



Australian Government

Government Response to the 2015 Review of the Impact of Illegal Offshore Wagering

April 2016

INTRODUCTION

On 7 September 2015, the then Minister for Social Services, the Hon Scott Morrison MP, asked the Hon Barry O'Farrell to conduct a Review of the Impact of Illegal Offshore Wagering (the Review).

The Review was conducted to investigate the size and scope of the illegal offshore wagering problem and advise on ways to strengthen our regulatory enforcement and protect Australians from illegal offshore wagering operators. The Australian Government (Government) is concerned that illegal offshore wagering causes several problems including:

- greater risk for consumers because legal protections are not in place and standard consumer protections are often absent;
- the potential for greater sports integrity problems, as relevant betting and transaction information is not available; and
- less tax revenue for governments, less product and other fees for the racing and sports industries, and fewer jobs for Australians.

Mr O'Farrell was given a broad terms of reference to conduct the Review to allow him to look at the problem holistically. Mr O'Farrell's Report is available at www.dss.gov.au/communities-and-vulnerable-people/programmes-services/gambling

The Review makes 19 recommendations and the Government has accepted 14 recommendations in full and four in-principle.

OVERVIEW OF THE AUSTRALIAN MARKET

The size and growth of the market

Australians are among the biggest gamblers in the world, spending \$1,245 per capita in 2014¹.

Online 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 gambling in Australia was \$21.1 billion and wagering made up \$3.4 billion of this. 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 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.

Legal online wagering is growing due to the ubiquity of mobile devices and changes in consumer behaviour, which have in part been driven by intensive marketing from companies licensed in Australia. The market is highly competitive, largely consisting of internationally owned companies, licensed and operating in Australia.

The Review found that estimating gambling expenditure by Australians on illegal offshore sites is difficult as there is no single authoritative data set. The lower estimate suggests that it is only 5 per cent of the total expenditure by Australians (\$64 million) and that this figure has declined markedly since 2004. Based on this figure, the 'problem' of illegal offshore gambling is relatively small. However, upper estimates quoted by the Review put the figure at 26 per cent of the market (\$400 million) and growing.

¹ All data is drawn from the Review of Illegal offshore Wagering Report unless otherwise stated

The Review found that Australians bet on illegal offshore sites for many reasons including a broader product offering and better odds. Illegal offshore sites offer a wider range of betting options including in-play and micro bets for sporting events which are not legally offered online to Australians. Some illegal offshore operators offer better odds as they are not paying taxes, licence fees, or product fees required to sustain the industry in Australia. Many Australians are also unaware that the sites they are betting on are not licensed in Australia and that there is limited legal recourse if they run into any difficulties obtaining winnings or deposits.

A number of countries have successfully tackled illegal offshore wagering by adopting a multifaceted approach to limiting access to unlicensed wagering sites. France, for example, legislated to break local monopolies on online gambling and introduced Internet Service Provider (ISP) and transaction blocking. This resulted in unauthorised wagering dropping from 75 per cent to 20 per cent of online gambling².

No country has eradicated illegal offshore betting in its entirety.

The Australian regulatory regime

Online gambling, including wagering, is regulated in Australia by a combination of state and territory, and Commonwealth laws. State and territory governments (states) are responsible for the regulation, licensing and most consumer protection measures of legal online gambling services. The Commonwealth Government's *Interactive Gambling Act 2001* (IGA) limits the types of online gambling products that can be offered to Australians.

Australia is home to nine jurisdictions that licence gambling with more than 60 pieces of legislation underpinning the regulatory environment. As a result Australia has a regulatory framework that is fragmented, inconsistent and leads to increased compliance burdens for online operators who need to comply with differing rules in each state and territory.

The IGA has become ineffective and out-dated, with considerable confusion among both licensed operators and consumers on what is permitted under the Act. For example, some operators have relatively recently introduced 'click-to-call' in-play betting services which have been developed to circumvent the operation of the legislation.

There is also ambiguity about whether offshore providers are complying with Commonwealth, state and territory law. Enforcement of the IGA has also been difficult, as the ambiguity of many provisions and the difficulties in obtaining admissible evidence from overseas jurisdictions often hamper investigations.

Problem gambling

Rates of problem gambling among interactive gamblers is a concern to the Government. It is therefore important that consumer protection measures are monitored and updated when appropriate given the current and projected growth in online gambling.

