

# Review of Illegal Offshore Wagering

Report to the Ministers for Social Services and the Minister for Communication and the Arts  
by Lead Reviewer, the Hon. Barry O'Farrell

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# Contents

Review of Illegal Offshore Wagering .....	1
Glossary and Definition of Terms.....	3
List of Acronyms and Abbreviations .....	14
Executive Summary .....	16
1 Introduction .....	25
1.1 Background.....	25
1.2 Purpose.....	28
1.3 Scope.....	29
1.4 Limitations of the Review .....	31
1.5 Approach to the Review.....	32
2 Market Structure .....	34
2.1 Gambling in Australia .....	34
2.2 Online wagering .....	45
2.3 Structure of the illegal offshore wagering market.....	52
2.4 Potential impacts of illegal wagering in Australia.....	55
3 Current Policy and Regulatory Framework .....	60
3.1 Online gambling regulation in Australia.....	60
3.2 Regulation of online wagering in other jurisdictions .....	73
3.3 Harm minimisation and responsible wagering .....	89
4 Drivers of Change .....	94
4.1 Impacts of the offshore wagering market .....	94
4.2 Magnitude of these impacts.....	95
4.3 Competitiveness of the domestic industry.....	98
4.4 Consumer protection .....	100
5 Policy and Regulatory Options .....	104
5.1 Establishing an evidence base for decision making.....	104
5.2 Reducing the size of the illegal offshore wagering market .....	106
5.3 Reducing barriers to competition for the domestic industry .....	119
5.4 Improving consumer protection .....	124
5.5 Other policy and regulatory options .....	146
6 Key Findings and Recommendations.....	149
6.1 General principles .....	149
6.2 Consumer protection and harm minimisation.....	152
6.3 Regulatory response framework .....	158
Appendix A : Terms of Reference.....	161
Appendix B : Stakeholder Consultations Strategy .....	163
Appendix C : Submissions to the Review .....	165
Appendix D : Literature Review .....	170
Appendix E : Productivity Commission 2010 Gambling Report No.50 Recommendations .....	177
Appendix F : DBCDE 2012 Review of the Interactive Gambling Act Recommendations.....	179

## Glossary and Definition of Terms

Key terms	Definition
<b>Accidental or incidental advertising</b>	<p>Accidental or incidental advertising refers to advertising for illegal online services that is permitted under the <i>Interactive Gambling Act 2001</i> (the Act). Broadly, the Act permits an interactive gambling service advertisement to be broadcast, datacast or published if:</p> <ul style="list-style-type: none"> <li>• the advertisement is broadcast, datacast or published as an accidental or incidental accompaniment to the broadcasting, datacasting or publication of other matter; or</li> <li>• no direct or indirect benefit (whether financial or not) is received for broadcasting, datacasting or publishing the advertisement (in addition to any direct or indirect benefit received for broadcasting, datacasting or publishing the other matter).</li> </ul>
<b>Associates</b>	<p>With respect to this Review, associates of online gambling operators refer to any person(s) advocating or assisting in the provision of online gambling services, whether these services are provided legally or illegally.</p> <p>Examples of associates may include:</p> <ul style="list-style-type: none"> <li>• agents of the operator seeking to encourage or facilitate use of the service, through contact with clients or through the provision of inducements;</li> <li>• third parties assisting the operator through the placement of advertisements in local media or through endorsement of the operator's services;</li> <li>• gambling software providers who provide specialist services and support to gambling operators; and</li> <li>• any other person(s) supporting the provision of these services through the use of call centre or back office functions.</li> </ul>
<b>At-risk gamblers</b>	<p>At-risk gamblers are defined as those people identified by the Problem Gambling Severity Index (PGSI) as being either 'moderate risk' or 'high risk' of experiencing gambling problems. The PGSI is a self-reporting assessment tool used to gauge the degree to which a person's gambling is problematic.</p>
<b>Betting limits</b>	<p>Betting limits refer to limits on the size of bets. Limits may refer to maximum betting limits where a cap is placed on bet size, typically as a harm minimisation measure and/or as a risk management measure for bookmakers, or minimum limits that refer to a minimum bet size that bookmakers must accept.</p>

Key terms	Definition
<b>Bonus bets</b>	<p>Bonus bets are free betting credits provided to gamblers as an inducement to commence betting or continue betting with a specific operator. The defining feature of bonus bets is that they are often required to be bet or ‘played through’ before they can be withdrawn; in other words the bettor must make additional bets in order to take advantage of the financial incentive.</p> <p>These play through requirements may apply to the bonus amount itself, to the bonus amount plus the stake required to attract the bonus, to the winnings obtained through using the bonus amount, or to a combination of these amounts.</p>
<b>Bookmaker</b>	<p>Bookmakers are persons or organisations who take bets, calculate odds and pay out winnings. Bookmakers are licensed in each jurisdiction. Traditionally, bookmakers have referred to individuals operating at event venues. More recently, corporate bookmakers operating online have been established.</p>
<b>Casino Games</b>	<p>Describes the games that are usually found in a casino and includes electronic gaming machines (EGMs) and table games such as poker, roulette, black jack, etc.</p>
<b>Click to Call (also - Bet In-Play)</b>	<p>The ‘Click to Call’ and similar features, allow bettors to place in-play bets over their mobile device without speaking to an operator.</p>
<b>Contingency betting</b>	<p>Wagering where the bettor is able to wager that something may or may not happen in the course of an event (for example, that an outfield player will handle the ball in a soccer game).</p>
<b>Credit betting</b>	<p>Refers to the provision of a line of credit by a gambling operator to allow a customer to place bets without using deposited funds and to reconcile the account at a later date.</p> <p>Credit betting does not refer to the use of credit cards to deposit funds into an online gambling account.</p>
<b>Crypto currency</b>	<p>Crypto currencies typically refer to digital currencies used as an alternate means of exchange relative to traditional currency. Crypto currencies are generally used as a means of exchange for online goods and services. An example of a crypto currency is Bitcoin.</p>

Key terms	Definition
<b>Deposit limits</b>	<p>A deposit limit is a limit on the amount of money that can be deposited by the customer into a single gambling account over a defined period of time.</p> <p>At present, a number of online operators allow customers to set deposit limits, typically when their account is registered. The services typically limit the amount that may be deposited during a day (24 hours), week (7 days) or month (30 days).</p>
<b>Digital wallet (also – e-wallet)</b>	<p>A digital wallet refers to an online account that may be used as an alternate payment method for goods and services provided over the internet. Digital wallets may be used to transfer funds into and out of online gambling accounts without directly using traditional banking or credit accounts.</p> <p>Increasingly, digital wallets are being made not just for basic financial transactions but also to authenticate the holder's credentials.</p>
<b>Exotic bets</b>	<p>An exotic bet, also commonly known as a prop bet or proposition bet, novelty bet or a special bet, typically refers to bet types that do not refer to the final result of an event or match. For instance, betting markets that pay out on the first try scorer or top goal scorer are examples of exotic bets.</p> <p>Some bookmakers offer exotic multiples, which combine one or more single bets and/or parlays. The combinations offered and nomenclature can vary from bookmaker to bookmaker. Exotic multiples provide payouts for a low number of winning selections, with the greatest payout achieved if every selection wins.</p> <p>Another type of novelty bet is betting on non-sports/racing events, e.g., when the next royal child will be born or who will win a reality TV contest. Whilst these are not traditional betting events, they are increasing in popularity and are often used as a way to encourage engagement with an operator through promotion and advertising.</p>
<b>Fantasy sports</b>	<p>A fantasy sport is a game where participants assemble imaginary or virtual teams of real players of a professional sport. These teams compete based on the statistical performance of those players in actual games.</p> <p>Traditional fantasy sports are contested across a long time period (typically a season) across a number of formats. Daily fantasy sports, or DFS, are contested across a shorter period (typically a day or a week).</p>
<b>Fixed-odds betting</b>	<p>Fixed odds betting refers to bets placed on sporting or racing events where the eventual payout is determined at the time of the bet. This is</p>

Key terms	Definition
	<p>in contrast to pari-mutuel betting where the payout is based on the final pool of money staked.</p>
<p><b>Free play sites</b></p>	<p>Free play sites are websites that offer games of chance, mixed chance or skill (for example, slot machines or poker) to consumers without cost. Consumers play to win virtual currency rather than real currency.</p> <p>Some free play sites offer services on an unlimited basis and others offer the services on a restricted basis. Typically, these free play sites have ‘for pay’ features, which allow further play or special features; however, no real currency is at stake within the game.</p> <p>Free play sites are also referred to as demo or practice sites (when offered by gambling operators) or social casino games when there is no connection with a gambling site. The former have to have the same mechanics and payout rates as the actual gambling activity; the latter do not, these are the ones that have freemium offerings and do not pay out winnings.</p>
<p><b>Gambling</b></p>	<p>In this Report, gambling is defined as all forms of gaming and wagering, including betting on sports, racing and fantasy sports, lotteries, EGMs and all casino games including poker.</p> <p>In Australia, gambling is a collective term for the sub-categories of ‘gaming’ and ‘wagering’. Wagering is a gambling event that takes place on a sports field or racetrack. Online wagering refers to these forms of gambling, with the internet simply a mechanism for placing the wager.</p> <p>Interactive gambling (also referred to as online or remote gambling) is a joint term capturing gaming and wagering on the internet. The converging capabilities of computers, laptops, netbooks, tablets, mobile phones, smart phones, interactive televisions, gaming consoles, and wireless portable devices allow interactive gambling to be available almost anywhere at any time.</p>
<p><b>Gaming</b></p>	<p>Gaming refers to the playing of games of chance, or mixed chance and skill (for example, card games and poker machines) for money or something else of value.</p> <p>Interactive forms of this type of gambling are generally prohibited under the Act (see relevant definitions in sections 5 and 6 of the Act). However, gaming services provided to customers who are in a public place (for example, a bar, club or casino) are specifically excluded from the Act definitions of interactive gambling service and prohibited internet gambling service (section 8B of the Act).</p>

Key terms	Definition
<b>Gross Gambling Yield</b> (also – Gross Gambling Revenue)	Gross Gambling Yield (GGY), also referred to as Gross Gambling Revenue (GGR) refers to the operator’s return on gambling, based on the value of total turnover less the value of any payouts paid.
<b>Handicap betting</b>	<p>Handicap betting refers to wagering markets (typically associated with sports betting) where the bettor is required to select a result allowing for one team/participant to have a head start (or handicap).</p> <p>Typically, handicap betting seeks to balance the value bet on each option. Bookmakers in these cases generate revenue based on the margin charged on each bet.</p>
<b>Harm minimisation</b>	<p>Harm minimisation measures, in the context of gambling and related industries, refers to measures that seek to reduce the negative consequences of gambling, in particular those consequences associated with at-risk gambling.</p> <p>Examples of harm minimisation measures include, amongst others, pre-commitment requirements and self-exclusion registers.</p>
<b>Head to Head betting</b> (also – Result betting)	Head to Head betting with regard to sports betting refers to a bet type where the bettor selects the result of an event. Specifically this refers to which team or participant will win (or in some cases whether the event will end in a draw).
<b>Illegal offshore wagering</b>	<p>In the context of this Review, illegal offshore wagering refers to the provision of illegal wagering services by operators based in overseas jurisdictions to Australian residents. Illegal wagering services can include prohibited services under the IGA (such as interactive gaming or in-play betting) or services prohibited under State and Territory laws.</p> <p>Under the laws of each Australian State/Territory, the provision of wagering services is permitted only when conducted by an operator licensed by the gambling regulator of an Australian State/Territory. Similarly, the totalisator in each Australian State/Territory is licensed by the gambling regulator of that Australian State/Territory.</p>
<b>In-play betting</b> (also – ‘in the run’ betting or live betting)	<p>In-play betting refers to betting markets that allow bets to be placed after the commencement of an event such as a sporting match or racing event. Typically, the prices available to bettors may change as the match or event progresses.</p> <p>In Australia, in-play betting is permitted on site or over the telephone for all events, and online for racing events.</p>



Key terms	Definition
	Interactive forms of this type of gambling are specifically prohibited for other events such as sporting matches under the Act (see relevant definition in section 8A(2)(a) of the Act).
<b>Inducements</b>	<p>Inducements refer to financial incentives provided to gamblers or potential gamblers to encourage the initial or continued use of a specific operator. These include:</p> <ul style="list-style-type: none"> <li>• sign up offers (including free bets or matching of initial deposits);</li> <li>• multi-bet offers;</li> <li>• deposit bonuses (including free bets or matching of additional deposits);</li> <li>• payouts on certain losing bets (including protest or extra-time payouts);</li> <li>• referral credits;</li> <li>• promotional odds (such as ‘bonus’ odds);</li> <li>• promotional winnings (such as ‘bonus’ winnings);</li> <li>• competitions offering bonus bets as prizes;</li> <li>• reduced commissions;</li> <li>• free bets; or</li> <li>• cash rebates.</li> </ul>
<b>Integrity in sports/racing</b>	<p>A sport that displays integrity can often be recognised as honest and genuine in its dealings, championing good sportsmanship, providing safe, fair and inclusive environments for all involved. It will be also expected to ‘play by the rules’ that are defined by its code.</p> <p>With regards to gambling, integrity typically refers to an absence of uncompetitive measures used to distort the normal function of gambling markets such as match-fixing.</p> <p>A sport that generally displays integrity has a level of community confidence, trust and support behind them. The impact of this on their business cannot be underestimated.</p>
<b>Interactive gambling</b> (also – online gambling or remote gambling)	Interactive gambling (including gaming and wagering) refers to gambling conducted using any of the following interactive mediums:

Key terms	Definition
	<ul style="list-style-type: none"> <li>• an internet carriage service;</li> <li>• any other listed carriage service;</li> <li>• a broadcasting service;</li> <li>• a datacasting service; or</li> <li>• any other content service.</li> </ul> <p>The prohibition of online gambling services does not apply to wagering services such as betting on racing, sporting or other events (placed before the event commences). It also does not apply to lotteries and other services declared exempt by the responsible Minister.</p>
<b>Interactive gambling service</b>	<p>Interactive gambling service refers to a gambling service (in the ordinary meaning of the term), where the service is provided in the course of carrying on a business and the service is provided to customers using any of the following:</p> <ul style="list-style-type: none"> <li>• an internet carriage service;</li> <li>• any other listed carriage service;</li> <li>• a broadcasting service;</li> <li>• a datacasting service; or</li> <li>• any other content service.</li> </ul> <p>See sections 4 and 5 of the Act.</p>
<b>Interactive gambling service advertisement</b>	<p>An interactive gambling service advertisement is any writing, still or moving picture, sign, symbol or other visual image, or any audible message, or any combination of two or more of those things, that gives publicity to, or otherwise promotes or is intended to promote, any of the following:</p> <ul style="list-style-type: none"> <li>• an interactive gambling service;</li> <li>• interactive gambling services in general;</li> <li>• trademarks in respect of, or internet addresses or domain names that relate to, an interactive gambling service; or</li> <li>• any words that are closely associated with an interactive gambling service.</li> </ul>
<b>Internet blocking (also – website blocking)</b>	<p>Internet blocking refers to the blocking of Internet Protocol (IP) addresses to restrict access to websites by internet users, typically for legal reasons. These filtering systems are applied at the Internet Service Provider (ISP) level.</p> <p>With regard to online gambling, a number of countries use IP filtering to control access to prohibited online gambling services.</p>

Key terms	Definition
<b>Know Your Customer</b>	Know Your Customer requirements refer to requirements for businesses to verify the identity of their customers. Online Gambling operators in Australia are required to comply with Know Your Customer requirements as part of their Anti-Money Laundering (AML) activities.
<b>Licensed onshore wagering</b>	<p>In this Report, licensed onshore wagering refers to interactive wagering services provided by operators licensed in an Australian State and Territory (excluding external territories such as Norfolk Island) and operating in accordance with all relevant State and Commonwealth laws.</p> <p>At the federal level, the Act prohibits the provision of an online gambling service to Australian residents; however, online wagering (save for in-play betting on sports events) and lotteries are exempt from this prohibition.</p> <p>In other words, the provision of an online wagering service to Australian residents is permitted under the Act, provided that the operator does not offer in-play betting on sports events. This position does not affect State and Territory laws that apply to online gambling and that contain additional prohibitions.</p>
<b>Merchant Category Code (MCC)</b>	Merchant category codes are used by credit card companies to identify the type of vendor associated with credit card transactions. For instance, the MCC for gambling is 7995.
<b>Microbets (also – microbetting or ‘ball-by-ball’)</b>	<p>Microbets are a specific category of ‘in-play’ style gambling that involves the placement of bets having the following characteristics and circumstances:</p> <ul style="list-style-type: none"> <li>• the placing, making, receiving or the acceptance of bets on particular events occurs during a session of a match or game;</li> <li>• the betting opportunity is repetitive and of a high frequency (for example, on a per ball basis in a game of cricket or a per point basis in tennis);</li> <li>• a bet is placed on one of a limited number of outcomes, although the number of possible outcomes may be more than two (e.g. whether the next serve will be a fault; whether the next ball will be a no ball);</li> <li>• the time between placing a bet and knowing the outcome is very short (usually less than five minutes, with the exception of appeals, intervals and interruptions).</li> </ul>
<b>Mobile gambling</b>	Mobile gambling refers to online gambling services that are accessed through a mobile device such as a smart phone or tablet.

