

Chapter 7

Effectiveness of the current regulatory framework

7.1 This chapter considers the effectiveness of the *Interactive Gambling Act 2001* (IGA). It details where the IGA appears to be successful and where there are deficiencies. Rather than comment on aspects of the IGA throughout this chapter, the committee will consolidate its views at the end of the chapter.

Clarifying the purpose of the IGA

7.2 To assess the effectiveness of the IGA, it is important to be clear about its purpose. The Explanatory Memorandum for the Interactive Gambling Bill 2001 detailed the concern to be addressed by the IGA regarding the link between greater accessibility and availability of gambling opportunities leading to an increase in the prevalence of problem gambling:

The Government is concerned that new interactive communication services will give interactive gambling service providers (IGSPs) new opportunities to increase the size and accessibility of the gambling industry in Australia. The Productivity Commission has found a strong link between the accessibility of gambling services and the prevalence of problem gambling in the community. In its report, *Australia's Gambling Industries* (1999), it states that 'there is sufficient evidence from many different sources to suggest a significant connection between greater accessibility...and the greater prevalence of problem gambling.

The concern is thus that the growth in availability of interactive gambling services to the Australian community will lead to an increase in problem gambling.¹

7.3 The IGA aims to minimise the harmful effects of gambling on the Australian community by limiting the provision of interactive gambling services to Australians.² It is against this aim that the committee will consider its effectiveness.

Reviews

7.4 The IGA was last reviewed in 2004 and this review concluded that:

The IGA had curtailed the development of the Australian interactive gambling industry and was associated with the minimal use of internet gaming services by Australians. It found that the IGA has proven largely successful in meeting its policy objectives of minimising the potential expansion of interactive gambling that may exacerbate problem gambling

1 Interactive Gambling Bill 2001, *Explanatory Memorandum*, pp 6–7.

2 Interactive Gambling Bill 2001, *Explanatory Memorandum*, p. 7.

in Australia. The review found no substantive evidence to support amendment or repeal of the IGA on the basis that the legislative framework is ineffective in preventing access to interactive gambling services.³

7.5 The committee notes that the Department of Broadband, Communications and the Digital Economy (DBCDE) is currently conducting a review into the IGA which:

...is intended to ensure that the prevalence of problem gambling in the online environment and gambling addiction in the Australian community is limited.⁴

Committee view

7.6 The committee agrees that it is time to review the rationale and effectiveness of the IGA which has been in effect since 2001 and was last reviewed in 2004. It is particularly relevant given the growth in online gambling and technology developments in this area.

Limiting the provision of interactive gambling services

7.7 To limit the provision of interactive gambling services to Australians, the IGA makes it an offence to intentionally provide a prohibited interactive gambling service, as defined by the IGA, to customers in Australia.⁵ This offence provision extends to offshore providers of interactive gambling services to customers in Australia.⁶ This means that any interactive gambling service provider, either within or outside Australia, would be committing an offence if it had customers in Australia. In addition, it is also an offence to provide an Australian-based interactive gambling service to customers overseas in designated countries.

Limiting Australian-based services being provided to customers overseas

7.8 Regarding Australian-based interactive gambling services being provided to customers in overseas countries, the committee notes that currently there are no countries designated under section 15A of the IGA where it is prohibited for Australian gambling operators to provide interactive gambling services. In order to be designated, a foreign government must:

- make a request to the minister for such a declaration, and

3 Information available from:
http://www.dbcde.gov.au/broadband/online_gambling/interactive_gambling_act_2001
(accessed 29 June 2011).

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

5 *Interactive Gambling Act 2001*, Part 2, section 15.

6 *Interactive Gambling Act 2001*, Part 2A, section 15A.

- have legislation that mirrors the provisions of section 15 of the IGA, that is, that prohibits the provision of interactive gambling services.⁷

Limiting Australian-based interactive gambling services

7.9 Regarding the provision of a prohibited Australian-based interactive gambling service to customers in Australia, the Productivity Commission (PC) concluded that 'the IGA has clearly prevented any Australian-based company from providing online gaming to Australian residents' and indicated that the real effect of the IGA had been to prevent companies located in Australia from providing online gaming services to Australians.⁸

7.10 In its IGA review discussion paper, DBCDE confirmed:

It appears that the most significant effect of the IGA has been to prevent companies located in Australia from selling online gaming services to Australians.⁹

Limiting overseas-based interactive gambling services accessible to Australians

7.11 The IGA does not prevent Australians from accessing overseas interactive gambling services. Indeed, submissions indicated that the IGA has the practical effect of restricting customer choice to overseas websites for interactive gambling services prohibited by the IGA. This may expose customers to unscrupulous operators where they have little or no recourse if they experience problems and lose their money.

7.12 Australians currently have easy access to overseas internet gambling sites, subject to the effectiveness of the complaints regime and any subsequent investigations. Dr Sally Gainsbury and Professor Alex Blaszczyński noted that despite the restrictions of the IGA, Australians have access to over 2,000 online gambling sites and in 2010 spent over \$968 million.¹⁰

7.13 Customers wishing to take advantage of bets that are prohibited from being provided to Australian customers online are able to access overseas websites to place those bets. Betchoice highlighted that the prohibition of 'in-play' betting only forces customers to look outside Australia where operators may not have the same standards of probity and which are out of reach of Australian authorities.¹¹

7 See *Interactive Gambling Act 2001*, Part 1, section 9A; See also http://www.dbcde.gov.au/broadband/online_gambling/interactive_gambling_industry_code/frequently_asked_questions#faq21 (accessed 11 July 2011).