According to the Review, the rate of problem gambling for online gamblers is 2.7 per cent with 41 per cent of online gamblers considered to be 'at-risk' gamblers (low-risk, moderate-risk and problem gamblers). This means they experience problems, to varying degrees, such as to their physical health like stress or anxiety; financial problems caused by gambling, or chasing losses.

This compares to figures for all gamblers where 0.9 per cent are problem gamblers and around 20 per cent are 'at risk' gamblers.

² Victorian Government submission to the Illegal Offshore Wagering Review

Online gambling combines a number of issues that are not universally present with other modes of gambling:

- the ability to gamble online, anywhere via mobile devices;
- the ability for gambling operators to target individual gamblers with offers and encouragements to bet;
- the ability to transfer large amounts electronically into online betting accounts; and
- the ability for gambling operators to offer lines of credit to gamblers.

Online, you can lose your house, in front of the TV, in a weekend.

THE GOVERNMENT'S DIRECTION

The Government has accepted in full or in-principle 18 of the Review's 19 recommendations. (See the table attached). As the Review notes, no single policy reform can deal conclusively with every aspect of illegal offshore wagering. Consequently a multifaceted approach is required. Based on the Review's recommendations, the Government proposes a three-staged approach, which can be concurrently implemented.

1. The establishment of a national consumer protection framework (national framework). The aim is to empower individual gamblers to ensure that problem gambling is minimised.
2. Amend the law to make it clear that it is illegal for unlicensed overseas gambling companies to offer gambling products to Australians. The Australian Communications and Media Authority (ACMA) will also be empowered to have stronger enforcement mechanisms.
3. Introduce other disruption measures to curb illegal offshore gambling activity.

No measure will completely eliminate the illegal offshore wagering market, but the combination of clarifying the law combined with other disruption measures will make a significant difference, as has been demonstrated by other nations.

The Government will clarify the existing law to respect the provisions and original intent of the IGA by moving to prohibit 'click-to-call' in-play wagering services.

This three-staged approach is outlined in detail below.

1. A National Consumer Protection Framework

The Review made clear that the Australian consumer protection regime is weak and inconsistent across the nation. Mr O'Farrell said "*a key concern of this review is the effectiveness of existing consumer protection measures for online wagering*". This view was shared by many in the gambling industry including by gambling providers. The largest wagering company in the world, Bet365, said that "*Australia's responsible gambling standards are inconsistent and fall a long way behind international best practice*".

With online wagering growing at 15 per cent per annum, it is clear that a stronger consumer protection regime is required.

In line with the Review's recommendations, the Government will work with the states to establish a national framework of agreed minimum standards. The Government aims to agree on a framework model within 12 months.

At a minimum the framework should comprise of the following elements:

- a national self-exclusion register for online wagering;
- a voluntary pre-commitment scheme for online wagering;
- standardised messaging and gambling counselling advice across the nation;
- the provision for operators to provide activity statements for online wagering on demand and on a regular basis;
- operators to train staff in the responsible conduct of gambling through an accredited provider; and
- prohibit lines of credit being offered by wagering providers.

In line with its election commitment for problem gambling, the Government is of the view that people should bet with money they already have and therefore will seek to ban the provision of lines of credit for online wagering altogether. This would bring Australia into line with many other countries and make it consistent with other channels of gambling where providing lines of credit is unlawful. The Government will also consider a harmonised regulatory regime to ensure that the offering of inducements is consistent with responsible gambling.

A range of possible approaches to implement the national framework will be considered and discussed with the states and stakeholders, including that adopted for the National Policy on Match-Fixing in Sport, and a national regulatory approach. The implementation of a national framework may also have flow on benefits to sport and racing integrity, with the provision of more transparent betting and transaction information.

The Government will also introduce nation-wide research on this issue to assist with the development and evaluation of policy responses to gambling and its impact within Australia. We need to understand the size of the problem and collect the data to make informed evidence-based decisions.

The Government will work with the states and territories on a collaborative research effort, including developing an agreed research programme.

2. Clarify the law regarding illegal offshore gambling and empower the ACMA

The Review found that there is a significant weakness in the IGA in that it does not expressly prohibit the provision of gambling services to Australians by offshore providers. Consequently, many offshore providers offering gambling products to Australians may stop if the law was clearer.

For example, the gambling regulator in Gibraltar, a responsible regulator in the global market, informed the Review that labelling offshore operators as 'illegal' was not consistent with its understanding of the IGA.

