited content at levels above the PC (i.e. ISP, firewall or network device).

The report of the NOIE investigation, which was released in March 2001, incorporated the findings of a report prepared by information technology consulting firm ComTech. Drawing on existing studies of the technical measures available to block or filter Internet content, ComTech found that there were several technical methods that could be used to implement a ban on interactive gambling.²²³ However, these technologies would only provide for a partial level of restriction and would involve a number of drawbacks, including unintended restrictions on Internet access, potential degradation of general Internet performance and the imposition of

²²² A router is the backbone of the Internet. It is a special purpose computer which examines the packets of Internet data (which contain destination and source IP numbers) and, using this information, directs the data towards its destination. Router filtering would block information even before it reaches the Australian ISP.

²²³ National Office for the Information Economy, *Technical consultancy: options and impacts of blocking interactive gambling content*, report prepared by Com Tech Integration Services, NOIE, Canberra, 2000. Studies drawn on in the conduct of the Report included National Office for the Information Economy, *Blocking content on the Internet: a technical perspective*, report prepared by the CSIRO, NOIE, Canberra, June 1998, National Office for the Information Economy, *Access prevention techniques for Internet content filtering*, report prepared by the CSIRO, NOIE, Canberra, December 1999, Senate Environment, Communications, Information Technology and the Arts Legislation Committee, *Interactive Gambling Bill 2001*, SECITAC, Canberra, May 2001.

substantial costs, particularly on ISPs.

The findings of the ComTech report were supported by other studies conducted prior to the introduction of the IGA.

In a study of the technologies available to block Internet content, the Commonwealth Scientific and Industrial Research Organisation (CSIRO) identified a number of technical and non-technical limitations associated with application level filtering and packet level filtering.²²⁴

The Gartner Consulting Group, in a report prepared for the Internet Industry Association, concluded that filtering or blocking access to online gambling sites had significant technical flaws and that means were available to both users and website owners to by-pass filtering products.²²⁵

Current developments in filtering technologies

The review has examined technological developments in filtering technologies since the introduction of the Commonwealth's legislative framework for interactive gambling. With few technical differences between the filtering of gambling and other illegal or potentially offensive content, this has included an assessment of filtering technologies in broad application.

A number of submissions to the review expressed the view that filtering technologies provided limited capacity to block Internet sites, including prohibited Internet gambling content. For example, Lasseters claimed that:

While technology can be used to enforce player protection measures it cannot be effectively used to block or filter Internet sites in a way that will restrict access to Australia sites. ... Technology for blocking content at an ISP level has been unreliable as techniques are readily circumvented by experienced offshore operators.²²⁶

A limited number of submissions also indicated they were unaware of any significant technological developments following the introduction of the IGA. For example, the Australian Casino Association noted that:

²²⁴ National Office for the Information Economy, *Blocking content on the Internet: a technical perspective*, report prepared by the CSIRO, NOIE, Canberra, June 1998. 'Application level filtering' (at a server or ISP level) refers to blocking a particular web page or ftp site by forcing access to the Internet to be made through a *proxy server*, which performs filtering and may store (*cache*) frequently accessed material. The proxy server can then compare clients' requests with a supplied 'black list' of web sites, FTP sites, or newsgroups. 'Packet level filtering' (at a server or ISP level) involves the assessment of the IP address of the sender of a packet, and the blocking of those IP address which correspond to a supplied 'black list'.

²²⁵ Internet Industry Association, *Blocking online gambling— technical study*, report prepared by Gartner Australasia Pty Ltd, IIA, Canberra, May 2001.

²²⁶ Lasseters Corporation Limited, submission to review, p.21. See also submissions by: ACT Government; Centrebet Pty Ltd; the Convergent Communications Research Group; and Urban Seed Victorian Local Governance Association, Communities Against the Pokies Plague and the Inter-Church Gambling Task Force.

The Association is unaware of any technological developments over the past two years which materially alter the policy landscape. There is no technical ‘silver bullet’ allowing either better enforcement of the IGA approach or which renders it completely unworkable. ... Filtering illegal gambling traffic at the ISP-level remains an impractical option, with the costs far outweighing the benefits.²²⁷

As part of the review of the Online Content Co-regulatory Scheme, Ovum Pty Ltd were contracted to provide technical advice on relevant developments in Internet content filtering technology, focusing on non-PC based methods.²²⁸ Ovum found that server and firewall filtering locations to be the most effective enforcement points for filtering software, with the use of a pass-through or proxy server considered to be the most effective method of ensuring that all web content is filtered.²²⁹ This use of a proxy server ensures that every access request from every user is subject to the same rules and that nothing can pass without inspection and filtering.²³⁰

Notwithstanding these findings, Ovum found that it was no more practical or technically feasible to use analysis filtering techniques (noted previously) via a proxy system to automatically filter web content in 2003 than it was in 2000.²³¹

- Analysis filtering techniques such as file type and link type may result in a high degree of false positives, as they do not assess the content of a particular page.
- Textual, image and profile type analysis can have a significant impact on network performance, as greater accuracy typically requires increased system resources resulting in slower response times.

By contrast, Ovum found that more sophisticated algorithms and greater processing power at the server level have made the application of index filtering more technically feasible in a proxy system in 2003 than it was in 2000.²³²

- Ovum estimate that these developments have reduced the delay of such filtering at an ISP-level to approximately ten milliseconds per request—a delay which is unlikely to be noticeable to the end user.
- Beyond saturation, however, (the point at which the system is handling as many URL requests as it can) the delay would increase with the number of additional users wanting to use the system.

While more practical with regard to ISP filtering than in 2000, index filtering remains subject to a number of technical limitations with regard to the lists of prohibited content:

²²⁷ Australian Casino Association, submission to review, p.9. See also submission by Centrebet Pty Ltd.

²²⁸ Department of Communications, Information Technology and the Arts, *Internet content filtering: a report to the DCITA*, report prepared by Ovum Pty Ltd, DCITA, Canberra, 4 April 2003.

²²⁹ A proxy server is a server which sits between an end-user and a real server. Proxy servers were designed to improve ISPs’ security and performance by caching (i.e. saving) commonly accessed pages. Proxy servers intercept requests to assess whether they can fulfil the request themselves and, therefore, provide the content to the user more quickly and minimise the ISP’s downloads.

²³⁰ Department of Communications, Information Technology and the Arts, *Internet content filtering: a report to the DCITA*, report prepared by Ovum Pty Ltd, DCITA, Canberra, 4 April 2003, p.19.

²³¹ *Ibid*, p.5.

²³² *Ibid*, p.5.

- Filtering that utilises only index technologies is limited by the list employed, as it does not block unlisted content, and may also result in overblocking of content that is not prohibited but is located on the same IP as listed prohibited content.
- While filter vendors commonly update their indices daily, some pages will be miscategorised during automated analysis. Correcting miscategorisations requires manually checking each new site, involving significant resources and possible delays in the listing of pages for blocking.

ACG has undertaken an assessment of the developments in filtering technologies following the commencement of the IGA. This has included an evaluation of the findings of the studies noted previously, together with consultations with a number of major Australian ISPs.

In addition to general concern regarding the effectiveness of filtering technology, industry consultations indicated general concern that ISP-level filtering would create an onerous burden on Australian ISPs. While providing a lower estimate of the potential costs by an ISP-level filtering regime, Ovum confirmed that the implementation of filtering at the server side would impose costs on the industry. In relation to these costs, Ovum noted:

The cost of implementing such a system remains high. In addition to the initial set-up costs, ISPs also have an ongoing annual cost for licence fees, any lease costs of additional infrastructure and ongoing administrative costs. The costs in the first year of implementation are sizeable and are unlikely to be regained even if charges are passed on to users.

