



Australian Government

Department of Communications and the Arts



Regulation Impact Statement

November 2016

Interactive Gambling Amendment Bill 2016

Table of Contents

Background	3
1. The problem.....	5
2. The need for government action	11
3. Policy Options	13
Option 1: Maintain the status quo.....	13
Option 2: Prohibit 'click to call' in-play betting services and strengthen enforcement	13
Option 3: Greater enforcement action by the AFP	13
4. Impact Analysis	13
Option 1: Maintain the status quo.....	13
Option 2: Prohibit 'click to call' in-play betting services and strengthen enforcement	14
Impacts on stakeholders	18
Option 3: Greater enforcement action by the AFP	21
5. Preferred Option.....	22
Net benefits.....	24
6. Consultation	26
7. Implementation and evaluation	27
Conclusion.....	28

Background

The Interactive Gambling Act 2001

The *Interactive Gambling Act 2001* (the IGA) aims to minimise the scope for problem gambling among Australians by limiting the provision of gambling services to Australians through interactive technologies such as the internet. The IGA regulates interactive gambling services by:

- prohibiting interactive gambling services being provided and advertised to Australians;
- prohibiting Australian based interactive gambling services from being provided to customers in designated countries; and
- establishing a complaints based system to deal with internet gambling services and advertisements where the relevant content is available to Australian customers.

Prohibited services under the IGA include online casino-style gaming services of chance or mixed skill and chance, such as blackjack, roulette and poker, which are played for money or anything else of value. Wagering and lotteries are permitted under limited circumstances.

Offences of providing an interactive gambling service to customers in Australia presently carry a maximum penalty of \$360,000 (2000 penalty units) per day for individuals and \$1.8 million per day for corporations, and apply to all interactive gambling service providers, whether based in Australia or offshore, or whether Australian or foreign owned.

The Australian Communications and Media Authority (the ACMA) is responsible for investigating complaints made under the IGA about the provision of interactive gambling content, services and advertising. For Australian-hosted content, the ACMA must not investigate but must refer it to an Australian police force for investigation, which will investigate if appropriate. The ACMA will investigate overseas hosted interactive gambling websites itself and, if satisfied the site offers prohibited interactive gambling services, must notify the website to approved filter providers and the Australian Federal Police (AFP) if warranted.

The IGA also prohibits the broadcasting or publishing of interactive gambling service advertisements in Australia, including on the internet. Individual broadcasters and publishers are responsible for ensuring their programming and advertising comply with regulatory requirements. The ACMA (broadcasting and radio advertisements) and the Department of Communications and the Arts (online and print advertisements) consider complaints about interactive gambling service advertisements in the first instance and refer complaints to the AFP for formal investigation if warranted.

2015 Review of the impact of Illegal Offshore Wagering

The *Government's Policy to Help Problem Gamblers* (August 2013) contained a commitment to investigate methods to strengthen the enforcement of the IGA to ensure Australians are protected from illegal offshore gambling operators.

On 7 September 2015, the Australian Government commenced a Review of the Impact of Illegal Offshore Wagering (**the Review**) led by the Hon Barry O'Farrell.

The primary focus of the Review was to investigate the impacts of illegal offshore wagering on Australia and measures to mitigate its effects. Key areas for examination outlined in the Terms of Reference were:

- the economic impacts of illegal offshore wagering and associated financial transactions on legitimate Australian wagering businesses, including the size of the illegal industry, growth, organisation and interrelationships with other criminal industries and networks;
- international regulatory regimes or other measures that could be applied in the Australian context;
- what other technological and legislative options are available to mitigate the costs of illegal offshore wagering; and
- the efficacy of approaches to protect the consumer – including warnings, information resources, public information campaigns and any other measures, regulatory or otherwise, that could mitigate the risk of negative social impacts on consumers.

Mr O'Farrell provided his report with recommendations to the Minister for Communications, Senator the Hon Mitch Fifield and the Minister for Human Services, the Hon Alan Tudge on 18 December 2015.

Government Response to the Illegal Offshore Wagering Review

The Government released its response to the Review on 28 April 2016, supporting 18 of the Review's 19 recommendations (14 in full, four in principle and one noted). The response proposed the recommendations be implemented concurrently in a three staged process:

- Strengthen the enforcement of the IGA including giving additional powers to the ACMA;
- Work with states and territories to establish a national consumer protection framework comprising agreed minimum standards for online wagering including prohibiting lines of credit being offered by wagering providers, a national self-exclusion register, voluntary pre-commitment, enhanced staff training and enhanced research, among other measures. It is imperative that while protecting consumers from offshore gambling operators there are also the necessary harm minimisation protections in the Australian licensed gambling industry and;
- Consult on a range of other disruption measures to reduce illegal offshore gambling activity.

The Department of Social Services has overarching responsibility for the implementation of the Government response including the establishment of the national consumer protection framework.

The Department of Communications and the Arts (the Department) is responsible for Recommendations 3 and 17 which contain legislative proposals to prohibit 'click to call' in-play betting services and a series of amendments to strengthen the enforcement of the IGA.

The response stated the Government considers 'click to call' in-play betting services are breaching the intent of the IGA and will therefore seek to introduce legislation to clarify the IGA as soon as possible. Consistent with the Review's recommendations, the Government would also introduce a series of amendments to strengthen the enforcement of the IGA including to:

- Prohibit the provision of regulated interactive gambling services to Australians by unlicensed operators;
- Introduce a civil penalty regime to be enforced by the ACMA and extend the ambit of enforcement to affiliates and agents;
- Establish a register of illegal interactive gambling services to be published on the ACMA website to raise awareness amongst Australian consumers;
- Provide the ACMA with the ability to notify international regulators of operators providing prohibited interactive gambling services to Australians; and
- Disrupt the travel to Australia of offenders by placing names of directors or principals on the Movement Alert List.

Regulation Impact Statement

The first key decision point for the Government was to consider its response to the Review. An interim Regulatory Impact Statement (RIS) was developed by the Department of Social Services to support the cabinet submission process and to assist in informing Government deliberations. The Department of Communications and the Arts provided regulatory costings for Recommendations 17 and 19 of the Review as requested by the Office of Best Practice Regulation (OBPR).

The OBPR informed the Department of Communications and the Arts and the Department of Social Services that a standard form RIS will be required for a number of the proposals in the Government's response as they will have more than minor regulatory impacts on stakeholders. This version of the RIS has been refined in response to the feedback provided by OBPR.

The RIS has been developed to assess the Government's Response to Recommendations 3 and 17 of the Review – a series of amendments to prohibit 'click-to-call' in-play betting services and strengthen the enforcement of the IGA. It was informed by the Review, the Government response and other publications available to the Department of Communications and the Arts.

The RIS outlines the problem of illegal offshore gambling on Australia, why government intervention is required, and assesses the merits of three options to determine the preferred course of action:

- Option 1: Maintain the status quo.
- Option 2: Prohibit 'click to call' in-play betting services and measures to strengthen enforcement of the IGA (Government Response to the 2015 Illegal Offshore Wagering Review).
- Option 3: Greater enforcement action by the AFP.

This RIS was included in the exposure draft of the Interactive Gambling Amendment Bill released to selected industry, responsible gambling and government stakeholders on 22 September 2016. Comments from stakeholders have been used to finalise this RIS.

1. The problem

Australians are among the biggest gamblers in the world, spending \$1,245 per capita in 2014¹. Online gambling, in particular online wagering (betting on racing and sporting events), is growing in Australia due to the ubiquity of mobile devices and changes in consumer behaviour. Consequently, offshore gambling operators target Australians which leads to negative social and economic effects on industry, racing and sporting associations, problem and at-risk gamblers, consumers and government. The key legislation – the IGA – which was enacted in 2001, has been ineffective in stopping offshore operators from providing interactive gambling services to Australians.

Size and growth of the interactive gambling market

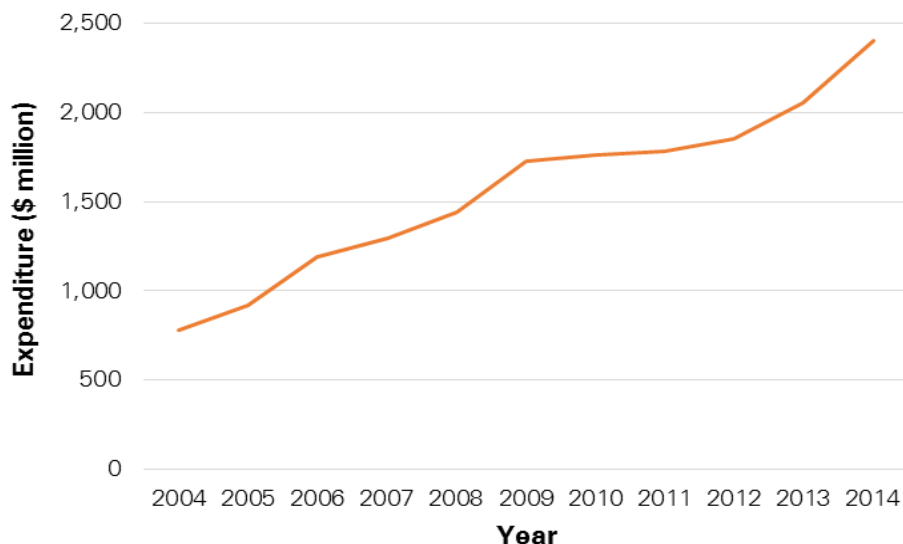
An overwhelming majority of Australians are internet users. A recent ACMA report states that 92 per cent of Australians went online in the six months to May 2015. At May 2015, 13.41 million Australian adults (74 per cent) were estimated to be using a smartphone compared to 12.07 million (67 per cent) at May 2014². This high uptake in digital technologies has contributed to an increasing number of Australians using interactive gambling services.