The Government will amend the IGA to make it clear that the provision of gambling services to Australians by offshore providers is prohibited, unless they are licensed by a state or territory.

Consistent with the Review's recommendations, the Government will give additional powers to the ACMA to notify relevant international regulators if an operator in their jurisdiction is in breach of Australian law. The ACMA will also be granted powers to implement civil penalties.

These actions will send a clear message to gambling operators that the Government is serious about compliance with its gambling laws, and should see responsible international gambling companies either obtaining a licence or ceasing to provide gambling products to Australians.

Other countries take this approach and we will seek to replicate it. 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.

3. Introduce other disruption measures to curb illegal offshore gambling activity

In addition to clarifying the law, the Review recommended the implementation of a series of other mechanisms to disrupt the illegal offshore gambling market. The term 'disrupt' is carefully used as no single action will completely eliminate illegal offshore gambling. However the combination of greater legal clarity and stronger enforcement (as outlined above) in concert with the disruption measures will have a significant impact.

In line with the recommendations of the Review, the Government will pursue the following responses.

- The creation of name and shame lists to be published online to detail illegal sites and their directors and principals and the use of instruments to disrupt travel to Australia by named individuals.
- Work with the states to restrict unlicensed offshore operators that continue to provide gambling services to Australian consumers, from obtaining an Australian licence for a specified period.
- Consultation with Internet Service Providers to assess the potential options and practicality of voluntarily disrupting access to overseas based online wagering providers who are not licensed in Australia through the use of blocking or pop-up warning pages. Consultation with the banks and credit card providers to assess the potential options and practicality of payment blocking strategies to address illegal offshore gambling.

Expansion of the online betting market

The Government notes the Review's finding that the introduction of a strong national framework is required before considering any expansion of products in the online gambling market.

The Government does not intend to further expand the online betting market in Australia by legalising online in-play betting.

The Government considers 'click-to-call' in-play betting services are breaching the provisions and intent of the IGA. The Government will therefore introduce legislation to clarify the IGA as soon as possible.

CONCLUSION

The Government's approach draws on the experience of overseas regulators, where the most effective reforms brought online gambling within regulatory boundaries, but not without robust approaches to protect consumers and sport, and discourage illegal operators.

The Government extends its gratitude to the Hon Barry O'Farrell for his leadership in conducting the Review and thanks all those who contributed through meetings, research and submissions.

We look forward to engaging with the states, the wagering sector, researchers and the community to progress these measures.

Recommendation	Position	Comments
<p>1: Commonwealth, State and Territory governments should recommit to Gambling Research Australia to ensure that research funds are directed towards maximising the information available to policy makers, academics, the community and industry about the nature, prevalence and impact of gambling across Australia.</p>	<p>Agree in-principle</p>	<p>Focused, strategic and nation-wide research is essential to developing and evaluating policy responses to gambling and its impact within Australia. Gambling Research Australia is currently being evaluated. The Commonwealth and the states and territories are considering which research model best meets the goal of maximising understanding of the nature, prevalence and impact of gambling.</p> <p>The Government will work with the states and territories on a collaborative research effort, including developing an agreed research program and allocating funding to an appropriate research body or bodies.</p>
<p>2: A national policy framework, comprising agreed minimum standards, be established to provide consistency in the regulation of online wagering and to improve the effectiveness of consumer protection and harm minimisation measures across the nation.</p>	<p>Agree</p>	<p>The Government agrees that there should be a nationally consistent framework for gambling regulation and consumer protection, in line with the Government's gambling policy. National consistency is particularly important in this area given that the product crosses jurisdictional boundaries.</p> <p>The Government will work closely with the states and territories, industry and other stakeholders, to develop a national policy and regulatory framework. This will include the specific role(s) that each stakeholder will play.</p> <p>A range of possible approaches to implement the national framework will be considered and discussed with the states and territories and stakeholders, including: that adopted for the National Policy on Match-Fixing in Sport, and a national regulatory approach.</p>
<p>3: Until the proposed national framework is established and operating, consideration of additional in-play betting products should be deferred and legislative steps taken to respect the original intent of the <i>Interactive Gambling Act 2001</i>.</p>	<p>Noted</p>	<p>The Government does not intend to further expand the Australian gambling market through enabling the offering of online in-play betting.</p> <p>The Government is of the view that the Australian online wagering agencies offering 'click-to-call' type in-play betting services are breaching the provisions and intent of the IGA. The Government will introduce legislation as soon as possible to give effect to the intent of the IGA.</p>

