

Chapter 6

The current regulatory framework

6.1 This chapter describes the development of the primary legislation in Australia for interactive gambling, the *Interactive Gambling Act 2001* (IGA), and provides a brief explanation of how it works, what is prohibited by the IGA and what is allowed.

The power of the Commonwealth to regulate

6.2 Historically, the regulation of gambling has been the responsibility of state and territory governments. However, the Commonwealth regulates interactive gambling as it uses communications services which, under the Australian Constitution, are a Commonwealth responsibility.¹ Currently, offline gambling is primarily a state and territory responsibility. However, state and territory legislation regulates the way in which legal forms of interactive services can be provided, for example, by licensing providers and setting requirements to protect players.²

Working towards the Interactive Gambling Act

6.3 The IGA regulates interactive gambling services to Australians. It is the end result of work undertaken over a number of years to respond to concerns about the extent of problem gambling and its social costs, the increased availability and accessibility of gambling services in Australia and the threats posed by new technologies which have the potential to significantly worsen the problem. Thus it seeks to address a multiplicity of issues posed by the various forms of and platforms for interactive gambling. The key question then as now is whether prohibition or liberalisation is a more effective approach to address these issues. This will be the key issue discussed in the next chapter but it is useful to firstly provide a brief overview of the work undertaken to develop the government's current position on interactive gambling which resulted in the IGA.

Working with states and territories

6.4 In the late 1990s, when regulatory models for online gambling were in their infancy, a cooperative approach by all state and territory governments was pursued

1 Section 51(v) of the Australian Constitution gives the Commonwealth responsibility for 'postal, telegraphic, telephonic, and other like services'.

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

and a draft regulatory model was developed.³ However, agreement on this uniform regulatory model for online gaming was not able to be reached.

1999 Productivity Commission Report

6.5 As a result of the growing community concern over problem gambling, the Productivity Commission (PC) conducted an investigation and in 1999 it produced a report on Australia's Gambling Industries. In relation to online gambling, the PC found that 'online gambling and interactive TV potentially represent a quantum leap in accessibility to gambling, and will also involve new groups of people'.⁴ While noting some features of internet gambling which may moderate problem gambling, the PC concluded:

Overall, however, the Commission considers it likely that (without harm minimisation measures and appropriate regulation) online gambling will pose significant new risks for problem gambling.⁵

6.6 While recognising the potential harms of online gambling for consumers, the PC recommended 'managed liberalisation':

Internet gambling offers the potential for consumer benefits, as well as new risks for problem gambling. Managed liberalisation — with licensing of sites for probity, consumer protection and taxation — could meet most concerns, although its effectiveness would require the assistance of the Commonwealth Government.⁶

Senate select committee

6.7 The PC report was followed in March 2000 by the report of the Senate Select Committee on Information Technologies, *Netbets: A review of online gambling in Australia*.⁷ The committee also favoured managed liberalisation. It concluded that prohibition would be difficult and expensive to implement and would not prevent an increase in problem gambling. It believed that prohibition would steer gamblers to overseas gambling sites and the committee favoured improved regulation and the implementation of harm minimisation policies.⁸

3 See Senate Select Committee on Information Technologies, *Netbets: A review of online gambling in Australia*, March 2000, p. 26.

4 Productivity Commission, *Gambling*, vol. 1, Commonwealth of Australia, Canberra, 2010, p. 50.

5 Productivity Commission, *Gambling*, vol. 2, Commonwealth of Australia, Canberra, 2010, p. 18.21.

6 Productivity Commission, *Australia's Gambling Industries*, vol.1, Commonwealth of Australia, Canberra, 1999, p. 4.

7 Senate Select Committee on Information Technologies, *Netbets: A review of online gambling in Australia*, March 2000.

8 Senate Select Committee on Information Technologies, *Netbets: A review of online gambling in Australia*, March 2000, p. 77.