Key terms	Definition
<b>Online casino games</b>	Games that are usually played at a casino such as EGMs and table games that are instead played online.
<b>Pari-mutuel betting</b>	Pari-mutuel betting refers to a bet type where the odds quoted at the time of the bet are indicative and the final payout is determined upon completion of the event based on the pool of money wagered on the event. This is in contrast to fixed odds betting where the odds agreed to at the time of the bet are used to determine the final payout.
<b>Payment blocking</b>	Payment blocking is a system used to monitor and limit financial transactions between online gambling services and their customers. Typically, this refers to the blocking of credit card transactions based on the merchant code for online gambling.
<b>People adversely affected by gambling</b> (also – problem gamblers)	People for whom gambling has had a detrimental effect on their life and/or wellbeing. These people are often referred to as ‘problem gamblers’.
<b>Point of consumption tax</b>	A point of consumption tax is a tax applied to consumers in the jurisdiction where the transaction occurs. With regards to interactive gambling, a point of consumption tax refers to a tax applied to gambling operators’ product generated from Australian customers, no matter where in the world the operator itself is located.
<b>Pre-commitment</b>	Pre-commitment refers to the self-setting of limits to gambling prior to the commencement of the gambling session and is a potential harm minimisation measure. Pre-commitment may be voluntary or mandatory. At present, a number of online wagering operators in Australia provide voluntary pre-commitment options upon account registration.
<b>Pre-event betting</b>	Pre-event betting refers to bets that are made prior to the commencement of an event, such as a sporting match. Pre-event betting is in contrast to in-play betting, where bets are made after the commencement of the event.
<b>Predatory marketing</b>	<p>Predatory marketing refers to marketing practices used by operators to encourage at-risk players to gamble or continue to gamble.</p> <p>These practices may include, amongst others, targeting profitable at-risk gamblers by offering financial or other inducements to those players who have and use mail, phone and email solicitations to offer free credit and other inducements such as access to sporting events.</p>

Key terms	Definition
<b>Proactive responsible gambling</b>	<p>Proactive responsible gambling refers to the use of predictive analysis to identify at-risk gamblers so that they may be referred to services that may reduce the negative impacts of gambling. Typically, predictive analysis refers to the analysis of betting behaviour using predictive algorithms to identify behaviour consistent with at-risk gambling.</p> <p>The use of predictive analysis to identify at-risk gamblers is required in the UK as part of its regulatory framework.</p>
<b>Product fees</b>	<p>Product fees (see also Race fields fees) are fees paid by licensed betting operators in Australia to Australian sporting and racing bodies. Typically, under these agreements, product fees paid to sporting bodies are based on 'gross revenue' and fees paid to racing bodies are based on turnover.</p> <p>For example, if a wagering operator wishes to take bets on the A-League, they must have an approval from Football Federation Australia (FFA). Under the conditions of this approval, the wagering operator must pay a product fee to the FFA and meet certain integrity obligations.</p> <p>In addition, wagering operators in Australia must seek approval from sporting organisations on the types of bets offered to their clients.</p>
<b>Prohibited internet gambling content</b>	<p>Prohibited internet gambling content refers to internet content that is accessed, or available for access, by an end user in the capacity of a customer of a prohibited internet gambling service.</p> <p>The Act provides that a person may make a complaint to the Australian Communications and Media Authority (ACMA) if the person has reason to believe that end users in Australia can access prohibited internet gambling content using an internet carriage service (section 16).</p>
<b>Race fields fees</b>	<p>Race fields fees are fees paid by licensed betting operators in Australia to Australian racing bodies.</p> <p>For example, if a wagering operator wishes to take bets on the Melbourne Cup, they must have an approval from Racing Victoria. Under the conditions of this approval, the wagering operator must pay a product fee to Racing Victoria and meet certain integrity obligations.</p> <p>In some jurisdictions, race fields fees are determined by legislation; in others, these fees are determined by agreement between licensed operators and the racing bodies.</p>
<b>Responsible gambling</b>	<p>Responsible gambling refers to a gambling environment that is safe, socially responsible and supportive and where the potential for harm associated with gambling is minimised and people can make informed decisions about their participation in gambling.</p>

Key terms	Definition
	Responsible gambling typically refers to measures that are applied by industry to minimise harm. However, the measures involved may be similar to measures mandated by governments as part of the licensing and regulatory framework.
<b>Self-exclusion</b>	<p>Self-exclusion (or self-banning) is a voluntary process whereby a person with a gambling concern can have themselves excluded from specific gambling venues, or from accessing gambling products provided by particular providers.</p> <p>Self-exclusion programs in Australia are provided on a per venue or operator basis.</p>
<b>Standard telephone service</b>	A carriage service for the purpose of voice telephony (amongst other things) as outlined in the <i>Telecommunications (Consumer Protection and Service Standards) Act 1999</i> (see section 6).
<b>Table Games</b>	Games played at a table with a dealer such as poker, roulette, baccarat etc.
<b>Technology neutral (also – platform neutral)</b>	Technology neutral, in the context of the regulation of online activities, typically refers to regulation that is consistent across different technologies. In the case of gambling regulation, this refers to regulation that is consistent across gambling services provided through land-based, phone, online or other channels.
<b>Totalisator</b>	A totalisator is an entity that provides gambling services as part of a pari-mutuel betting system, that is, a system where the payouts are automatically determined based on the amount gambled. Historically, totalisators (such as the various TABs) have been regulated separately to bookmakers in Australian States and Territories. In recent years, totalisators have expanded to include online bookmaking operations similar to those provided by corporate bookmakers.
<b>Turnover</b>	In gambling markets, turnover refers to the total amount of money staked by gamblers, this includes the value of payouts to gamblers.

## List of Acronyms and Abbreviations

Acronym/Abbreviation	Definition
ACMA	Australian Communications and Media Authority
AFP	Australian Federal Police
AGRC	Australian Gambling Research Centre
AML	Anti-Money Laundering
AWC	Australian Wagering Council
BIC	Bank Identifier Codes
CIS	Centre for Internet Safety
COAG	Council of Australian Governments
DBCDE	The Department of Broadband, Communications and the Digital Economy
DNS	Domain Name System
EDM	Electronic direct marketing
EEA	European Economic Area
EGMs	Electronic Gaming Machines
EU	European Union
FCA	Financial Counselling Australia
FFA	Football Federation Australia
GBGA	Gibraltar Betting and Gaming Association
GBGC	Global Betting and Gaming Consultants
GGR	Gross Gambling Revenue
GGY	Gross Gambling Yield
GRA	Gambling Research Australia

Acronym/Abbreviation	Definition
H2GC	H2 Gambling Capital
HKJC	Hong Kong Jockey Club
IGA or The Act	<i>Interactive Gambling Act (2001)</i>
IP	Internet Protocol
ISP	Internet Service Provider
MAL	Movement Alert List
MCC	Merchant Category Codes
NIGA	Norfolk Island Gaming Authority
PACE	Passenger Analysis Clearance Evaluation
PGSI	Problem Gambling Severity Index
UIGEA	<i>Unlawful Internet Gambling Enforcement Act 2006 (US)</i>
VPN	Virtual Private Network
VRGF	Victorian Responsible Gambling Foundation



# Executive Summary

## Background to the Review of Illegal Offshore Wagering

Across the global gambling market, online games and wagering are the fastest growing market segments over recent years. These sectors of the gambling market are also subject to a range of regulatory restrictions in a number of Australian jurisdictions.

Wagering is the fastest growing gambling sector in Australia. Fast growth in a market of this size, particularly where the platforms are largely online, raises concerns about the harmful impacts on our community, especially on the largely young male audience to whom these interactive products are marketed. As operators in these markets are operating outside the regulatory reach of Australian law enforcement and regulators, strategies to mitigate harm are particularly important.

A key determinant of the relative size of the legal and illegal market is the ability of the regulatory framework to attract offshore bookmakers operating illegally to move onshore and submit to Australian regulatory requirements. This is in part influenced by a regulatory framework that places legal operators on a competitive footing with the illegal market. Key elements of the regulatory framework that may influence the relative size of the legal and illegal markets include taxation levels, the types of services and product fees permitted or prohibited (such as online in-play wagering on sporting events) and the range and scope of regulatory harm minimisation measures.

The importance of appropriate harm minimisation measures to ensure adequate consumer protection is well documented, as is the need to manage the social and economic impacts of both problem gambling and illegal offshore wagering. Australia's online gambling market is subject to a range of regulatory measures that aim to protect our community and industry from potentially harmful gambling activities. Successive governments have acknowledged that enforcement of Australian regulations against illegal offshore online wagering operators is difficult, and previous studies have highlighted the challenges of bringing illegal offshore wagering activities into a regulated onshore environment.

The *Interactive Gambling Act 2001* (the Act) is directed at controlling the provision of online gambling services to Australians. Under the Act, it is an offence to provide certain interactive gambling services to consumers located in Australia. This carries a maximum penalty of \$360,000 per day for individuals and \$1.8 million per day for corporations, which applies to all providers whether they are located in Australia or offshore.

On 7 September 2015, the Commonwealth announced a review of the illegal offshore wagering market in Australia (the Review). The Review has involved extensive consultation and engagement with a broad range of community, industry and government stakeholders directed to strengthening enforcement of the Act and ensuring Australians are adequately protected from the impacts of illegal offshore wagering operators.

## How the Review was undertaken

This Review has sought to establish an evidence base for its recommendations through the completion of a literature review and extensive consultation with stakeholders. This evidence base was then used as the basis to assess a wide range of policy and regulatory options identified by stakeholders to form the basis for the Review recommendations.

Australian and international industry stakeholders and community support services, academics and other researchers, State and Territory governments, Commonwealth agencies, national and international regulators, and members of the community affected by gambling made written submissions to the Review and were invited to participate in stakeholder roundtables and other individual meetings with the Lead Reviewer as part of the consultation phase of the Review.

The stakeholder consultations undertaken by the Lead Reviewer and the written submissions lodged with the Review contributed to the evidence base of the Review and the examination of its Terms of Reference. In addition, a detailed literature review examined international regulatory regimes and the measures implemented in those jurisdictions to mitigate the impact of offshore wagering. The literature review also reviewed current academic and industry data, analysis of the offshore wagering market and the efficacy of approaches to protect consumers.

A number of stakeholders described the impacts associated with illegal offshore wagering and identified potential measures that could reduce the size of the offshore market and its associated impacts. The Government is committed to implementing preventative measures that are available and useful for all gamblers, and treatment options to help those experiencing harm. This includes venue-based voluntary pre-commitment, more and better targeted counselling and support services, more effective self-exclusion schemes, a strong and safer online gambling environment and examining the provision of deferred settlement facilities.

This Review has made recommendations that it considers provide an appropriate balance between allowing domestic operators to compete on a level playing field with offshore operators while ensuring a robust framework for identifying and addressing the harms associated with gambling. Importantly, the recommendations will enable the Government to continue working with industry, State and Territory governments, academia and the community sector to deliver real, meaningful and measurable support for problem gamblers.

In undertaking this Review there were a number of limitations. Key limitations that have required consideration included the absence of reliable and independent data on the nature and scope of the illegal offshore wagering market and the particular impacts of this market on the Australian community.

While jurisdictions offer extensive public information and guidelines for industry on the application of regulations and legislation with respect to gambling, this information often does not relate specifically to the illegal offshore wagering market. In addition, information regarding legal markets is often uncertain.

Furthermore, the fluid nature of the regulatory landscape in the Australian State and Territory jurisdictions, with changes being introduced regularly in the current environment, has resulted in the need for the evidence base and findings of this Review to be recalibrated.

Gambling policies and strategies in the States and Territories and across foreign jurisdictions are evolving and are subject to a number of current and parallel reviews and consultative processes. While these policy issues are separate to the focus of this Review, it is important to have regard to the wider policy context within which gambling licences operate. Consequently, implementation of the outcomes of this Review will need to be mindful of these evolving policy parameters.

## The evidence considered by the Review

Section 2 of this Review Report examines the gambling market in Australia generally and the illegal offshore wagering market specifically.

A key concern of this Review was the size and scope of the illegal offshore market and the inconsistent application of regulatory controls and measures to protect Australian consumers. Other broader impacts with which this Review is concerned include the economic impact of competition on online bookmakers based in Australia, stemming from offshore bookmakers servicing Australian consumers illegally; the flow-on impact on the broader economy of wagering services moving offshore; and the impact on the Commonwealth and State and Territory governments in terms of forgone revenue through lost licensing and product fees and taxation.

Online wagering is defined as wagering activity carried out online or using an interactive medium. It should be noted that measurement of the size and scope of the online market is difficult. In particular, estimating the size of the offshore online market is problematic given that:

- some of these services are provided illegally and are therefore less transparent than licensed, land-based or onshore online services; and
- these services may be regulated in a number of jurisdictions with varying reporting regimes.

The illegal offshore wagering market consists of operators who are not licensed in Australia to provide wagering services. However, many of these offshore wagering operators are legal and regulated in other jurisdictions internationally.

The rigour and nature of these regulations varies from country to country. These operators, while legal in their “home” jurisdiction, may nevertheless offer wagering products that are not legal in Australia, such as online in-play betting.

Importantly, the Act does not prohibit the provision of all gambling services by offshore operators. As long as offshore operators are not providing prohibited services, or acting contrary to State and Territory legislation, it is legal for offshore operators to provide services for Australian consumers.

Globally, the illegal offshore wagering market is growing and wagering represents the largest sector of the global internet gambling market. It is thought that 80 per cent of these bets on global sport are illegal, based on where the consumer is making the bet. Australia makes up a small fraction of this expenditure on offshore operators.

The size of the offshore wagering market in Australia is difficult to quantify with certainty. According to Global Betting and Gaming Consultants (GBGC), the offshore wagering market in Australia in 2014 was worth \$63.9 million, down around 70 per cent since 2004. The steep decline in offshore wagering expenditure seems to coincide with:

- the ability of onshore sites to legally advertise nationally since late 2008; and
- the trend of industry consolidation, which has resulted in a large number of significant offshore operators obtaining Australian wagering licences in recent years.