The effects of these costs on small ISPs will have more significant impact than on the larger ISPs. Larger ISPs may potentially use this as a competitive advantage by not passing on costs to users. Although larger ISPs will also see reduced margins, there will be less of an impact than on the smaller ISPs.²³³

ACG also found a general level of concern regarding the impact of ISP-level filtering on broadband services. The Internet Industry Association expressed the view that mandating the use of filters at the ISP-level could significantly reduce the access speed of broadband connections:

The IIA estimates that filtering is likely to degrade broadband performance [speed] by up to 80 per cent. CSIRO and Telstra note that such a claim may be accurate and, in any event, the performance impact would be likely to be 'considerable'.²³⁴

With relevance to the operation of the complaints system, the review notes that many of the limitations found to be associated with ISP-level filtering are not replicated to the same degree with the application of filtering products at a PC-level. Generally, PC-based filter technologies can apply more sophisticated filtering techniques than are practical at the ISP-level. This is primarily due to the reduced system resources required to filter only one end-user's Internet requests. Moreover, PC-level filtering has been found to have a negligible impact on Internet performance.²³⁵

²³³ Ibid, pp.5–6.

²³⁴ Allen Consulting Group, *Final report on issues related to Commonwealth interactive gambling regulation*, report prepared for the Department of Communications, Information Technology and the Arts, Melbourne, p.130.

²³⁵ Ibid., p.126, citing NetAlert and the Australian Broadcasting Authority, *Effectiveness of Internet filtering software products*, report prepared by the CSIRO, NetAlert and the ABA, September 2001.

On this basis, the review has found that PC-level filtering continues to be the most appropriate enforcement point for the application of filtering products. As noted in section 5.2 above, Internet subscribers with Australian ISPs currently have the option to ‘opt-in’ at a PC-level to a filtering product or service under the Internet Industry—Interactive Gambling Industry Code. ISPs make available one of the 15 filters listed in the Code, at a price determined by the ISP.

The review has also found no evidence of substantial advances in filtering technologies generally since the commencement of the IGA. While more sophisticated algorithms and greater processing power at the server level have improved the technical feasibility of ISP-level *index* filtering, these developments have not generally overcome the practical difficulties and limitations noted with regard to blocking prohibited Internet gambling content prior to the introduction of the IGA. Given the current capabilities of filtering technologies, the review has found no evidence to support further consideration of mandatory ISP-level filtering of prohibited Internet gambling content at this point.

6.2 Developments in geolocation technologies

Geolocation systems attempt to determine the location of end-users who access the Internet by matching an individual user’s Internet Protocol (IP) address to a geographical location.²³⁶ An overview of the operation of these technologies is provided below.

Geolocation systems have been used in a number of e-commerce applications, including the delivery of location-specific content and the assembly of data to support the provision of targeted online marketing and advertising.²³⁷ These systems have also been used to support compliance with local restrictions on the cross-jurisdictional provision of services and fraud management. For example:

- online payment provider, PayPal, has used geolocation software to determine whether site users are from an area of the world known for credit card fraud²³⁸
- online gaming provider, MGM Mirage, which is licensed in the Isle of Man, has employed geolocation technologies in order to prevent the provision of services to jurisdictions in which the provision of such services is illegal.²³⁹

It is in this context that geolocation technologies have specific application to the offence provisions of the IGA. Subsections 15(4) and 15A(4) provide that a range of matters are to be taken into account in determining whether an Interactive gambling service provider (IGSP) could, with reasonable diligence, have ascertained that their service had either an Australian-customer link or a designated country-customer link for the purposes of the IGA. Relevantly, these matters include, under para. 15(4)(d) and 15A(4)(d):

²³⁶ An IP address is a 32-bit numeric address used to identify points on the Internet, written as four numbers separated by periods.

²³⁷ B Tedeschi, ‘Online locator software use grows’, *New York Times*, 16 June 2003, D Strom (2003), ‘We know where you live’, *Web Informant #333*, 16 June 2003.

²³⁸ B B Tedeschi, ‘Online locator software use grows’, *New York Times*, 16 June 2003.

²³⁹ Online Casino Black Jack, *MGM Mirage chooses Quova for new online gaming venture*, Online Casino Black Jack, 9 September 2002, viewed 22 November 2003, www.the-makers.com/online_casino_black_jack_06-09-2003.html.

d) whether the person has network data that indicates that customers were physically present outside Australia:

- 1) when the relevant customer account was opened; and
- 2) throughout the period when the service was provided to the customer.

‘Network data’ would include data derived from geolocation software products. The Explanatory Memorandum to the IGA noted that, in determining whether the use of geolocation software programs or other monitoring systems constituted reasonable diligence, regard would need to be had, amongst other things, to the technical and commercial feasibility of using such programs or systems.²⁴⁰

In this regard, the review has identified a number of technology firms which currently offer some form of geolocation software.²⁴¹ While a number of these providers have identified significant enhancements in capacity of the software to identify a customer’s physical location, a number of potential limitations to the technology remain.

Accuracy rates are likely to be as low as 70 per cent in less-developed countries, where the assignment of IP addresses may be done at only a regional or country level, rather than a city level.

Geolocation technologies must assume that a specific Internet user is located in close physical proximity to the Point of Presence, which is the first point at which the user’s computer signals interface with routing equipment utilised by an ISP. The use of an ISP outside of a local telephone area, wireless Internet access, or Internet connections in countries with only a few ISPs may result in the inaccurate identification of the location of users.

Changes from the current Internet Protocol (IPv4) to a new version (IPv6) may impede the ability of geolocational software to maintain current accuracy levels.²⁴²

The review notes that the provision of network data from the use of geolocation is only one of a number of factors that are to be taken into account in determining whether an IGSP had used reasonable diligence to ascertain whether their service had an Australian-customer link. Other matters include those listed at paras. 15(4)(a), 15(4)(b), 15(4)(c) and 15(4)(e) of the IGA. The same also applies to the designated country provisions under s.15A of the IGA.

²⁴⁰ Explanatory Memorandum to the *Interactive Gambling Act 2001*, p.54.

²⁴¹ These providers include Quova, Akamai, Verifa, DigitalEnvoy, InfoSplit, I2Plocator, activetarget, Maxmind and javainetlocator.

²⁴² Information Technology Association of America, *Ecommerce taxation and the limitations of geolocation tools*, Information Technology Association of America, 15 October 2002, viewed 12 April 2003, www.ita.org/news/pr/PressRelease.cfm?ReleaseID=-1480108901, A E Cha, ‘Rise of Internet borders prompts fears for web’s future’, *washingtonpost.com*, 4 January 2002. L Guernsey, ‘Welcome to the world wide web. Passport please?’, *New York Times*, 15 March 2001.

The operation of geolocation technology

The majority of Internet users in developed countries, including the United States, Europe and Australia, are provided with a registered IP address when they connect to the Internet. This process, known as dynamic IP addressing, assigns to an Internet user for the duration of any visit to the Internet a specific IP address drawn from a fixed pool of addresses 'assigned' to each geographic area—typically cities.

It is possible only to isolate the user's location to a level of precision that reflects the point where the customer joins the Internet. For dial up Internet users, this location is commonly called a POP, (point of presence)—the first point at which their computer signals interface with routing equipment utilised by an ISP.

IP addresses gathered contemporaneously with an ongoing e-commerce transaction are cross-referenced with existing information previously gathered and the geolocation position of the Internet user is relayed back to the vendor's e-commerce servers.

Source: Information Technology Association of American (2002), *Ecommerce Taxation and the Limitations of Geolocation Tools*: www.elawnetwork.com/taxation.html

6.3 Player protection and harm minimisation technologies

Since the introduction of the IGA, there have been no significant technological developments capable of assisting in the management of problem gambling. Nonetheless, as noted in section 4.1 above, with respect to interactive gambling, the online nature of the service can facilitate responsible gambling and consumer protection measures that may not be practicable offline.

In its submission to the review, Lasseters outlined the measures that it has in place to limit problem gambling, including:

- player registration and personal verification controls
- bet and deposit limits and self-imposed restrictions
- prohibitions on credit betting and restrictions on the immediate access winnings
- transaction records on players accounts
- self-exclusion facilities
- links to online counselling, self-help and support services.²⁴³

Many of these measures were noted also in the Senate Select Committee on Information Technologies' report *Netbets: A Review of Online Gambling in Australia*. In supporting the regulation of online gambling, the Select Committee report noted:

A heightened level of harm minimisation policies will encourage more responsible gambling habits, and

²⁴³ Lasseters Corporation Limited, submission to review, pp.19–20.

online gambling revenue will not be dependent on problem gamblers.²⁴⁴

A number of submissions to the review have also provided comment on the capacity for technological measures to help address problem gambling. According to Dr Rohan Miller, for instance, it should be possible to develop new Internet measures to assist problem gamblers. However, such products are not currently available.