¹ All data and diagrams are drawn from the 2015 Review of the Impact of Illegal Offshore Wagering Report unless otherwise stated.

² ACMA Communications Report 2014-15, pages 3 and 42

In Australia, the total amount spent on all forms of interactive gambling was \$2.4 billion in 2014, which includes both onshore and illegal offshore gambling activities. Figure 1 below shows that online gambling expenditure has more than doubled in Australia since 2004.

Figure 1 Interactive gambling expenditure 2004-2014



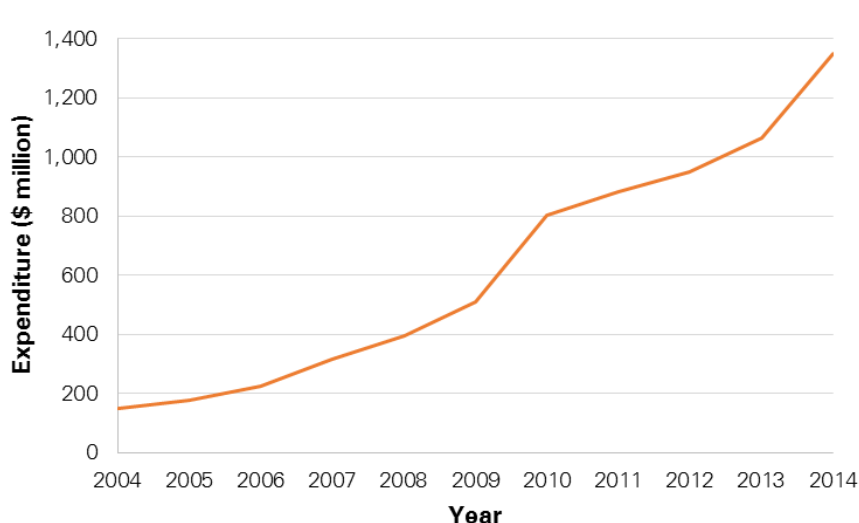
Source: 2015 Review of the impact of Illegal Offshore Wagering

The Review stated that one study estimated the prevalence of interactive gambling in Australia in 2010-11 was eight per cent, while in 2013 a report suggested that the rate of interactive gambling was 21 per cent of the population. Stakeholder feedback in the Review indicated that online gambling is growing as a result of a shift from land-based channels to online channels, in line with broader trends in the economy. The most common way of betting interactively in 2013 was via a personal computer or laptop, followed by a smartphone.

Wagering services

Wagering is defined as gambling on the outcome, or on a contingency, in racing, sporting or other events. Wagering is presently a relatively small part of the overall gambling market in Australia but it is the fastest growing segment. In 2013-14, overall expenditure on wagering in Australia was \$3.4 billion. Just under half of all wagering expenditure was conducted online (\$1.4 billion), and this is growing at a rate of 15 per cent per annum. The growth in onshore online wagering over the last ten years is substantial, with the market increasing around seven times from under \$200 million to almost \$1.4 billion, as shown in Figure 2 below. The Review found that the number of active online wagering accounts in Australia has grown four-fold during the period 2004 to 2014 from 200,000 to 800,000. Many people have more than one account.

Figure 2 Onshore online wagering 2004-2014

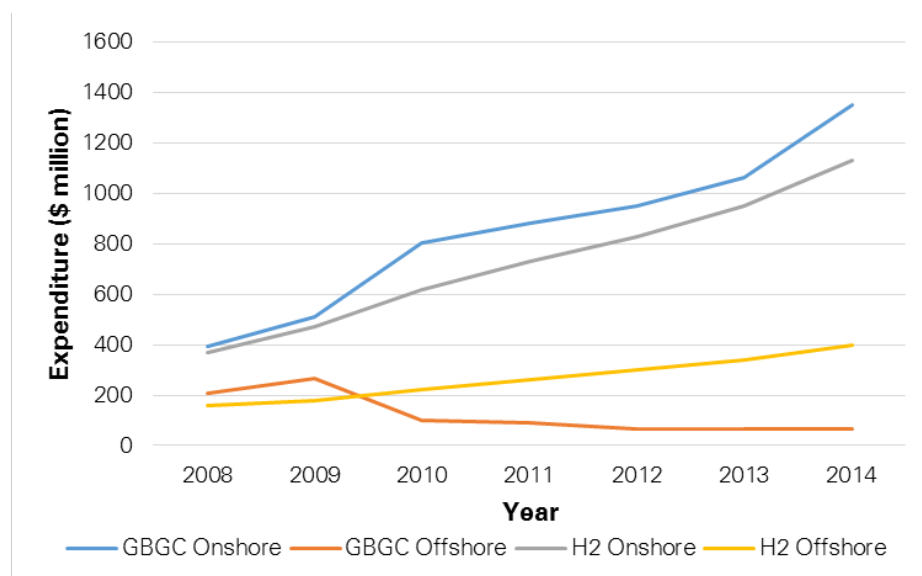


Source: 2015 Review of the impact of Illegal Offshore Wagering

Money spent with offshore gambling operators

The Review found that estimating the size of the offshore wagering market is challenging given the number of offshore sites, operators and jurisdictions that must be considered. Estimates of offshore wagering ranged from \$63.9 million to \$400 million in 2014 (compared to the overall expenditure on wagering in Australia of \$3.4 billion in 2014). Global Betting Gaming Consultants (GBGC) claimed the market has decreased to \$63.9 million since 2004 as a result of major overseas operators obtaining a licence in Australia and being legally allowed to advertise their services. H2 Gambling Capital, however, claim that their figure of \$400 million expenditure is expected to grow to \$910 million by 2020.

Figure 3 Onshore and offshore wagering expenditure 2008-2014



Source: 2015 Review of the impact of Illegal Offshore Wagering

The *2012 Review of the Interactive Gambling Act 2001* estimated the amount of money being spent on all prohibited gambling services based overseas (including casino style games such as blackjack and roulette) to be just under \$1 billion annually³.

The Review stated that some 400 overseas hosted websites offer prohibited online interactive gambling services to Australians. The majority of these services are provided by operators licensed in overseas jurisdictions including Curacao, Malta, Gibraltar, Costa Rica and the Philippines. Many of these websites accept Australian currency and directly advertise to Australians despite offering services prohibited under the IGA.

Negative social and economic effects of illegal offshore wagering

Despite the range of figures, the report states that illegal offshore wagering has adverse effects on the Australian licensed wagering industry, racing and sporting organisations, government and consumers without seeking to quantify the effects. These include:

- Loss of taxation revenue and sporting payments. Offshore operators pay no taxes to state and territory governments or fees to racing and sporting organisations.
- Loss of revenue for the Australian licensed gaming and wagering industry. Offshore providers can attract Australian consumers with better odds, inducements and products due to the absence of regulatory obligations.
- Risk to the integrity of Australian sport. Unlike licensed providers, offshore operators do not share information with law enforcement agencies or sporting codes around suspicious betting activities.
- Increased risk of money laundering and other criminal activities as offshore providers operate outside of Australian law; and
- Offshore operators provide gambling services that breach the IGA.

Problem gambling

A major concern in the Review was around the limited harm minimisation and consumer protection controls offered by offshore gambling providers. Some offshore websites do not offer a level of protection for problem, at-risk and underage gambling. Many consumers can also be unaware that offshore sites they are using are not licensed in Australia and that there is limited legal recourse if they run into any difficulties obtaining winnings or deposits.

The rate of problem gambling in Australia is said to be 0.6 per cent of the adult population, or just under one per cent of gamblers. This is consistent with international rates, as observations of the prevalence of problem gambling are generally around one per cent of all gamblers. In Australia, over 80 per cent of gamblers are not at risk of problem gambling, while around 12 per cent of gamblers are classified as low risk and a further six per cent are at moderate risk.⁴

The Review contained research data that showed the rate of problem gambling is higher among interactive gamblers compared to gamblers more generally. The study found that 2.7 per cent of interactive gamblers are problem gamblers compared to 0.9 per cent of all gamblers. A recent study found that 41 per cent of interactive gamblers were at risk of problem gambling compared with less than 20 per cent of non-interactive gamblers. However, the Review noted there is insufficient evidence to establish a causal link between online gambling and increased prevalence of gambling problems.

³ Final Report 2012 Review of the Interactive Gambling Act 2001, Department of Broadband, Communications and the Digital Economy

⁴ Gainsbury, S., Russell, A., Hing, N., Wood, R., Lubman, D. & Blaszczynski, A. 2014, The prevalence and determinants of problem gambling in Australia: Assessing the impact of interactive gambling and new technologies. *Psychology of Addictive Behaviors*, 28(3):769-779.