According to H2 Gambling Capital (H2GC) however, the size of the offshore wagering market is significantly larger and growing. H2GC estimated that expenditure on offshore wagering in 2014 was \$400 million, significantly higher than the GBGC estimate. H2GC claims that this expenditure is expected to grow to \$910 million by 2020. The size of the market is a key consideration of this Review, particularly with regard to the impacts of offshore wagering.

Likewise the impact of online in-play wagering on the demand for offshore wagering was disputed amongst stakeholders, with a number of stakeholders considering the prohibition of this form of gambling as a key competitive disadvantage for onshore operators, while others considered the leakage of gambling activity to the offshore sector due to in-play wagering was minor.

According to the GBGC, the amount of money spent on online in-play wagering was estimated to be \$64.5 million in 2013 across the Oceania region. According to H2GC data, online in-play wagering in Australia in 2014 was valued at \$218.1 million, of which almost all was conducted offshore. This is expected to grow significantly to over \$600 million by 2020. The significant difference in the estimates and forecasts of online in-play wagering across the two datasets reflects the uncertainty associated with measuring the size of online gambling markets.

The Review has considered both datasets when assessing the case for changing the approach to regulating these markets. Importantly, the size of the in-play market is significant across both datasets, despite the significant difference between the two estimates. The larger the size of the market the greater the impacts, which is of concern given it is predicted to grow.

## **The impacts of illegal offshore wagering**

The social impacts of illegal wagering on the individual and the community have natural similarities and linkages with the impacts of legal onshore wagering. Therefore, much of the discussion below considers the social impacts of illegal wagering in the context of the broader sector.

The economic impacts of illegal offshore wagering are discussed in more detail in the body of the Report and include the impacts on industry of leakage of gambling activity to the offshore sector and lost revenue associated with gambling taxes, and licensing and product fees for Commonwealth, State and Territory governments and sporting and racing bodies.

The impacts of Australians betting with offshore wagering providers are felt by a broad range of stakeholders including:

- the individual consumer of wagering services;
- the consumer's immediate family;
- the domestic industry, including related industries such as the sporting and racing industries;
- Commonwealth, State and Territory governments; and
- the remainder of the economy through the indirect impacts of expenditure in the local economy.

As part of its call for submissions, the Review asked stakeholders what were the key impacts of illegal offshore wagering and associated financial transactions. Stakeholders identified a number of impacts, largely based on the leakage of revenue offshore and the lack of transparency of betting activity. Some of the impacts identified by stakeholders include:

- difficulties for consumers in disputes with offshore wagering providers;
- challenges to the integrity of racing and sport through the use of betting exchanges, lack of access to betting records and links between offshore operators and organised crime;
- reductions in the level of income earned by sporting and racing bodies as a result of offshore operators not paying product fees on events held in Australia;
- decreased community investment associated with reduced revenue available to racing and sporting clubs;
- increases in the negative impacts of gambling given that some offshore operators do not have consumer protection and harm minimisation measures in line with Australian standards; and
- reductions in taxation and other revenue earned by industry and governments as a result of decreased activity in the domestic industry.

Typically, the size of the offshore market is likely to drive the magnitude of the negative impacts, particularly with regard to economic and financial implications. For instance, the greater the size of the offshore market the greater the loss in taxation and other revenue. However, some social impacts, such as increases in the harm associated with offshore wagering or difficulties regarding disputes, may be significant for specific stakeholders regardless of the size of the offshore market.

There was consensus amongst stakeholders on the impact of illegal offshore wagering. However, as there was diversity in relation to the size of the market, there is uncertainty surrounding the magnitude of the impact and the need for policy or regulatory responses to address these impacts.

## The way forward

As described briefly above, online gambling in Australia is governed by the Act reflecting the Commonwealth's responsibility for regulating the provision of telecommunications in Australia. State and Territory governments, however, are responsible for gambling more broadly. As a result, State and Territory governments are responsible for regulating and licensing the legal onshore online gambling operators.

While regulation of gambling primarily rests with the State and Territory governments, the Commonwealth Government is committed to a national approach to gambling policy. The Commonwealth policy on gambling contains a number of commitments including strengthening enforcement of the Act and ensuring that Australians are protected from illegal online gambling operators.

The Review considers it important that a nationally consistent and robust regulatory framework, including the consistent application of harm minimisation and consumer protection measures, is necessary before consideration is given to expanding products available to consumers under the Act. In addition, the Review considers it important that this nationally consistent regulation be enforced in a manner that disrupts the access of offshore operators to the Australian market.

While the size of the market remains uncertain, there is sufficient consensus among stakeholders to indicate that there is a need for a regulatory response to reduce the impact of the illegal offshore wagering market and to increase and harmonise the measures in place to protect consumers from the harms associated with gambling including the harms specifically associated with accessing offshore operators who are not subject to Australia's consumer protection framework.

The recommendations of this Review are presented in full in the body of the Report. These recommendations represent the views of the Review with respect to specific components of the national policy framework.

This Review has considered how the national policy framework should be implemented and any changes necessary to the Act or its enforcement to address the issues identified through the implementation of the national policy framework and enforcement measures to reduce the impacts of the offshore market.

Specifically, these measures should seek to address the following issues:

- the need for reliable and consistent research information on the Australian gambling market; the size of each sector – such as wagering – and the prevalence and magnitude of the harms associated with all forms of gambling;
- the value of a consistent regulatory framework that applies across State, Territory and Commonwealth jurisdictions specifically measures to:
  - reduce the variance of the levels and types of regulation across jurisdictions, which increases compliance costs for the onshore industry; and
  - reduce the disparity between the availability of products currently offered by offshore operators but not onshore operators;
- the importance of robust consumer protection and harm minimisation measures across all regulatory regimes in Australia to adequately protect the community from the harms associated with gambling.

- These measures include:
  - a national self-exclusion register;
  - a requirement that all operators permit customers to set limits on their wagering activity;
  - credit or deferred settlement should be subject to standard consumer protection laws;
  - activity statements should be available to all consumers on demand or on a regular basis;
  - all operators should train their staff in the responsible conduct of gambling through an accredited provider and be required to deliver a standardised message on responsible gambling across all of their consumer facing platforms;
  - advertising of gambling should be the subject of consistent and enforceable regulation across all Australian jurisdictions; and
  - the Act should be amended to simplify the definition of prohibited activities and extend the role of the Australian Communications and Media Authority (ACMA) in relation to all aspects of enforcement and compliance with the Act.

## Recommendations

**Recommendation 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.

**Recommendation 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.

**Recommendation 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 *Interactive Gambling Act 2001*.

**Recommendation 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.

**Recommendation 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.

**Recommendation 6:** Operators should be required to apply additional consumer protections where 'credit' or deferred settlement betting is available.

**Recommendation 7:** Links between online wagering operators and payday and other lenders should be discouraged.

**Recommendation 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.

**Recommendation 9:** As part of the national policy framework, the current 90 day verification period should be reduced to at least 45 days.

**Recommendation 10:** All staff involved with online users must undertake appropriate training in the responsible conduct of gambling – provided through an accredited provider.

**Recommendation 11:** That the national policy framework include consistent, enforceable rules about advertising of online gambling.

**Recommendation 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.

**Recommendation 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.

**Recommendation 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.



**Recommendation 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.

**Recommendation 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*.

**Recommendation 17:** The Act should be amended to:

- 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 DBCDE review; and
- 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.

**Recommendation 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 2012 DBCDE Review of the *Interactive Gambling Act 2001* relating to 'safe harbour' provisions be adopted to support these efforts.

**Recommendation 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.

# 1 Introduction

A review of illegal offshore wagering (the Review) was established to enable the Commonwealth Government to address growing concerns about the impacts of illegal offshore operators on the Australian community and the economic viability and integrity of Australian sporting and racing industries.

While regulation of gambling primarily rests with the State and Territory governments, the Commonwealth Government is committed to a national approach to gambling policy. The Commonwealth's policy on gambling contains a number of commitments, including strengthening enforcement of the *Interactive Gambling Act 2001* (the Act) and ensuring Australians are protected from illegal online gambling operators.

This section of the Report outlines the context of this Review of the impact of illegal offshore wagering, summarises previous reviews of the Act and the online wagering market and outlines the nature and scope of this Review.

## 1.1 Background

A presentation in April 2015 to the United Nations Congress on Crime Prevention and Criminal Justice estimated that the global sports betting market was worth up to \$3 trillion and that the illegal sector of the market accounted for around 90 per cent of that sum. In Australia, it has been estimated that illegal offshore gambling is a \$1 billion annual business.<sup>1</sup>

Negative economic and social impacts are associated with the offshore wagering sector. Noting these impacts and the measures available to address them, there is a need to examine the nature and scope of the current market in Australia as well as the effectiveness of harm minimisation measures and enforcement options to address the effect of offshore wagering on the Australian community and on the wagering industry.

Across the globe, countries have developed or are developing strategies to address issues associated with offshore wagering. The objective of this Review is to understand the impacts of offshore wagering on the Australian community and the Australian wagering industry and to identify and recommend strategies that may reduce any negative impacts.

While not all offshore operations are illegal, or unregulated, offshore wagering operators operate without an Australian licence and are exempt from the payment of taxes and product fees in Australia. Furthermore, while the levels of consumer protection provided by offshore operators may vary compared to Australian standards, the scope for Australian jurisdictions to impose consumer protection measures on offshore operators is limited.

Online wagering providers in Australia must meet legislative requirements outlined in the Act as well as broader gambling compliance requirements set out by the State and Territory governments through their licensing regimes. At present, the Act prohibits the provision of online gambling services and exempts wagering in limited and express circumstances.

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<sup>1</sup> DBCDE 2013, Review of the Interactive Gambling Act 2001. Australian Government. Canberra.

The Act was introduced at a time when the online environment was less sophisticated and mobile internet technologies less developed. Over time, technological advances have changed the online gambling environment, and it has become necessary to review the continued relevance of the regulatory framework. In particular, it is necessary to review whether the current approach to online gambling is a driver of offshore wagering and its subsequent impacts.

In addition to this Review, a number of recent reviews and inquiries have investigated the appropriateness of the existing regulatory framework in Australia. These include:

- The Productivity Commission's Inquiry Report on Gambling (2010): a public inquiry into gambling found that the Act did not restrict Australians from accessing online casino style gaming services.
- The Department of Broadband, Communications and the Digital Economy (DBCDE): a review of the Act in 2012, which made a series of recommendations to amend the Act.
- The Parliamentary Joint Select Committee on Gambling Reform (2011-13): inquired into the 2010 Productivity Commission report on gambling, as well as best practice measures and gambling-related legislation. The following reports were released by the Committee:
  - the design and implementation of a mandatory pre-commitment system for electronic gaming machines (EGMs) (May 2011);
  - interactive and online gambling and gambling advertising (December 2011);
  - the prevention and treatment of problem gambling (October 2012);
  - drafting of the *National Gambling Reform Bill 2012* and related bills (November 2012);
  - the advertising and promotion of gambling services in sport (June 2013); and
  - drafting of the *Poker Machine Harm Reduction (\$1 Bets and Other Measures) Bill 2012*, the *Anti-Money Laundering Amendment (Gaming Machine Venues) Bill 2012* and the *Interactive Gambling Amendment (Virtual Credits) Bill 2013*.

These prior review reports formed an important evidence and experience base for this Review and contribute to the Review's understanding of the current regulatory framework in Australia. A selection of recommendations from these reviews has been reproduced in the appendices of this Report.

## Productivity Commission Inquiry into Gambling (2010)

Following a decision by the **Council of Australian Governments** (COAG), the Australian Government requested the Productivity Commission undertake a public inquiry into gambling. The inquiry provided an update on developments since **the Commission's 1999 report**, and considered a wide range of issues:

- the nature and definition of gambling and the range of activities incorporated within this definition;
- the participation profile of gambling, including problem gamblers and those at risk of problem gambling;
- the economic impacts of the gambling industries, including industry size, growth, employment, organisation and interrelationships with other industries such as tourism, leisure, other entertainment and retailing;
- the social impacts of the gambling industries, the incidence of gambling abuse and the cost and nature of welfare support services necessary to address it;
- the contribution of gambling revenue to community development activity and employment;
- the effects of the regulatory structures – including licensing arrangements, entry and advertising restrictions, application of the mutuality principle and differing taxation arrangements – governing the gambling industries, including the implications of differing approaches for industry development and consumers;
- the implications of new technologies (such as the internet), including the effect on traditional government controls on the gambling industries;
- the impact of gambling on Commonwealth, State and Territory budgets;
- the impact that the introduction of harm minimisation measures at gambling venues has had on the prevalence of problem gambling and on those at risk; and
- the effectiveness and success of harm minimisation measures used by the State and Territory governments.

While the Productivity Commission Inquiry was wide ranging and considered all aspects of gambling in Australia and the treatment of problem gambling, it made specific recommendations relating to online gambling. These recommendations included limited liberalisation of online gambling and the implementation of national harm minimisation measures.

## Department of Broadband, Communications and the Digital Economy Review of the IGA (2012)

The DBCDE released its Final Report as part of its review of the Act in 2012. The report made a number of recommendations intended to create significant changes to the Australian regulatory landscape concerning online gambling. Of particular note are the following recommendations:

- the conduct of a five-year pilot in respect of the licensing of online poker operators, which will enable the provision by those licensed operators of online poker tournaments to Australian based consumers;
- the development of a national standard applicable to all Australian licensed online gambling operators to provide for a minimum set of harm minimisation measures;
- the introduction of additional penalties and other measures under the Act to strengthen the effectiveness of the prohibitions of the supply of prohibited interactive gambling services; and
- the limitation of the current restrictions on the supply of in-play sports betting services to certain types of sports micro-betting.

A full list of recommendations from the DBCDE Review is reproduced in Appendix F.

### 1.2 Purpose

The purpose of this Review is to address the impact of illegal offshore wagering on the economic viability and integrity of the racing and sports industries, and ensure that Australians are protected from illegal online wagering operators. By delivering this Review, the Government is working towards a commitment to the public made prior to the 2013 election.

This Review has undertaken an inquiry into the use of offshore wagering services by Australian customers in Australia. It is expected that the Review outcomes will enable the Commonwealth Government to address community and industry concerns about the economic and social impacts of offshore wagering services. This Review will examine international and national regulatory regimes to benchmark the Australian framework and review a range of other technological and legislative options to minimise harms associated with wagering more broadly and offshore wagering in particular.

The Review Report contains recommendations directed at reducing the scope and reach of the illegal offshore wagering market. This includes, but is not limited to, improved regulatory controls, industry codes and standards, and measures directed to enhancing consumer protection.

### 1.3 Scope

The Minister for Social Services has commissioned the Lead Reviewer to carry out the Review of illegal offshore wagering. The Review has been informed by consultations with key stakeholder groups, including Commonwealth agencies, State and Territory governments, industry and community groups.

The Terms of Reference establish the scope and parameters of the Review. The following table outlines the scope of the Review according to the Terms of Reference. The section references in the right hand column outline where the criteria have been addressed in this Review Report. The Terms of Reference are provided in full in Appendix A of this Report.

*Table 1-1: Terms of Reference*

Terms of Reference	Section reference
The economic impacts of illegal offshore wagering and associated financial transactions on legitimate Australian wagering businesses.	4.1–4.2
Size and growth of the illegal industry.	2.2–2.3 and 4.2
Organisation and interrelationships with other criminal industries and networks.	2.3
International regulatory regimes or other measures that could be applied in the Australian context.	3.2
Technological and legislative options available to mitigate the costs of illegal offshore wagering.	4.3 and 5.3
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.	4.4 and 5.4

#### **What is illegal offshore wagering?**

The Terms of Reference require that the Review focus on ‘illegal offshore wagering’. To adequately address the Terms of Reference, this Review has examined the illegal offshore wagering market relative to the legal onshore wagering market and other sectors of the Australian gambling market more broadly.