Recommendation	Position	Comments
<p>4: A national self-exclusion register that applies across all online operators should be developed, either by an expansion of the Northern Territory register or through a new national system. The costs associated with such a register should be borne by online operators.</p>	<p>Agree</p>	<p>A nationwide, self-exclusion capability to be offered by all providers to all consumers will be developed as part of the national framework in consultation with the states and territories, and other stakeholders (as per recommendation 2).</p> <p>A number of states and territories and wagering providers already have voluntary self-exclusion and pre-commitment systems available, and a national register should ideally leverage existing architecture.</p>
<p>5: Operators should be required to offer customers an opportunity to set voluntary limits on their wagering activities. Consumers should be prompted about setting or reviewing limits on a regular basis.</p>	<p>Agree</p>	<p>The national framework will incorporate standards for making voluntary pre-commitment limits available to all consumers. These will be developed in consultation with the states and territories, and other stakeholders (as per recommendation 2).</p> <p>The standards will consider elements such as visibility, transparency and periodic prompting empowering consumers to reconsider their betting limits.</p>
<p>6: Operators should be required to apply additional consumer protections where 'credit' or deferred settlement betting is available.</p>	<p>Agree</p>	<p>Gamblers should only bet with the money they have. This policy exists for most other gambling products, such as pokies and casinos. It should also occur with the rapidly growing online wagering segment.</p> <p>A number of jurisdictions already prohibit online operators from offering lines of credit.</p> <p>The Government's response goes further than the Review, and consistent with our election commitment, will seek to ban lines of credit being offered for online betting altogether. The Government will work with the states and territories to achieve this.</p> <p>The Government will also consider a harmonised regulatory regime to ensure that the offering of inducements is consistent with responsible gambling.</p>

Recommendation	Position	Comments
7: Links between online wagering operators and payday and other lenders should be discouraged.	Agree	Concerns were raised to the Review about links between payday lenders and online betting operators. The Government will work with the industry, state and territory governments and the counselling sector to investigate ways to discourage the link between payday lenders and online wagering.
8: Users should be regularly sent online statements detailing their wagering activity including total wagered, winnings and losses. These statements should also be readily accessible through the operator's website.	Agree	<p>The Government will work with the states and territories to develop a universal and nationally consistent approach to empower gamblers to monitor and manage their expenditure as part of the national framework (as per recommendation 2). A number of wagering service providers already provide their consumers with activity statements.</p> <p>These statements should be transparent and easy to understand. Minimum information requirements will be part of the national framework.</p>
9: As part of the national policy framework, the current 90 day verification period should be reduced to at least 45 days.	Agree	<p>The Government will work with the states and territories and industry to significantly reduce the current verification periods and to ensure appropriate safeguards are in place to protect young and vulnerable consumers.</p> <p>International experience suggests verification can be completed more quickly, so the Government will pursue a target of less than 45 days, with the target to be included in the national framework (as per recommendation 2).</p>
10: All staff involved with online users must undertake appropriate training in the responsible conduct of gambling – provided through an accredited provider.	Agree	The Government will work with the states and territories, the industry, community sector and training providers on mandatory training requirements. Wagering service providers are well placed to identify and support problem gamblers in the responsible conduct of gambling, similar to the responsible service of alcohol requirements.

Recommendation	Position	Comments
<p>11: That the national policy framework include consistent, enforceable rules about advertising of online gambling.</p>	<p>Agree</p>	<p>The Government agrees there is scope to make the rules that apply to the advertising of online wagering in states and territories more consistent as part of the national policy framework, and welcomes proposals by industry to develop national guidelines applying to advertisements on different media.</p> <p>The Government notes that there are also a range of regulations applying to distributors of content, such as television and radio broadcasters, which apply nationally to sectors of the industry. These rules have in most cases been developed with extensive consultation and therefore already reflect community views, but there will be differences between media platforms consistent with the way people consume different types of media. These existing frameworks will be taken into account in any national approach.</p>
<p>12: The national policy framework should ensure that advertising of online services using social or digital media platforms is subject to similar regulatory controls as other media.</p>	<p>Agree</p>	<p>The Government agrees that the national framework should also apply to advertising of online wagering services using social or digital media platforms. To the extent that general rules applying to the content of advertisements are developed, these should apply to advertising on social or digital media that carry those advertisements. The regulatory controls for licensing of wagering providers should require compliance with the advertising rules in the national framework.</p> <p>In general social media platforms have good self-regulatory frameworks in place for content, and the Government will work with such providers to ensure these offer appropriate controls in relation to advertising of wagering services and products.</p>
<p>13: The national policy framework should introduce a system to allow for the development and use of nationally consistent and standardised messaging to assist efforts to ensure responsible gambling.</p>	<p>Agree</p>	<p>The Government will work with the states and territories, and other stakeholders to include standardised messaging about responsible gambling in the national framework (as per recommendation 2).</p>