The moratorium

6.8 In the meantime, the government announced the establishment of a Ministerial Council on Gambling and its intention to examine the feasibility and consequences of banning interactive gambling.⁹

6.9 In April 2000, at the first meeting of the Ministerial Council on Gambling, the Commonwealth called on the states and territories to join a voluntary 12-month moratorium on new interactive gambling services while the feasibility and consequences of a permanent ban were examined. This was rejected by the majority of states and territories.¹⁰

6.10 The response was the Interactive Gambling (Moratorium) Bill 2000 which applied a 12-month moratorium on new interactive gambling services from 19 May 2000 to 18 May 2001 until further research was conducted into the industry. The Senate Environment, Communications, Information Technology and the Arts Legislation Committee conducted an inquiry into the bill and reported in September 2000.¹¹ An amended moratorium bill was passed which excluded certain forms of wagering. The legislation was passed in both Houses in December 2000.¹²

6.11 During the moratorium period, the National Office for the Information Economy (NOIE) conducted an investigation into the feasibility and consequences of banning interactive gambling.¹³ It concluded that no method would be 100 per cent effective in preventing Australians accessing interactive gambling services. However, the report also found that a ban would be consistent with the Commonwealth's e-commerce strategy which called for appropriate legal and regulatory measures to protect consumers.¹⁴

6.12 The committee notes that the 2010 PC report found several flaws in the underlying cost/benefit analysis that it believed limited the usefulness of the NOIE report findings. These were:

9 National Office for the Information Economy, *Report of the investigation into the feasibility and consequences of banning interactive gambling*, 27 March 2001, p. 11.

10 National Office for the Information Economy, *Report of the investigation into the feasibility and consequences of banning interactive gambling*, 27 March 2001, p. 26.

11 Senate Environment, Communications, Information Technology and the Arts Legislation Committee, Interactive Gambling (Moratorium) Bill 2000, September 2000.

12 National Office for the Information Economy, *Report of the investigation into the feasibility and consequences of banning interactive gambling*, 27 March 2001, p. 26.

13 National Office for the Information Economy, *Report of the investigation into the feasibility and consequences of banning interactive gambling*, 27 March 2001.

14 National Office for the Information Economy, *Report of the investigation into the feasibility and consequences of banning interactive gambling*, 27 March 2001, p. 6.

- the report considered the ban in isolation from any other potential regulatory solutions that may have been able to minimise harms;
- the analysis assumed the ban would be effective at stemming demand for online gaming and would have zero implementation and enforcement costs; and
- the model used many questionable assumptions.¹⁵

6.13 The PC suggested that these concerns, combined with new evidence since the report was published, warranted a re-evaluation of online gaming policy.¹⁶ The PC findings and conclusions are discussed in the following chapters.

Interactive Gambling Act

6.14 In April 2001, the Interactive Gambling Bill 2001 was introduced into the Senate. It was referred to the Senate Environment, Communications, Information Technology and the Arts Legislation Committee for inquiry and report.¹⁷

6.15 The purpose of the IGA is to limit the availability of and discourage the provision of interactive gambling services to Australians. There are two key elements to the IGA. First, the provision of an Australian-based interactive gambling service is prohibited.¹⁸ It is important to note that the offence provision applies to the providers of interactive gambling services and not the users. In addition, Australian companies can offer the banned services to overseas-based gamblers. However, the minister has the capacity to declare 'designated countries' where it is an offence to provide services to them.

6.16 The second element of the IGA is to establish a complaints scheme administered by Australian Communications and Media Authority (ACMA) which enables Australians to make complaints about interactive gambling services on the internet available to Australians.

What is prohibited?

6.17 Australian-based online gaming websites (e.g. casino-type games such as poker and roulette, and virtual electronic gaming machines) are prohibited by the IGA. Online wagering is not prohibited by the IGA but there are two exceptions:

15 Productivity Commission, *Gambling*, vol. 1, Commonwealth of Australia, Canberra, 2010, pp 15.5–15.6.

16 Productivity Commission, *Gambling*, vol. 1, Commonwealth of Australia, Canberra, 2010, p. 15.6.

17 Report of the Senate Environment, Communications, Information Technology and the Arts Legislation Committee, *Interactive Gambling Bill 2001*, May 2001.