It is important to understand where the illegal offshore wagering market sits in relation to the broader gambling landscape in Australia. Gambling takes many specific forms, with sports and racing betting and wagering being one of the many gambling offerings, as shown in Figure 1-1 below. Offshore online gambling includes both gambling on prohibited products and gambling on wagering and lotteries with providers who are not licensed in Australia. Most of the types of gambling mentioned below can also be found online. Virtual forms of gambling share many of the same features as offline, or land-based, gambling.

Online gambling is regulated under the Act, which states that it is an offence to offer an interactive gambling service to an Australian consumer. Racing and sports betting are exempt from this prohibition, as are online lotteries, while online gaming machines, poker and other casino games are prohibited. Importantly, while it is an offence for a gambling operator to offer these games to Australians, it is not an offence for Australians to participate in these games.

Figure 1-1: Categories of gambling in Australia



The Act prohibits the provision of online casino and table games such as roulette, blackjack and poker to Australian residents. The prohibition of online gambling, however, is not exhaustive. For instance the Act:

- Does not criminalise the act of playing at an unlicensed online casino or placing wagers with unlicensed online wagering operators; therefore, Australian consumers cannot be charged under the Act. Rather, the law makes it illegal for an online casino or wagering operator to accept business from Australian customers.
- Does not prohibit the operation of an online casino within Australian borders – however, advertising and offering services to Australian consumers carry heavy penalties.
- Does not prohibit licensed online lottery providers from offering their services and products online to the public, as long as they do not offer instant-win scratch cards.

Within the wagering market, there are legal and illegal delivery channels. The Act exempts pre-event wagering on sports, racing and other events and in-play wagering on racing events from the general prohibition on online gambling services. This includes fixed-odds and pari-mutuel betting (where payouts are automatically determined based on the pool of money wagered on the event) on sports and horse and dog racing, using betting exchanges or intermediaries and pool betting. Online operators licensed by at least one Australian State or Territory, including external territories such as Norfolk Island, are permitted to offer their services to Australian residents in all States and Territories, as long as they comply with the Act, which includes a prohibition on online in-play wagering on sports. An exception to this is for operators providing lotteries, which need to be licensed in each State or Territory where they provide services.

Offshore operators are able to provide the same services as onshore operators under the Act; however, they must also comply with State and Territory based gambling legislation, including race fields legislation where it applies. Many foreign operators, however, offer in-play wagering on sports, or do not comply with State and Territory based requirements. As a result, these operators may be acting illegally by providing prohibited services to Australian residents.

While offshore operators are not licensed in Australia, most operators are generally licensed and regulated in at least one other jurisdiction, which may or may not have a robust regulatory and consumer protection framework. In some jurisdictions, licensing conditions require operators to operate legally in all other jurisdictions. The possibility of obtaining online poker licenses in the US resulted in several major operators withdrawing from illegal markets as it was a condition of their US licence that they were not offering services prohibited in other jurisdictions. Some stakeholders argue this could be a useful mechanism to encourage operators to come onshore.

## 1.4 Limitations of the Review

A level of ambiguity exists around the accuracy of figures for expenditure on and participation in offshore wagering. The sections below provide a brief overview of some of the challenges associated with estimating the size of the offshore wagering market and the approach used by the Review to address these issues.

### Expenditure on offshore wagering

In 2012, the DBCDE estimated \$1 billion was being spent by Australian consumers on offshore sites.<sup>2</sup> However, the focus of the DBCDE review was online gambling more broadly, rather than online wagering specifically. A number of stakeholders have, as part of this Review, cited figures regarding the size of the offshore gambling sector as a whole, rather than offshore wagering.

While no estimate of spending on offshore wagering was provided by the DBCDE in 2012, the Productivity Commission estimated in 2010 that online gaming (that is casino games and poker) comprised the majority of the offshore market, at \$790 million in expenditure on offshore sites.<sup>3</sup>

Since 2012, online gambling in general has grown significantly, consistent with the economy-wide migration to online service delivery channels and the significant investment in brand awareness by online operators. While this would indicate that the size of the online gambling market is larger overall than in 2012, this may not be the case for offshore wagering.

In recent years a number of large European wagering operators have acquired Australian wagering licenses or existing Australian operators and have moved their operations onshore. The online gambling market has also become more highly regulated, with a rise in jurisdictions legalising and regulating online gambling and increased consumer expectations and demand for licensed operators with stronger consumer protection measures. These developments, in addition to the expansion of advertising for onshore operators, are likely to have impacted the size of the offshore wagering market.

Estimates sourced as part of this Review exhibit significant divergence in estimates of the size of the offshore wagering market in Australia. Sources include:

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<sup>2</sup> DBCDE 2013, Review of the Interactive Gambling Act 2001. Australian Government. Canberra.

<sup>3</sup> Productivity Commission 2010, Gambling, Report No. 50, Canberra pp. 15-16



- Global Betting and Gambling Consultants (GBGC), a subscription service that reports on the size of the market globally;
- H2 Gambling Capital (H2GC), through a report attached to the submission of the Australian Wagering Council (AWC);
- publicly available gambling statistics; and
- information provided by other stakeholders through submissions and consultations.

Estimating the size of the offshore wagering market is challenging given the hundreds of sites, operators and jurisdictions that must be considered. There are often no reporting requirements for these sites that would allow an accurate understanding of the amounts wagered and the location of customers. Self-reporting of expenditure by Australians on offshore sites may be unreliable, despite efforts to maximise accuracy of reports within research methodology.<sup>4</sup> Estimates are generally based on extrapolating from the available data based on the estimated number of operators, potential consumers, self-reported participation and other factors. Consequently, estimates of the size of the offshore market are uncertain, being based on approximations.

Given the divergence of information presented by these sources, the Review has considered the range of estimates available in its examination of the offshore wagering market and the policy and regulatory options that may address issues associated with offshore wagering.

In addition, the Review has considered stakeholder views on the impacts of offshore wagering and the effectiveness of the consumer protection framework where there is broad consensus that significant issues exist.

## 1.5 Approach to the Review

Respecting jurisdictional frameworks, the Review sought to examine the impact of illegal offshore wagering on the Australian community and also to consider its effect on the economic viability and integrity of the sporting and racing industries.

The Lead Reviewer led extensive consultations with a wide range of stakeholders and interested persons including land-based and online gambling operators, sporting industry associations and representatives (Australian and international); community groups; banking and financial institutions; internet providers; regulators; academics and researchers; political representatives; and persons adversely affected by gambling.

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<sup>4</sup> Blaszczyński, A., Ladouceur, R., Goulet, A., & Savard, C. 2006, How much do you spend gambling? Ambiguities in questionnaire items assessing expenditure, *International Gambling Studies*, 6, 123-128; Braverman, J., Tom, M. A., & Shaffer, H. J. 2014, Accuracy of self-reported versus actual online gambling wins and losses, *Psychological Assessment*, 26(3), 865; Gainsbury, S. 2011, Player account-based gambling: Potentials for behaviour-based research methodologies, *International Gambling Studies*, 11(2), 153-171.

In addition to consultations and stakeholder meetings, the Lead Reviewer received written submissions from a broad range of interested parties. Appendices B and C contain an outline of the stakeholder consultations and submissions received by the Review. Many submissions are also available for public viewing on the Review website.<sup>5</sup>

The stakeholder consultations undertaken by the Lead Reviewer and the written submissions lodged with the Review formed a significant evidence base for the Review and the examination of its Terms of Reference. In addition to the evidence gathered through consultations and written submissions, the Lead Reviewer was assisted in the conduct of the Review by a detailed literature review that examined international regulatory regimes and the measures implemented in those jurisdictions to mitigate the impact of offshore wagering. The literature review also examined current academic and industry data, analysis of the offshore wagering market and the efficacy of approaches to protect consumers. A detailed summary of the literature review is contained at Appendix D.

The Review Report is structured as follows:

- Section 2 provides an overview of the Australian wagering market, outlining the market structure of both the land-based and offshore wagering markets. This is followed by a brief assessment of the potential impacts of illegal wagering activities.
- Section 3 considers the issue of illegal offshore wagering in the context of the current policy and regulatory environment. This section draws on past reviews undertaken by the Productivity Commission and DBCDE as well as recent developments in State and Territory jurisdictions.
- Section 4 discusses the rationale for action and intervention to address the problem and potential risks if left unchecked. It articulates the nature, scale and key drivers of illegal offshore wagering and provides an analysis of the economic, regulatory and social impacts of the problem.
- Section 5 critiques the wide range of regulatory, legislative and technological options available to respond to the challenges associated with illegal offshore wagering, drawing from the experience of international jurisdictions. Each option is considered according to its viability in the Australian context, likelihood of success and risks of unintended outcomes.
- Section 6 summarises the key findings of the Review and recommends actions, which respond directly to the Terms of Reference, based on the analysis and evidence base developed as part of this Review.
- A series of appendices provide supplementary information to the main body of the Report, including details of public consultations undertaken as part of the Review.

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<sup>5</sup> <<https://engage.dss.gov.au/review-impact-of-illegal-offshore-wagering/impact-of-illegal-offshore-wagering-public-submissions/>>

## 2 Market Structure

This section outlines the current gambling market structure in Australia and provides an introduction to the illegal offshore gambling market.

### 2.1 Gambling in Australia

#### Defining gambling

Gambling refers to a range of activities that involve people staking money on chance events. For the purposes of this Report, gambling is defined using the commonly accepted definition used by the Productivity Commission. Gambling is:

*“Entertainment based on staking money on uncertain events driven by chance, with the potential to win more than staked but with the ultimate certainty that gamblers will lose over time”.*<sup>6</sup>

These activities are recreational in nature and are distinguished from other activities where chance plays a role, such as stock investments. Gambling in Australia comprises gaming, wagering, lotteries and other forms of minor gambling such as raffles.

The distinction between these various types of gambling is made below:

- *Wagering or betting* involves staking something (usually money) on the outcome of a contest or any uncertain event or matter. The principal types of wagering are racing and sports betting.
- *Gaming* for the purpose of this Review includes all other forms of gambling such as EGMs, lotteries, keno, table games (such as blackjack) and minor gaming such as raffles.

One of the most significant changes to the gambling environment in the past 15 years has been the increased availability of online gambling. The gambling market has expanded from traditional gambling modes (such as in-person and telephone gambling) to include interactive or remote gambling. Internet gambling – including the use of mobile platforms – is the fastest growing mode of gambling in Australia and is changing the way gamblers engage with this activity.<sup>7</sup>

*Interactive or online gambling – “Gambling activities offered through interactive media such as computers, mobile and smart phones, tablets and digital televisions.”*<sup>8</sup>

Due to the high level of accessibility, the immersive interface and ease with which money can be spent, concerns have been expressed by some community and consumer representatives that online gambling may increase rates of problem and at-risk gambling.

Interactive gambling can be accessed through providers operating in Australia and overseas. Onshore gambling refers to gambling activities undertaken through Australian licensed gambling operators, while offshore gambling refers to gambling undertaken through providers based in other jurisdictions. Many of these operators provide gambling activities that are illegal in the Australian market. This issue is discussed further in Section 2.2 of this Report.

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6 Productivity Commission 2010, Gambling, Report No. 50, Canberra.

7 Gainsbury, S. 2015, Online Gambling Addiction: the Relationship Between Internet Gambling and Disordered Gambling, *Curr Addict Rep* (2015) 2:185-193.

8 Gainsbury, S. 2014, Interactive Gambling, AGRC Discussion Paper no. 3, November 2014, accessed 15 November 2015, <<https://aifs.gov.au/agrc/publications/interactive-gambling/rise-interactive-gambling>>

## Legal status of gambling in Australia

This section briefly introduces the key legislation and regulatory arrangements in Australia. Section 3 discusses these arrangements in greater detail.

### Key legislation and regulatory authorities

Gambling policy in Australia has traditionally been the responsibility of the State and Territory governments. These governments have responsibility for regulating and providing oversight of the provision of gambling services and derive revenue through the imposition of fees and taxes.

Each State and Territory has a range of legislation that applies to gambling activities within its jurisdiction, and regulatory bodies in each State and Territory operate to enforce these laws. Further detail of these laws and regulatory authorities is included in Section 3.1 of this Report.

In March 2001, the Commonwealth Government, concerned that new interactive technology such as the internet could have the potential to exacerbate problem gambling, introduced legislation to prohibit the provision of certain interactive gambling services to Australian residents: the Act. The Act came into effect in July 2001.

Key functions of the Act include:

- prohibiting interactive gambling services from being provided to customers in Australia;
- prohibiting Australia-based interactive gambling services from being provided to customers in designated countries;
- establishing a complaints-based system to deal with internet gambling services where the relevant content (prohibited internet gambling content) is available for access by customers in Australia; and
- prohibiting the advertising of interactive gambling services.

The prohibition of online gambling services does not apply to wagering services such as betting on racing, sporting or other events (placed before the event commences). It also does not apply to lotteries and other services declared exempt by the responsible Minister.

### Legal and illegal activities

There is a range of gambling activities permitted under Australian law. Broadly speaking, all gambling activities (see Figure 1-1.) that are offered in a land-based form are also accessible online. It is not an offence for Australian customers to access these services. However, according to the Act, it is an offence to provide prohibited interactive services to Australian customers. In general, most online gambling activities are classified by the Act as prohibited interactive services.

Specifically, online gambling activities prohibited by the Act include:

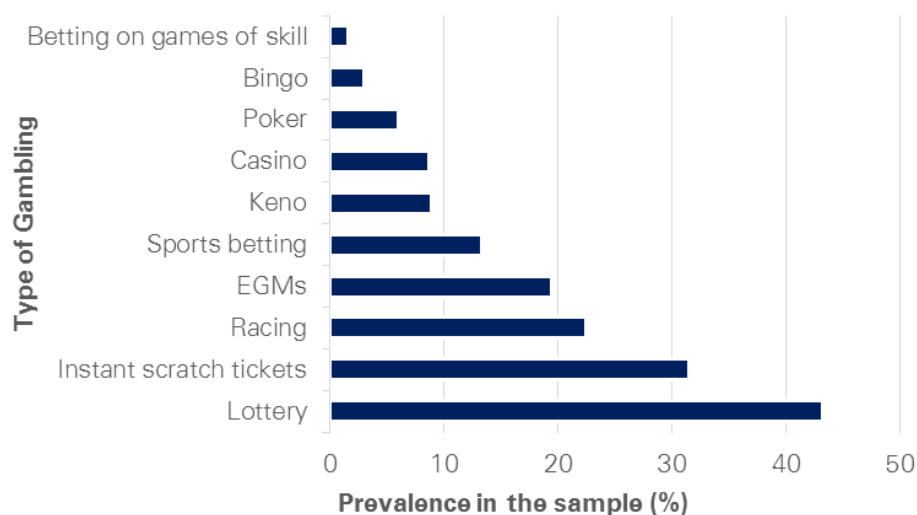
- online versions of casino style gaming, such as EGMs, blackjack, roulette, poker, bingo etc.;
- online instant lotteries;
- online scratch tickets or 'scratchies'; and
- online in-play (live) betting on sports events. (It is important to make the distinction that online in-play (live) betting on *racing* events is legal.)

The majority of offshore gambling activity relates to activities prohibited in the Australian market (mostly casino style gaming).<sup>9</sup> Recently, some Australian operators have sought to test the limits of the prohibition in relation to online in-play betting on sports events by including a feature in either their desktop or mobile application that activates the device’s microphone prior to accessing live betting options.<sup>10</sup>

### Participation rates

The most recent national prevalence study conducted in Australia indicates that gambling in Australia is a common recreational activity, with 64 per cent of Australians having gambled on at least one occasion in 2010-11.<sup>11</sup> Lotteries and instant scratch tickets were the most popular forms of gambling, as illustrated in Chart 2-1. The focus of this Review is wagering on racing and sporting events. Participation in these types of gambling in Australia is lower, with 22 per cent of the population wagering on racing and 13 per cent of the population wagering on sports.