Interactive gamblers with problem gambling issues may have developed these problems on non-interactive gambling activities, i.e. land-based gambling. As a result, it may be the case that interactive gambling itself does not cause problem gambling but rather that, for at-risk gamblers, use of online gambling is common and may contribute to gambling problems.

Many of the risk factors for problem gambling associated with online gambling may be heightened for gamblers who use mobile and supplementary devices. These include the convenience and easy accessibility and availability of gambling, enhanced privacy, perceived anonymity, and the reduced salience of electronic funds (Gainsbury et al., 2012; MacKay & Hodgins, 2012; Svensson & Romild, 2011; Wood, Williams, & Parke, 2012).

Minimal enforcement of the Interactive Gambling Act

Online gambling (mostly wagering and lottery services) is currently regulated in Australia by a combination of state and territory, and Commonwealth laws. State and territory governments are responsible for the regulation, licensing and most consumer protection measures for legal online gambling services. The Commonwealth's IGA limits the types of interactive gambling services that can be offered to Australians. Unfortunately, the IGA has been ineffective in stopping the provision of prohibited interactive gambling services.

There have been no prosecutions under the IGA since its inception despite the significant number of complaints referred to the AFP relating to prohibited internet gambling services being provided to Australian consumers. There has been a total of 139 complaints referred to the AFP for investigation since 2007-08. Due to competing priorities and available resources, investigations of interactive gambling services are rarely conducted by the AFP. It should also be noted that criminal prosecution is considered likely to be unsuccessful or ineffective due to uncertainty about the legality of services under the IGA, evidence requirements and the offshore location of gambling operators. These impediments are considered by the AFP when deciding whether to conduct an investigation.

This issue of enforcement was highlighted in 2015 when a number of Australian licensed wagering operators launched 'click to call' in-play betting services.

'Click to call' in-play betting services

The IGA prohibits online in-play betting (bets placed after the commencement of play) on sporting events, e.g. AFL, NRL, cricket or tennis matches. A sporting event provides a greater opportunity for a larger number of bets to be placed via the internet which goes against the intent of the IGA to minimise the scope of problem gambling amongst Australians. However, in-play betting is allowed via the telephone as calling a live operator is likely to slow down the betting activity of the customer and therefore reduce the risk to problem and at-risk gamblers.

Five Australian licensed wagering operators – William Hill, SportsBet, bet365, Ladbrokes and Unibet – offered 'click to call' type in-play betting services which were a mix of data entry on websites or mobile applications with a voice call. These services claimed to avoid the operation of the prohibition of online in-play betting on sporting events in the IGA by relying on the telephone betting service exemption.

There were two variations of 'click to call' services. One allowed a consumer to activate a VoIP call by entering the bet type and amount via the website or application, a computerised voice then reads back the consumer's proposed bet, and then asks the consumer to confirm or cancel the bet by pressing a website or application icon. The second version used a mix of a smartphone application and keypad to perform the betting transaction. Transactions could be completed within ten seconds and there is no conversation between the automated operator and consumer.

The ACMA assessed these services as potentially a prohibited interactive gambling service under the IGA and referred the matters to the AFP for investigation. The AFP declined to investigate and the services continued to be offered to consumers until 5 October 2016 when a ban was in put place by the Northern Territory Government in response to the Commonwealth Government's intention to prohibit these services.

Betting on sporting events, in-play betting and problem gambling

The Australian Gambling Statistics (32nd Edition released in August 2016), prepared by the Queensland Governments Statisticians Office (Queensland Treasury), revealed that Australians lost almost \$23 billion to gambling in 2014-15, up nearly eight per cent on the previous year. Poker machines accounted for \$12 billion; Racing \$3 billion; and Lotto nearly \$2 billion. Sports betting accounted for \$814 million, which while smaller than the other gambling products at around 3.5 percent of total gambling losses, was a 30 per cent increase on the previous year. Dr Charles Livingstone, a gambling researcher at Monash University's School of Public Health and Preventative Medicine, stated that 'the massive growth in sports betting is unrivalled, I think, in the history of Australian gambling'⁵.

The Victorian Responsible Gambling Foundation (VRGF) conducted a prevalence study of gambling and health in Victoria in 2014. The most popular location for sports betting was over the internet at 52 per cent; followed by 45 per cent in a TAB; 24 per cent in pubs or hotels; 9 per cent via the telephone; 8 per cent in clubs; and 7 per cent at the racetrack⁶.

The uptake of mobile devices, and its use for gambling activity with continuous access, including to financial transfers, may exacerbate the incidence and severity of problem gambling in Australia, particularly among younger people. Over the internet was the most common channel used by those classified as problems gamblers who participated in sports betting (71 per cent), followed by TAB outlet betting (46 per cent) and pubs or hotels (23 per cent).⁷

The Victorian prevalence study found that, of problem gamblers who bet online:

- 71 per cent bet on sports;
- 33 per cent bet on table games;
- 15 per cent bet on gaming machines; and
- less than one per cent bet on keno⁸.

In an ABC online article published on 28 May 2015, Dr Christopher Hunt, a clinical psychologist at the University of Sydney's Gambling Treatment Clinic stated that the bulk of their clients used to be poker machine addicts, but now they are treating mostly young men in trouble with online betting. Dr Hunt stated 'when I first started, we pretty much never saw anyone of that 18 to 25-year-old demographic, but what we've seen is a dramatic increase, especially over the past three, four years. It seems to be young men who are getting themselves into trouble, and I guess that's particularly related to the fact that it's tied to sports and horse betting, because those sorts of gambling are almost always men's preferred forms of gambling.'⁹

The Australian Wagering Council, the peak industry body representing Australia's online wagering industry including operators that were offering 'click to call' in-play betting services, reported that

⁵ <http://www.abc.net.au/news/2016-08-23/sports-betting-losses-on-the-rise/7777388>

⁶ *Study of Gambling and Health in Victoria - Findings from the Victorian Prevalence Study 2014* (released November 2015). Note the figures were based on a list of preferences where sports bettors could choose more than one way of betting.

⁷ *ibid.* Note the figures indicate that some problem gamblers do gamble on more than one type of service.

⁸ *ibid.* Note the figures indicate that some problem gamblers do gamble on more than one type of service.

⁹ <http://mobile.abc.net.au/news/2015-05-28/online-gambling-addictions-among-young-men-dramatic-increase/6504282>

around 120,000 Australian consumers were using 'click to call' in-play betting products since their introduction in 2015¹⁰. Figures reported in the Australian newspaper on 16 August 2016 showed that the five operators offering online in-play betting (William Hill, Ladbrokes, bet365, Sportsbet and Unibet) were making as much as \$500,000 a week from the product, based on figures suggesting it accounted for three per cent of their gross profit on bets¹¹.

As 'click to call' in-play betting products were introduced only recently in Australia, the potential effects on problem and at-risk gamblers are relatively unknown. However, the VRGF has stated the following on the matter of 'click to call' services, in play wagering and the potential effects on problem gambling in Australia.

'Internet enabled live in-play betting is a relatively new phenomenon and no definitive research on how dangerous it is compared to other forms of gambling is yet published. However, the possibilities offered by the speed of the internet and app interfaces mean that it is a qualitatively different product to the other channels used for making in-play bets. It is continuously accessible, it is amenable to push messages/offers that interact with the actual stream of betting someone is doing, and its speed and flexibility make it more suitable to a much wider range of "events" that can be bet upon'¹².

The VRGF stated 'Research on problem gambling has associated the most dangerous products with the ones that are most continuous, where the gap between placing the bet and learning the outcome are short, and where opportunities to keep betting keep flowing. The VRGF sees frequency of betting, and intensity of betting, where betting decisions are likely to be made on impulse or in heightened emotional states, as associated with harmful gambling. An environment where this sort of betting was available and being promoted to the sport viewing public at large, as well as to individual customers interacting with a bookmaker, would not be fostering responsible gambling. Such an environment would be undermining responsible gambling'.

The VRGF added 'making live in-play online betting legal in Australia can be expected to grow Australian participation in this form of betting. This is because advertising will be deployed to build a market for it, something illegal offshore providers have largely not been able to do. In-play betting during an event becomes much easier to do via an online channel. Local providers' apps can create an interactive stream of such betting. The effect of making it legal will be to increase the percentage of Australians at risk from this product, most probably by a considerable amount.'

In its submission to the Review, Financial Counselling Australia stated that in relation to online gambling there are two options:

- legalising in-play betting and opening up the market to offshore providers; or
- prohibiting harmful practices and limiting the extent to which gambling becomes entrenched.

Financial Counselling Australia stated that 'from a harm minimisation perspective, the most appropriate option is to ban in-play betting, online casinos, fantasy games, and other emerging forms of online gambling'.

2. The need for government action

There is a clear need for government action as a key cause for the current problems is the ineffectiveness of the IGA. The objective of the IGA is to stop the provision and advertising of interactive

¹⁰ Figure supplied by the Australian Wagering Council in March 2016.

¹¹ theaustralian.com.au/national-affairs/state-politics/crackdown-to-force-bookies-to-hand-over-millions/news-story/220acb392716e339bcbf800c7a217f70

¹² Victorian Responsible Gambling Foundation public submission to the 2015 Illegal Offshore Wagering Review

gambling services to persons located in Australia. It was acknowledged by the majority of industry, government and community stakeholders in the Review that the IGA is not delivering its objective and reforms are needed.