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

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

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

11 Betchoice, *Submission 43*, p. 15.

7.14 In 2010, the PC concluded that one of the key effects of the IGA had been to drive consumers to use overseas sites, 'some with poor harm minimisation features and unscrupulous business practices'.¹² It indicated that 'the legislation attempts to dissuade people from gambling online by making it more dangerous'. The PC argued that this deterrent would have the greatest effect on responsible gamblers who would be likely to avoid online gambling altogether. It proposed that the prohibitions would have the least effect on problem gamblers 'whose behaviour means they may not respond appropriately to the riskier online gaming environment the IGA facilitates'.¹³ The PC also argued:

Whilst the IGA also nominally prohibits the provision of gaming services by overseas companies, it has no meaningful way of enforcing this and the legislation appears to have been largely ignored. In effect, therefore, the IGA has ensured that domestic consumption of online gaming services will be exclusively provided by offshore companies.¹⁴

7.15 Regarding the effect of the IGA, the PC expressed the view that 'it would be surprising if the ban had no effect, for no other reason than it limits advertising of online gaming and means that Australians cannot gamble with providers that they recognise to be safe brands for venue-based gambling in Australia'.¹⁵ The PC pointed out that while the IGA and the ban on advertising in particular may have reduced demand for online gaming below what it otherwise would have been, it is not clear that the effect has been large. It added:

Australian consumption of online gaming has grown and will continue to do so, making the prohibition less effective over time.¹⁶

7.16 The PC concluded that the ban would be less effective over time as customers become accustomed to gambling over the internet and 'as overseas sites develop reputations for probity (if not safety)'.¹⁷

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

13 Productivity Commission, *Gambling*, vol. 2, Commonwealth of Australia, Canberra, 2010, p. 15.19.

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

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

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

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

Deficiencies of the IGA raised with the committee

Questions about enforcement

7.17 The IGA is supported by a complaints-based system, as described in the previous chapter, which is intended to limit and discourage access to overseas gambling sites. However, submissions drew attention to what is seen as a lack of enforcement, particularly around access to overseas sites.

7.18 Dr Gainsbury and Professor Blaszczynski noted that little appears to be done to prevent overseas sites from allowing Australians to play or to stop the sites from directly marketing to Australians.¹⁸ They detailed their concerns:

One particular deficiency of the IGA is the degree of compliance enforcement. Despite a policy of prohibition, Australians can easily access offshore Internet gambling sites, spend large amounts of money and be exposed to unfair player practices. This is of significant concern as Australians have little recourse if they lose their money or experience unscrupulous treatment. However, little appears to be done to prevent these sites from allowing Australians to play or to stop the sites from directly marketing to Australians.¹⁹

7.19 They pointed to the absence of prosecutions for breaches of the IGA as evidence for the inadequacy of regulatory restrictions and compliance.²⁰ The NSW Government also expressed concern over the adequacy of enforcement:

With no prosecutions having been conducted under the Act to date, the Act's ability to effectively prevent Australians from accessing overseas online gaming sites would appear to be minimal.²¹

7.20 The NSW Government emphasised that its concern about the lack of effectiveness of the IGA is compounded by the potential for growth in the online gambling industry and reports of increased participation by Australian consumers on overseas gambling sites.²²

7.21 The Victorian InterChurch Gambling Taskforce was also of the view that little effort has been made to enforce the IGA. The Taskforce noted that in FY2008-2009, ACMA investigated only 11 complaints relating to prohibited internet gambling

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

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

20 Dr Sally Gainsbury and Professor Alex Blaszczynski, *Submission 7*, p. 2. See also Asher Moses, 'FBI, federal police target overseas poker websites that flout law', *Sydney Morning Herald*, 30 May 2011, p.1; Andrew Tillett, 'Online bets flourish despite a 10-year ban', *West Australian*, 30 June 2011, p. 4.

21 NSW Government, *Submission 56*, p. 8. See also Tasmanian Government, *Submission 26*, p. 4.

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

content. In three cases, ACMA notified providers of internet filter software to add these sites to the blocked list.²³

7.22 The committee notes that the enforcement process is subject to the referral of complaints. DCBDE emphasised that the system is reactive rather than proactive and the agencies involved can only respond to complaints received:

One point to make in reference to that is that their [AFP] starting point is going to be the number of sites about which they have received referrals from ourselves, the ACMA, or someone else. There is no guarantee that, for example, there have been complaints about all 2,000 sites. Their starting point is the number of complaints that have come through to them...²⁴

DCBDE/ACMA process

7.23 DCBDE advised that from July 2010 to June 2011, ACMA completed 48 investigations. 38 involved overseas-hosted prohibited internet gambling content and the URLs were referred to the Australian Federal Police (AFP). Seven did not provide access to prohibited internet gambling content and were not referred to the AFP. Three investigations were terminated due to lack of information. Also during this period ACMA referred one Australian hosted site to the AFP.^{25 26}

7.24 ACMA took the committee through the method of investigating complaints concerning overseas providers and clarified that the IGA does not provide ACMA with a direct relationship to overseas regulators:

The ACMA delegate would make the finding about whether the site contained prohibited content. It would then refer the matter to the AFP, because that is what the act requires. From there, the AFP would then make notifications to overseas law enforcement agencies—for instance, the law enforcement agency responsible for matters dealing with Gibraltar—and then it would be up to that overseas law enforcement agency to communicate with a licensing authority.²⁷

7.25 ACMA advised that following a finding by the ACMA that there is prohibited content available to Australian residents, the first action is to notify the AFP which will notify overseas enforcement agencies. The second action is for ACMA to advise

23 Victorian InterChurch Gambling Taskforce, *Submission 31*, p. 7.

24 Mr Richard Windeyer, *Committee Hansard*, 19 August 2011, p. 37.

25 As ACMA does not have the jurisdiction to investigate an Australian-hosted URL this is not included in the total of 48 investigations.

26 Department of Broadband, Communications and the Digital Economy, *Review of the Interactive Gambling Act 2001*, Discussion paper, August 2011, pp 12–13.

27 Ms Elizabeth Press, *Committee Hansard*, 19 August 2011, p. 32.

the family friendly filters. Australian residents who utilise those filters will then have those services blocked.²⁸

7.26 ACMA stressed that following through on the investigation of a prohibited service lies with the appropriate law enforcement authority.²⁹

The AFP assesses referrals from the ACMA and the Department against its case Categorisation Prioritisation Model. Elements considered include:

- incident type and the impact of the matter on Australian society;
- the importance of the matter to both the client and the AFP in terms of the roles assigned to them by Government and Ministerial direction; and
- the resources required by the AFP to undertake the matter.³⁰

7.27 It added that further pursuing DCBDE and ACMA referrals is up to the AFP:

...I do not think we are in a position to comment on how the AFP makes judgments about which ones to pursue and which ones not to, other than the fact that they have a prioritisation system, which they could no doubt explain to you. That is theirs to determine and takes into account all the matters they have got before them.³¹