Recommendation	Position	Comments
14: The current single national telephone number and web portal – Gambling Help Online – should be refocused to operate more consistently across all States and Territories, and provide a stronger pathway to other support services for problem gamblers and their families.	Agree in-principle	The Gambling Help Online service is a joint Commonwealth and state and territory partnership. It is currently undergoing formal evaluation to assess its effectiveness and to identify areas for service improvement. The Government will work with state and territory governments to ensure information to assist problem gamblers and their families is consistent and easy to access.
15: Further research should be undertaken on the impact of betting restrictions on illegal offshore wagering and the identification of options to improve the situation.	Agree	The Government will examine the existing literature base on betting limits, commission further research, and undertake further consultations to explore options to address the impact of betting restrictions imposed by Australian licensed bookmakers, which have been cited as a factor in decisions to gamble offshore.
16: A national policy framework that leverages off existing Commonwealth, State and Territory agencies should be implemented and enforced in a similar vein to the National Policy on Match-Fixing in Sport.	Agree in-principle	In line with recommendation 2, the Government will develop national policy and regulatory frameworks, in consultation with the states and territories. This might be implemented and enforced in a similar manner to the National Policy on Match-Fixing in Sport, but the Government will also discuss with the states and territories other mechanisms for implementation.

Recommendation	Position	Comments
<p>17: The Act should be amended to:</p> <ul style="list-style-type: none"> - improve and simplify the definition of prohibited activities - extend the ambit of enforcement to affiliates, agents and the like - include the use of name and shame lists published online to detail illegal sites and their directors and principals and to include the use of other Commonwealth instruments to disrupt travel to Australia by those named - allow ACMA, where appropriate, to notify in writing any relevant international regulator in the jurisdiction where the site is licensed - allow ACMA to implement new (civil) penalties as proposed by the 2012 review - include a provision that restricts an operator providing illegal services to Australian consumers from obtaining a licence in any Australian jurisdiction for a specified future time period 	<p>Agree</p>	<p>The Government will introduce legislative amendments to provide greater clarity around the legality of services, strengthen the enforcement of the Interactive Gambling Act 2001, and deliver improved enforcement outcomes.</p> <p>It will also introduce the other mechanisms as outlined in the recommendation.</p> <p>The implementation of the national framework and other legislative and disruption measures may also be flow on benefits in the critical areas of sport and racing integrity.</p>
<p>18: Treasury, and other relevant agencies should work with banks and credit card providers to identify potential payment blocking strategies to disrupt illegal offshore wagering. Additionally, the recommendation from the <i>2012 Review of the Interactive Gambling Act 2001</i> relating to 'safe harbour' provisions be adopted to support these efforts.</p>	<p>Agree</p>	<p>While disruption strategies cannot provide a complete solution, payment blocking and restrictions have been used in other jurisdictions such as the United Kingdom, France and the United States as part of a multifaceted strategy designed to reduce the adverse outcomes of illegal online wagering.</p> <p>The Government will consult with the banks and credit card providers to assess the potential options and practicality of payment blocking strategies to address illegal offshore wagering and gaming.</p> <p>The adoption of Recommendation 8 from the 2012 Review of the Interactive Gambling Act 2001 will be considered after the potential options have been explored.</p>

Recommendation	Position	Comments
<p>19: ACMA should seek to pursue voluntary agreements with ISP and/or content providers to block identified sites fostering illegal wagering activity within Australia. Failing this, consideration should be given to legislative options for applying website blocking to disrupt the use of offshore operators.</p>	<p>Agree in-principle</p>	<p>Many countries have used Internet Service Providers (ISP) blocking as part of a multifaceted strategy designed to reduce the adverse outcomes of illegal online gambling.</p> <p>The Government will consult with ISPs to assess the potential options and practicality of voluntarily disrupting access to overseas based online wagering providers who are not licensed in Australia through the use of blocking or pop-up warning pages.</p>