Chart 2-1: Gambling prevalence of Australians in 2010-11



Source: Hing, N., Gainsbury, S., Blaszczynski, A., Wood, R., Lubman, D. and Russell, A. 2014, *Interactive Gambling, Gambling Research Australia*, accessed 12 November 2015, <<http://www.gamblingresearch.org.au/resources/6482d5fa-f068-41e5-921f-facd4f10365e/interactive+gambling.pdf>>

### Problem gambling prevalence

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.<sup>12</sup>

9 GBGC 2015, Interactive Gambling Dataset 2015, GBGC, Isle of Man.

10 Greyhound Racing Victoria submission, p 5.

11 Hing, N., Gainsbury, S., Blaszczynski, A., Wood, R., Lubman, D. and Russell, A. 2014, *Interactive Gambling, Gambling Research Australia*, accessed 12 November 2015, <<http://www.gamblingresearch.org.au/resources/6482d5fa-f068-41e5-921f-facd4f10365e/interactive+gambling.pdf>>

12 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.

The Terms of Reference state this Review will examine the efficacy of approaches to protect the consumer. This includes consideration of whether the existing consumer protection framework adequately protects consumers who are at-risk gamblers or people adversely affected by gambling. While problem gambling prevalence in Australia is in line with international norms, the Review also considers how effective the existing approach is in addressing the harms associated with online gambling in general, and offshore wagering specifically.

### **Interactive gambling prevalence**

This Review focuses on illegal offshore wagering conducted through interactive channels. As a result, an understanding of the prevalence of interactive gambling is relevant to this Review. A study estimated that the prevalence of interactive gambling in Australia in 2010-11 was eight per cent<sup>13</sup>, while in 2013 a report suggested that the rate of interactive gambling was 21 per cent of the population.<sup>14</sup> This is consistent with stakeholder feedback, which indicates 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 mobile phone.<sup>15</sup>

While land-based gambling is still the dominant form of gambling in Australia more broadly, more recent information provided for Victoria has found that online channels are the most popular way to access sports wagering services. This is of particular importance to this Review, given its focus on wagering.

### **Characteristics of interactive gamblers**

Given that the focus of this Review is on wagering through online channels, it is important to understand the characteristics of these consumers relative to the broader population. The prevailing characteristics of interactive gamblers differ from those of gamblers more broadly. This may indicate that policy and regulatory options that seek to influence gambling behaviour online need to consider these differences.

When compared with all gamblers, a significantly higher proportion of interactive gamblers are male (62 per cent of interactive gamblers compared with 47 per cent of all gamblers) and are younger (an average age of 37 years compared to 45 years).<sup>16</sup>

Interactive gamblers were also more likely to have an undergraduate degree or Year 12 completion than non-interactive gamblers.<sup>17</sup> This indicates that interactive gamblers are more likely to be well educated and have higher levels of disposable income. This is important as stakeholders to this Review have suggested that the incidence of harm associated with gambling is often felt by those in lower socio-economic groups.

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13 Gainsbury, S., Russell, A., Hing, N., Wood, R., Lubman, D. & Blaszczynski, A. 2015, How the internet is changing gambling: Findings from an Australian prevalence survey. *Journal of Gambling Studies*, 31(1), 1-15.

14 Roy Morgan 2014, Internet betting on the rise, Roy Morgan Gambling Currency Report, article no. 5468.

15 Ibid.

16 Gainsbury, S., Russell, A., Hing, N., Wood, R., Lubman, D. & Blaszczynski, A. 2015, How the internet is changing gambling: Findings from an Australian prevalence survey. *Journal of Gambling Studies*, 31(1), 1-15.

17 Ibid.

## Prevalence of problem gambling among interactive gamblers

As discussed above, a key concern of this Review is the effectiveness of existing consumer protection measures for online wagering. The rate of problem gambling is higher among interactive gamblers compared to gamblers more generally. The study cited above found that 2.7 per cent of interactive gamblers are problem gamblers compared to 0.9 per cent of all gamblers.<sup>18</sup>

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.<sup>19</sup> This is important when considering the harm minimisation measures that should be included in any reforms to interactive gambling legislation and the gambling regulatory framework more broadly.<sup>20</sup>

While this suggests problem gambling is more prevalent among interactive gamblers, there is insufficient evidence to establish a causal link between online gambling and increased prevalence of gambling problems. Rather, problem gamblers are likely to be early adopters of online channels. For instance, studies have shown that for interactive gamblers with problem gambling issues, these problems are typically associated with land-based gambling and generally existed before they started gambling online. As a result, it is thought 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.<sup>21</sup>

## Size, growth and composition of market

This section outlines the legal gambling market in Australia more broadly. It does not distinguish between the modes of gambling, and hence, the discussion is inclusive of any legal land-based gambling activities. Online wagering is discussed in Section 2.2. An understanding of the size and composition of the gambling market in Australia provides useful context to inform this Review. In particular, understanding the size of the offshore wagering market in the context of the overall gambling market more broadly provides perspective on the potential impacts of this subsector of the industry.

### Market overview

The gambling market in Australia comprises casinos, EGMs, keno outlets, lottery outlets, bookmakers, and the Totalisator Agency Boards (TAB) and their retail outlets. In 2013-14 the market consisted of:

- 13 casinos;
- 197,054 EGMs across 5,341 venues (estimated);
- 4,285 Keno outlets;
- over 4,000 lottery outlets;
- 463 bookmakers; and
- 4,535 TAB retail outlets.<sup>22</sup>

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18 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

19 Hing, N., Gainsbury, S., Blaszczynski, A., Wood, R., Lubman, D. and Russell, A. 2014, Interactive Gambling, *Gambling Research Australia*, p.93, accessed 12 November 2015, <<http://www.gamblingresearch.org.au/resources/6482d5fa-f068-41e5-921f-facd4f10365e/interactive+gambling.pdf>>

20 Ibid.

21 Gainsbury, S. 2015, Online gambling addiction: The relationship between internet gambling and disordered gambling, *Curr Addict Rep*, 2, pp.185-93.

22 Australasian Gaming Council, 2015, Guide to Australasia's Gambling Industries 2014-15, accessed 17 November 2015, <<https://www.austgamingcouncil.org.au/agc-database>>

## Gambling turnover and expenditure

In 2013-14, gambling turnover, or the amount wagered, totalled \$180.4 billion, of which around 13 per cent was on wagering (\$23.4 billion).<sup>23</sup> Turnover on gambling refers to the amount bet by consumers of gambling services. While this measure is important, particularly for the calculation of turnover-based taxes and product fees, a more relevant measure for our analysis is the overall expenditure on gambling (gross gambling revenue or GGR), which considers how much is lost by consumers.

Where relevant, this Report focuses on expenditure as it reflects the amount lost by consumers. Turnover in contrast includes the pay-outs made to consumers. While turnover reflects the amount staked each year and therefore ignores changes in win or loss rates, expenditure is more directly tied to the impacts of wagering more broadly and offshore wagering in particular because:

- expenditure reflects the total amount lost by consumers, which is the key impact on individuals and households associated with wagering. By contrast, turnover reflects the amount wagered and therefore does not include winnings; and
- expenditure reflects the profits from wagering activities for operators, and therefore better reflects the impact of the leakage of wagering activity offshore on the domestic industry.

In 2013-14, overall expenditure on gambling in Australia was about \$21.2 billion, of which wagering constituted \$3.4 billion. Table 2-1 below outlines the turnover and expenditure of gambling in Australia by gambling type in 2013-14. It should be noted that the totals from this data source may not match the totals from other data sources relied upon in this Report. This reflects the challenge in accurately quantifying the size of gambling markets as outlined in Section 1.4.

*Table 2-1: Gambling turnover and expenditure 2013-14*

Gambling type	Turnover (\$million)	Expenditure (\$million)
Racing	17,659	2,788
Sports Betting	5,747	626
Gaming	156,961	17,742
Total	180,367	21,156

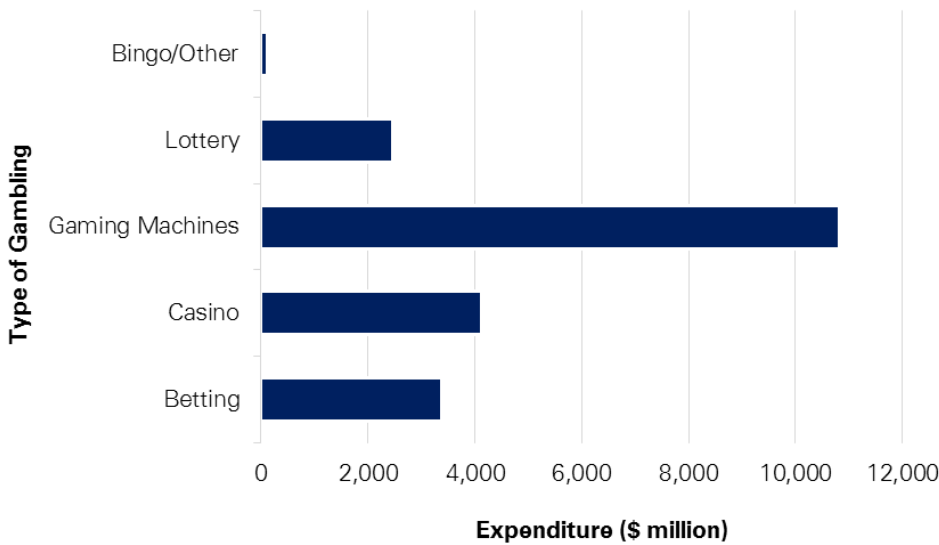
Source: Queensland Government Statistician's Office 2015, *Australian Gambling Statistics*

Chart 2-2 below shows the breakdown of gambling expenditure in Australia in 2013. Around half of gambling expenditure was spent on EGMs. Wagering accounts for two per cent of total gambling expenditure. Wagering operators therefore compete in a small sub-section of the Australian gambling market. This positions wagering operators in a relatively small market compared to the overall gambling market in Australia.

<sup>23</sup> Queensland Government's Statisticians Office 2015, *Australian Gambling Statistics 1988-89 to 2013-14*, 31st Edition, Queensland Treasury, accessed 17 November 2015, <<http://www.qgso.qld.gov.au/products/reports/aus-gambling-stats/index.php>>



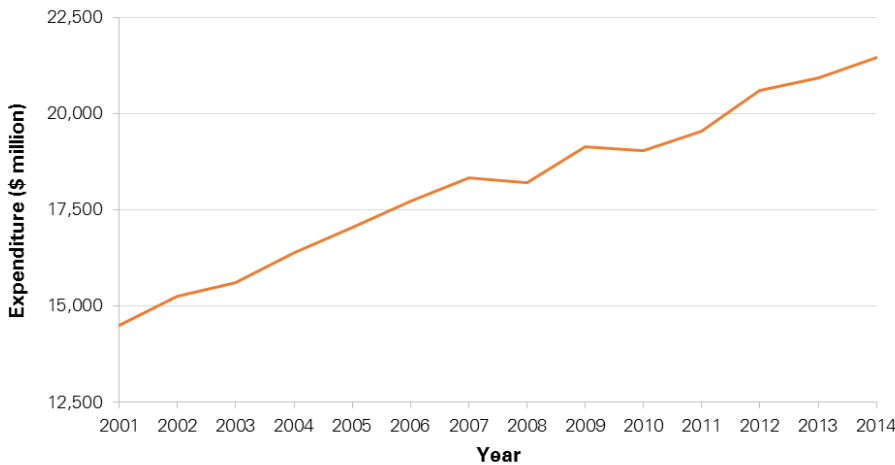
Chart 2-2: Gambling expenditure 2013



Source: GBGC 2015, *Global Gambling Report data appendix 2007-2013*, November.

Overall gambling expenditure has increased, up almost three per cent in 2013-14 on the previous year, and 48 per cent since 2001 (equivalent to a 3.1 per cent annual growth rate).<sup>24</sup> Chart 2-3 below illustrates the change in gambling expenditure since 2001. GBGC predicts that gambling expenditure will rise to about \$23.2 billion by 2019.

Chart 2-3: Gambling expenditure 2001-2014

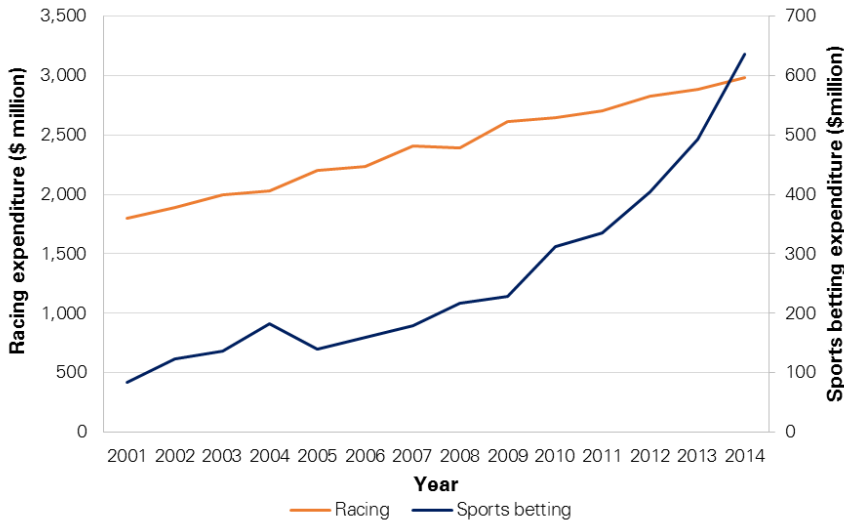


Source: GBGC 2015, *Global Gambling Report Key markets database*, November.

While wagering makes up a small proportion of overall gambling expenditure in Australia, expenditure in this section of the market has grown by over 30 per cent since 2007. This increase is attributable to a significant increase in sports betting, although wagering on racing events accounts for the majority of wagering expenditure. Chart 2-4 below illustrates racing and sports betting expenditure from 2001 to 2014. It should be noted that, due to the large difference between the two measures, they have been plotted on separate axes in Chart 2-4.

<sup>24</sup> GBGC 2015, *Global Gambling Report Key markets database*, GBGC, Isle of Man.

Chart 2-4: Racing and sporting betting expenditure 2001-2014



Source: GBGC 2015, *Global Gambling Report Key markets database*, November.

GBGC forecasts estimate that spending on sports betting will continue to rise each year, reaching around \$756 million in 2019 (a 19 per cent increase on current figures). On the other hand, they predict wagering on racing will decrease by around seven per cent over the next four years.<sup>25</sup>

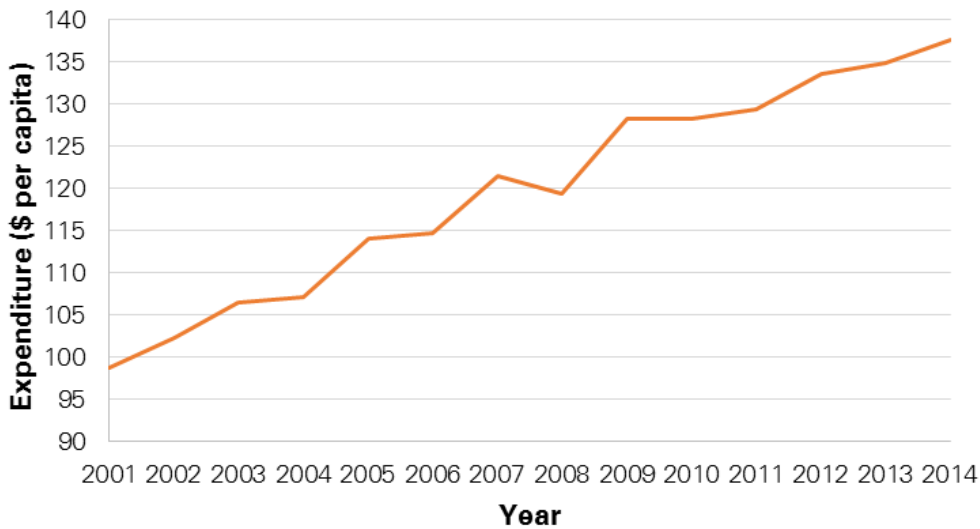
These forecasts are important, as prevalence data from Victoria indicates that sports betting has relatively high participation rates for online channels. In Victoria, the majority of sports bettors gamble online. As a result, shifts to greater levels of sports wagering are likely to be accompanied by additional growth in the online market and, potentially, the offshore market.