Australian Federal Police process

7.28 The AFP advised the committee that:

In the previous two years (since 2009), the AFP received 15 referrals concerning allegations of offences committed contrary to the Act. In isolation, when compared to other criminal activity, these referrals were categorised as low priority for investigation and consequently not investigated.³²

7.29 The AFP provided the following flow chart to illustrate the referral process.³³

28 Ms Elizabeth Press, *Committee Hansard*, 19 August 2011, p. 36.

29 Ms Jennifer McNeill, *Committee Hansard*, 19 August 2011, p. 32.

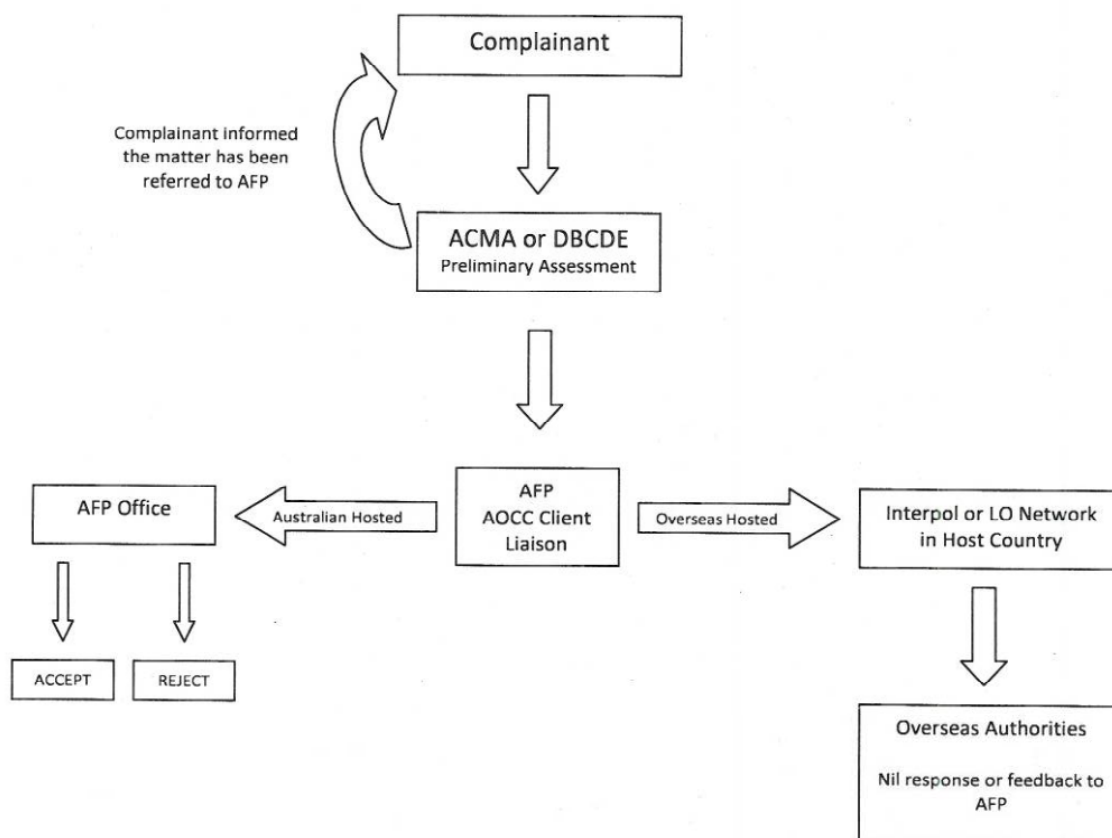
30 Department of Broadband, Communications and the Digital Economy, *Review of the Interactive Gambling Act 2001*, Discussion paper, August 2011, p. 12.

31 Mr Richard Windeyer, *Committee Hansard*, 19 August 2011, p. 37.

32 Australian Federal Police, *Submission 49*, p. 1.

33 Additional information received from AFP, 19 August 2011, available from: http://www.afp.gov.au/Senate/committee/gamblingreform_ctte/interactive_online_gambling_advertising/submissions.htm.

Interactive Gambling Act 2001 Complaints – Referral Process



Challenges of enforcement

7.30 The AFP expanded on their submission at a hearing. Although the evidence was taken in-camera, in general terms the committee heard of the complexity of the online environment and the difficulties in pursuing investigations of and obtaining evidence from providers which are located and licensed in jurisdictions where their activities are legal. As can be seen from the diagram above, the AFP is reliant on assistance from foreign law enforcement which the committee notes again can be challenging if the activity is lawful in that country.³⁴

7.31 Dr Gainsbury and Professor Blaszczyński argued that legal action should be taken against unregulated sites that allow Australians to play and pointed to the recent legal action in the US where, despite the difficulties of taking legal action in this area, several large online poker sites were prosecuted and forced to stop providing services to US residents.³⁵

³⁴ Australian Federal Police, general summary of evidence provided in-camera, 19 August 2011.

³⁵ Dr Sally Gainsbury and Professor Alex Blaszczyński, *Submission 7*, p. 3.

7.32 Online gambling has been illegal in the United States since 2006. In April 2011, the websites for PokerStars, Full Tilt Poker and Absolute Poker were seized by the Federal Bureau of Investigation (FBI). The US websites have been shut down and the founders were charged with bank fraud,³⁶ money laundering and breaches of US gambling laws.³⁷

7.33 The committee notes that the Australian Crime Commission has identified online gambling as a money laundering risk and also as a risk for revenue and taxation fraud.³⁸ The committee notes these recent prosecutions overseas point to an increased willingness by authorities to take action regarding illegal activities overseas despite the complexity of the online environment.

7.34 DCBDE confirmed that 'while the IGA applies to providers in other countries, there is limited practical scope for Australian law enforcement agencies to pursue, with any prospect of success, foreign based providers'.³⁹ Its discussion paper highlighted the difficulties of enforcement:

The relatively limited range of enforcement options available under the IGA, and the need for the AFP to consider referrals against its own internal case prioritisation framework, may have contributed to the apparent lack of successful enforcement activity under the IGA. Alternative enforcement options such as civil penalty provisions might offer more scope in this regard.⁴⁰

7.35 DCBDE emphasised that another technical challenge is that internet gambling sites can move and relaunch very quickly.⁴¹

7.36 When asked about the issue of enforcement, DCBDE confirmed that the review of the IGA would include the mechanisms of enforcement:

I think the example you give is one of the challenges associated with enforcing this particular act in this space. The challenge is partly related to the jurisdictional difficulties when you are operating in the online

36 In the US, financial institutions are compelled to identify and block restricted gambling transactions. The prosecutions centre on a scheme to deceive banks about the true nature of transactions to evade the financial transactions controls. See Australian Racing Board, *Submission 5*, Interactive Gambling and Broadcasting Amendment (Online Transactions and Other Measures) Bill 2011, p. 3.