In another submission, Regis Controls Pty Ltd proposed its own technological solution, which it claimed could mitigate the effects of problem gambling. WWWagering and Gaming Consultants also claimed that a number of technology-based solutions are suited to reducing problems of interactive gambling and that technology could be used to study and identify early problematic behaviour, which would improve the targeting of preventative programs. It acknowledged, however, that the effectiveness of these measures is limited.

Drawing on the information provided in submissions to the review together with relevant overseas developments, ACG has assessed the potential for player protection measures to assisting in the management of problem gambling.²⁴⁵

ACG noted the capacity for certain of the available player protection measures to monitor online gambling behaviour. In this regard, computer software implemented by gambling operators may provide the capacity to detect patterns of problem gambling not available in other forms of offline gambling. Player registration requirements may also enable the verification of identity, age and address, thereby minimising the potential for gambling by minors.

Notwithstanding these specific findings, ACG questioned the effectiveness of self-identification and self-exclusion mechanisms in alleviating problem gambling. This was reiterated in a submission to the review by the Convergent Communications Research Group, which considered player protection systems, such as timeouts, on-screen warning and exclusions to be easily circumvented by potential problem gamblers and therefore of limited benefit.

The review considers that the currently available player protection measures have the capacity to complement the framework established by the IGA, but not to replace it. Responsible gambling and consumer protection measures can potentially limit increased incidences of problem gambling in those forms of gambling that are legal under the IGA. There is no evidence to suggest that they would ameliorate problem gambling in high risk gambling modes.

²⁴⁴ Senate Select Committee on Information Technologies, *Netbets: a review of online gambling in Australia*, SSCIT, Canberra, March 2000, p.6.

²⁴⁵ Allen Consulting Group, *Final report on issues related to Commonwealth interactive gambling regulation*, report prepared for the Department of Communications, Information Technology and the Arts, Melbourne, p.140.

7. The feasibility of and capacity to regulate financial transactions associated with the provision of interactive gambling services

Section 69A of the IGA provides for regulations to be made to make agreements in relation to payments for the supply of illegal interactive gambling services unenforceable. The Parliamentary intent was for any such regulations to discourage the provision of illegal interactive gambling services to Australian customers by allowing gamblers to default on their debts.

Consultations undertaken on this issue after passage of the IGA indicated a range of unintended regulatory effects, technical limitations and legal uncertainties that brought into question the capacity of any such regulations to achieve their intended outcome.

In light of these complexities, the former Minister for Communications, Information Technology and the Arts directed the review to consider in more detail the feasibility of, and capacity to, regulate financial transactions associated with the provision of interactive gambling services.

Key findings—financial transactions

Regulations made in accordance with s.69A of the IGA are unlikely to achieve the outcome intended by Parliament, which was to discourage the provision of interactive gambling services to customers in Australia.

The likely result of regulations would be that Australian card-issuing financial institutions would be liable for any dishonoured gambling-related debts under either of the major credit card associations. Online casino operators would be under little pressure to wind back their operations to Australians and consumers may be attracted by their capacity to repudiate any debt incurred by such gambling.

Australian card-issuing institutions could respond to the introduction of such regulations by blocking the use of their cards for all gambling-related transactions, including wagering and lottery services permitted under the IGA.

A range of potential circumventions would reduce the potential effectiveness of measures introduced by credit card associations.

To achieve the purpose of s. 69A, new regulatory mechanisms and additional information requirements in the card associations' financial transaction authorisation request process would be required. There would be significant efficiency costs, processing delays, and other that would ultimately be borne by all Australian credit cardholders.

In view of these costs, and the low use of illegal interactive gambling services by Australians, a case has not been made to use the financial payments to regulate the provision of interactive gambling services.

7.1 The regulation of gambling-related financial transactions

The Minister may, under s.69A, make regulations providing that an agreement which provides for the payment of money for the supply of an illegal interactive gambling services has no effect. Paragraphs 69A(1)(a) and 69A(1)(b) provide that regulations to this effect 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 interactive gambling service.

This regulatory power was included in the IGA to strengthen measures to discourage the provision of interactive gambling services to customers in Australia. The Senate debate on the provision suggested that it would enable gamblers to default on their debts, thereby putting pressure on online casino operators to wind back their operations, at least to Australian customers.²⁴⁶

Subsection 69A(1) provides that regulations may provide for the matters specified in paras. 69A(1)(a) and 69A(1)(b).²⁴⁷ In this regard the provision, provides for discretion as to the matters to which any such regulations, if made, may apply and, in fact, whether regulations be made at all. Notwithstanding this discretion, subs. 69A(2) requires that if regulations are to be made, they ought to be made within six months after the commencement of Part 2 of the IGA.

To this end, the Government initiated a process of public consultation shortly after the passage of the IGA on how the intent of regulations under s.69A might best be given effect. This process revealed a number of legal uncertainties and technical constraints that may limit the capacity to regulate financial transactions associated with interactive gambling services or otherwise make them unfeasible.

On this basis, the former Minister directed the review to consider in more detail the feasibility of and capacity to regulate financial transactions associated with the provision of interactive gambling services.

7.2 An overview of relevant aspects of the financial payments system

The payment system is the lifeblood of the interactive gambling industry; without an efficient means of transferring funds between gambler to gambling operator, the industry would cease to remain viable. This section of the review report provides an overview of the structural elements of the financial payments system relevant to the potential regulation of gambling-related financial transactions.

²⁴⁶ Australia, Senate, *Debates*, 28 June 2001, pp.25462–25464 and pp.25427–25428.

²⁴⁷ A power to make regulations in such terms is usually interpreted as giving the person with the power to make the regulations the choice as to whether regulations are to be made at all and, if regulations are to be made, whether the regulations will deal with all the matters provided for, or only certain cases. See also *Acts Interpretation Act 1901* s.33(3A).

Credit cards remain the major payment method used to fund interactive gambling transactions.²⁴⁸ Broadly, there are two types of credit card organisations; credit card associations such as Visa International Service Association (Visa) and MasterCard International Incorporated (MasterCard), and full service credit card companies such as American Express Company and Discover Financial Services.

Card associations do not provide credit services directly to cardholders or businesses. Rather, they establish the operating standards that define the policies, roles and responsibilities of the member financial institutions, who, in turn, issue the credit cards, sign up merchants to accept credit cards, or both. Card companies issue their own brand of cards directly to customers and authorise merchants to accept those cards.

Consistent with their divergent operating structures, card associations and card companies have taken alternate approaches to provision of financial services for Internet gambling.

Submissions to the review by both Visa and MasterCard indicated that neither association has in place policies that specifically restrict the use of cards for Internet gambling.²⁴⁹ The coding system implemented by the associations' permits, however, the blocking of Internet gambling transactions at the discretion of the card-issuing member institutions in recognition that the legal status of Internet gambling varies between jurisdictions. Further detail on the coding system and the transaction process utilised for credit card transactions is provided below.

American Express and Discover Financial Services have implemented screening and monitoring procedures to restrict the capacity for Internet gambling sites to become credit card merchants. The decision is reported to have been made on the basis of minimising exposure to high-risk industries, which include gambling activities.²⁵⁰

In late 2002, the US GAO conducted a survey of Internet gambling websites to gather data on the payment options offered to those wishing to gamble. The survey results, summarised in Table 7.2.1 below, indicate that an estimated 85 per cent of Internet gambling sites accept either MasterCard or Visa. This compares with an estimated 4.9 per cent and 1.2 per cent who state that they accept American Express and Discover respectively.

²⁴⁸ M Balestra and A Cabot, *Internet gambling report*, 6th edn, The River City Group, Missouri, 2003, p.71.

²⁴⁹ Visa International Service Association, confidential submission, MasterCard International, p.4.

²⁵⁰ W O Jenkins Jr. *Internet gambling: an overview of the issues*, United States General Accounting Office, Washington, 2 December 2002, p.20.