According to H2GC data, Australia ranks highest in the world in terms of per capita expenditure on gambling (\$1,245 per annum in 2014) and according to GBGC, per capita expenditure on wagering in Australia is growing over time (Chart 2-5).

There are a large number of sites actively targeting the Australian market from offshore in recent years, offering in-play services. However, the number of sites available to Australians has decreased in recent years. A submission made to this Review indicated that, since 2011, the number of online gambling providers that use English language websites and accept play from Australia and/or in Australian dollars has fallen from more than 2,000 to fewer than 400. In-play services refers to betting on an event during or after the commencement of the specific event. Online in-play wagering on sports events is prohibited by the Act.

<sup>25</sup> GBGC 2015, *Global Gambling Report Key markets database*, GBGC, Isle of Man.

Chart 2-5: Per capita expenditure on wagering 2001-2014



Source: GBGC 2015, *Global Gambling Report Key markets database*, November.

## Revenue

Government revenue from gambling is largely derived from State and Territory gambling taxes and licence fees. In general, relative to other industries a high level of tax is applied with a percentage going to community programs, problem gambling programs and assistance to those who experience problem gambling.<sup>26</sup>

The revenue amounts vary by State and Territory as they each set their own level of tax, licence fees and other contributions. In 2013-14, the total revenue collected by governments in Australia was approximately \$5.4 billion, with NSW accounting for about one-third.

Table 2-2 below presents the revenue generated by all gambling activities and the revenue from wagering.

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<sup>26</sup> Australasian Gaming Council, 2015, *Guide to Australasia's Gambling Industries 2014-15*, accessed 17 November 2015, <<https://www.austgamingcouncil.org.au/agc-database>>

Table 2-2: Gambling revenue 2013-14 by State/Territory

State/Territory	All gambling (\$million)	Racing (\$million)	Sports betting (\$million)	Total wagering (\$million)
ACT	5.9	4.2	0	4.2
NSW	1,868.6	121.3	12.7	134
NT	58.0	3.7	0	3.7
QLD	1,045.5	37.7	2.3	40
SA	381.1	0	0.6	0.6
TAS	82.1	2.2	0.4	2.6
VIC	1,512.0	42.7	9.4	52.1
WA	438.1	36.8	4.4	41.2
<b>Total</b>	<b>5,440.4</b>	<b>251.5</b>	<b>29.8</b>	<b>281.3</b>

Source: Queensland Government's Statisticians Office 2015, *Australian Gambling Statistics*

In some States and Territories, gambling accounts for a sizeable proportion of government revenue. In particular, the Northern Territory (10.6 per cent), Victoria (9.8 per cent), Tasmania (9.8 per cent) and South Australia (9.4 per cent) derive a considerable portion of their revenue from gambling.<sup>27</sup>

Offshore operators do not contribute to government revenue as they are not based in Australia for tax purposes and do not pay licence fees. As a result, the offshore gambling market reduces the potential revenue available to Australian governments through taxation. While this impacts a small proportion of all revenues, over time as the shift to online channels continues, these impacts may be expected to grow.

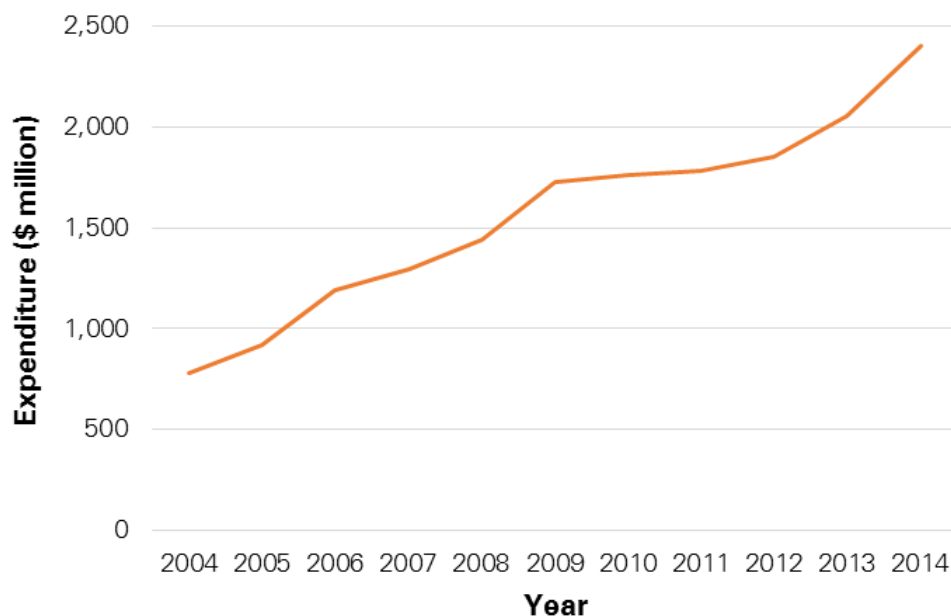
### Interactive gambling

There are a number of internet gambling sites based in various jurisdictions that accept players from Australia. These sites offer a range of gambling products, most of which are prohibited in Australia. However, there is some disagreement among stakeholders on the extent to which these operators target Australian consumers. While some operators clearly target Australians through the provision of wagering markets on Australian events and the use of domestic phone lines as contact points for consumers, others do not appear to actively target Australians (for instance the websites may not be available in English).

<sup>27</sup> Ibid.

Globally, online gambling was worth US\$33.4 billion (\$34.4 billion)<sup>28</sup> in 2013 and US\$35.1 billion (\$38.5 billion) in 2014, most of which was attributable to the sports betting and wagering market.<sup>29</sup> In Australia, the total amount spent on interactive gambling was US\$2.0 billion (\$2.1 billion) in 2013 and US\$2.2 billion (\$2.4 billion) in 2014,<sup>30</sup> which includes both onshore and illegal offshore gambling activities. Chart 2-6 below shows that online gambling has more than doubled in Australia since 2004.

Chart 2-6: Interactive gambling expenditure 2004-2014\*



\*Includes all interactive gambling expenditure (i.e. both onshore and offshore)

Source: GBGC 2015 *Interactive Gambling Dataset 2015*.

In 2004, the majority of online gambling expenditure was conducted via offshore providers. Since that time, Australian onshore operators have increased their market share, with more money now spent with Australia-based operators (about 55 per cent of all online gambling expenditure). Chart 2-7 shows gambling expenditure through both onshore and offshore operators.

28 Where data from the GBGC 2015 Interactive Gambling Report was reported in US dollars, the exchange rates of 1.031 in 2013, 1.098 in 2014 and 1.030 in 2019, which were provided by the GBGC 2015 Key Markets Database, were used to convert US dollar estimates to AU dollar estimates.

29 GBGC 2015, *Interactive Gambling Dataset 2015*, GBGC, Isle of Man.

30 Ibid.

Chart 2-7: Onshore and offshore interactive gambling expenditure 2004-2014



Source: GBGC 2015 *Interactive Gambling Dataset 2015*

Given the availability of online wagering, the offshore gambling market in Australia is primarily made up of online casino games (including poker, roulette, blackjack, baccarat and EGMs such as slot/poker machines). According to GBGC, there were around 1.4 million casino accounts held by Australians in 2013. This Review does not focus on casino gaming. Rather, it is focused on wagering, which is discussed in greater detail below.

## 2.2 Online wagering

Online wagering refers to wagering activity carried out online or using an interactive medium.

This section outlines the online wagering market in Australia for onshore and offshore operators. It should be noted that measuring the size and scope of the online market is difficult. In particular, estimating the size of the offshore market is problematic given that:

- some of these services are provided illegally and are therefore less transparent than licensed land-based or onshore online services; and
- these services may be regulated in a number of jurisdictions with varying reporting regimes.

As a result, measurements of the size of the online market typically rely on estimation methods that collate the information available and extrapolate from this information to account for expected gaps in the data.

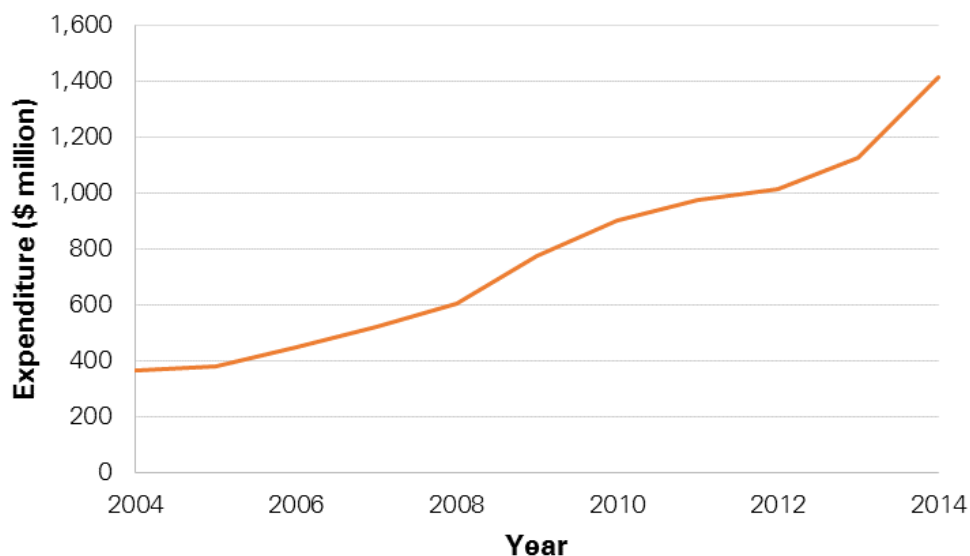
For this Report, estimates generated by the GBGC have been used as the main source of information on the size of the market. This data has been cross-checked against information from H2GC, sourced from the submission by the AWC. While there are differences in the estimates provided by the two sources, consultation with industry and non-industry stakeholders has identified these sources as useful measures of gambling activity.

Where possible, information from both datasets has been combined in the same chart or presented side by side to ensure a full range of data is reflected in the Review and to provide a more complete image of the gambling and wagering landscape in Australia and overseas. However, comparable data was not always available across both datasets and GBGC data has been used in some instances with no comparator.

## Market size

In total, the online wagering market in Australia in 2014 was worth \$1.4 billion in expenditure. The online wagering market has grown considerably, up 289 per cent since 2004 or 15 per cent per year, as illustrated in Chart 2-8 below.<sup>31</sup> This is a faster growth rate than that of the gambling market as a whole, which grew by 48 per cent or 3.1 per cent per year over the same period. The significant growth in online wagering compared with gambling more broadly highlights the importance of an examination of the effectiveness of online wagering regulation and consumer protection.

Chart 2-8: Online wagering expenditure 2004-2014\*



\*Includes both onshore and offshore operators

Source: GBGC 2015, *Interactive Gambling Dataset 2015*, GBGC, Isle of Man.

## Onshore wagering market

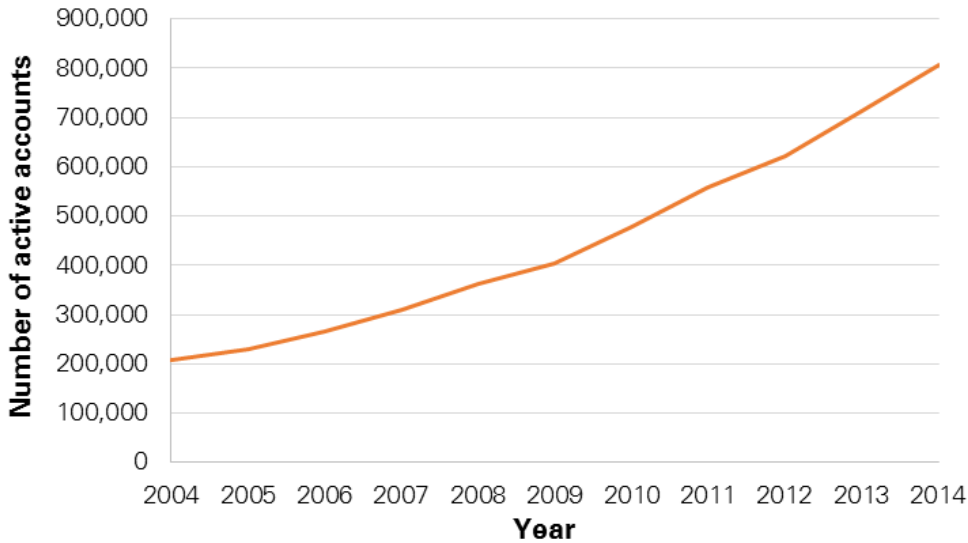
Onshore online wagering refers to wagering services provided by operators based in Australia. These providers need to be licensed in an Australian State or Territory to provide online gambling activities, meaning that they need to comply with State and Territory regulations. Australian operators offer legal online wagering for a variety of racing and sporting events.

According to GBGC there are around 800,000 active online wagering accounts in Australia, around four times the number active in 2004.<sup>32</sup> Chart 2-9 shows the growth in online wagering accounts in Australia. The growth in accounts reinforces the view that online wagering in Australia has grown significantly over time. As a result, it is important to consider the regulation of online wagering given the significant growth in the industry since the implementation of the Act and the previous reviews identified in Section 1.

<sup>31</sup> GBGC 2015, *Interactive Gambling Dataset 2015*, GBGC, Isle of Man.

<sup>32</sup> *Ibid.*

Chart 2-9: Number of active online sports betting accounts 2004-2014

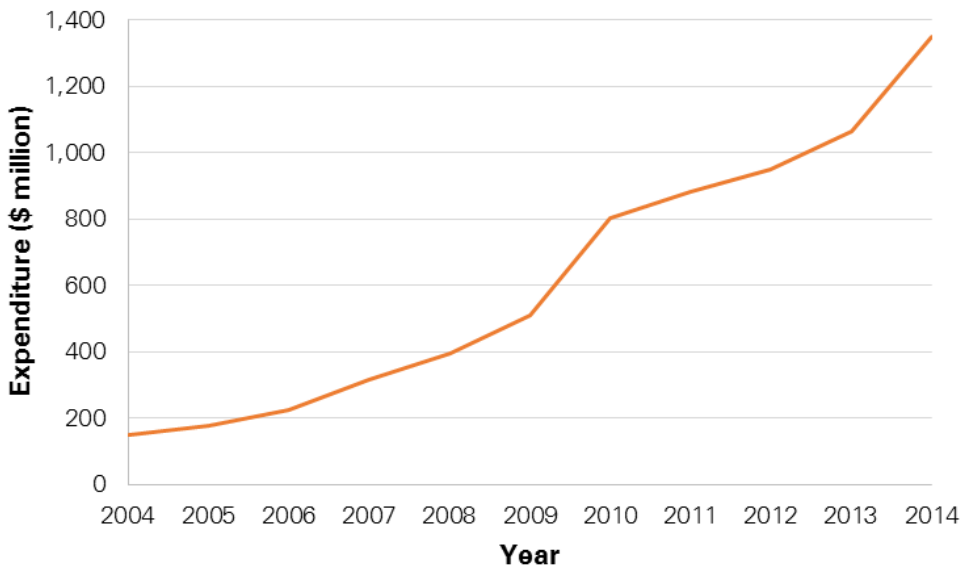


Source: GBGC 2015 *Interactive Gambling Dataset 2015*

### Expenditure

According to GBGC, expenditure on onshore wagering was around \$1.4 billion in 2014, which was 95 per cent of the total online wagering market in Australia. 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 Chart 2-10.

