

## Chapter 3

### Regulation versus prohibition of online gambling

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

#### Background

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3.9 Sportsbet agreed that prohibition is not working:

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

3.10 Betfair supported this view:

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

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

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

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

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

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

3.11 The Australian Internet Bookmakers Association submitted that:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## Advantages of liberalisation

### *Potential for greater player protection*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

### ***Committee view***

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

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

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

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

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

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

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

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

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

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

3.37 Betfair also highlighted taxation currently going overseas:

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

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

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

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

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

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

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

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

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

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

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

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

### *Committee comment*

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

### **Risks of liberalisation**

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

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

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

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

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

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

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

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

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

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

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

3.45 The Victorian InterChurch Gambling Taskforce concluded:

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

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

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

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

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

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

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

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

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

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

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

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

### ***Committee view***

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

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

## **Issues**

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

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

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

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

3.52 The Victorian InterChurch Gambling Taskforce emphasised this point:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

*Relevant research*

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

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

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

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

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

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

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

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



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

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

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

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

3.64 A report by KPMG noted that:

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

3.65 The KPMG report also noted that:

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

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

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

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

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

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

### ***Committee view***

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

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

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

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

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

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

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

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

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

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

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

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

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

### *Tax issues*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

*Portability of the online business model*

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

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

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

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

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

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

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

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

***Committee majority view***

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

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

**A summary of the case for prohibition**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

### *Support for the IGA*

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

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

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

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

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

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

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

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

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

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

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

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

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

### **Views of states and territories**

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

#### ***New South Wales***

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

#### ***Tasmania***

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

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

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

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

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

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

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

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

### ***Western Australia***

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

### ***Committee view***

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

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

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

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

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