Table 7.2.1: Internet gambling payment options—summary of the results of the US GAO *Internet Gambling Web Site Survey*

Payment options	Percentage of sites	Number of sites	95% confidence interval
Credit cards			
Visa	85.8	139	79.5–90.8
MasterCard ^a	85.1	137	78.1–89.8
American Express	4.9	8	2.2–9.5
Discover	1.2	2	0.1–4.4
Online payment providers			
PayPal	66.7	108	59.8–73.5
FirePay	21.0	34	15.0–28.1
NETeller	32.7	53	25.9–39.5
EZPay	1.2	2	0.1–4.4
Equifax	0.0	0	0.0–1.8
Direct wire transfer			
Bank Wires	59.3	96	52.1–66.4
Western Union	46.9	76	39.7–54.2
Money orders/cheques			
Money orders	27.8	45	21.3–34.3
Travellers cheques	8.0	13	4.3–13.3
Bank drafts, cashier’s cheques, certified cheques	40.1	65	33.0–47.3
Personal cheques	29.6	48	23.0–36.3
Electronic banking systems or processors			
Idollar ^b	5.6	9	2.6–10.3
Electronic financial services	15.5	25	10.3–20.8
Other banking systems	28.0	45	21.4–34.5

^a(out of 161); ^b(out of 160)

Source: W O Jenkins Jr. *Internet gambling: an overview of the issues*, United States General Accounting Office, Washington, 2 December 2002, *Internet Gambling Web Site Survey*, p.53.

ACG has also assessed the payment methods accepted by a sample of interactive gambling providers, including all the major Australian providers together with a number of overseas Internet gambling sites. Consistent with the results of the GAO survey, ACG found both Visa and MasterCard to be accepted by all the interactive gambling providers surveyed, with a number of Australian wagering providers also accepting Bankcard.²⁵¹

With relatively few interactive gambling sites found to accept credit card company cards, the remaining consideration of payment systems under section 7.2 is focused on the major association card schemes, and in particular the associations' coding system and transaction process.

A typical MasterCard or Visa transaction involves the following five participants: the cardholder; the card issuer (a member financial institution); the card association (MasterCard or Visa); the acquirer (a member financial institution) and the merchant.

The following provides an overview of the transaction process in its simplest form.²⁵² An authorisation request is sent from the merchant to the acquirer, then from the acquirer to the card association, which in turn forwards it to the card issuer. The authorisation request must be 'coded' using the card association codes. These codes identify, among other things, the type of merchant and the communication method by which the transaction is taking place.

On the basis of the information provided in the authorisation request, the card issuer then makes a determination as to whether the transaction should be authorised. Once (and if) authorised, it sends approval to the card association, which in turn forwards the appropriate approval back the acquirer and then on to the merchant.

To identify Internet gambling transactions, the card associations use the Merchant Category Code (MCC) 7995, which identifies the transaction as gambling or gaming, together with certain of the information provided in 'Data Element 61', including a point-of-service (POS) condition code and Electronic Commerce Indicator.²⁵³

Currently, when an authorisation request is sent from an acquiring institution with either MasterCard or Visa schemes, it includes a number of fields of information. While each card association uses different terminology for these information fields, the generic terms used in Table 7.2.2 below describe the information provided in authorisation requests.

²⁵¹ Allen Consulting Group, *Final report on issues related to Commonwealth interactive gambling regulation*, report prepared for the Department of Communications, Information Technology and the Arts, Melbourne, p.146. It should be noted that the advertising of acceptance of major credit cards such as MasterCard and Visa does not preclude transactions from issuing banks that attempt to block Internet gambling being denied.

²⁵² The card association's transaction process is based on information provided by MasterCard and Visa in submissions to the review.

²⁵³ Visa International Service Association, confidential submission; W O Jenkins Jr. *Internet gambling: an overview of the issues*, US GAO, Washington, 2 December 2002, p.22.

Table 7.2.2—Mandatory information fields for MasterCard and Visa

	MasterCard	Visa
Cardholders account number	✓	✓
Processing code	✓	✓
Amount/value of the transaction	✓	✓
Merchant category codes (type of merchant)	✓	✓
Date and time of transaction	✓	✓
POS entry mode (type of terminal)	✓	✓
POS condition code (additional POS information)	✓	✓
Acquiring bank identification	✓	✓
Currency code	✓	✓
Merchant's name	✓	✓
Additional information field	✓	✗

✗ not mandatory/non/existent

✓ mandatory

Source: ANZ, additional information provided to the Allen Consulting Group

As noted in section 3.2 above, a number of major card-issuing banks in the United States have implemented policies to decline authorisation requests coded as an Internet gambling in order to prevent the use of their cards for online gambling. These banks include Bank of America, Fleet, Direct Merchants Bank, MBNA and Chase Manhattan. The GAO found that issuing member banks, representing more than 80 per cent of the purchase volume of cards issued by Visa and MasterCard in the United States, had implemented policies to deny payment authorisation request for transactions coded as Internet gambling.²⁵⁴

Australian card-issuing financial institutions do not, however, read all the information provided in the authorisation request. ANZ has advised ACG that its transaction processing system reads only the following information fields:

- cardholder's account number, to check whether the transaction involves a valid card
- amount of the transaction
- date and time of the transaction
- merchant category code
- currency code.²⁵⁵

²⁵⁴ W O Jenkins Jr. *Internet gambling: an overview of the issues*, US GAO, Washington, 2 December 2002, p24.

²⁵⁵ Allen Consulting Group, *Final report on issues related to Commonwealth interactive gambling regulation*, report prepared for the Department of Communications, Information Technology and the Arts, Melbourne, p.157.

While relatively few information fields are read, only two are checked before the authorisation decision is made. These fields concern whether the cardholder account number is valid and whether the card has sufficient funds. ACG has found that the reason that only two information fields are checked is that the entire process of authorisation should take no more than ten seconds. Otherwise, the transaction will ‘time out’ and not be completed. The more information that has to be checked before a transaction can be authorised, the greater the chance that the transaction will not be completed in the allotted time.

Both associations have in place systems to ensure the accuracy of merchant and commerce codes. MasterCard, in its submission to the review, stated that acquiring banks face the prospect of fines and other sanctions (including suspension or revocation of association membership) for the miscoding of transactions by merchants. Issuers also face similar penalties for the breaches of the MasterCard rules, which include prohibiting the misuse of the card for such things as illegal purposes. Visa also has in place an audit program designed to minimise the extent of coding errors related to Internet gambling.

In addition to these measures, the associations provide the capacity for the card issuer to ‘chargeback’ incorrectly coded transactions to the acquirer, who may then seek to recover these losses from the merchant. It should be noted that this chargeback facility is provided for incorrectly coded transactions only, and not for correctly coded gambling-related transactions, the debt for which the cardholder declines to honour.

While the preceding sections describe the interactive gambling transaction in its simplest form, such transactions also potentially involve a number of intermediary parties, retained by card issuers, acquirers or gambling providers to perform services in connection with some or even all of their roles in respect to the payment transaction.

These intermediaries may include online payment providers (also known as payment aggregators) such as PayPal, FirePay, NETeller, EZPay and Equifax. While differences exist, online payment providers generally enable an individual to establish a ‘virtual account’, which may be funded by any number of sources, including credit cards. In this case, the online payment provider must have an agreement with a card association which would allow payments to be made to the virtual account by means of the credit card. The individual account holder may then use those funds to make payments with a merchant (or its bank) with whom the online payment provider has an agreement.

As noted in Table 7.2.1 above, the GAO *Internet Gambling Web Site Survey* indicated that online payment providers are a widely accepted payment method for Internet gambling, with an estimated 66 per cent of Internet gambling sites accepting PayPal and an estimated 21 per cent and 33 per cent accepting FirePay and NETeller respectively.²⁵⁶ Consistent with the GAO survey findings, ACG also found that a number of major overseas Internet gambling sites accept payment by NETeller and FirePay.²⁵⁷

While online payment providers do not circumvent the coding system, they do have the potential

²⁵⁶ In July 2002, online auction site eBay announced that it was acquiring PayPal and that under the terms of the purchase PayPal would stop doing business with online gambling merchants.