Chart 2-10: Onshore online wagering 2004-2014



Source: GBGC 2015 *Interactive Gambling Dataset 2015*



According to GBGC the onshore wagering market is expected to grow to almost \$2.5 billion in 2019.<sup>33</sup> Importantly, as these operators are licensed by Australian States and Territories, this expenditure is able to be taxed and will become an increasingly important revenue stream as the online wagering market grows.

However, H2GC estimates that the onshore market in 2014 was \$1.1 billion, or 74 per cent of the online wagering sector as a whole. This difference is significant and reflects the difficulty in estimating the size of online gambling markets. Importantly, the H2GC data suggests that a greater proportion of the market is based offshore, which is important in determining the magnitude of the issues addressed by this Review (as discussed in Section 4).

As shown in Chart 2-11, the growth in wagering overall is much smaller than the growth in the online wagering market. Chart 2-11 shows the expenditure in each market from 2004 to 2014. It illustrates that land-based wagering is not experiencing any growth, and that online wagering is becoming a larger proportion of the wagering market.

*Chart 2-11: Land-based and onshore online wagering expenditure 2004-2014*



Source: GBGC 2015, *Interactive Gambling Dataset 2015*, GBGC, Isle of Man. GBGC 2015, *Global Gambling Report Key markets database*, GBGC, Isle of Man.

<sup>33</sup> GBGC 2015, *Interactive Gambling Dataset 2015*, GBGC, Isle of Man.

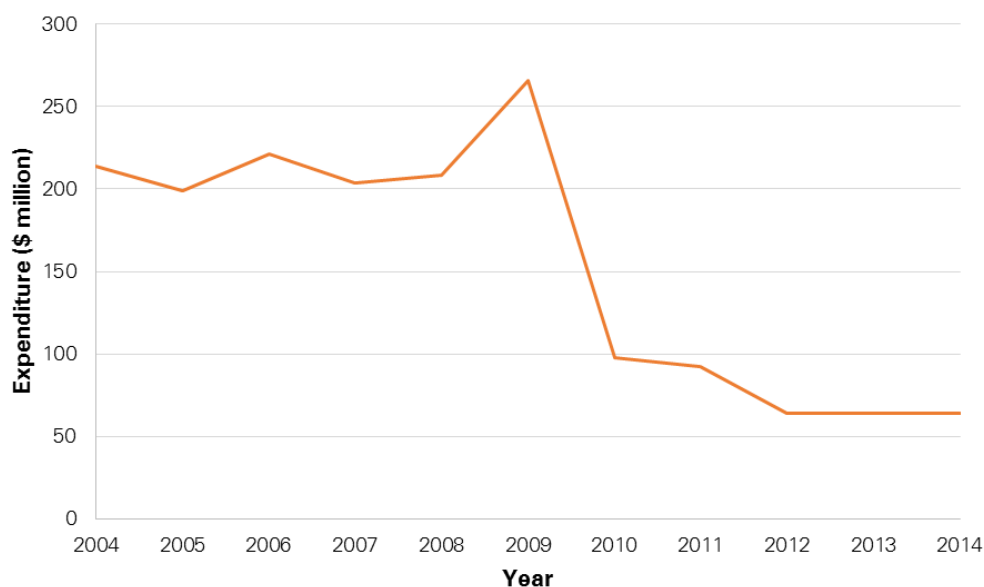
## Offshore wagering

Offshore wagering is not subject to Australian taxes as the operators are not regulated under the Australian State and Territory regulations like their onshore counterparts. Therefore, offshore wagering represents potential lost revenue to Australian governments. As a result, the size of the offshore market directly relates to the Terms of Reference for this Review.

According to GBGC, the offshore wagering market in Australia in 2014 was worth \$63.9 million, down around 70 per cent since 2004.<sup>34</sup> Chart 2-12 below shows this decline in expenditure on offshore wagering from 2004 to 2014. The steep decline in offshore wagering expenditure coincides with the ability of onshore sites to legally advertise nationally since late 2008 as a result of a decision of the Australian High Court in *Betfair Pty Ltd v Racing New South Wales & ORS [2012] HCA 12*.<sup>35</sup>

According to H2GC however, the size of the offshore wagering market is significantly larger and growing. H2GC has estimated that expenditure on offshore wagering in 2014 was \$400 million, significantly higher than the GBGC estimates. H2GC claims that expenditure is expected to grow to \$910 million by 2020. The size of the market is a key consideration of this Review, particularly with regard to the impacts of offshore wagering.

Chart 2-12: Offshore wagering expenditure 2004-2014



Source: GBGC 2015, *Interactive Gambling Dataset 2015*, GBGC, Isle of Man.

The decline in the offshore wagering market indicated by the GBGC data coincides with a significant increase in the proportion of operators coming onshore by obtaining Australian licensing from 2004 to 2014.

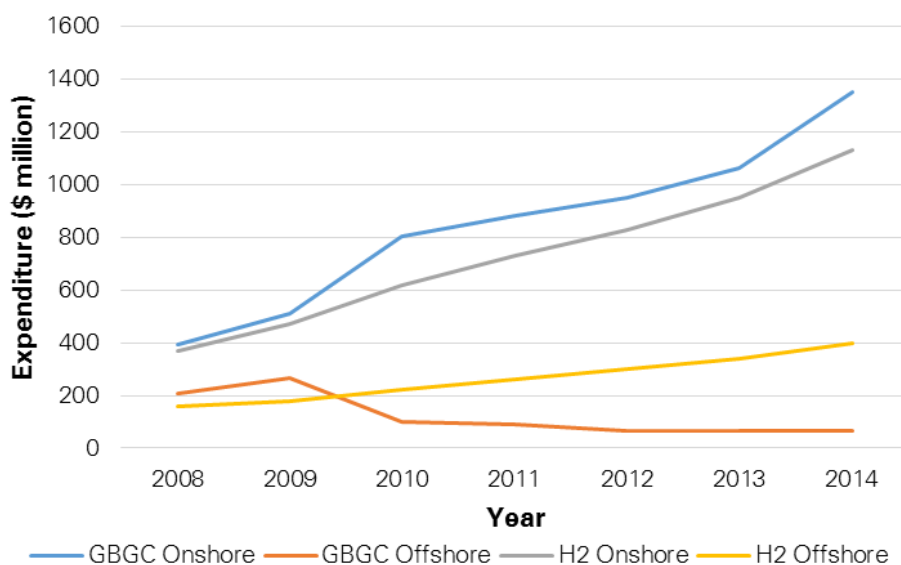
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34 GBGC 2015, *Interactive Gambling Dataset 2015*, GBGC, Isle of Man.

35 Gainsbury, S., Russell, A., Hing, N., Wood, R., Lubman, D. & Blaszczynski, A. 2015, How the internet is changing gambling: Findings from an Australian prevalence survey, *Journal of Gambling Studies*, 31(1), 1-15.

According to GBGC data, there was growth in the onshore market share from about 65 per cent in 2008 to about 95 per cent in 2014 (and from about 69 per cent in 2008 to about 73 per cent in 2014 according to H2GC data). Chart 2-13 below illustrates the change in market share from 2008-2014.

Chart 2-13: Onshore and offshore wagering expenditure 2008–2014



Source: GBGC 2015, *Interactive Gambling Dataset 2015*, GBGC, Isle of Man. H2 Gambling Capital, *Australian Offshore Interactive Wagering Independent Report, Prepared for Australian Wagering Council*, November 2015.

Since 2009, a number of offshore wagering providers have come onshore as part of the broader market consolidation of the Australian industry. This would be expected to increase the size of the onshore market as previously offshore operators are reclassified as onshore. For example, European bookmaker Paddy Power came onshore in late 2010 through the acquisition of Australian firm Sportsbet. The table below provides a timeline of key entries to the Australian market since July 2009. This coincides with a sharp decline in the offshore share of the market according to GBGC and a smaller decline according to H2GC.

Table 2-3: Timeline of key market consolidation events and operator entries since 2009

Date	Transaction
July 2009	Paddy Power (Ireland) acquires 51% of Sportsbet
October 2009	Sportsbet acquires IASBET
March 2011	Paddy Power (Ireland) acquires remaining 49% of Sportsbet
October 2011	Sportingbet acquires Centrebet

Date	Transaction
June 2012	bet365 (United Kingdom) enters the market
March 2013	William Hill (United Kingdom) acquires Sportingbet Australia
August 2013	William Hill (United Kingdom) acquires Tom Waterhouse
September 2013	Ladbrokes (United Kingdom) acquires Bookmaker.com.au
March 2014	Matt Tripp acquires BetEasy
April 2014	Ladbrokes (United Kingdom) acquires Betstar
August 2014	Crown buys 100% of Betfair Australia

Source: GBGC 2015, *Global Gambling Report 10*, GBGC, Isle of Man.

Given that online in-play betting on sports events other than horse races is prohibited in Australia, it is thought by many in the industry that a significant proportion of offshore wagering consists of in-play betting activities. While no specific data is available from GBGC on this issue for Australia, data is available for the Oceania region, of which Australia is the biggest gambling market (around 90 per cent of all wagering activity in the region).<sup>36</sup>

According to the GBGC, the amount of money spent on online in-play wagering was estimated to be \$64.5 million in 2013.<sup>37</sup> Given that online in-play wagering on sports is prohibited in Australia, it is likely that this market is dominated by offshore providers. GBGC predicts that the online in-play wagering market will continue to grow in Oceania to around \$120 million by 2019.<sup>38</sup>

According to H2GC data, online in-play wagering in Australia in 2014 was valued at \$218.1 million, almost all of which was conducted offshore.<sup>39</sup> This is expected to grow significantly to over \$600 million by 2020.<sup>40</sup> The significant difference in the estimates and forecasts of online in-play wagering across the two datasets reflects the uncertainty associated with measuring the size of online gambling markets.

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36 GBGC 2015, *Interactive Gambling Dataset 2015*, GBGC, Isle of Man.

37 Ibid.

38 Ibid.

39 Australian Wagering Council 2015, *Submission to the Review of Illegal Offshore Wagering*, November 2015.

40 H2 Gambling Capital 2015, *Australian Offshore Interactive Wagering Independent Report*, Prepared for Australian Wagering Council, November.

The Review has considered both datasets when considering the case for changing the approach to regulating these markets. Importantly, the size of the in-play market is significant across the range of both datasets, despite the significant difference between the two estimates. Given the correlation between the size of the offshore wagering market and the impacts associated with offshore wagering (see Section 4), if the true value of the market is at the higher end of the range, the impacts are expected to be greater than if the true value is at the lower end of the range.

### 2.3 Structure of the illegal offshore wagering market

As discussed in Section 2.1, the illegal offshore wagering market consists of operators who are not licensed in Australia to provide wagering services. However, many of these offshore wagering operators are legal and regulated in other jurisdictions internationally.

The rigour and nature of these regulations vary from country to country. These operators, while legal in their home jurisdiction, may nevertheless offer wagering products that are not legal in Australia, such as online in-play betting on sports bets.

Globally, the illegal offshore wagering market is growing and wagering represents the largest sector of the global internet gambling market.<sup>41</sup> It is thought that 80 per cent of these bets are illegal, based on where the consumer is making the bet.<sup>42</sup>

Within the Australian context, estimates of size and scale of the offshore market vary:

- in 2012 the Final Report of the DBCDE Review of the IGA estimated Australia's interactive gambling spend was \$1.6 billion, with 60 per cent spent with illegal offshore operators;<sup>43</sup> and
- in 2014, H2GC estimated in excess of 20 per cent of Australian expenditure on interactive wagering goes to offshore providers: \$400 million (with in-play constituting around \$215 million of this) and \$100 million in lost taxation revenue and product fees.<sup>44</sup>

Despite the prohibitions contained in the Act, Australians are known to still be placing bets with offshore operators (as described in Section 2.2).

The ability of the Act to regulate this conduct was the subject of the Review of the *Interactive Gambling Act 2001* conducted by the DBCDE in 2012. The DBCDE Review followed reports that around 60 per cent of the total value of interactive gambling in Australia, estimated at \$1.6 billion in 2010, was spent on prohibited overseas-based services.<sup>45</sup>

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41 Hing, N., Gainsbury, S., Blaszczyński, A., Wood, R., Lubman, D. and Russell, A. 2014, Interactive Gambling, Gambling Research Australia, accessed 12 November 2015, <<http://www.gamblingresearch.org.au/resources/6482d5fa-f068-41e5-921f-facd4f10365e/interactive+gambling.pdf>>

42 University Paris 1 Pantheon-Sorbonne & International Centre for Sport Security (ICSS), 2014, Protecting the Integrity of Sport Competition. The Last Bet for Modern Sport, Executive Summary, Sorbonne-ICSS Research Programme on Ethics and Sport Integrity, accessed 24 November 2011, <[http://www.theicss.org/wp-content/themes/icss-corp/pdf/SIF14/Sorbonne-ICSS%20Report%20Executive%20Summary\\_WEB.pdf?bisphpreq=1](http://www.theicss.org/wp-content/themes/icss-corp/pdf/SIF14/Sorbonne-ICSS%20Report%20Executive%20Summary_WEB.pdf?bisphpreq=1)>

43 DBCDE 2013, Review of the Interactive Gambling Act 2001. Australian Government. Canberra.

44 Australian Wagering Council 2015, Submission to the Review of Illegal Offshore Wagering, November 2015.

45 DBCDE 2013, Review of the Interactive Gambling Act 2001. Australian Government. Canberra.

The major impacts of offshore activities have been assessed as:

- increased risks to consumers as a consequence of reduced consumer protections;
- lower harm minimisation standards of some offshore sites;
- a potential increase in the threat to the integrity of sport; and
- loss of taxation revenue to the Government.

These potential impacts are discussed further in Section 2.4. In addition, stakeholders' views of the impacts of illegal offshore wagering are presented in Section 4.

Online wagering is available in most countries, and governments globally are considering the impact of legislation, taxation, advertising and promotional activities such as wagering inducements in detail and formulating their response to these issues. For example:

- Some countries, including Singapore and the majority of the US (except three states), have prohibited online gambling outright (including online wagering on sports and racing).<sup>46</sup>
- In contrast, European nations are increasingly moving towards legalising and regulating online wagering, as a method of moving operators onshore. Internet gambling is legal to varying degrees in most of the European Union (EU).
- Parts of the EU, including member countries such as France, Denmark and Spain, have taken the initiative to license and regulate internet gambling. Often these countries have favourable regimes in relation to the taxation of wagering profits, attracting many offshore operators.
- Online wagering has never been a restricted practice in the UK and is currently regulated by the *Gambling (Licensing and Advertising) Act 2014*.
- Other jurisdictions – Malta, Alderney, Gibraltar and the Isle of Man – have robust regulatory regimes and the European Commission found in a 2013 study that they were examples of best practice in relation to the regulation of offshore wagering in the EU.<sup>47</sup> It should be noted that whilst these jurisdictions place great importance on having very high licensing and regulatory standards to ensure that gambling offers are fair and transparent, that controllers and beneficiaries are of good character, and that customer funds and rights are properly protected,<sup>48</sup> they also have a high prevalence of problem gambling.<sup>49</sup>

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<sup>46</sup> Ystats.com, Global Online Gambling and Betting Market 2015, May 2015, accessed on 30 November 2015, <[https://www.ystats.com/wp-content/uploads/2015/05/Product-Brochure-Order-Form\\_Global-Online-Gambling-and-Betting-Market-2015.pdf](https://www.ystats.com/wp-content/uploads/2015/05/Product-Brochure-Order-Form_Global-Online-Gambling-and-Betting-Market-2015.pdf)>

<sup>47</sup> European Commission 2014, Study on the role of regulators for online gambling: Authorisation, supervision and enforcement, Final Study Report.