18 Report of the Senate Environment, Communications, Information Technology and the Arts Legislation Committee, *Interactive Gambling Bill 2001*, May 2001, p. 2. See also *Interactive Gambling Act 2001*, Part 2, section 15.

- online wagering services before an event/match commences are permitted. However, 'in-play' wagering on the outcome of an event, i.e. betting on the outcome of an event online, after the event has started, is prohibited but customers can use the TAB or phone for such bets; and
- 'ball-by-ball' betting is permitted via the telephone or in person (e.g. TAB) during the event/match. However, this wagering (e.g. who will score the first try) in the online format is not permitted during the event.

6.18 These 'in-play' exclusions were considered to be the most harmful forms of online wagering as the internet can facilitate rapid and continuous betting.¹⁹ The IGA also contains provisions for the Minister to exclude any service from the prohibition at their discretion.

6.19 The offence created by the IGA to intentionally provide a prohibited interactive gambling service, as defined by the IGA, to customers in Australia extends to offshore providers of interactive gambling services to customers in Australia.²⁰ Australian residents are able to make complaints about interactive gambling services. If the complaint is upheld by ACMA, internet service providers (ISPs) are notified of the prohibited service.²¹ ISPs must then provide customers with an approved filter.²²

What is allowed?

6.20 The IGA allows certain wagering and gaming services to be provided in Australia. Traditional wagering services, where the internet is used to facilitate an established form of wagering activity, were excluded from the IGA or allowed. Therefore it is legal to offer a traditional betting or wagering service on events before they commence over the internet or other communications device.

6.21 The following table provided by Betfair illustrates what is permitted under the IGA.²³

19 See http://www.dbcde.gov.au/broadband/online_gambling/interactive_gambling_industry_code/frequently_asked_questions (accessed 14 June 2011).

20 Clause 15 A. Code is available from: <http://www.acma.gov.au/webwr/aba/contentreg/codes/internet/documents/gamblingcode.pdf> (accessed 14 July 2011).

21 In accordance with the requirements of the Interactive Gambling Industry Code.

22 Available from: <http://www.acma.gov.au/webwr/aba/contentreg/codes/internet/documents/gamblingcode.pdf> (accessed 14 July 2011).

23 Betfair, *Submission 12*, p. 11.

	Pre-play	In-play
Telephone betting - sport	yes	yes
Telephone betting - racing	yes	yes
Online betting - sport	yes	no
Online betting - racing	yes	yes

6.22 Online wagering on non-sporting events is not prohibited by the IGA. Most forms of traditional lotteries offered over the internet are exempt from the prohibition as they are unlikely to pose a risk to problem gamblers. Only rapid or player-initiated online lotteries such as online scratchies are banned as they have been judged to present a greater risk to problem gamblers. The IGA also provides for the minister to prohibit 'highly repetitive or frequently drawn forms of keno-type lotteries or similar lotteries,' should these become a problem.²⁴

6.23 The Department of Broadband, Communications and the Digital Economy noted that the current regulation of interactive gambling services 'has led to a lack of platform neutrality, which may need to be reconsidered. The use of platform neutral legislation to regulate the provision and advertising of these services may prove easier to enforce.' However, it recognised that achieving platform neutrality would involve consideration of 'opening up more continuous forms of micro-betting with its associated risks for problem gambling and potentially increasing opportunities for gambling fraud through match-fixing'.²⁵

Advertising of prohibited interactive services

6.24 A third element of the IGA is the prohibition on the advertising of prohibited interactive gambling services to Australians on the internet, in print, broadcasting or datacasting media.²⁶ It is prohibited to advertise prohibited interactive gambling services on broadcast media such as free-to-air television and radio, in print media such as magazines and newspapers, and on billboards. Advertising on internet services aimed at an Australian audience is also banned. This means that websites designed for

24 See http://www.dbcde.gov.au/broadband/online_gambling/interactive_gambling_industry_code/frequently_asked_questions (accessed 14 June 2011).