37 Asher Moses, 'FBI poker crackdown could hit biggest Australian players', *Sydney Morning Herald*, 19 April 2011, p. 3; 'Online poker site a 'global Ponzi scheme'', *Sydney Morning Herald*, 21 September 2011.

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

39 Department of Broadband, Communications and the Digital Economy, *Review of the Interactive Gambling Act 2001*, Discussion paper, August 2011, p. 12.

40 Department of Broadband, Communications and the Digital Economy, *Review of the Interactive Gambling Act 2001*, Discussion paper, August 2011, p. 13.

41 Mr Richard Windeyer, *Committee Hansard*, 19 August 2011, p. 37.

environment and, as such, that is one of the [things the] review will need to have a good look at—just how the enforcement arrangements do work and whether there are ways that that could be improved.⁴²

7.37 The example referred to in the quote above⁴³ was the website Casino.com which lists 'Australian winners' and displays the Australian flag in the background. Senator Xenophon suggested that the appearance of the site could give customers the sense that they are dealing with an Australian company. The committee was advised that the site is hosted in Singapore but licensed through a licence entity that is located in Gibraltar. ACMA clarified that, as far as the IGA is concerned, the issue is one of accessibility⁴⁴ not whether or to what degree a site references Australia. In relation to the IGA review, DCBDE responded that:

The general issue that the review needs to look at is the more general point about, in a sense, the ability to offer services globally in the online environment, irrespective of where you are located or the customer is located. Also, there is then the question of how and what is the right way of regulating that and dealing with that, including what is the right way of enforcing it. The point is that just because there is, apparently, a particularly strong link to Australia or a reference to Australia that will not make a great deal of difference in how easy it is to enforce upon the overseas based providers. So I think the review will be looking more at how you deal with the overseas and jurisdictional challenges rather than at the Australian specific component of an overseas site.⁴⁵

7.38 Regarding the targeting of Australians by overseas websites, ACMA explained:

There is at least one instance which is expressly contemplated as relevant in the Interactive Gambling Act. That is in connection with a potential defence available under section 15, which sets out the offence of providing an interactive gambling service to customers in Australia. Subsection 3, in short, indicates that it is a defence if the person who is providing the service could not with reasonable diligence have ascertained that the service had an Australian customer link. Clearly, that would not be a potential defence available in that situation. Otherwise, my understanding is that factors like that might have been regarded as aggravating factors or relevant factors at a sentencing stage, if the matter had been prosecuted.⁴⁶

7.39 ACMA added:

There have been no prosecutions to date, so there is not a body of jurisprudence to which I can refer you but, based on my understanding of

42 Mr Richard Windeyer, *Committee Hansard*, 19 August 2011, p. 32.

43 See *Committee Hansard*, 16 September 2011, pp 55–59.

44 *Interactive Gambling Act 2001*, Section 16, subsection 1.

45 Mr Richard Windeyer, *Committee Hansard*, 19 August 2011, p. 33.

46 Ms Jennifer McNeill, *Committee Hansard*, 19 August 2011, p. 34.

how these things work in other spheres, that would be a relevant matter for a judge to consider.⁴⁷

Capacity for illegal activities and tax avoidance

7.40 The committee noted above that the Australian Crime Commission has identified online gambling as a money laundering risk and also as a risk for revenue and taxation fraud.⁴⁸ Dr Gainsbury and Professor Blaszczynski listed a number of activities associated with internet gambling that need to be addressed by any regulatory framework. These include: the capacity for cross-jurisdictional shifting of monies for illegal or terrorist purposes, laundering money, loss of taxable revenue to overseas countries, possibilities of exploiting/cheating players, lack of procedures for the resolution of disputes, lack of clarity over boundaries of legal responsibility, and harm to local residents.⁴⁹

7.41 The Victorian InterChurch Gambling Taskforce expressed its concern that many overseas gambling providers are located in secrecy jurisdictions commonly known as tax havens:

For example, Pokerstars is located in the Isle of Man, ranked 24th in the Financial Secrecy Index (FSI). Daniel Meisel, who was subject to an indictment for engaging in an illegal online gambling business in the US, set up the operation in Costa Rica, ranked 34th on the FSI. A number of these secrecy jurisdictions allow for arrangements where the beneficial owners of the online gambling provider may be kept secret, undermining the ability to ensure probity standards. Further, the tax arrangements in these secrecy jurisdictions will allow providers in these jurisdictions a financial advantage over a provider based in Australia, and actively encourage tax avoidance.⁵⁰

47 Ms Jennifer McNeill, *Committee Hansard*, 19 August 2011, p. 34. Another example of enforcement difficulties with the IGA is the case of Bet365, a UK-based online bookmaker and gaming operator, which recently applied for an Australian sports betting licence in the Northern Territory. In preparation for this licence application, Bet365 advised its Australian customers in August 2011 that it was shutting down its casino, poker, games and bingo sites, which it had been offering to Australians in breach of the IGA. Media reporting on this licence application drew attention to the lack of enforcement of the IGA. It noted that if Bet365 were to be successful in obtaining a licence to operate in Australia when it had been openly flouting Australian legislation, the effectiveness of the current regulatory framework would need to be questioned. (At the time of printing, it is understood that Bet365's licence application was still being considered). See Patrick Smith, 'Offshore bookies mock betting rules', *The Australian*, 19 August 2011; CasinoListings, 'Bet365 applies for Australian sportsbetting licence', 18 May 2011, <http://www.casinolistings.com/news/2011/05/bet365-applies-for-australian-sportsbetting-licence> (accessed 29 November 2011).