²⁵⁷ Allen Consulting Group, *Final report on issues related to Commonwealth interactive gambling regulation*, report prepared for the Department of Communications, Information Technology and the Arts, Melbourne, p.146.

to obscure online gambling transactions where the initial payment of funds into the players virtual account is not coded to reflect the eventual use of those funds for online gambling.

In its submissions to the review, MasterCard indicated it had taken steps to ensure that monies paid into online payment providers accounts, and subsequently used to fund Internet gambling, are coded as gambling transactions.

Since 2002, MasterCard has approached electronic account providers are required assurances that either:

- (a) monies paid into monies paid into their electronic accounts from MasterCard cards will not be used for Internet gambling transactions; or
- (b) monies paid into their electronic accounts from MasterCard cards which may subsequently be used for Internet gambling purposes will be coded as gambling transactions when seeking authorisation for the purchase of electronic chips.²⁵⁸

MasterCard indicated that this has resulted in cases of online account providers having provided an assurance that their system is able to segregate funds deposited from a MasterCard. In another case, an online payment provider declined to provide an assurance, and thereafter ceased to accept MasterCard cards.²⁵⁹

In addition to online payment providers, there are a number of alternative (i.e. non-credit card) payment methods which may be used to fund Internet gambling. These include cheques, money orders and wire transfers, as well as emerging private label debit. As noted in Table 7.2.1 above, the US GAO has estimated that the majority of Internet gambling sites accept bank wires, with a significant proportion estimated to accept money order and various cheque types. These payment systems remain, however, more costly and involve much longer time delays than credit card payment systems.

With some exceptions (namely Western Union) wire transfers are widely used as a method to pay customers winnings.²⁶⁰

7.3 Current regulatory options

The review has assessed two broad approaches to the use of the financial payments system to regulate the provision of interactive gambling services to:

- make regulations in line with the provisions of s.69A
- require financial institutions to block transactions with gambling operators who provide illegal interactive gambling services.

These two approaches are discussed and evaluated in the following sections.

²⁵⁸ MasterCard International, submissions to review, p.14.

²⁵⁹ Ibid.

²⁶⁰ M Balestra and A Cabot, *Internet gambling report*, 6th edn, The River City Group, Missouri, 2003, p.73.

Make regulations in line with the provisions of s.69A

Section 69A of the IGA allows regulations to be made to make agreements in relation to payments for the supply of illegal interactive gambling services unenforceable. The following section outlines the review's consideration of the feasibility of and capacity to make regulations in line with s.69A.

A number of submissions to the review called for regulations to be made under s.69A as it is currently drafted. For example, the NSW Department of Gaming and Racing commented that:

Regulations under section 69A of the IGA, would be of significant deterrence to overseas Internet gambling operators seeking to target the Australian community, and is warranted despite the potential complexity of it enforcement.²⁶¹

Other submissions, while indicating support for regulations, remained concerned that any such regulations not unduly restrict the provisions of services otherwise permitted under the IGA. In this regard, TABCORP, in indicating support for the making of regulations under s.69A, stated:

The Government should ensure that the legislation clearly provides that financial institutions can continue to work with providers of betting services licensed in Australian jurisdictions (e.g. wagering).²⁶²

Stating a contrary position to those noted previously, a number of submissions questioned the feasibility of any regulations made under s.69A. For example, Centrebet commented:

The Issues Paper outlined two broad options to alter the status of financial transactions associated with illegal interactive gambling. The first was to render financial agreements for the provision of illegal interactive services to Australians as unenforceable. The Issues Paper noted the problems arising with agreements made internationally, and the risk that Australian financial institutions may bear the ultimate financial burden of unenforceable agreements. Centrebet sees little merit in pursuing this option. It is unlikely to contribute anything more to existing legal situation whereby the Australian courts will not act to support illegal contracts.²⁶³

Submissions by the financial services industry reiterated many of these concerns regarding the feasibility of making of regulations under s.69A in terms of potential legal uncertainties, the imposition of liability on financial institutions and the subsequent adverse effect on problematic gambling behaviour.

MasterCard claimed that regulations would undermine the certainty of current law governing Internet gambling contracts:

²⁶¹ NSW Department of Gaming and Racing, submission to review, p.11. See also submissions by: WA Department of Racing, Gaming and Liquor; Urban Seed, the Victorian Local Governance Association, Communities Against the Pokies Plague and the Inter-Church Gambling Taskforce; South Australian Heads of Churches Gambling Taskforce; and the Hon Nick Xenophon MLC.

²⁶² TABCORP Holdings Limited, submission to review, p.4., See also submissions by TAB Limited, TOTE Tasmania Pty Ltd, TAB Agents' Association of New South Wales, Australian Jockey Club, Australian Lotteries Industry (additional information provided to review).

²⁶³ Centrebet Pty Ltd, submission to review, p.13. See also submissions by Northern Territory Treasury, IASbet Limited, Australian Casino Association, Professor Jan McMillen, Convergent Communications Research Group.

... Option 1 [69A regulations] arguably targets agreements unrelated to the Gambling Agreement. Considering the many different combinations and permutations of payment transactions which may underlie the primary Internet gambling transaction, MasterCard is concerned that the regulations would impose an imprecise test for determining which contracts or agreements will fall within their scope.²⁶⁴

The Australian Bankers Association noted the potential for regulations to impose liability for dishonoured gambling transactions on Australian financial institutions:

... when a customer performs a transaction with a bank credit card, the card scheme honours the transaction, which is in turn honoured by the bank. If a customer purchases an illegal gambling service over the Internet and then repudiates the debt, the bank would be liable for that debt. A customer could continue to gamble on an interactive gambling website at the expense of card-issuing banks.²⁶⁵

In relation to the potential liability effects, MasterCard also submitted that this may have the unintended consequence of encouraging rather than discouraging problem interactive gambling, as consumers may flaunt their capacity to repudiate any debt incurred by that gambling:

... Option 1 [s.69A regulations] will be contrary to the objective of the Act of discouraging persons in Australia and designated countries from consuming illegal Internet gambling services. It is difficult to understand how Australian customers, armed with the knowledge that financial institutions will be prevented from recovering debts run up through illegal Internet gambling services, will be discouraged from engaging in such services. In fact, they will be encouraged to gamble more because they cannot be held accountable.²⁶⁶

The review has considered the making of regulations designed to achieve the outcome intended by Parliament with respect to s.69A. Regulations made 'in line with s.69A' would necessarily provide the capacity for Australian gamblers to repudiate debts incurred with the providers of illegal interactive gambling services. The intention would be for this capacity to enable gamblers to default on their debts, thereby putting pressure on online casino operators to wind back their operations, at least to Australians.

Given the primary use of credit card payment methods for interactive gambling, the review has, in the first instance, considered the effect of s.69A regulations on these payment systems.

With payments to the providers of illegal interactive gambling services honoured through the payment system, it is difficult to see how this might discourage the provision of online gaming services to customers located in Australia, or otherwise affect the behaviour of illegal gaming providers.

The underlying objectives of the regulations could be advanced if Australian card-issuing institutions were able to chargeback to the acquiring bank any dishonoured debts for illegal interactive gambling services. Faced with the obligation for debts incurred by Australian gamblers, acquiring financial institutions would have a strong incentive to ensure these providers of illegal interactive gambling services implemented procedures to prevent Australian-based gamblers from purchasing these services.

²⁶⁴ MasterCard International, submission to review, p.20. See also submission by Australian Bankers Association.

²⁶⁵ Australian Bankers Association, submission to review, p.6. See also submission by ANZ Bank, MasterCard International Limited. Visa International (confidential submission) also confirms this information.

²⁶⁶ MasterCard International, submission to review, p.21.

However, as noted in section 7.2. the information available to the review suggests that, the current chargeback facility available through either major card associations is only provided for incorrectly coded transactions. That is, liabilities for illegal gambling debts that were correctly coded would not be able to be charged back to the acquiring.

With card-issuing member financial institutions obliged to pay the payment card system any amounts incurred by their cardholder, and with card-holders provided with the capacity to dishonour any such debt, regulations made in line with s.69A are likely to be ineffective in discouraging the provision of interactive gambling services to customers in Australia.

Rather than discourage the provision of illegal interactive gambling services to Australians, there is a risk that regulations made in line with s.69A would promote the use of these services because consumers would be able to dishonour debts incurred through that gambling.

