

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

**Submission to the Community Affairs
References Committee Inquiry into
*The Prevalence of Interactive and Online
Gambling in Australia***

October 2010

Introduction

The Department oversees the *Interactive Gambling Act 2001* (IGA) which aims to limit the provision of interactive gambling services to Australians and to, therefore, minimise the scope for problem gambling among Australians. To this end, the IGA is intended to balance the protection of Australians with a sensible and enforceable regulatory regime.

Among other things, the IGA prohibits the provision of interactive gambling services to customers in Australia and the advertising of interactive gambling services. The IGA is designed to regulate the provision of both Australian and overseas based interactive gambling services.

Interactive gambling services

The IGA defines ‘interactive gambling service’ and makes it an offence to intentionally provide a service that falls within this definition to customers in Australia. For the purposes of the IGA, an ‘interactive gambling service’ may include gambling services provided to customers using:

- an internet carriage service; or
- a broadcasting service; or
- any other content service.

Interactive gambling services under the IGA include:

- online casino-style gaming services of chance or mixed skill and chance, such as online pokie machines and poker, which are played for money or anything else of value; and
- ‘in play’, ‘ball by ball’ or ‘contingency’ betting online during a sporting event.

Some forms of more traditional gambling services, including services that facilitate wagering on certain racing and sporting events, are excluded from the IGA definition of ‘interactive gambling service’, and it is therefore not an offence under the IGA to provide such services. Telephone betting services are also excluded from the IGA definition of ‘interactive gambling service’. A telephone betting service is defined in the IGA as ‘a gambling service provided on the basis that dealings with customers are wholly by way of voice calls made using a standard telephone service’. This means that, while services offering ‘in play’, ‘ball by ball’ or ‘contingency’ betting online during a sporting event are ‘interactive gambling services’ under the IGA, similar services, and dealings with the customer, provided by a telephone betting service do not fall under the definition.

Section 69 of the IGA 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. This means that a gambling service that is not an ‘interactive gambling service’ under the IGA could be subject to State or Territory law.

For example, the Victorian *Gambling Regulation Act 2003* (the Act) regulates the gambling industry and activities in Victoria, including in relation to certain aspects of interactive gaming. The Act provides for the conduct under licence of ‘interactive gaming’.

A person may complain to the Australian Communications and Media Authority (the ACMA) about prohibited internet gambling content. If a complaint relates to internet content hosted in Australia and the ACMA considers the complaint warrants investigation, the ACMA must refer the complaint to a member of an Australian police force. The ACMA does not have any powers under the IGA to direct the take down of Australian hosted sites that offer interactive gambling services. The ACMA will also investigate overseas hosted content itself and, if satisfied the content is prohibited, must notify the content to approved PC filter providers (listed in Schedule 1 to the Interactive Gambling Industry Code) and a police force if appropriate.

The offence of intentionally providing an interactive gambling service to Australian customers carries a penalty of 2,000 penalty units, which currently equates to a maximum penalty of \$220,000 for natural persons. The maximum penalty that can be imposed on a corporation is 5 times this amount (currently \$1.1 million).

The IGA does not currently operate to prohibit Australian hosted sites providing interactive gambling services to overseas customers, provided that no customers physically present in Australia are able to access those services.

Advertising of interactive gambling services

The IGA also prohibits the broadcasting or publishing of interactive gambling service advertisements in Australia. In certain circumstances, the inclusion of an interactive gambling service advertisement on a website will be taken as a publication of the advertisement in Australia. Interactive gambling service advertisements include sponsored advertising and a broad range of material broadcast or published that gives publicity to, or otherwise promotes or is intended to promote:

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

The penalty for breaching any of the advertising prohibitions in the IGA is 120 penalty units, which currently equates to a maximum penalty of \$13,200 for natural persons. The maximum penalty that can be imposed on a corporation is 5 times this amount (currently \$66,000).

The Department considers complaints regarding the advertising of interactive gambling services and refers potential breaches of the IGA to the Australian Federal Police and/or the ACMA for investigation.

It is a condition of each commercial television broadcasting licence and each subscription television broadcasting licence that the licensee will not broadcast an interactive gambling service advertisement in contravention of Part 7A of the IGA. In addition, under the *Broadcasting Services Act 1992*, it is a condition of each commercial television and subscription television broadcasting licence not to use a broadcasting service in the commission of an offence against another Act or law of a State or Territory.

It is the responsibility of individual broadcasters, internet content providers and print publishers to ensure that a particular program or advertisement complies with the IGA.

Productivity Commission Inquiry into Gambling

The Productivity Commission's Inquiry Report on Gambling was tabled on 23 June 2010. The Report contained 48 recommendations, including in relation to interactive gambling. It is available at the Productivity Commission's website at www.pc.gov.au/projects/inquiring/gambling-2009.

The Government is considering the Report's recommendations.

The Department is examining the regulatory approaches taken by other countries in relation to interactive gambling.