This view was also supported by the 2012 *Review of the Interactive Gambling Act 2001* undertaken by the Department of Broadband, Communications and the Digital Economy. That review also recommended amendments to the IGA to improve its effectiveness. The *Government's Policy to Help Problem Gamblers* (August 2013) contained a commitment to investigate methods to strengthen the enforcement of the IGA to ensure Australians are protected from illegal offshore gambling operators.

The Department of Communications and the Arts has policy responsibility for the IGA. The ACMA is responsible for investigating complaints made under the IGA about the provision of interactive gambling content, services and advertising. The Government has the capacity to implement measures to strengthen the enforcement of the IGA including expanding the role of the ACMA.

IGA reforms would contribute to:

- Reducing the number of operators and websites (currently some 400) that offer interactive gambling services to Australians.
- Reducing the amount of revenue and associated taxes that are lost due to gambling with offshore providers.
- Increasing the number of offshore operators obtaining a licence in an Australian state or territory.
- Reducing the risk of money laundering and other criminal activities.
- Reducing the scope of problem gambling amongst Australians using interactive technologies (when combined with the national consumer protection framework proposed in the Government Response to the 2015 Illegal Offshore Wagering Review).
- Reducing the number of complaints received by the ACMA and other agencies in relation to the provision and advertising of interactive gambling services.
- Raising awareness amongst Australian consumers of the risks attached to gambling with unlicensed offshore providers.
- Raising awareness amongst international regulators and operators about Australian gambling laws.

Government intervention is not only required to address issues associated with illegal offshore gambling but also within the Australian licensed gambling industry. Clear and enforceable provisions are required to ensure the integrity of the Australian interactive gambling industry and the burgeoning wagering sector.

Constraints and barriers

There are a number of practical and legal challenges with pursuing enforcement actions against any entity with no Australian presence. As previously mentioned, the majority of prohibited interactive gambling services are provided by overseas based operators which presents the following challenges for enforcement agencies:

- offshore gambling providers may ignore a summons and refuse to appear in an Australian court if prosecution is commenced, and the company may operate in a jurisdiction where there are no extradition agreements in place;
- an offshore gambling provider may be operating lawfully within its jurisdiction, and foreign regulatory and enforcement agencies may be unwilling or unable to provide assistance in these circumstances;
- obtaining evidence could be difficult and any evidence provided may not satisfy Australian legal requirements; and
- difficulties in identifying specific persons within the offshore gambling organisation relevant to the offences.

The availability of new enforcement options is likely to prove a significant deterrent to both Australian and overseas based operators. However, due to the challenges outlined above, the responsible enforcement agency may not be able to obtain a successful outcome in all cases.

'Click to call' in-play betting services

On 28 April 2016, the Government committed to closing down 'click to call' in-play betting services as they undermine the intent of the IGA to limit the scope of problem gambling in Australia. It was reported on 12 August 2016, that the Northern Territory Government had requested its licensed operators to cease providing 'click to call' in-play betting services within 28 days¹⁰. 'Click to call' services ceased being provided on 5 October 2016. Legislation is required under the IGA to ensure 'click to call' type products are not offered by wagering operators licensed in other states or territories.

3. Policy Options

Option 1: Maintain the status quo

Leave the existing regulatory and enforcement framework unchanged. There would be no amendments to the provisions of the IGA and the AFP would remain as the lead enforcement agency.

Option 2: Prohibit 'click to call' in-play betting services and strengthen enforcement

Option Two reflects the Government's response to the Review released on 28 April 2016. The Response agreed to legislative measures to prohibit 'click to call' in-play betting services and strengthen the enforcement of the IGA. A number of related amendments to further clarify the legality of services under the IGA and to support the ACMA's expanded enforcement role would also be included.

Option 3: Greater enforcement action by the AFP

Provide the AFP with more resources to prioritise and conduct investigations of interactive gambling services.

4. Impact Analysis

Option 1: Maintain the status quo

Description

Leave the existing regulatory and enforcement framework unchanged.

Analysis

Benefits	Shortcoming
<ul style="list-style-type: none"> Five Australian wagering operators would continue to receive revenue from 'click to call' in-play betting services. 	<ul style="list-style-type: none"> Gambling operators will continue to ignore the provisions and intent of the IGA. Gambling money spent with offshore operators resulting in loss of revenue for Australian licensed operators; loss of taxation revenue and sporting/racing payments. Limited to no harm minimisation and consumer protection controls for Australian consumers.

¹⁰ theaustralian.com.au/national-affairs/state-politics/crackdown-to-force-bookies-to-hand-over-millions/news-story/220acb392716e339bcfb800c7a217f70

Benefits	Shortcoming
	<ul style="list-style-type: none"> • Risk to integrity of Australian sport as offshore operators do not share information with sporting codes and organisations around suspicious betting activities • Increased risk of money laundering and other criminal activities as offshore providers operate outside of Australian law • Provision of prohibited interactive gambling services to Australians. • Prohibiting 'click to call' services may see a percentage of money being spent with offshore providers on in-play betting products.

The status quo is not feasible and there are significant short comings to a 'do-nothing' option. As mentioned previously, Australians lost up to an estimated \$400 million betting with offshore wagering operators in 2014, and this is expected to increase to \$910 million by 2020. These figures do not include the amount of money being spent on prohibited interactive gambling services such as online casinos, poker and lotteries. The *2012 Review of the Interactive Gambling Act 2001* estimated the total money spent on all illegal interactive gambling services with offshore operators to be just under \$1 billion annually.

The adverse effects of offshore gambling will also continue – no payments of Australian taxes or sporting fees (an estimated \$100 million is going offshore annually in lost tax revenue and product fees); no sharing of information regarding suspicious betting activity with law enforcement or sporting bodies which could affect the integrity of Australian sport; prohibited interactive gambling services being provided to Australians; and minimal to no harm minimisation and consumer protection controls increasing the risk of problem gambling.

Most stakeholders across all sectors agree that the IGA is ineffective in stopping the provision of prohibited gambling services due to enforcement difficulties. There have been no prosecutions despite a significant number of complaints relating to interactive gambling services being provided to Australian consumers. As a consequence, gambling operators will continue to ignore the provisions of the IGA with detrimental effects to Australian industry, consumers, problem and at-risk gamblers and government.

The five Australian licensed providers of 'click to call' in-play betting services would continue to benefit from offering this product. The effects of these products on problem gambling is currently unknown but allowing these services to continue could pose a risk to problem and at-risk gamblers.

Regulatory Costs

There would be no change to regulatory costs by maintaining the status quo.

Option 1: Average annual regulatory costs				
Change in costs (\$ million)	Business	Community organisations	Individuals	Total change in costs
Total, by sector	\$ 0	\$ 0	\$ 0	\$ 0

Option 2: Prohibit 'click to call' in-play betting services and strengthen enforcement

Description

Option Two reflects the Government's response to the 2015 Review of the impact of Illegal Offshore Wagering released on 28 April 2016. The Response agreed to legislative measures to prohibit

'click to call' in-play betting services and strengthen the enforcement of the IGA. These enforcement measures are as follows:

- Prohibit the provision of regulated interactive gambling services to Australians by unlicensed operators;
- Introduce a civil penalty regime to be enforced by the ACMA and extend the ambit of enforcement to affiliates and agents;
- Establish a register of illegal interactive gambling services to be published on the ACMA website to raise awareness amongst Australian consumers;
- Provide the ACMA with the ability to notify international regulators of operators providing prohibited interactive gambling services to Australians;
- Disrupt the travel to Australia of offenders by placing names of directors or principals on the Movement Alert List; and
- A series of measures to further clarify the provisions of the IGA and support the ACMA's increased enforcement role.

The proposed amendments will give effect to the 2013 election commitment made by the Government in its *Policy to Help Problem Gamblers* (August 2013) to investigate options to strengthen the enforcement of the IGA to protect Australians from illegal gambling operators.

Analysis

Benefits	Shortcomings
<ul style="list-style-type: none"> • Stronger enforcement action against breaches of the IGA. • Clear message to operators and associates that the Australian government is serious about compliance with its gambling laws. • Clearer IGA provisions give more certainty to gambling operators and enforcement agencies. • Prohibition of 'click to call' in-play betting services reducing the risk of higher rates of problem and at-risk gambling. • Decreased loss of money going offshore leading to more revenue for licensed operators, and greater taxation and fees paid in Australia. • Potentially decreases risk to integrity of Australian sport, money laundering and other criminal activities. • Greater awareness amongst Australian consumers of the risks of gambling offshore. • Greater awareness of Australian gambling laws amongst offshore operators and regulators. 	<ul style="list-style-type: none"> • Cross jurisdictional issues will continue to impede prosecution - enforcing Australian law overseas is challenging and successful outcomes will not always be possible. • Prohibiting 'click to call' services may financially impact Australian licensed online wagering operators and money may be wagered with offshore providers which could increase risks to the integrity of Australian sport.