A further issue is that Australian financial institutions, faced with the liability for illegal interactive gambling debts, could choose to block all Internet gambling-related transactions.²⁶⁷ The most straightforward option available would involve the banks using the existing coding system noted in section 7.2 above to decline authorisation requests for gambling-related transactions.

However, card-issuing institutions are unable to distinguish at the time of authorisation, between different types of gambling and would therefore be unable to distinguish between legal and illegal forms of gambling defined by the IGA. As a result, transactions in relation to legal online wagering or lottery services would also be declined.

For example, a gambling consumer located in Australia would not be able to place an interactive TAB bet on an Australian horse race, purchase an Australian lottery ticket on the Internet or place a bet with a foreign supplier of an excluded wagering or lottery service using an Australian-issued credit card.

This outcome would be contrary to the object of the IGA and inconsistent with broader operation of the legislative framework.

Require financial institutions to block transactions with gambling operators providing illegal interactive gambling services

An alternative approach may be to require Australian financial institutions to block transactions with gambling operators who provide illegal interactive gambling services. This would most likely be achieved through legislative amendment to the IGA.

A number of submissions to the review have provided comment on the requirement for Australian card-issuing institutions to identify and decline authorisation requests from gambling merchants.

²⁶⁷ See submissions by ANZ, MasterCard International, Australian Bankers Association.

Noting developments in the United States, a number of submissions called for introduction of a similar requirement for Australian card-issuing institutions. For example, Urban Seed, the Victorian Local Governance Association, Communities Against the Pokies Plague and the Inter-church Gambling Taskforce, the South Australian Heads of Churches Gambling Taskforce expressed the view that:

Attacking illegal interactive gambling through the payments system is an effective strategy as developments in the USA have shown. ... Placing the burden of controlling illegal internet gambling on the financial sector will force financial institutions to take measures such as correctly coding illegal gambling payments in order to filter out illegal gambling transactions. That is already happening internationally and Australian institutions are no less capable of assisting in this way.²⁶⁸

In contrast, a number of submissions questioned the feasibility and effectiveness of the imposition of any requirement that Australian financial institutions block transactions with interactive gambling merchants. For example, IASbet stated that:

IAS supports the policy principle of prevention of fraudulent activity associated with unscrupulous operators and illegal gambling transactions, however IASbet does not support the blocking of all credit card transactions for gambling services. The challenge is to identify and deal with what is illegal, not to assume all activity is illegal.²⁶⁹

Reiterating these concerns regarding the distinction between legal and illegal services, submissions by financial services providers expressed the view that it is not possible for the current international coding system to identify categories of services which may be considered illegal in certain jurisdictions. As noted by MasterCard in its submission to the review:

... the coding system is unable to distinguish among various types of gambling and wagering (e.g. sports betting, horse racing, casinos, lotteries etc.), and is therefore unable to distinguish between what is regarded as legal and illegal forms of gambling under the Act. Rather, it includes all forms of gambling under a single code.²⁷⁰

In its submission to the review, ANZ raised the possibility that the current card association codes might be redesignated to enable Australian card-issuing banks to identify transactions for the provisions of illegal gambling services as defined under the IGA. Visa and MasterCard, however, questioned the feasibility of such an approach, indicating that the assignment of a unique MCC for online casinos would involve significant financial outlays for member institutions, merchants and the associations themselves.

In its consideration of these issues, ACG developed an alternative option that would require Australian card-issuing institutions to perform additional information checks in processing all credit card payments.

²⁶⁸ Urban Seed, the Victorian Local Governance Association, Communities Against the Pokies Plague and the Inter-Church Gambling Taskforce, submission to review, p.8 and p.11. See also submissions by: the South Australian Heads of Churches Gambling Taskforce; the Hon Nick Xenophon MLC; NSW Department of Gaming and Racing; and WA Department of Racing, Gaming and Liquor.

²⁶⁹ IASbet Limited, submission to review, p.31. See also submissions to review by: Australian Casino Association; Centrebet Pty Ltd; Convergent Communications Research Group; Lasseters Corporation Limited; Northern Territory Treasury; and , , , Professor Jan McMillen..

²⁷⁰ MasterCard International, submission to review, p.12.

Firstly, the card-issuer would be required to determine whether the transaction was an interactive gambling transaction. This would involve reconfiguring existing authorisation systems and would be similar to the authorisation system changes implemented by a number of issuing banks in the United States.

Secondly, Australian card-issuing financial institutions would need to determine whether the transaction was with an eligible merchant. This assessment of eligibility would be made by assessing the merchant's name (provided as an information field in the authorisation request) against a predetermined list of those gambling merchants who provide only those services permitted under the IGA.

The ACG proposal would require Australian card-issuing institutions to refuse authorisation for gambling-coded transactions, except for those 'eligible interactive gambling service providers'.

An eligible interactive gambling service provider would be one who had satisfied a regulator (for example, the ABA) that they have in place procedures that screen Australian-based gamblers from purchasing gambling services that are prohibited under the IGA. The regulatory body would then provide an updated list of eligible providers to Australian card-issuing financial institutions.

It seems that the ACG proposal might achieve a measure of support among financial institutions.²⁷¹ ACG noted supplementary information provided by ANZ, which stated that:

ANZ would support the extension of the current Visa and MasterCard scheme processes to allow for the identification of 'registered' gambling providers.²⁷²

In its submission to the review, MasterCard has indicated support, in principle, for this type of approach, albeit with some qualifications:

In MasterCard's experience, the blocking capability inherent in the payment card schemes is the most effective tool that can be employed by financial institutions to confront the problems raised by illegal Internet gambling. To the extent any regulations made under section 69A of the Act target financial institutions, MasterCard supports an approach which confers a role upon financial institutions to prevent illegal Internet gambling transactions by utilising the blocking capability.

Any regulations which follow this approach must be sufficiently flexible to utilise the existing infrastructure and the coding mechanism of the payment card schemes, which operate uniformly across the globe.

Similarly, MasterCard believes that this approach can only be successful if financial institutions receive the benefit of a 'safe harbour' immunity from legal proceedings, provided they have undertaken their role in good faith.²⁷³

National Australia Bank (NAB), however, does not support this approach. In additional information provided to ACG, NAB indicated:

²⁷¹ Allen Consulting Group 2003, *Final Report on Issues Related to Commonwealth Interactive Gambling Regulations*, Melbourne, p.162.

²⁷² Ibid.

²⁷³ MasterCard International Inc, submission to review, p.22.

The cost to the schemes for designing and implementing such a system is likely to be significant and would also be likely subject to a long implementation timeframe if supported by the schemes ... it is unlikely that a costly and potentially complex system would be supported in order to continue facilitation primarily of Internet based sports-betting for Australian residents.²⁷⁴

Information provided to ACG by NAB indicated that implementation of this option would take about 6–8 months and cost it approximately A\$120 000. Without further information, ACG has been unable to estimate the broader costs of implementing the required changes to issuers authorisations systems. ACG note however, that with issuers' authorisation systems being slightly different, each would have to implement a unique solution for its own systems. With more than 60 issuers of credit cards in Australia, the costs to the industry could be large.²⁷⁵

However, the administrative costs associated with the proposal are unquantified. These would include development and maintenance of a list of eligible gambling merchants, the conduct of assessments and ongoing monitoring of service providers granted eligibility.

The impacts that the ACG proposal would have on the efficiency of the financial payments system are also unquantified. These would include increased waiting times for credit card processing as the type of transaction and merchant name are screened. According to ACG:

It is worth noting that the attempts to foreclose the purchase of illegal interactive gambling services by 18 000 people may impose waiting costs on all 9.6 million Australian credit cardholders, who make over 900 million credit card purchases each year.

The ACG proposal would also subject to circumventions of the credit card associations' coding system, including the:

- failure on the part of gambling merchants to correctly code Internet gambling transactions
- use of online payment providers to 'obscure' the correct coding
- use of alternate (non-credit card) payment systems.