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

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

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

7.42 The Taskforce argued that the significant numbers of providers located in secrecy jurisdictions 'provides even stronger reason for the Commonwealth Government to do all it can to resist the access of these gambling providers to the Australian community'. It added:

We would urge the Commonwealth Government reject any temptation to respond by allowing Australian online gambling providers to be set up with low taxes, which seek to target gamblers in other countries with the aim of extracting profit from those places. In effect Australia would then be seeking to export gambling problems and harms to other parts of the world, while seeking the profits to be brought onshore to Australia.⁵¹

Ambiguities and inconsistencies

7.43 Submitters suggested the lack of enforcement of the IGA to date may be in part due to ambiguities in the Act being exploited. The Victorian InterChurch Gambling Taskforce said that after making a complaint to ACMA about a site, they were advised that:

...although the website provides links to other sites that offer internet gambling services, the access to games were not provided directly by the site itself. ACMA stated th[at] it was not possible to deposit money on the website and therefore the website is not a gambling service as defined under section 4 of the IGA, and as such it is not [a] prohibited internet gambling service as defined under section 6 of the IGA.⁵²

7.44 The Taskforce concluded that people wishing to market an online casino appear to only have to set up a website to which the online casino is linked to be able to legally do so.⁵³

7.45 In response to whether the website detailed above, which did not directly provide internet gambling services, would be looked at by the review of the IGA, DCBDE stated:

I think the review is looking at a pretty broad suite of aspects of the act to the extent it will look at the questions around the provision of prohibited services as well as the advertising of prohibited services and how best those should be treated in the future. As you would appreciate, the terms of reference are not going to, in a sense, specify instance by instance the sorts of things considered, but the review is intended to cover the act and, broadly, what it does.⁵⁴

7.46 The DCBDE discussion paper admitted that the structure and complexity of the legislation 'may have caused difficulties in the interpretation and application of

51 Victorian InterChurch Gambling Taskforce, *Submission 31*, pp 5–6.

52 Victorian InterChurch Gambling Taskforce, *Submission 31*, p. 8.

53 Victorian InterChurch Gambling Taskforce, *Submission 31*, p. 8.

54 Mr Richard Windeyer, *Committee Hansard*, 19 August 2011, p. 34.

certain provisions in the IGA, especially those relating to the advertising of prohibited interactive gambling services'. Advertising and the IGA is discussed in chapter nine

Regulation is difficult to understand

7.47 In addition to the ambiguities and inconsistencies for providers interpreting the legislation, Dr Gainsbury and Professor Blaszczynski referred to preliminary research which indicates a high level of confusion among Australians regarding internet gambling regulation which has led to:

...a disparity in that sites that abide by the regulatory requirements compete unfairly with offshore sites that offer better odds, more products and have fewer personal identification requirements.⁵⁵

7.48 They advocated that further efforts be made to educate Australians about the differences between regulated and unregulated sites and the dangers of playing on unregulated sites.⁵⁶ Dr Gainsbury pointed out that:

There are a number of sites which are branded to Australian poker players which, people are unlikely to be aware, are not acting in a legal manner in providing those services.⁵⁷

7.49 The Coalition of Major Professional and Participation Sports (COMPPS) also mentioned that the current legislation is 'inadequate, fragmented and confusing'.⁵⁸

7.50 Wesley Mission submitted that an appropriate range of sanctions and warnings should apply based on a public health approach and it is important for consumers who choose to gamble online to understand the following:

1. that they are participating in an activity that is prohibited in Australia;
2. that there are numerous alternative forms of gambling that are legal in Australia that are government regulated and provide some level of consumer protection;
3. that there are serious risks of harm attached to online gambling;
4. that the government is unable to control offshore gambling operations, and cannot offer any consumer protections or redress for consumers who get into trouble; and
5. that help for problem gambling is available in Australia.⁵⁹

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

56 Dr Sally Gainsbury and Professor Alex Blaszczynski, *Submission 7*, p. 3. See also Dr Sally Gainsbury, *Committee Hansard*, 16 September 2011, p. 33.

57 Dr Sally Gainsbury, *Committee Hansard*, 16 September 2011, p. 35.

58 COMPPS, *Submission 16*, p. 4.

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

Options to strengthen the IGA

7.51 The main enforcement mechanism for the IGA relies on the investigation of complaints about services hosted outside Australia, which is reactive rather than proactive. However, it was pointed out to the committee this mechanism has not resulted in any prosecutions. To address the deficiencies highlighted to the committee, particularly access to overseas sites, a number of suggestions were provided to strengthen the IGA. These are discussed below.

Financial restrictions

7.52 One option to strengthen the IGA would be not to allow financial transactions with gambling providers. Many submitters pointed to US legislation where this is the case. The Victorian InterChurch Gambling Taskforce suggested requiring Australian financial institutions to block the payment of credit card transactions with known internet gaming and casino sites. This would 'curtail Australians doing business with such sites and reduce the incentive for off-shore based providers to market to Australian customers'. It noted that in the US, this legislation prohibiting financial transactions related to internet gambling has resulted in several large internet gambling providers removing access for US customers to their services.⁶⁰

7.53 The Australian Racing Board (ARB) also supported the introduction of financial transactions controls and suggested:

Section 69A of the IGA provides the Minister with the capacity to develop regulations relating to financial agreements involving illegal interactive gambling services. The regulations may provide:

- that an agreement has no effect to the extent to which it provides for the payment of money for the supply of an illegal interactive gambling service; and
- that civil proceedings do not lie against a person to recover money alleged to have been won from, or paid in connection with, an illegal gambling service.

To date no such regulations exist.⁶¹

7.54 The ARB submitted that the IGA should be amended to adopt the approach taken in the US. It highlighted that the US uses the *Unlawful Internet Gambling Enforcement Act 2006* (the UIGEA) to control interactive gambling through financial regulation. The Act:

...restricts US banks and credit card companies from processing transactions for any internet gambling sites. The UIGEA also makes it illegal for

60 Victorian InterChurch Gambling Taskforce, *Submission 31*, p. 7.

61 Australian Racing Board, *Submission 27*, p. 22.

internet gambling providers to accept money transfers from potential US online gamblers.⁶²

7.55 This approach was also supported by other submitters.⁶³ The US approach is discussed in greater detail in chapter five where approaches taken by overseas jurisdictions to prohibit online gambling are outlined.

7.56 The Interactive Gambling and Broadcasting Amendment (Online Transactions and Other Measures) Bill 2011 is also being considered by the committee. It contemplates including provisions in the IGA to allow consumers to cancel financial transactions to international gambling websites provided the transactions have not been completed. The bill's provisions relating to financial transactions are discussed separately in chapter 15.