Prohibit 'click to call' in-play betting services

The IGA prohibits online in-play betting (bets placed after the commencement of play) on sporting events, e.g. AFL, NRL, cricket or tennis matches. In 2015 and 2016, five Australian licensed wagering operators (William Hill, SportsBet, bet365, Ladbrokes and Unibet) offered 'click to call' in-play betting services which were a mix of data entry on websites or mobile smartphone applications with a voice call. These services claimed to avoid the operation of the prohibition of online in-play betting on sporting events in the IGA by relying on the telephone betting service exemption. The ACMA assessed these services as potentially a prohibited service under the IGA and referred the matter to the AFP for investigation.

On 28 April 2016, the Government committed to closing down these services as they undermined the intent of the IGA to limit the scope of problem gambling in Australia. It was reported on 12 August 2016, that the Northern Territory Government had requested its licensed operators to cease providing 'click to call' in play betting services within 28 days¹¹. 'Click to call' in-play betting services were discontinued on 5 October 2016. Legislation is required under the IGA to ensure 'click to call' type products are not offered by wagering operators licensed in other states or territories.

Prohibit unlicensed gambling providers under the IGA

The IGA prohibits interactive gambling services but does not address the issue of unlicensed overseas providers offering services permitted under the IGA. State and territory legislation requires a gambling provider located in that jurisdiction to acquire a gambling licence, however, as offshore gambling providers are not located in an Australian jurisdiction they appear to ignore this requirement.

A new provision requiring gambling providers to be licensed by an Australian state or territory jurisdiction before providing interactive gambling services to persons located in Australia would provide clarity to international gambling operators and regulators around licensing requirements in Australia. It would also provide a simple to establish key criterion for enforcement agencies when investigating the legality of interactive gambling services.

The new provision may create an incentive for reputable offshore online gambling operators to obtain a licence in Australia. These operators may not wish to jeopardise current or future licensing agreements in other jurisdictions and may decide to either obtain an Australian licence or withdraw their services.

Other countries have taken a similar approach. France, for example, makes it clear that it is illegal, based on a domain geolocation, for a foreign online betting company to offer gambling products to French nationals. The UK has passed laws requiring all interactive gambling operators to be licensed with its regulator to provide services to UK residents or face enforcement action.

ACMA to notify international regulators of illegal operations

The Review stated that some 400 overseas hosted websites offer prohibited online interactive gambling services, e.g. real money casino style games, to Australians. The majority of these services are provided by site operators licensed in overseas jurisdictions including Curacao, Malta, Gibraltar and Costa Rica. Overseas site operators and their regulators may not be aware that the operators are breaching Australian law.

This proposed measure would allow the ACMA to write to international regulators alerting them to operators who are breaching the provisions of the IGA. Letters to international regulators could outline the provisions of the Act, associated penalties, as well as request their assistance to ensure the offending licensee stops providing illegal gambling services to persons located in Australia.

The ACMA could seek to build productive relationships with international regulators to raise awareness of Australian gambling laws and receive assistance in any enforcement actions, e.g. obtaining evidence. For example, the Danish Gambling Authority has entered into agreements with Alderney, France, Gibraltar, Isle of Man, Malta and the United Kingdom. It would also be beneficial for these international regulators to form a relationship with the ACMA to ensure that Australian-based operators are not providing illegal gambling services into their jurisdictions.

¹¹ theaustralian.com.au/national-affairs/state-politics/crackdown-to-force-bookies-to-hand-over-millions/news-story/220acb392716e339bcfb800c7a217f70

ACMA to issue civil penalties for breaches of the Act

The IGA contains criminal offences and penalty provisions for providing and advertising interactive gambling services. These criminal provisions involve high evidentiary requirements and rely on the investigation priorities of the AFP and the prosecution priorities of the Commonwealth Director of Public Prosecutions. As previously mentioned, no prosecutions have been undertaken despite the significant number of complaints referred to the AFP.

This proposed measure would enable the ACMA to issue infringement notices, and seek civil penalties and injunction orders in court if required, similar to its enforcement roles under the *Do Not Call Register Act 2006*, *Spam Act 2003*, *Telecommunications Act 1997* and the *Broadcasting Services Act 1992*. This would align with current regulatory practices and allow a quicker and more focused response as the ACMA would be responsible for the entire complaint handling process from receipt to enforcement.

Criminal penalty provisions would be retained so that they are available to be used for more serious breaches. Mutual assistance treaties may rely on the existence of criminal penalties, so the criminal penalties would also be retained for this purpose.

Extend the ambit of enforcement to affiliates and agents

Stakeholders informed the Review that there is a network of Australian based agents and affiliates engaged by illegal offshore operators to recruit new customers in return for a commission paid by the operator relative to the customer's wagering activity. Some of these operators have call centres or offices located in Australia that recruit new customers and service existing customers.

The Government agreed with the Review recommendation to 'extend the ambit of enforcement to agents, affiliates and the like'. Enforcement action would be able to be taken against agents, affiliates, associates and employees who receive a direct payment, salary or commission for promoting, recruiting or supporting customers to bet with these illegal offshore gambling sites. Disrupting the chain of support is likely to affect the number of Australians who use these services.

Establish a register of illegal interactive gambling services and disrupt travel of offenders

A further proposed measure is for the ACMA to publish the name of the offending website and company name on the ACMA website and enable the ACMA to notify the Department of Immigration and Border Protection of information relating to illegal interactive gambling services, including the names of directors or principals on movement alert lists such that their travel to Australia may be disrupted. This measure will be used as a deterrent for operators who would not want their website and company publicly named as breaching Australian law and whose principals may wish to travel to Australia in the future. Secondly, the list will act as a tool for raising awareness amongst Australians of illegal gambling websites that should be avoided.

Related amendments

Related amendments would be implemented to improve the complaints handling and investigation processes the ACMA undertakes in relation to interactive gambling services. One of these amendments will enable the ACMA to conduct a full investigation of complaints of interactive gambling services (internet-based or other carriage based services) irrespective of where the content is hosted or located. Currently under the IGA, the ACMA undertakes two different processes depending on where content is hosted, which can be confusing to stakeholders and complainants. These amendments will streamline processes to support the ACMA in its new enforcement role.

Impacts on stakeholders

Online in-play betting is an issue that polarises stakeholders. Australian licensed online wagering operators and major professional sporting bodies claim that the prohibition on online in-play betting on sporting events is driving Australian consumers to offshore operators. The Australian Wagering Council, licensed online wagering operators such as Sportsbet, bet365 and Crownbet, and the Coalition of Major Professional and Participation Sports Incorporated (COMPPS) support lifting the existing prohibition on online in-play sports betting. Reasons provided for the liberalisation of online in-play betting includes that it would:

- provide an incentive for Australian consumers to bet with onshore operators;
- reflect a technology and platform neutral approach to online wagering regulation given that this form of betting is currently available in physical venues and over the telephone; and
- be consistent with regulatory practices around the world which do not differentiate between pre-event and in-play betting.

In its submission to the Review, COMPPS stated that the 'strong preference of [its] members is that all betting on their sports takes place in a regulated environment where they are able to put in place mechanisms that enable them to react to suspicious, illegal or corrupt practices. Members believe that the prohibition on online in-play betting should be removed as it is driving wagering activity away from legitimate channels that are within the integrity reach of Australian sport and subject to high standards of harm minimisation and consumer protection'¹².

Stakeholders who sought to maintain the prohibition on online in-play betting products included Tabcorp, hospitality groups including Clubs Australia and the Australian Hotels Association, racing bodies such as Racing Australia and responsible gambling organisations including Financial Counselling Australia and the Victorian Responsible Gambling Foundation. The reasons expressed in the Review for continuing the prohibition were as follows:

- the issue of in-play betting was overstated and would not likely impact the size of the illegal offshore market;
- allowing online in-play betting on sport would introduce significant integrity issues such as concerns about match fixing;
- that online in-play betting on sport would reduce the amount of money wagered on racing which would harm the traditional racing industries; and
- that online in-play betting on sport would be expected to result in an increase in behaviour consistent with problem gambling.

Use of 'click to call' and other in-play betting services by Australians

As previously mentioned, the Australian Wagering Council, the peak industry body representing Australia's online wagering industry including operators that offered 'click to call' in-play betting services, reported that around 120,000 Australian consumers were using 'click to call' in-play betting products since their introduction in 2015¹³.

Figures reported in the Australian newspaper on 16 August 2016 showed that the five operators offering 'click to call' type services (William Hill, Ladbrokes, bet365, Sportsbet and Unibet) were making as much as \$500,000 a week from the product, based on figures suggesting it accounted for three per cent of their gross profit on bets¹⁴.

¹² Coalition of Major Professional and Participation Sports Incorporated submission to the 2015 Illegal Offshore Wagering Review.

¹³ Figure supplied by the Australian Wagering Council in March 2016.

¹⁴ theaustralian.com.au/national-affairs/state-politics/crackdown-to-force-bookies-to-hand-over-millions/news-story/220acb392716e339bcbf800c7a217f70

The Review stated a range of estimates for in-play betting expenditure by Australian consumers. In 2014, according to the GBGC, the amount of money spent on online in-play betting was estimated to be \$64.5 million in 2013. Given that online in-play betting on sports is prohibited in Australia, and this figure was derived the year prior to the introduction of 'click to call' in-play betting products, it is likely that this market is dominated by offshore providers. According to H2GC data, online in-play betting in Australia was valued at \$218.1 million in 2014, almost all of which was conducted offshore.