ACG has estimated the direct benefits of using the payments system to curtail illegal interactive gambling to be between A\$250 000 and A\$1.6 million, based on various levels of effectiveness. However, this range does not take account of implementation costs, administrative costs or any detrimental effects on the efficiency of the payments system as outlined above. These costs would need to be subtracted from any estimate of benefits.²⁷⁶

As noted in section 3.3 above, the introduction of the IGA has been associated with the minimal use by Australians of illegal interactive gambling services that may potentially lead to problem gambling. ACG found that only 0.12 per cent, or approximately 18 000 Australian adults used

²⁷⁴ Allen Consulting Group 2003, *Final Report on Issues Related to Commonwealth Interactive Gambling Regulations*, Melbourne, p.163, citing email from National Australia Bank.

²⁷⁵ Ibid, p.164. Many different credit unions issue credit cards, but these credit unions share the same systems, operated by CUSCAL (the industry association). ACG indicate that the assessment of authorisation requests might be more efficiently undertaken at the card association level (i.e. by MasterCard or Visa). The review considers that further consideration of appropriate screening points would need to be made should an option to block Internet gambling-related financial transaction be pursued.

²⁷⁶ Ibid, p.169.

the Internet to gamble for money on gaming services in the 12 months to April 2003.²⁷⁷

The IGA has successfully curtailed development of the Australian interactive gaming industry and resulted in minimal use of illegal Internet gambling services by Australians. In this context, there is no case to use the financial payments system to regulate the provision of interactive gambling services.

²⁷⁷ Ibid, p.59.

Submissions to the review

The former Minister for Communications, Information Technology and the Art issued a media release on 26 February 2003 advising of the release of the background paper and inviting submissions on the matters to be considered by the review. Submissions were sought by 22 April 2003. A number of extensions to the submission date were requested and granted by the Department.

Forty-five submissions were received from the individuals and groups listed below. Two submissions were requested to remain confidential, while a third submission was not provided electronically. The remaining forty-two submissions were posted on the Department's website.

1. ACT Government	24 April 2003
2. ANZ	5 May 2003
3. Australian Bankers' Association	28 April 2003
4. Australian Bookmakers' Association Pty Ltd	2 May 2003
5. Australian Casino Association	30 April 2003
6. Australian Jockey Club	7 May 2003
7. Australian Lotteries Industry	22 April 2003
8. Australian Racing Board, Australian Harness Racing Council Inc, Australian and New Zealand Greyhound Association Inc.	1 May 2003
9. Australian Subscription Television and Radio Association (not provided electronically)	12 May 2003
10. The Sporting Exchange Limited (Betfair)	2 May 2003
11. Centrebet Pty Limited	1 May 2003
12. Clubs Australia and New Zealand	2 May 2003
13. Commercial Television Australia	17 April 2003
14. Community Services Ministers' Advisory Council	7 May 2003
15. Convergent Communications Research Group	1 May 2003
16. Cricketbet	5 May 2003
17. Danish Ministry of Taxation	11 April 2003
18. Golden Casket Agents' Association Ltd	2 May 2003
19. IASbet Limited	12 May 2003
20. Interactive Gaming Council	21 April 2003
21. Lasseters Corporation Limited	2 May 2003
22. Lottery Agents' Association of Victoria	16 April 2003

23. Mair, Mr Peter	22 April 2003
24. MasterCard International	2 May 2003
25. McMillen, Professor Jan	4 May 2003
26. Miller, Dr Rohan	22 April 2003
27. Northern Territory Treasury	22 May 2003
28. New South Wales Department of Gaming and Racing	29 April 2003
29. New South Wales Harness Racing Club Limited	5 May 2003
30. Publishing and Broadcasting Limited	22 April 2003
31. Regis Controls Pty Ltd	23 April 2003
32. South Australian Heads of Churches Gambling Task Force	29 April 2003
33. Smythe, Mr Tim	22 April 2003
34. SportOdds Systems Pty Ltd	28 April 2003
35. Sports Investments Australia Pty Ltd (FoxSports)	5 May 2003
36. TAB Limited	16 April 2003
37. TABCORP Holdings Limited	2 May 2003
38. TAB Agents' Association of New South Wales	22 April 2003
39. TOTE Tasmania Pty Ltd	24 April 2003
40. TVB Enterprises (commercial in confidence)	21 April 2003
41. Urban Seed, the Victorian Local Governance Association, Communities Against the Pokies Plague and the Inter-church Gambling Taskforce	1 May 2003
42. Visa International Service Association (commercial in confidence)	7 May 2003
43. Western Australian Department of Racing, Gaming and Liquor	22 April 2003
44. WWWagering & Gaming Consultants	23 April 2003
45. Xenophon, the Hon Nick MLC	2 May 2003



Australian Government

Department of Communications,
Information Technology and the Arts

REVIEW OF ISSUES RELATED TO COMMONWEALTH INTERACTIVE GAMBLING REGULATION

Call for Submissions

BACKGROUND

The *Interactive Gambling Act 2001* (IGA) establishes a regulatory framework at the Commonwealth level to address community concerns about the availability and accessibility of interactive gambling in Australia.

This framework has been in effect since August 2001 and followed a 12-month moratorium on the introduction of new interactive gambling services that was in place from 19 May 2000 until 18 May 2001.

The moratorium allowed the Commonwealth Government to investigate the feasibility and consequences of banning the provision of interactive gambling services to Australian residents. In line with previous inquiries, the Government found that the availability of gambling services on the Internet represents a 'quantum leap' in the accessibility of gambling, and has the potential to exacerbate problem gambling.

REGULATORY FRAMEWORK

Under the IGA, it is an offence to provide certain interactive gambling services to customers physically located in Australia. This offence, which carries a maximum penalty of \$220 000 per day for individuals and \$1.1 million per day for corporations, applies to all interactive gambling service providers, whether based in Australia or offshore, whether Australian or foreign owned. The IGA also makes it an offence to advertise interactive gambling services in Australia. These services typically involve the Internet to play games of chance, or games of mixed chance and skill.

The offences of providing and advertising interactive gambling services do not apply to all interactive gaming and wagering services. The IGA provides for a limited number of exclusions as follows:

- a telephone betting service
- excluded wagering services including betting on a horse race, harness race, greyhound race or sporting event, or any other event, series of events or contingency, where the bet is placed prior to the event commencing

- excluded lottery services; which include most forms of lottery service, except for online instant and scratch lotteries and other highly repetitive or frequently drawn keno-type lotteries
- excluded gaming services that are provided to customers in a public place
- services that have a designated broadcasting or datacasting link, including:
 - a program or series of programs broadcast on a broadcasting service
 - programs or content transmitted on a datacasting service
- certain contracts (including options and futures contracts) that are exempt from gaming or wagering laws under the *Corporations Act 2001*
- any service declared exempt by the Minister.

The advertising prohibition under the IGA extends to all forms of media, both electronic and non-electronic, including advertising via the Internet, broadcast services, print media, billboards and hoardings, subject to certain exceptions. These exceptions include political advertising and incidental or accidental advertising. The prohibition does not extend to advertisements published in overseas media, such as magazines that are published overseas, or websites that are aimed at non-Australian audiences.

As part of the framework established by the IGA, the Australian Broadcasting Authority (ABA) administers a complaints scheme under which Australian residents or companies trading in Australia are able to complain to the ABA if they believe that Australians can access prohibited Internet gambling content. The ABA is required to investigate the complaint and refer Australian-hosted prohibited Internet gambling content to the Australian Federal Police (AFP) or a State or Territory police force if it considers the complaint should be so referred. If the prohibited Internet gambling content is hosted overseas, the ABA is required to notify the makers of filters listed in Schedule 1 to the Interactive Gambling Industry Code (the Code).

The Code was developed by the Internet Industry Association, as required by the IGA, and deals specifically with the issue of overseas sourced material. The Code requires Internet service providers (ISPs) to provide their customers with one of the approved filters listed in Schedule 1 of the Code. The ABA may also refer overseas-hosted prohibited Internet gambling content to the AFP or a State or Territory police force where they believe the material is hosted in a country of interest to that police force.

While the IGA currently makes it an offence only to provide interactive gambling services to people in Australia, the Minister for Communications, Information Technology and the Arts has the ability under the Act to widen the offence to include the provision of such services to people in a 'designated country'. This requires the government of that country to request a designation from the Minister, and for that country to have in force legislation that corresponds with the main offence provisions of the IGA. No foreign country has been designated under this provision to date.