ISP blocking

7.57 Blocking online gambling websites by internet service providers (ISPs) is an option used in some overseas jurisdictions which received support from submitters. The Victorian InterChurch Gambling Taskforce noted:

The main enforcement mechanism has been for the Australian Communications and Media Authority (ACMA) to investigate complaints about interactive gambling services hosted outside Australia. Sites that host content prohibited by the Act are placed on a “black list” maintained by approved vendors of internet filter software. The installation and use of internet filters is voluntary so this measure is only effective in cases where users install and regularly update their software. ACMA has no power to compel internet service providers to block content.⁶⁴

7.58 The Australian Racing Board supported the need for ISP blocking:

France moved in 2010 to legislate in respect of online gambling. Importantly its legislative framework makes provision for ISPs to block access to illegal gambling sites.

The IGA should be amended to require the regulator to block the ISPs of online firms who do not comply with the required form minimisation responsibilities, probity measures and funding obligations or breach restrictions on advertising...⁶⁵

7.59 ISP blocking was also supported by other submitters.⁶⁶ DCBDE mentioned ISP blocking in its IGA review discussion paper, which stated:

62 Australian Racing Board, *Submission 27*, p. 22.

63 See for example Greyhounds Australasia, *Submission 41*, p. 11; Harness Racing Australia, *Submission 52*, p. 7.

64 Victorian InterChurch Gambling Taskforce, *Submission 31*, p. 7.

65 Australian Racing Board, *Submission 27*, p. 23.

66 See for example Greyhounds Australasia, *Submission 41*, p. 11.

Such measures are currently utilised to support prohibition in China and Thailand, and to support regulated access in France, Italy, and Denmark (to be introduced in 2011).

In France, courts can direct ISPs to block unlicensed online gambling operators and fine those that do not comply. French ISPs have [publicly] noted their dissatisfaction with these laws. In Italy, ISPs are required to block unlicensed gambling websites. ISPs can be fined if they fail to block unlicensed sites. In Thailand, ISPs are required to block all gambling websites. Failure to block the list of gambling websites can lead to termination of an ISP's operating licence.⁶⁷

7.60 J.G. Phillips and Professor Blaszczynski advised that to restrict access to sections of the community such as minors, filters could be used but they are unlikely to be 100 per cent successful.⁶⁸

7.61 In its 2010 report, the Productivity Commission (PC) acknowledged that strengthening the IGA would require 'a technological barrier aimed at impeding access to off-shore gaming websites'. It noted that:

...the Australian Government is currently developing a technology to filter the internet, at the provider level, in order to block websites known to contain illegal material. Online gaming does not appear to be targeted in the scheme, but it is included in a supplementary voluntary scheme that the Government is encouraging internet service providers to offer on a commercial basis.⁶⁹

7.62 The PC further noted that blocking websites 'may reduce, but would not eliminate, online gaming by Australians' as there are relatively straightforward methods to circumvent this measure. It added that:

To meaningfully reduce online gaming, the internet filtering system would need to be compl[e]mented with amendments to the IGA that made it an offence for Australian citizens to access online gaming products. Further, resources would need be allocated to the detection and prosecution of Australian online gamblers who breach these provisions. Combined, these measures would significantly curtail online gaming by Australians.⁷⁰

7.63 However, the PC submitted that such measures could be seen as a 'draconian response to a practice that is widely accepted in a physical setting'. It concluded that:

67 Department of Broadband, Communications and the Digital Economy, *Review of the Interactive Gambling Act 2001*, Discussion paper, August 2011, p. 15.

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

69 Productivity Commission, *Gambling*, vol. 2, Commonwealth of Australia, Canberra, 2010, p. 15.21.

70 Productivity Commission, *Gambling*, vol. 2, Commonwealth of Australia, Canberra, 2010, p. 15.21.

The magnitude of these costs is such that the level of harm associated with online gaming would need to be very high, and unavoidable through alternative regulatory responses, in order for a net benefit to arise from bolstering the IGA.⁷¹

Criminal sanctions

7.64 The DBCDE IGA review discussion paper also mentioned that some countries impose criminal sanctions on the provision of interactive gambling services:

A number of countries (including Australia) impose criminal sanctions for the provision of certain online gambling services, and in some countries (for example, China) it is illegal for their citizens to access such services. However, due to jurisdictional issues and difficulties monitoring online gambling offences and gathering evidence, such laws are often difficult to enforce.⁷²

Licensing agreements

7.65 DBCDE also advised that licensing agreements can be used to regulate access:

Countries also use licensing frameworks to regulate access to online gambling services. In some instances, only domestic services are licensed and able to offer services to citizens, while other countries allow overseas-based services to offer licensed services.⁷³

International agreements

7.66 As outlined in chapter five, there appears to be a movement towards attempting to put in place international agreements around probity and consumer protection standards. Wesley Mission suggested that Australia could seek to work with European nations that allow online gambling to develop international standards on probity and consumer protection:

In the longer term, the Australian government should work with the international community to see if a relatively safe international online gambling framework can be established. In our opinion, Australia should not open the door to offshore online gambling until there are means to control the activities of offshore online gambling providers. By legalising

71 Productivity Commission, *Gambling*, vol. 2, Commonwealth of Australia, Canberra, 2010, p. 15.22.

72 Department of Broadband, Communications and the Digital Economy, *Review of the Interactive Gambling Act 2001*, Discussion paper, August 2011, p. 15.

73 Department of Broadband, Communications and the Digital Economy, *Review of the Interactive Gambling Act 2001*, Discussion paper, August 2011, p. 15.

online gaming in Australia we lose the ability to argue against consumers also gambling with unregulated offshore casinos.⁷⁴

7.67 Gaming Technologies Association agreed and stated that 'appropriate operation [of online gambling] through legislation and regulation requires transnational thinking and international cooperation'.⁷⁵

7.68 Dr Gainsbury and Professor Blaszczynski also supported work with overseas jurisdictions to achieve greater consistency:

Australian approaches to responsible Internet gambling ought to take into consideration, and where appropriate, adopt or introduce relevant policies and procedures that are consistent with those implemented in other international jurisdictions. Given the Internet is a global phenomenon, a uniform set of guidelines informing policy decision makers across international boundaries must be pursued to maximize regulatory control and monitoring.⁷⁶

7.69 DBCDE also mentioned this work as an option:

Some countries that regulate access to online gambling are exploring the possibility of entering into agreements to assist with this regulation. For example, the respective regulators in France and Italy have signed a memorandum of understanding to formalise information sharing and discuss common issues. The regulators will seek to work together on regulatory issues, the control of legal operators and illegal sites, as well as fraud and consumer safety.⁷⁷

7.70 However, it noted:

The increasing number of countries permitting regulated access to licensed online gambling providers continues to diminish the prospects of international cooperation between countries that prohibit online gambling to enforce their laws at a global level. Agreements between countries that allow regulated access may be more viable.⁷⁸

7.71 The committee notes that the PC concluded that 'the whole reason we have a problem with the IGA is that there is no such international arrangement in place'. It

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

75 Gaming Technologies Association, *Submission 19*, p. 3.

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

77 Department of Broadband, Communications and the Digital Economy, *Review of the Interactive Gambling Act 2001*, Discussion paper, August 2011, p. 17.