Based on these figures, there would appear to be some demand for in-play betting products amongst Australian consumers and that abolition of 'click to call' in-play betting services is likely to have a revenue impact on the five wagering providers. However, it is unclear to what extent consumers use in-play betting products, i.e. one-off or on a regular basis, and how many will return to their normal betting practices or potential new telephone products after the abolition of 'click to call' in-play betting services. Wagering stakeholders have indicated that consumers may return to illegal offshore providers to make online in-play bets. There may also be adverse financial impacts in relation to development, marketing and other costs invested by these operators to establish the services.

Measures to strengthen the enforcement of the IGA

The issue of in-play betting may divide stakeholders, however, there was one issue that garnered near consensus from all stakeholders – the current level of enforcement of the IGA is ineffective in stopping offshore gambling providers. Stakeholders across all sectors agreed that if improvements are not made to the enforcement of the IGA, offshore operators will continue to offer gambling services to Australians.

In its submission to the Review, Clubs Australia stated that 'the focus of Government should be on strengthening the enforcement of the IGA with respect to unlicensed operators, effectively ring-fencing the domestic market, and applying greater standards of consumer protection and harm minimisation to licensed online wagering operators' and 'Clubs Australia remains concerned that despite the intent of the IGA and the findings in the 2013 review [Review of the Interactive Gambling Act 2001 – 2012 Final Report] there is still no evidence that legal action has been taken against an illegal offshore provider of gambling services. We submit that if the intent of the Act remains Government policy then it should be enforced'¹⁵.

Tabcorp proposed that the IGA be amended to prohibit the provision of interactive gambling services by operators who are not licensed in Australia. This view was shared by many stakeholders including CrownBet, Sportsbet and the Australian Hotels Association. CrownBet's submission added 'the biggest failing of the Australian wagering regulatory regime is that the IGA does not prohibit offshore operators from offering wagering services to Australian residents'¹⁶.

Tabcorp argued that a number of changes be made to improve the current enforcement regime to deter wagering providers (whether within Australia or overseas) from breaching Australian interactive wagering laws'. It proposed a number of deterrence mechanisms similar to the recommendations in the Review of the Interactive Gambling Act 2001 - 2012 Final Report including introducing a civil penalty regime; a public register of noncompliant persons; non-compliant directors to be placed on a Movement Alert List; and a provision preventing non-compliant persons from receiving a licence for a period of time. Racing Australia also recommend civil penalties, a register of illegal offshore operators and the use of a Movement Alert List, and greater enforcement of existing criminal provisions of the IGA. Racing Australia also called for the blocking of websites and financial transactions relating to illegal offshore wagering.

¹⁵ Clubs Australia public submission to the 2015 Illegal Offshore Wagering Review

¹⁶ CrownBet public submission to the 2015 Illegal Offshore Wagering Review

CrownBet advocated for penalties to be imposed on associates, affiliates and agents of illegal operators, and the blocking of offshore wagering websites. Sportsbet called for deterrence measures to be deployed including to:

- publish and update on the ACMA website the list of known prohibited gambling operators; and
- make operators of prohibited services aware that law enforcement bodies may be monitoring any attempts by them to enter Australia.

The enforcement measures under Option 2 will be used to reduce the provision and advertising of all prohibited interactive gambling services under the IGA including casinos-style games, poker, in-play betting, and any other interactive gambling services that are provided by operators who are not licensed in an Australian state or territory.

Regulatory costs

The Department of Communications and the Arts completed its self-assessed costings for Option 2 which were accepted by the OBPR in May 2016.

It was agreed only one of the proposed measures - prohibit unlicensed gambling providers under the IGA – had a regulatory costing impact. The new licensing requirement under the IGA is expected to have differing effects on offshore operators – some will stop providing illegal services to Australians, some will apply for a licence with a state or territory, and others will continue to provide services illegally to Australian residents.

Some 35 offshore gambling sites¹⁷ are providing online wagering services to Australian residents, however, many of these are providing other services that are prohibited under the IGA, e.g. casino style games and in-play betting on sporting events. It is assumed that a small number of reputable online gambling operators (five to ten operators) will alter their services and apply for a licence in the years following the introduction of this proposed measure. Based on current licensing processes in Australia and other assumptions around compliance costs, it was accepted that the regulatory impact to gambling operators would be \$58,400 annually. The Department of Communications and the Arts proposes to use IMR Standard (OBPR ID 19650) as the appropriate offset for this cost.

The OBPR considered that the proposal to prohibit ‘click to call’ in-play betting services has zero regulatory costs. The proposal essentially bans an activity which goes against the intent of the IGA, which in itself has no regulatory costings burden.

There will also be some impact on agents, affiliates and employees who may be currently employed or receiving a commission to support illegal gambling operators from obtaining Australian customers. These activities are currently prohibited under the IGA and *Criminal Code Act 1995*, however, an active regulator would now enforce these provisions more effectively. The other proposed measures will see an increase in responsibilities of the ACMA and will not affect industry or individuals unless they breach the IGA.

Option 2: Average annual regulatory costs

Change in costs (\$ million)	Business	Community organisations	Individuals	Total change in costs

¹⁷ Based on search results of the Online Casino City website online.casinocity.com accessed in June 2016. The result comprises sports and racebook websites in English that accept Australian players and dollars.

Licence requirement	\$0.06	\$ 0	\$ 0	\$ 0.06
Total, by sector	\$0.06	\$ 0	\$ 0	\$ 0.06

Option 3: Greater enforcement action by the AFP

Description

Provide the AFP with more resources to prioritise and conduct investigations of interactive gambling services.

Analysis

Benefits	Shortcomings
<ul style="list-style-type: none"> • More investigations of interactive gambling services would be conducted which could lead to successful prosecutions of offenders. • AFP prioritising interactive gambling complaints would act as a deterrent to operators. • Positive effects on Australian licensed wagering and gambling providers, racing and sporting associations and government. 	<ul style="list-style-type: none"> • The ambiguity around the legality of gambling services and operators under the IGA would continue to affect investigations. • Criminal prosecutions would still require high evidentiary requirements and cooperation of overseas jurisdictions. • Offshore gambling providers would still be outside the reach of Australian law. • Importance of interactive gambling investigations would still depend on emerging and critical priorities of the AFP. • Budget impact of providing more resources for the AFP.

The IGA provides for the ACMA to handle complaints about prohibited internet gambling content. For Australian-hosted content, the ACMA must not investigate but must refer it to the AFP for investigation, which will investigate if appropriate. The ACMA will investigate overseas hosted internet gambling websites itself and, if satisfied the site offers prohibited internet gambling services, must notify the website to approved filter providers and the AFP if warranted. As previously noted, due to competing priorities, resourcing and the challenges involved in obtaining a successful prosecution, the AFP on most occasions decline to undertake an investigation into interactive gambling matters. Stakeholders in the Review noted the competing priorities of the AFP.

A key reason for operators continuing to breach the IGA is the minimal enforcement of its provisions. The AFP being more active in relation to interactive gambling matters may have a stronger deterrent effect on operators, both in Australia and overseas, who may be providing services in breach of the IGA. The AFP would need to prioritise interactive gambling matters and may require additional resources to conduct investigations.

Greater action by the AFP would no doubt have a positive effect, however, there are other challenges outside its control that also need to be addressed. With the introduction of new gambling technologies, it can be difficult to clearly determine which services breach the provisions of the IGA. This was evident in the 'click to call' services recently launched by a number of Australian licensed providers.

Furthermore, criminal prosecutions involve high evidentiary requirements and obtaining information from, and enforcing judgements in, overseas jurisdictions can be problematic. These factors would still need to be addressed to support any enhanced enforcement actions taken by the AFP.

Regulatory Costs

This proposal would have no regulatory costing impacts on business, community organisation or individuals. It would simply strengthen the enforcement actions by the AFP against any entity or individual who commits a criminal offence under the IGA.

Option 3: Average annual regulatory costs				
Change in costs (\$ million)	Business	Community organisations	Individuals	Total change in costs
Total, by sector	\$ 0	\$ 0	\$ 0	\$ 0

5. Preferred Option

Option 2: Prohibit 'click to call' in-play betting services and strengthen enforcement

Prohibiting 'click to call' in-play betting services

Prohibiting 'click to call' type in-play betting services is aimed at protecting Australians from the potential harms of the type of gambling product that the IGA seeks to prohibit – betting products where multiple bets can be placed in a short period of time. This is the same reason why online casinos, poker machines and instant lotteries are also banned under the IGA. The intent of the IGA is to limit the scope of problem gambling in Australia and these services claim to bypass its provisions.

As mentioned previously, the Australian Gambling Statistics revealed that Australians lost almost \$23 billion to gambling in 2014-15. Sports betting accounted for \$814 million (around 3.5 per cent of Australian gambling losses) which was a 30 per cent increase on the previous year- the biggest increase of all gambling products. The uptake of mobile devices, and its use for gambling activity with continuous access, including to financial transfers, is exacerbating the incidence and severity of problem gambling in Australia, particularly among younger people. Among interactive gamblers, sports betting was used by a significantly greater proportion of those with at least some level of gambling problems, a finding not replicated among land-based only gamblers. This is consistent with previous Australian research finding that problem interactive gamblers were more likely to gamble on sports than problem land-based gamblers¹⁸.