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

26 Note: datacasting is the broadcasting of data using radio waves as a means of delivery. For the most part, it refers to supplementary information sent by TV stations to accompany digital TV, e.g. news, weather, traffic but it can also be interactive, e.g. gaming and shopping.

a specifically Australian audience will not be able to carry interactive gambling advertisements.²⁷

6.25 However, there are various exceptions including political advertising, incidental or accidental advertising, and advertising in imported print publications or websites that are not aimed specifically at an Australian audience. ISPs are generally protected by the Criminal Code from liability for third party content that is innocently transmitted over their networks. In other words, an ISP or other third party can only be guilty of the offence if it knowingly or recklessly transmits the advertisement.²⁸

Agency roles

6.26 The following agencies are involved in administering and enforcing the IGA.

The Department of Broadband, Communications and the Digital Economy

6.27 The Department of Broadband, Communications and the Digital Economy (DBCDE) has policy responsibility for online gambling and administers the IGA. It advised that as the IGA does not specify who considers complaints about advertising of prohibited online gambling services, it conducts a preliminary assessment and refers potential breaches to the Australian Federal Police (AFP). Potential breaches of licence conditions are referred to the Australian Communications and Media Authority (ACMA).

The Australian Communications and Media Authority

6.28 ACMA considers complaints about prohibited content itself, notifying approved PC filter vendors (and a police force if appropriate) of prohibited content. ACMA refers Australian based content to the AFP. Ms Jennifer McNeill, Acting General Manager, Content, Consumer and Citizen Division, Australian Communications and Media Authority, informed the committee:

In general terms, the Australian Communications and Media Authority has two main roles to play in this gambling space. The first is the role that it is given under the Interactive Gambling Act whereby the authority receives complaints about prohibited internet gambling content. It also has a role registering industry codes of practice dealing with interactive gambling matters. It also has a role investigating particular advertising of prohibited gambling services in a broadcasting context. So that is the suite of responsibilities that it has under the Interactive Gambling Act itself. Sitting

27 See http://www.dbcde.gov.au/broadband/online_gambling/interactive_gambling_industry_code/frequently_asked_questions (accessed 14 June 2011). Note: The regulation of gambling advertising at sporting venues is a matter for state and territory governments.

28 See http://www.dbcde.gov.au/broadband/online_gambling/interactive_gambling_industry_code/frequently_asked_questions (accessed 14 June 2011).

slightly separate from that is a role that it has in the coregulatory broadcasting space where the Commercial Television Industry Code of Practice contains rules that the commercial television industry members have agreed to abide by. That restricts the sort of advertising and the timing of advertising that can be run on commercial television programs...²⁹

Australian Federal Police

6.29 The IGA requires ACMA and DBCDE to refer alleged criminal activity to an Australian police force. The AFP assesses referrals from ACMA (prohibited internet gambling content) and DBCDE (advertising of prohibited services) against its Case Categorisation and Prioritisation Model.³⁰ Enforcement of the IGA is discussed in the next chapter.

Related work

Review of the Interactive Gambling Act

6.30 On 27 May 2011, the Council of Australian Governments (COAG) Select Council on Gambling Reform announced that the Department of Broadband, Communications and the Digital Economy (DBCDE) would undertake a review of the IGA. The review is due for completion in the first half of 2012.³¹ The department's website provided some further detail:

The review will include an examination of the operation of the IGA and the effectiveness of the current provisions. It will also include further consideration of international regulatory approaches to online gambling and their potential applicability to the Australian context. It will also examine the ability to improve harm minimisation measures for online gambling services.

The review will look at the enforcement of existing prohibitions on certain types of online gambling, the way the Act applies to different technological platforms, and the growing number of Australian consumers gambling online in an unregulated environment.