STATUTORY REVIEW

Section 68 Requirements

Under section 68 (1) of the IGA the Minister for Communications, Information Technology and the Arts (the Minister) must, before 1 July 2003, cause to be conducted a review of Commonwealth regulation of interactive gambling. The review is required to consider a broad range of matters that are specified in section 68 and are discussed below.

Subsection 68(4) of the IGA requires that services that are currently excluded under the IGA be considered by the statutory review. Consequently, the review will consider issues related to all forms of interactive gambling services, whether or not currently prohibited. In line with this requirement, 'interactive gambling services' for the purposes of the review shall refer to all interactive gaming and wagering services.

On 16 January 2003, the Minister announced that he had instructed the Department of Communications, Information Technology and the Arts (the Department) to undertake the required review.

Section 69A

Under section 69A of the IGA, the Government may make regulations providing that an agreement for the payment of money for the supply of an illegal interactive gambling service has no effect. The use of this regulatory power is to be in accord with the overall aim of the IGA, which is to limit potential problem gambling in Australia associated with interactive gambling.

The Government has not made any regulations under section 69A but has consulted stakeholders on how their intent could best be given effect. The issues are complex and the Government is concerned not to create unintended regulatory effects or to impose undue regulatory burdens.

The Minister has directed the Department to further consider matters associated with section 69A in the context of the statutory review.

Consultancy

The Department has invited tenders for research into issues related to Commonwealth interactive gambling regulation in Australia. The successful tenderer will assist the Department in the conduct of the review by providing research, analysis and other supporting material on certain of the issues required to be considered. As part of that consultancy, the successful tenderer will also liaise with key stakeholders associated with interactive gambling in Australia.

ISSUES

The Growth of Interactive Gambling Services

The review is required to provide an assessment of the development of interactive gambling services both in Australia and overseas. This will include an assessment of the size and projected growth of the interactive gambling industry. The industry response to the introduction of the Commonwealth's interactive gambling legislation will also be assessed, along with the impact of regulatory measures introduced in other jurisdictions. The review

will also provide an assessment of the availability of interactive gambling services and the incidence of use of these services in Australia.

Comments are invited on these issues.

The Social and Commercial Impact of Interactive Gambling Services

As mentioned above, the overall aim of the IGA is to limit potential problem gambling in Australia associated with interactive gambling services. The review is required to consider the social and commercial impact of interactive gambling services and the effectiveness of the IGA in dealing with these impacts. This will involve analysis of the incidence of problem gambling in Australia with respect to both illegal and excluded interactive gambling services relative to the incidence of problem gambling in offline equivalents.

Comment is sought on the social and commercial impacts of interactive gambling, particularly by comparison with non-interactive forms of gambling. Submitters may also wish to comment on the effectiveness of the IGA in dealing with such impacts.

Comment is also invited on any other relevant social or commercial impacts of interactive gambling services. These might include matters such as the demand for welfare and other support services or the role of interactive gambling services in the development of the Australian information and communication technology sector.

The Operation of the IGA and the Effect of Existing Exclusions

The Commonwealth's regulatory framework is comprised of three elements:

- the offence provisions in the IGA:
 - and the exclusions outlined above
- the complaints scheme administered by the ABA
- the operation of the Interactive Gambling Industry Code.

In the period 11 January to 31 December 2002, the ABA received 13 complaints about Internet gambling content. Eleven investigations were completed, with two investigations terminated due to lack of sufficient information (in both cases the ABA was unable to locate any Internet content at the addresses provided by the complainants). Of the 11 investigations completed, seven resulted in location of prohibited Internet gambling content hosted outside Australia and the ABA notified the details of the content to the makers filter software products, in accordance with the procedure set out in the Code. Two investigations resulted in location of Australian hosted content that was not prohibited. In relation to the advertising prohibition under the IGA, two complaints have been received and are currently under investigation.

Comments are invited on the operation of the IGA and on the effect of the existing exclusions.

Technological developments relevant to the regulation of interactive gambling services or capable of assisting in the management of problem gambling

Technologies relevant to the regulation of interactive gambling would include those capable both of assisting regulation, such as filtering technologies, and conversely those used either to

promote interactive gambling or to undermine the offence provisions and complaints scheme of the IGA.

However, technological developments are also able to provide more effective consumer protection mechanisms, including for example complete transaction records and effective mechanisms for pre-commitment on spending. These may mitigate the incidence of problem gambling associated with interactive gambling services.

Comment is invited on these issues. It should be noted, however, that in this regard the review is to assess technological trends and capabilities broadly. Promotional material for particular technology products is not sought if it does not elucidate broader issues.

The feasibility of and capacity to regulate financial transactions associated with the provision of interactive gambling services

As mentioned above, under section 69A of the IGA the Government may make regulations providing that an agreement for the payment of money for the supply of an illegal interactive gambling service has no effect.

Shortly after the passage of the IGA, the Government initiated a process of public consultation on how the intent of regulations under section 69A might best be given effect. This process, which began in September 2001 with a call for public submissions by the National Office for the Information Economy (NOIE), has continued throughout 2002.

These consultations have indicated that the Government's ability to render agreements that provide for the payment of money for the supply of illegal interactive gambling services unenforceable is uncertain. There are a number of legal and practical considerations that may limit the capacity to regulate financial transactions associated with interactive gambling services or otherwise make them unfeasible. Given these concerns, the Government has not made regulations to date.

The Government is concerned that any intervention in this area is appropriate to the level of problem gambling associated with illegal interactive gambling services. The Government is also concerned not to create unintended regulatory effects or to impose undue regulatory burdens.

Consultations have indicated that two broad approaches might be available for the development of regulations under section 69A.

- Make regulations under the provisions of section 69A

The purpose of such regulations would be to render agreements for the provision of illegal interactive gambling services to customers in Australia unenforceable after any debt has been incurred.

It is unclear, however, whether Australian law would cover agreements and related payments for services provided by individuals/institutions in jurisdictions other than Australia. It is possible that under this approach, the liability for interactive gambling debt may rest with Australian financial institutions because the capacity for these institutions to recover payments made to overseas interactive gambling merchants appears uncertain.

- Require financial institutions to block credit card transactions related to illegal interactive gambling services.

Following similar developments in some jurisdictions in the United States, this option would require Australian credit card issuing institutions to identify and decline authorisation requests from gambling merchants for illegal interactive gambling transactions.

Should Australian financial institutions respond to this requirement through the use of credit card transaction service codes, such measures appear likely to be effective for credit card purchases occurring directly between the consumer and the gambling merchant, where the merchant has correctly coded the gambling transaction.

There appear, however, to be a number of means by which the correct identification of illegal interactive gambling transactions might be avoided. These include establishment of player accounts with offshore financial institutions, the use of online payment providers, and the potential for gambling merchants to use incorrect credit card transaction service codes in order to avoid identification of gambling transactions. It is also uncertain how any such regulations would discourage the use of alternative payment systems and emerging payment technologies, such as e-cash.

Comment is sought on the Government's ability to regulate financial transactions associated with the provision of interactive gambling services. This would include an assessment of the options outlined above as well as any other approaches and the potential impact of relevant overseas developments on the regulation of financial agreements associated with interactive gambling services.

Comment is also sought on whether available options represent an appropriate response to the level of problem gambling associated with interactive gambling in Australia.

SUBMISSIONS

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

Submissions should be provided by Tuesday, 22 April 2003 and should be addressed to:

Manager
Broadcasting and Online Content
Licensed Broadcasting
Department of Communications, Information Technology and the Arts
GPO Box 2154
CANBERRA ACT 2601

Submissions may be provided electronically, preferably in a format compatible with Microsoft Word 97, and should be emailed to iga.review@dcita.gov.au. Further information on this review can be obtained from the Department's website at www.dcita.gov.au or from Rhyan Bloor at email: rhyan.bloor@dcita.gov.au or telephone 02 6271 1869, facsimile 02 6271 1717.

Submissions will be made public unless otherwise specified. Persons providing a submission should indicate clearly whether any aspect of the submission should not be made public. Submissions will be considered in the preparation of a review report, which will be tabled by the Minister in both Houses of Parliament.