In-play wagering allows for more betting options. Instead of betting ceasing after an AFL or rugby league match has commenced, effectively giving the consumer a break from betting for a couple of hours, in-play betting would enable the consumer to continuously bet throughout the match. This type of rapid betting can lead to gambling problems, in particular amongst young males who are attracted to sports betting. As 'click to call' in-play betting products were available for just over 18 months, the effects on problem gambling are not known.

Licensed wagering operators such as bet365, Sportsbet and CrownBet, state that allowing in-play betting services legally in Australia will stop a considerable amount of money being wagered with offshore providers. Online in-play betting in Australia was valued at \$218.1 million in 2014, almost all of which was conducted offshore. Other stakeholders believe that the amount of revenue going offshore on in-play betting products is overstated. It would be likely that legalising in-play betting products in

¹⁸ Gainsbury, Russell et al., in press

Australia would see an increase in domestic wagering revenue, gambling taxes and sporting fees. However, the introduction of in-play betting may simply see a shift from one gambling product to another with no real gain in taxes or fees. Any gains would also be compromised if there was an increase in the rates of problem gambling as a result of the introduction of in-play betting products.

It is important to note that the United Kingdom (UK) and other countries allow in-play betting on sporting events. However, in the case of the UK, the UK Gambling Commission is very well staffed and can enforce strong and consistent harm minimisation and consumer protection controls across all UK licensed gambling operators. Currently in Australia, the level of harm minimisation differs between states and territories, and does not guarantee a level of care that responsible gambling organisations believe is needed to protect consumers. The Government response to the Review agreed to establish a national consumer protection framework consisting of consistent harm minimisation standards which will complement the enforcement measures under this preferred option.

Measures to strengthen the enforcement of the IGA

The preferred option addresses a key reason raised by the majority of stakeholders in the Review for the provision of illegal interactive gambling services to Australian residents – the current lack of enforcement of the IGA.

Leading industry stakeholders such as Tabcorp, Clubs Australia, CrownBet, Sportsbet, the Australian Hotels Association and Racing Australia strongly expressed the need for stronger enforcement of the IGA to stop the adverse effects of illegal offshore operators on industry, sporting and racing industries, consumers, problem and at-risk gamblers and government. Stakeholders may have different views on other areas, e.g. in-play betting, but they were united in calling for stronger enforcement of the IGA.

The preferred option will create better enforcement processes and a stronger deterrence for non-compliance. The enforcement measures will:

- Prohibit the provision of regulated interactive gambling services to Australians by unlicensed operators;
- Introduce a civil penalty regime to be enforced by the ACMA and extend the ambit of enforcement to affiliates and agents;
- Provide the ACMA the ability to notify international regulators of operators providing prohibited interactive gambling services to Australians;
- Disrupt the travel to Australia of offenders by placing names of directors or principals on the Movement Alert List; and
- A series of measures to further clarify the provisions of the IGA and support the ACMA's increased enforcement role.

The package of measures will clarify provisions around the legality of services and operators which will aid investigations by the ACMA. A provision in the IGA requiring operators to hold a state or territory licence to provide interactive gambling services to Australians will make it clear to international operators and regulators of the requirements in Australia. This measure will also assist other parties, e.g. internet and financial payment providers, who may be involved in disruptive measures to reduce access to, or to warn consumers of, these offshore sites.

The ACMA will be responsible for the entire complaint handling process from receipt to enforcement and will not have to rely on the priorities of the AFP or other agencies in most circumstances. It will be able to seek civil penalties and take other enforcement actions that may not be subject to similar difficulties as enforcing the current criminal penalty provisions.

Changes to preferred option based on consultation

The Government initially agreed to establish a register of illegal interactive gambling services to be published on the ACMA website to raise awareness amongst Australian consumers. Based on stakeholder feedback conducted in September 2016 on the preferred option, it was decided that the register would contain a list of Australian licensed wagering services only. Some stakeholders commented that a list of illegal gambling websites might inadvertently promote these services to Australian consumers. As there are a smaller number of legal wagering websites, the list will be easier to maintain by the ACMA. The list will be used to educate consumers by presenting the legal sites and that websites not on the list should be avoided as they are not licensed in Australia. The list will not be used to promote gambling and its sole purpose will be to raise awareness amongst persons wishing to gamble that there are websites that are licensed in Australia.

The ACMA would look to establish relationships with reputable overseas regulators to gain their assistance in information gathering and raising awareness amongst their licensees of the provisions and penalties of the IGA.

Net benefits

The net benefits of the preferred option are potentially very high.

There are minor regulatory costs (\$58,400 annually) associated with this package of enforcement measures as the majority of measures will only impact operators if they breach the provisions of the IGA. Figures showed that the five operators that offered 'click to call' services (William Hill, Ladbrokes, bet365, Sportsbet and Unibet) made as much as \$500,000 a week from the product, based on figures suggesting it accounted for three per cent of their gross profit on bets¹⁹. The five wagering operators are likely to lose a percentage of this revenue from the prohibition of 'click to call' products, however, it is unclear how many consumers will revert back to their normal betting practices, e.g. telephone, offshore or pre-play betting, prior to the introduction of 'click to call' services. There will also be financial impacts in relation to the loss of development, marketing and other costs invested by these operators to establish 'click to call' in-play betting services.

An indicative cost to the ACMA to establish and administer the proposed enforcement measures includes a one-off capital cost of \$500,000 and ongoing costs of \$2 million each year which could cover such elements as staffing, investigation and enforcement activities, research and educational activities, and liaison with international regulatory authorities²⁰.

On the benefit side, the enforcement measures are designed to stop illegal offshore gambling operators providing services to Australians which should see a reduction in wagering revenue going offshore (up to \$400 million in 2014). Based on a conservative assumption of 10 per cent, new revenue of around \$40 million could be realised for licensed wagering operators. In turn, this will mean greater taxes to state and territory governments, and fees to racing and sporting associations (\$100 million lost in taxation and payments in 2014). It may also reduce some of the offshore expenditure on other interactive gambling services (which was estimated to be just under \$1 billion in 2010). Additional revenue may lead to more jobs in the local gambling, sporting and hospitality industries.

Some of the estimated 35 offshore wagering operators currently providing services to Australians may apply for a licence which will increase the amount of licensing fees paid to government, racing and sporting authorities.

19 theaustralian.com.au/national-affairs/state-politics/crackdown-to-force-bookies-to-hand-over-millions/news-story/220acb392716e339bcbf800c7a217f70

²⁰ The figures are estimates only. No formal costings around ACMA expenses have been prepared.

The number of Australians that inadvertently bet with offshore operators and have to deal with the personal and financial costs should also decrease. The high rate of problem gambling amongst online gamblers is concerning and measures to protect vulnerable sectors of the community against offshore providers is likely to benefit the community.

Alternative Option: Maintain the status quo (Option 1)

Since the inception of the IGA in 2001, there has been minimal enforcement of its provisions. Offshore gambling operators ignore the provisions of the IGA as they know there is very minimal chance that any enforcement action will be taken against them. There have been no prosecutions despite a significant number of complaints relating to interactive gambling services being provided to Australian consumers. As a consequence, gambling operators will continue to ignore the provisions of the IGA with detrimental effects to Australian industry, consumers, problem and at-risk gamblers and government.

Gambling taxes, racing and sporting fees will continue to go to offshore gambling providers if no action is taken (an estimated \$100 million is going offshore annually in lost tax revenue and product fees). Australians lost up to an estimated \$400 million betting with offshore wagering operators in 2014, and this is expected to increase to \$910 million by 2020. The *2012 Review of the Interactive Gambling Act 2001* estimated the total money spent with offshore operators on all prohibited interactive gambling services to be just under \$1 billion annually. These figures are likely to increase without any type of intervention.

The adverse effects of offshore gambling will also continue to affect the integrity of Australian sports, as offshore providers do not share information regarding suspicious betting activity with law enforcement or sporting bodies, and problem gamblers will be put at risk due to the minimal to no harm minimisation and consumer protection controls on offshore gambling websites.

Alternative Option: Greater enforcement powers to the AFP (Option 3)

As mentioned in the previous section, greater enforcement action by the AFP would no doubt have a positive effect. However, more resources to the AFP would not be enough to reduce the provision of the illegal interactive gambling services to Australians. There are other challenges outside the AFP's control that also need to be addressed.

The IGA currently contains criminal penalties which involve high fault and evidentiary requirements and obtaining information from, and enforcing judgements in, overseas jurisdictions can be problematic. Option 2 will introduce a civil penalty regime that will enable the ACMA to issue warning and infringement notices, and seek civil penalties and injunctions. These enforcement provisions should enable a quicker response by the ACMA to contraventions of the IGA.

The current ambiguity of the IGA around the legality of services is a factor which would have been taken into account by the AFP when deciding whether to undertake an investigation. Option 2 will provide clarity for a number of provisions, e.g. amendments to make it a requirement for overseas providers to obtain a licence in Australia and prohibiting 'click to call' type in-play betting services. The AFP being more active in enforcing the provisions of the IGA would be effective, but legislative reforms to ensure investigation processes can be conducted would also be required.