78 Department of Broadband, Communications and the Digital Economy, *Review of the Interactive Gambling Act 2001*, Discussion paper, August 2011, p. 17.

recommended that, because this is a global issue, the government should investigate the cost-effectiveness of an international agreement.⁷⁹

Other approaches to regulation

The view of the Productivity Commission

7.72 Somewhere between prohibition and liberalisation is the view put forward by the PC which recommended 'managed liberalisation' of online gaming, starting with online poker games. It argued that the effects of this change should then be evaluated before further liberalisation is considered.⁸⁰

7.73 It emphasised that managed liberalisation should be subject to a regulatory regime that mandates:

- strict probity standards;
- high standards of harm minimisation, including:
 - prominently displayed information on account activity, as well as information on problem gambling and links to problem gambling support;
 - automated warnings of potentially harmful patterns of play;
 - the ability to pre-commit to a certain level of gambling expenditure, with default settings applied to new accounts, and the ability for gamblers to set no limit on their spending as one of the system options (with periodic checking that this remains their preference); and
 - the ability to self-exclude.⁸¹

7.74 The PC recommended that the government should monitor the effectiveness of these harm minimisation measures, as well as the performance of the regulator overseeing the national regulatory regime. In addition, the government should also evaluate whether: the provision of online poker card games should continue to be permitted and whether liberalisation should be extended to other online gaming forms.⁸² The PC emphasised to the committee that it recommended contingent liberalisation where an evaluation would look at the operation of liberalised online

79 Dr Ralph Lattimore, *Committee Hansard*, 16 September 2011, p. 45. See Productivity Commission, *Gambling*, vol. 2, Commonwealth of Australia, Canberra, 2010, p. 15.35.

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

81 Productivity Commission, *Gambling*, vol. 2, Commonwealth of Australia, Canberra, 2010, p 15.35.

82 Productivity Commission, *Gambling*, vol. 2, Commonwealth of Australia, Canberra, 2010, p 15.35.

poker; however, if it found there were significant problems, then consideration would be given as to whether it should continue to be permitted.⁸³

Why treat online poker differently

7.75 The PC outlined why it believed that online poker could be liberalised:

- it has a different character to poker machines;
- it is seen as a game of skill;
- there is no evidence that players experience the trance-like states that occur when playing EGMs;
- there is a social dimension in that one plays against other people so it is very interactive;
- other games can be played much more quickly and the stakeholder for other games is the casino; and
- the ground rules that apply, with players competing for a pot of money to which they contribute, limits losses.⁸⁴

7.76 However, research questioning the relative safety of online poker is also available:

A key example of this is the argument that online poker games appear to involve the lowest risks and, consequently, should be liberalised as a 'relatively safe gambling product'...The argument used to support this argument...contains several limitations. The parameters of legal poker playing are still unclear and differ between jurisdictions (Grohman, 2006; Kelly, Dhar, & Verbiest, 2007). Despite the element of skill involved, poker is still considered a game of chance, hence a gambling activity. Although in the long run, skill might predominate over chance, for each individual session or over a short period of time (months to a year), the outcome of poker is determined by chance (Grohman, 2006). A skilled player may know that his poker-hand has an 85% chance of beating his opponents hand, but 15% of the time, the player will lose the hand and the money staked.⁸⁵

7.77 Dr Gainsbury advised:

...when played on the Internet, poker can be both rapid and continuous, with multiple games played simultaneously, immediate shuffles and dealing and large stakes possible. The assertion that online poker players do not experience dissociation is contrary to results from a study examining

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

84 Mr Gary Banks, *Committee Hansard*, 16 September 2011, pp 45–46.

85 Dr Sally Gainsbury, Response to the Productivity Inquiry Report into Gambling: Online Gaming and the Interactive Gambling Act, *Gambling Research*, Vol. 22, No. 2, p. 3.

potential predictors for excessive online poker playing (Hopley & Nicki, 2010).⁸⁶

7.78 However, iBus Media, the world's largest poker media company, unsurprisingly agreed with the PC recommendations and stated that:

Online poker can be clearly distinguished from other forms of interactive gambling and wagering activities. Online poker is a game of skill, which is conducted peer-to-peer in a social setting.⁸⁷

7.79 It therefore argued that online poker should be excluded from the IGA and noted that section 10 of the IGA allows the Minister for Broadband, Communications and the Digital Economy to exclude any service from the provisions of the IGA at his discretion.⁸⁸

7.80 Mr Bill Barton, a regular poker player, agreed. While supporting any moves to increase the effectiveness of Australia's legislation, he submitted that online poker should be excluded and should be able to operate and be regulated in Australia. To support his argument, he noted that online poker 'is an activity quite distinct to other forms of online gambling and gaming'. He concluded:

Lastly, Australia sees itself as a modern country that provides relative freedoms to its residents. It is interesting that a person in a country like Russia, a country that we would proclaim generally restricts personal freedoms, can play online poker without fear of their government restricting these activities. We must protect our weakest links (problem gamblers and families of those problem gamblers), there is no doubt that this is our Governments policy and the stance of the majority of Australians. However we can do that through education, licensing, regulation, and better directed and funded support programs not removing personal freedoms from people that undertake those activities sensibly and responsibly.⁸⁹

Committee majority view

7.81 The committee majority notes that currently the IGA does not distinguish online poker from other online casino-type games. It also notes that the question of whether poker is a game of skill has been the subject of various legal cases.⁹⁰ Given its lack of expertise in this particular area and the fact that the committee did not take detailed evidence on this point, the committee majority continues to support a cautious approach to regulation and does not support online poker being excluded from the IGA.