29 Ms Jennifer McNeill, *Committee Hansard*, 19 August 2011, p. 31.

30 In determining which matters to prioritise, the AFP uses the Case Categorisation and Prioritisation Model (CCPM) to consider major elements of an operation. These include: incident type and the impact of the matter on Australian society; the importance of the matter to both the client and the AFP in terms of the roles assigned to them by Government and Ministerial direction; and the resources required by the AFP to undertake the matter. Information available from: <http://www.afp.gov.au/about-the-afp/operational-priorities/how-the-ccpm-is-applied.aspx> (accessed 29 June 2011).

31 Department of Broadband, Communications and the Digital Economy, *Submission 28a*, p. 1. See also COAG Communiqué, 27 May 2011, available from: http://www.jennymacklin.fahcsia.gov.au/statements/Pages/jm_comm_gamblingreform_27may2011.aspx (accessed 5 July 2011).

The Australian Government will consult widely with key stakeholders, states and territories, and the broader community in undertaking the review.³²

6.31 On 19 August 2011, the Terms of Reference for the review were released:

Having regard to the issues facing the enforcement of the Interactive Gambling Act 2001 (the Act), the Department of Broadband, Communications and the Digital Economy is to undertake a review of the operation of the Act, with reference to:

- the growth of online gambling services (both regulated and unregulated) in Australia and overseas, and the risk of this to the incidence of problem gambling;
- the development of new technologies, including smart-phones, and the convergence of existing technologies that may accelerate the current trend towards the take-up of online gambling services in Australia and overseas;
- the adequacy of the existing provisions of the Act, including technical, operational and enforcement issues relating to the prohibition of interactive gambling services and the advertising of such services;
- consideration, where appropriate, of technology and platform neutrality including current distinctions relating to 'betting on the run' and micro-betting;
- international regulatory approaches to online gambling services including consideration of their effectiveness and cost;
- examination of the social, tax, jurisdictional and enforcement aspects of regulated access to interactive gambling services currently prohibited under the Act;
- harm minimisation strategies for online gambling;
- the findings of the Joint Select Committee on Gambling Reform inquiry into interactive and online gambling and gambling advertising and the Productivity Commission Inquiry Report on Gambling (2010); and
- any other relevant matters.

In undertaking the review, the department will consult with key stakeholders, states and territories and the broader Australian community. The department will commission additional research as needed.

The department is to provide a report of its findings to the Minister for Broadband, Communications and the Digital Economy by the first half of

32 Information available from: http://www.dbcde.gov.au/broadband/online_gambling/2011_review_of_the_interactive_gambling_act_2001 (accessed 6 July 2011).

2012, subject to the Joint Select Committee on Gambling Reform reporting by the end of 2011.³³

6.32 On 24 August 2011, DBCDE released a discussion paper which outlines the key issues for the review and includes a number of broad questions designed to assist those wishing to make a submission to the review.³⁴

COAG Select Council on Gambling Reform

6.33 The Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) told the committee that the department 'has a strong interest in policy aimed at minimising harm from problem gambling in all its forms' and:

The Department shares the growing community concerns over the potential impacts of interactive and online gambling and gambling advertising, particularly the impact on vulnerable Australians.³⁵

6.34 FaHCSIA is supporting the COAG Select Council on Gambling Reform as it progresses 'the development of a national response to the Productivity Commission's 2010 report on gambling by the end of 2011. This national response will include consideration of issues related to the regulation of online gambling'.³⁶

Committee comment

6.35 The amount of work being undertaken by various organisations in this area at the current time and the potential for duplication was raised by Betchoice.³⁷ Given the committee's Terms of Reference are quite broad and cover issues other than the IGA, the committee considers that this inquiry will gather and provide valuable information which can be taken into consideration during other processes, including the DBCDE IGA review process.

33 Information available from:
http://www.dbcde.gov.au/broadband/online_gambling/2011_review_of_the_interactive_gambling_act_2001 (accessed 25 August 2011).

34 Information available from:
http://www.dbcde.gov.au/broadband/online_gambling/2011_review_of_the_interactive_gambling_act_2001 (accessed 25 August 2011).

35 FaHCSIA, *Submission 25*, p. 2.

36 FaHCSIA, *Submission 25*, p. 2.

37 Betchoice, *Submission 43*, pp 19–20.