Limitations of the preferred option

As outlined previously, due to the borderless nature of the internet and overseas location of many gambling operators, successful prosecution outcomes will not always be possible. Some of the challenges experienced by the AFP will also be present for the ACMA. There will be a number of practical and legal challenges with pursuing enforcement actions against gambling operators with no Australian presence.

It is envisaged that having an active regulator equipped with a range of enforcement options, together with better clarification of the IGA provisions, will see a reduction in the amount of gambling revenue going offshore and minimise the adverse effects on Australia. This package of measures, combined with other proposals in the Government response, will place Australia in a stronger position to combat the effects of illegal gambling services but is not expected to eradicate the problem.

6. Consultation

Interactive Gambling Amendment Bill 2016 (preferred option)

The preferred option of measures was circulated as an exposure draft to selected industry, responsible gambling and government stakeholders on 22 September 2016. Stakeholders across all sectors were very supportive of the enforcement measures. Comments were used to revise the measures contained in the proposed legislation and supporting documentation including this RIS.

Based on stakeholder feedback, it was decided that the register of unlicensed and illegal interactive gambling services will be changed to a register listing Australian licensed wagering sites. It was suggested that listing the legal wagering sites will be easier to maintain and will not inadvertently advertise illegal offshore gambling sites that should be avoided. It is important that the proposed new list does not in any way promote gambling and will rely on states and territories working with the ACMA to keep the list up to date. The list will be accompanied with text stating that websites not listed are likely to be illegal offshore gambling services.

It was also agreed that a provision be included in the IGA to enable the Minister to make a determination by legislative instrument of what constitutes a sporting event for the purposes of in-play betting rules under the IGA. This will enable specific rules to be developed for new forms of a current sport or new sports that are developed over time.

The consultation process resulted in changes to the penalty amounts for breaches of the IGA. It was viewed that there was inconsistency between the civil and criminal penalty amounts and that higher amounts for some contraventions were required to increase compliance. There were also some changes made to related amendments designed to clarify the legality of services under the IGA, e.g. telephone betting services, and processes to support the ACMA in its increased enforcement role.

The 2015 Review of the impact of Illegal Offshore Wagering

The preferred option was informed by the Review [2015 Review of the Impact of Illegal Offshore Wagering] that was led by the former Premier of New South Wales, the Hon Barry O'Farrell. The primary focus of the Review was to investigate the impacts of illegal offshore wagering on Australia, measures to mitigate its effects, and the efficacy of consumer protection controls.

The consultation involved a call for submissions process and stakeholder meetings. The submissions period was open for four weeks. 79 submissions were received and published on the Department of Social Services website where permission was granted by the author. Mr O'Farrell also conducted some 30 meetings with a wide range of stakeholders across all sectors – traditional and online wagering industry, racing, hospitality and sporting bodies, consumers and problem gamblers, researchers and academics, responsible gambling organisations and government. Mr O'Farrell provided his final report with recommendations to the Government on 18 December 2015.

The following key findings of the Review were based on stakeholder consultation and research:

- Illegal offshore wagering causes a range of social and economic impacts on Australia;

- There is minimal enforcement of Australian gambling and wagering laws due to ambiguity of existing legislation, the overseas location of operators and competing priorities of responsible enforcement agencies.
- Australian gambling and wagering regulatory arrangements are complex and inconsistent which impedes harm minimisation efforts and creates burdens for Australian licensed operators.
- There is limited availability of accurate and robust information and data on the size and impacts of offshore wagering on the Australian wagering industry, government and consumers.

The Government released its response to the Review on 28 April 2016, supporting 18 of the Review's 19 recommendations (14 in full, four in principle and one noted). The response agreed to prohibit 'click to call' in play betting and a series of measures to strengthen the enforcement of the IGA including additional powers to the ACMA. The majority of stakeholders consulted as part of this Review agreed that the IGA has been ineffective since its inception in 2001 and that measures were required to strengthen its enforcement against illegal gambling operators.

2012 Review of the Interactive Gambling Act

The Department of Broadband, Communications and the Digital Economy conducted a Review of the *Interactive Gambling Act 2001* in 2012. The 2012 Review of the IGA was announced by the then Minister for Broadband, Communications and the Digital Economy, the Hon Senator Stephen Conroy.

Consultations comprised a discussion paper, a draft report and a series of workshops with a range of stakeholders including state and territory government officials, industry, researchers, broadcasting and content providers, community and counselling organisations, sports administrators and gambling providers. Some of the enforcement measures contained in the preferred option (Option 2) were also part of the recommendations put forward in the 2012 Review.

7. Implementation and evaluation

Subject to Government priorities and parliamentary sittings, it is expected that the Interactive Gambling Amendment Bill will be introduced in Parliament in the 2016 Spring sittings.

Role of the ACMA

The ACMA will be responsible for administering the new measures once enacted. The ACMA will take on a greater enforcement role similar to its responsibilities under the *Do Not Call Register Act 2006*, *Spam Act 2003*, *Telecommunications Act 1997* and the *Broadcasting Services Act 1992*. The reforms will see the ACMA responsible for the entire complaint handling process from receipt to enforcement.

The ACMA will be able to investigate, on its own initiative or in response to a complaint, all interactive gambling services (internet-based or other carriage based services) or related advertising, including the gambling operator, irrespective of whether the content is hosted in Australia or overseas. Previously, the ACMA could not fully investigate complaints regarding Australian-based internet gambling content and had to refer these matters to the AFP. This process caused confusion to stakeholders and complainants.

The ACMA will be able to issue warning notices, infringement notices, and seek civil penalties and injunction orders without having to rely on the priorities of other agencies. It will also work with the Department of Immigration and Border Protection to place names of directors and principals of companies which have breached the provisions of the IGA on the Movement Alert List.

A further awareness raising activity will be for the ACMA to notify international regulators of illegal operations in their jurisdictions. The ACMA will be able to write to overseas regulators and seek their cooperation to stop the provision of illegal interactive gambling services to Australian residents.

Review of the ACMA

In June 2015, the Australian Government announced a review of the Australian Communications and Media Authority (ACMA). The purpose of the review was to examine the objectives, function, structure, governance and resource base of the ACMA to ensure it remains fit-for-purpose for both the contemporary and future communications regulatory environment.

The Department of Communications and the Arts released a draft report for comment in May 2016. This draft report put forward a number of reform proposals to modernise the ACMA's objectives, functions and governance arrangements and establish clear performance expectations.

The proposals included that the IGA be amended so that the ACMA handles all complaints relating to interactive gambling services and advertisements, that the ACMA conduct the same investigation process irrespective of whether the content is hosted in Australia or overseas, and that civil penalties and other enforcement measures are introduced and operate in addition to the existing criminal penalties.

At the time of finalising the RIS, the timing of the release of the final ACMA Report had yet to be determined.

Evaluation

The impacts of the measures should be closely monitored for effectiveness. Compliance information around the IGA, including the number of complaints received about prohibited interactive gambling services and the enforcement actions undertaken by the ACMA, will be included in the ACMA's Annual Report which is tabled in Parliament.

Conclusion

The growth of interactive gambling in Australia has grown since 2004 with many consumers moving away from traditional gambling products to betting online using smartphones, tablets and other digital devices. Australia's high rate of gambling expenditure and adoption of digital technologies makes it imperative that there is a strong and enforceable regulatory framework in the online gambling environment.

The negative effects of illegal offshore gambling are well documented. Offshore operators pay no Australian taxes or sporting fees; do not share information regarding suspicious betting activity with law enforcement or sporting bodies, offer gambling services prohibited under the IGA, and provide minimal harm minimisation and consumer protection controls. The harms affect nearly all stakeholders - Australia's wagering, racing and sporting industries, problem and at-risk gamblers, consumers and government.

The Review concluded that no single strategy would be effective in completely eliminating illegal offshore wagering in Australia. It suggested the aim of Commonwealth, state and territory governments should be to reduce the scope of such activity and control the associated harm to consumers through a range of disruptive and deterrent measures and stronger enforcement of existing regulation.

International experience indicates no country has eradicated illegal offshore betting in its entirety and that no single policy reform can deal conclusively with every aspect of illegal offshore wagering. However, international experience does demonstrate that a combination of clarifying the law, combined with stronger enforcement and other disruption measures, should significantly reduce the size of the problem. The UK, France and other countries have implemented a strong mix of regulatory and enforcement actions to combat the issue of illegal offshore gambling.

The proposed enforcement measures outlined in the Government's response to the Review (Option 2) will be the first stage to mitigate the effects of illegal offshore gambling on Australia. These enforcement measures will complement the other key recommendations in the Review that were agreed by the Government:

- establishing a national consumer protection framework comprising agreed minimum standards for online wagering including prohibiting lines of credit being offered by wagering providers, a national self-exclusion register, voluntary pre-commitment, enhanced staff training, and enhanced research among other measures. It is imperative that while protecting consumers from offshore gambling operators that we help to ensure that Australians have the proper protections with local licensed operators; and
- consult on a range of other disruption measures to reduce illegal offshore gambling activity.

These measures should see a reduction in the number of offshore operators providing services to Australians and associated adverse effects on the local wagering, sports and racing industries, consumers, problem and at risk gamblers, and government.