86 Dr Sally Gainsbury, Response to the Productivity Inquiry Report into Gambling: Online Gaming and the Interactive Gambling Act, *Gambling Research*, Vol. 22, No. 2, p. 3.

87 iBus Media, *Submission 42*, p. 3.

88 iBus Media, *Submission 42*, p. 13.

89 Mr Bill Barton, *Submission 36*, p. 5.

90 See iBus Media, *Submission 42*, pp 8 –11.

Committee conclusion

7.82 This section will detail the areas regarding the IGA that the committee as a whole agreed. The committee agrees that the IGA should be retained. It agrees that as far as preventing Australians from accessing Australian-based prohibited interactive gambling services, there is no doubt that the IGA has been successful.

7.83 In relation to Australians being able to access overseas-based prohibited gambling services, the committee acknowledges the limitations of the current complaints-based scheme to effectively regulate Australian consumers' overseas internet gambling activities. This is due in large part to the current lack of ability to enforce the IGA. The lack of any prosecutions since the IGA came into effect is concerning and provides little in the way of a deterrent. The committee emphasises that this is not due to a lack of willingness or effort on the part of the AFP, but is in large part due to the reliance on foreign assistance often in countries where the activity is legal. This does not point to a deficiency in the legislation but reflects the complexities of the online environment. However, the recent action taken by the US in this area shows that despite the complexities of the online environment, enforcement action is possible. The committee notes recent reporting that the AFP has now joined forces with the FBI to investigate untaxed and unregulated online casino sites.⁹¹

7.84 The committee is pleased to note AFP advice that the ACMA, DBCDE and the AFP have 'agreed to develop a stringent regulatory regime with a view to deterring those engaging in this unregulated industry'.⁹² The committee supports this work which is occurring separately to the review of the IGA and 'recognises the difficulties we all face with enforcement of the existing act and the need to work together as best we can to make it as effective as possible'.⁹³

7.85 Despite the limitations, the committee believes these do not mean that the IGA is ineffective. As acknowledged by the PC, it has been successful in limiting the provision of interactive gambling services to Australians and has reduced demand for these services below what it would have been without the Act in place. The committee believes that this is mainly due to the restrictions on advertising. The IGA is particularly effective in ensuring these services are not offered by Australian-based providers. However, given the challenges of the online environment it is less effective at limiting services from overseas providers.

7.86 A number of areas were pointed out to the committee which, if addressed, would improve the effectiveness of the IGA. The committee supports the review of the IGA addressing the inconsistencies and ambiguities identified in the Act that can be exploited by providers. The review should take into account the apparently narrow

91 Asher Moses, 'FBI, federal police target overseas poker websites that flout law', *Sydney Morning Herald*, 30 May 2011, p. 1.

92 Australian Federal Police, *Submission 49*, p. 1.

93 Mr Richard Windeyer, *Committee Hansard*, 19 August 2011, p. 43.

construct of the IGA to ensure that the legislation is able to effectively deal with the development of technical and other measures aimed at avoidance. This would include websites which are clearly providing a link to facilitate prohibited interactive gambling services.

Recommendation 3

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

7.88 In addition, given the apparently high level of confusion in the community regarding online gambling regulation, the committee would support an education campaign aimed at consumers. This should occur after the review of the IGA has been completed and should provide clarification, education and highlight the risks of harm involved with online gambling, particularly if accessing overseas unregulated websites.

Recommendation 4

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

7.90 The committee is left with the following options in relation to the IGA. The first is to strengthen the IGA to ensure it can be adequately and appropriately enforced for overseas as well as domestic providers of interactive gambling services. The other option is to liberalise and regulate currently prohibited interactive gambling services with appropriate safeguards which would allow Australian-based providers into the market. Another option would be a combination of these.

7.91 At this point in its consideration of this issue, the committee diverged in its views. The committee majority view is outlined below. Additional comments by the Chair, Coalition committee members and Senator Xenophon follow this report.

Committee majority view

7.92 The committee majority agrees that while there are limitations to its effectiveness, the IGA should be retained. The committee majority recognises that the IGA is intended to deter or limit users from accessing prohibited interactive gambling services. It has been particularly effective in preventing Australians from accessing Australian-based prohibited interactive gambling services. In relation to preventing Australians from accessing overseas-based prohibited interactive gambling services, the committee majority acknowledges its limitations. However, the committee

majority believes that these shortcomings do not mean the IGA is ineffective. While it is difficult to measure, the PC has acknowledged that the IGA has reduced demand for these services below what it would have been without the Act in place. The PC also acknowledged that the shortcomings of the IGA do not indicate a policy failure.

7.93 The committee heard about a number of areas in the IGA that could be amended to make it more effective. The committee majority agrees that the current review of the IGA is the most appropriate vehicle to address these identified inconsistencies and ambiguities. The committee also heard about areas requiring additional safeguards, such as advertising and inducements (addressed in a following chapter) and the need for more consumer education in this area. The committee majority agrees that providing information to consumers who choose to gamble online is important and supports the need for an education campaign. It also supports the work being undertaken by the AFP and DBCDE to make the enforcement mechanism more effective.

7.94 Customers have become increasingly familiar and comfortable with online transactions over the past 10 years. However, there will be some customers who remain cautious about using overseas gambling websites. There are overseas providers developing a good reputation and working to maintain it but there are still unscrupulous operators, so the use of an overseas gambling website is not without risk. While the committee majority acknowledges that the deterrent factor of the IGA has been reduced, it is not nullified. Also difficult to measure is the effect of the message that the IGA sends to the community that online gaming is not an activity currently sanctioned by the government.

7.95 In summary, the committee majority supports retaining the IGA and making changes to address issues identified to the committee and others that arise during the review of the IGA by DCBDE to improve its effectiveness. The committee heard about various measures to strengthen the IGA in relation to deterring customers from using overseas websites to access prohibited interactive gambling services. The committee received most evidence on financial transactions controls, such as those contained in the bill before the committee. However, the banking industry detailed practical, legal and technical difficulties and the committee majority is not convinced of this approach, as outlined in chapter 15. It looks forward to the further examination of such options by the IGA review being conducted by DCBDE.