<sup>48</sup> Gibraltar Gambling Commissioner submission.

<sup>49</sup> European Commission 2014, Study on the role of regulators for online gambling: Authorisation, supervision and enforcement, Final Study Report.

International online gambling regulation models include:

- monopoly markets in Norway, where a broad range of gambling products is offered by the state-backed monopoly and the Government's priority is to protect the state-backed monopoly and funnel players into state-owned services;
- ringed-fence markets, as in the UK, where a more restrictive approach is adopted through regulating internet gambling at the point of consumption, taxes are imposed and players and operators are protected from unlicensed services;
- offshore licensing, whereby some of the world's largest online gambling companies hold licences in one or more jurisdictions and target customers and revenues outside those jurisdictions;
- two regulatory regimes in Germany, with liberal gambling laws in Schleswig-Holstein that enable online operators to apply for licences for most games of chance, including sports bets, poker and casino games, and fully restricted internet gambling in other parts of Germany; and
- partially restricted gambling in the US, where criminalisation and other compliance and enforcement activities are used to curb the illegal trade.<sup>50</sup>

The experience of other jurisdictions in regulating online wagering is discussed in detail at Section 3.2.

## Operators

It has been suggested that 80 per cent of bets on the global sports betting market are illegal.<sup>51</sup> More than 8,000 operators offer wagering around the world, with around 80 per cent of these in jurisdictions with low gambling taxation rates and few compliance and enforcement inspections.<sup>52</sup>

These jurisdictions include the Cagayan province in the Philippines, Antigua and Barbuda and Costa Rica. Most of these operators offer bets all over the world, often without obtaining the national authorisations required in the countries of their customers, making them illegal operators in those countries. As indicated above, Malta, Alderney, Gibraltar and the Isle of Man have robust regulatory regimes.<sup>53</sup>

## Products

Online wagering products have allowed for the emergence of betting products not previously available to gamblers. These include betting exchanges, live betting, betting on less publicised events, and micro-bets.<sup>54</sup>

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<sup>50</sup> Allen Consulting Group, 2012, Research for the review of the Interactive Gambling Act 2001, accessed 25 November 2015, <[http://www.acilallen.com.au/cms\\_files/ACIL\\_OnlineGambling2012.pdf](http://www.acilallen.com.au/cms_files/ACIL_OnlineGambling2012.pdf)>

<sup>51</sup> Ibid.

<sup>52</sup> University Paris 1 Pantheon-Sorbonne & International Centre for Sport Security (ICSS), 2014, Protecting the Integrity of Sport Competition. The Last Bet for Modern Sport, Executive Summary, Sorbonne-ICSS Research Programme on Ethics and Sport Integrity, accessed 24 November 2011, <[http://www.theicss.org/wp-content/themes/icss-corp/pdf/SIF14/Sorbonne-ICSS%20Report%20Executive%20Summary\\_WEB.pdf?lbisphreq=1](http://www.theicss.org/wp-content/themes/icss-corp/pdf/SIF14/Sorbonne-ICSS%20Report%20Executive%20Summary_WEB.pdf?lbisphreq=1)>

<sup>53</sup> European Commission 2014, Study on the role of regulators for online gambling: Authorisation, supervision and enforcement, Final Study Report.

<sup>54</sup> University Paris 1 Pantheon-Sorbonne & International Centre for Sport Security (ICSS), 2014, Protecting the Integrity of Sport Competition. The Last Bet for Modern Sport, Executive Summary, Sorbonne-ICSS Research Programme on Ethics and Sport Integrity, accessed 24 November 2011, <[http://www.theicss.org/wp-content/themes/icss-corp/pdf/SIF14/Sorbonne-ICSS%20Report%20Executive%20Summary\\_WEB.pdf?lbisphreq=1](http://www.theicss.org/wp-content/themes/icss-corp/pdf/SIF14/Sorbonne-ICSS%20Report%20Executive%20Summary_WEB.pdf?lbisphreq=1)>

## Interrelationships with other criminal industries and networks

Given the lack of transparency and regulation in some offshore wagering jurisdictions, it is difficult to determine the extent of links to illegal activities and criminal groups. Criminal groups are often attracted to jurisdictions in which there are minimal checks and balances and a low level of taxation and regulation.

The use of offshore wagering for money laundering is an attractive proposition for criminal networks. Since illegal betting is generally not a criminal offence, funds derived for criminal activity can easily be transferred as winnings from an offshore player's account to a bank account in a reputable jurisdiction. It is estimated that around \$192 billion (\$US140 billion) is laundered each year through sports betting. This equates to around ten per cent of organised crime revenue worldwide acquiring the appearance of legality through wagering.<sup>55</sup>

## 2.4 Potential impacts of illegal wagering in Australia

The social impacts of illegal wagering on the individual and the community have natural similarities and linkages with the social impacts of problem gambling. Therefore, much of the discussion that follows below considers the social impacts of illegal wagering in the context of the broader gambling sector.

The economic impacts of illegal wagering are more specific and are discussed below in Section 2.4.2.

### Social impacts

In the last four decades, gambling has become widely accepted as a popular recreational or entertainment activity. This change has occurred as a result of several socio-political and economic influences and technological changes. These have led to increased liberalisation of legislation and attitudes, increased density and distribution of venues and gaming machines providing greater accessibility to gambling, and the market penetration of desktop and mobile device communication facilities.<sup>56</sup>

The expansion of avenues for gambling activity may be of concern as it has been suggested that the occurrence of gambling problems are related to overall gambling involvement and intensity in terms of the number of gambling activities pursued. These factors, therefore, have the potential to increase behaviours associated with at-risk or problem gambling.<sup>57</sup> However, due to the stigma associated with gambling, and its addictive qualities, the scale and severity of problem gambling is often underemphasised.

Despite the negative consequences of problem gambling, few problem gamblers (less than ten per cent) seek help from professional sources.<sup>58</sup> Problem gambling can have serious and long-lasting effects on the individual and the community. The social cost to the community of problem gambling is estimated to be between \$4.7 billion and \$8.4 billion a year.<sup>59</sup>

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55 Ibid.

56 Gainsbury, S., & Blaszczynski, A. 2012, Harm minimisation in gambling. In R. Pates & D. Riley (Eds). Harm reduction in substance use and high-risk behaviour: International Policy and Practice. Oxford: Wiley-Blackwell, pp. 263-278.

57 Gainsbury, S. et al. 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.

58 Evans & Delfabbro 2005, Motivators for change and barriers to help-seeking in Australian problem gamblers, *Journal of Gambling Studies*, 21(2), pp. 135-155.

59 Productivity Commission 2010, *Gambling*, Report No. 50, Canberra.



Consultations with non-industry stakeholders conducted as part of this Review indicated that while the social impacts of gambling may be felt by a small proportion of total gamblers they are significant and require regulatory responses to implement robust consumer protection frameworks to protect the community. A number of the potential social impacts are discussed in more detail below.

### **Mental and physical illness**

Often gambling provides a way for individuals to escape the burdens and psychological pressures of work and family responsibilities. However, addiction to gambling can manifest in a progressive and cyclical manner. Early warning signs of addiction include:

- missing work or school to gamble;
- borrowing money or selling possessions to finance gambling;
- arguments with family and friends about gambling;
- feeling guilt or shame about gambling; and
- consideration of illegal ways to obtain money to gamble.

There is some correlation between at-risk and problem gambling behaviour and other negative outcomes and behaviours. Problem gamblers experience high levels of mental health problems, including depression, anxiety and substance misuse disorders.<sup>60</sup> They have reported feelings such as anger, guilt, anxiety and depression as well as physical problems such as headaches and bodily pains, insomnia and gastrointestinal ailments.<sup>61</sup>

Studies have demonstrated higher rates of smoking and alcohol consumption, as well as substance abuse or dependence, among interactive gamblers relative to non-interactive gamblers.<sup>62</sup> Problem gamblers are four times more likely to have problems with alcohol and four times more likely to smoke daily than non-problem gamblers.<sup>63</sup>

### **Disruption to employment and educational commitments**

A gambler's ambition, effectiveness and productivity at work or study can be affected by his or her inability to concentrate due to anxiety and depression or gambling during work hours. This may in turn lead to termination of employment or suspension from their educational institution. Rates of unemployment are higher amongst at-risk gamblers compared to the average population.<sup>64</sup>

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60 Hodgins, Stea, & Grant 2011, Gambling disorders, *Lancet*, 378(9806), pp. 1874-84.

Lorains, Cowlishaw & Thomas 2011, Prevalence of Comorbid disorders in problem and pathological gambling: Systematic review and meta-analysis of population surveys, *Addiction*, 106(3), pp. 490-8.

61 Abbott, D.A. et al 1995, Pathological Gambling and Family: Practice Implications, *Families in Society: The Journal of Contemporary Human Services* 76 (4), April 1995.

62 Gainsbury, Wood, Russell, Hing, & Blaszczynski 2012, A digital revolution: Comparison of demographic profiles, attitudes and gambling behaviour of Internet and non-Internet gamblers, *Computers in Human Behavior*, 28, pp. 1388-98.

63 Thomas, S, and Jackson, A (2008), Report to beyondblue, Risk and Protective Factors: Depression and comorbidities in problem gambling.

64 *Ibid.*

Individuals who experience difficulty in controlling their betting often end up spending more time and money engaged in the activity than they originally intended, which takes them away from their other regular commitments such as work and school. Financial Counselling Australia (FCA) claims that the activities of online operators can exacerbate these issues. In some rare cases, people already struggling to repay gambling debts are encouraged to bet more through the provision of unsolicited credit, which in turn increases their debt and exacerbates the problem.<sup>65</sup> Rarely, the individual may engage in other illegal activities to pay their debt (theft, forgery, embezzlement etc.) and may face penalties such as imprisonment.<sup>66</sup>

### Family breakdown

Compulsive gambling behaviour can stress and eventually devastate not only the gambler but also the family unit, adversely affecting the marriage, parent-child relationships and the psychological development of the children of at-risk gamblers. The individual often withdraws from family and friends and there may be abandonment of the family unit entirely.<sup>67</sup>

Gambling has both direct and indirect effects on the family that can last for a short period of time into the long term. There is also a myriad of potential economic consequences faced by the families of at-risk gamblers such as:

- loss of money to pay for essentials;
- harassment of the family from external debt collection agencies seeking to enforce the obligations of creditors;
- repossession of property;
- borrowing from payday lenders to finance gambling;<sup>68</sup>
- eviction due to an inability to meet rent or mortgage commitments;
- being incarcerated for related crimes (discussed below) to try and repay debts;
- bankruptcy; and
- destitution and homelessness.

A number of studies have considered the impacts of at-risk and problem gambling on the families of those with this issue. In particular, these studies have noted that:

- The home environment of at-risk gamblers can leave children and spouses feeling isolated and physically and emotionally deprived. They may experience feelings of pervasive loss including the loss of the gambling parent, in both a physical and an existential sense; the loss of the child's relationship with extended family; the loss of security and trust, as well as more tangible financial losses, such as the loss of savings and even the family home.<sup>69</sup>

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65 Financial Counselling Australia 2015, Duds, Mugs and the A-List – A Report on the Impact of Uncontrolled Betting, August 2015.

66 Abbott, D.A. et al (1995) Pathological Gambling and Family: Practice Implications, *Families in Society: The Journal of Contemporary Human Services* 76 (4), April 1995.

67 Ibid.

68 Financial Counselling Australia 2015, Duds, Mugs and the A-List – A Report on the Impact of Uncontrolled Betting, August 2015.

69 Darbyshire et al. 2001, The Experience of Pervasive Loss: Children and Young People living in a family where parental gambling is a problem, *Journal of Gambling Studies* Vol. 17, No. 1, 2001.

- Because of financial problems and marital tension, children can experience stress-related illnesses such as allergies, asthma, and gastrointestinal disorders. Emotional issues such as fear and anxiety regarding their family stability or own welfare may arise, causing deterioration in school performance. Children in this situation commonly turn to drugs and alcohol at an early age to fill the void left by a lack of physical and emotional attention at home.<sup>70</sup>
- The cycle of problem gambling is also likely to continue – children with parents who are problem gamblers are up to ten times more likely to become problem gamblers themselves than children with non-gambling parents.<sup>71</sup> Given the high acceptance of gambling as a recreational activity, children may model themselves after the family’s gambling behaviours. Addiction to gambling among youths is a notable and serious concern.

### Threats to consumer protection

Offshore operators are not subject to Australian consumer protection laws and other responsible gambling requirements and this can lead to additional social impacts for consumers of offshore services including Australian consumers being subjected to unethical practices by some offshore operators.<sup>72</sup>

Further, illegal offshore operators do not pay taxes to Australian governments or contribute to state-based responsible gambling funds, which provide a range of services to problem gamblers, those at risk of problem gambling, their families and gambling education. As a result, the pool of money for problem gambling services is lower than it would be if the operators were licensed in Australia.

### Economic impacts

A number of other economic impacts of illegal wagering are discussed below. These impacts relate to a loss of revenue for governments and the domestic wagering industry as well as the cost of maintaining sport and racing integrity.

#### Loss of tax revenue

Australian wagering customers spend a significant amount with illegal offshore providers, but those providers pay no product fees and deny revenue streams to governments, the racing industry and sporting organisations. It is important to discourage any Australia-based operators being tempted to relocate offshore in order to avoid the obligations to State and Territory governments, racing and sporting bodies that they face under existing Australian laws.<sup>73</sup>

#### Impact on the integrity of sports and wagering markets

Recently, the integrity of sport has been challenged following reports of alleged corruption and manipulation, inappropriate sports betting and fraudulent match-fixing activities.<sup>74</sup> The future of the Australian wagering and sports betting industry is fundamentally reliant on protecting the integrity of Australian racing and sport. Australians expect sport to be played fairly, honestly and in the spirit of good Australian sportsmanship.<sup>75</sup>

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70 Abbott, D.A. et al 1995, Pathological Gambling and Family: Practice Implications, Families in Society: The Journal of Contemporary Human Services 76 (4), April 1995.

71 The Problem Gambling Treatment and Research Centre, 2010, Children at risk of developing problem gambling, May 2010.

72 Select Committee on Gambling, NSW Legislative Council, 2014, The Impact of Gambling, Parliament NSW, accessed 15 November 2013, <[http://australianwageringcouncil.com/assets/Final\\_Report.pdf](http://australianwageringcouncil.com/assets/Final_Report.pdf)>

73 Chappell, T. (2014) Move to stamp out illegal wagering, AAP General News Wire, 29 October 2014.

74 Ibid.

75 Ibid.

Threats to the integrity of sports and wagering markets often stem from the activities of offshore wagering firms that carry out operations illegally. There are concerns that illegal offshore operators are targeting Australian consumers – with some sources suggesting as much as 26 per cent of betting by Australia-based customers was conducted with operators not licensed in Australia in 2013-14.<sup>76</sup> Offshore operators are popular amongst Australian wagerers due to the more competitive prices and variety of products offered.<sup>77</sup>

In general, the main concern associated with offshore wagering and its impact on integrity issues relates to the following:

- offshore operators are unlicensed and therefore not subject to transparency rules under integrity agreements, which require them to provide betting information to sporting and racing bodies, facilitating the identification of suspicious betting patterns;
- offshore operators do not pay product fees to racing and sporting bodies, which reduces the level of funds available to be invested in integrity programs, and passed through to player and official incomes, reducing incentives for corruption; and
- some offshore operators are believed to have links to criminal networks, making these operators more susceptible to corruption and other criminal industries and networks, especially money laundering.

Some stakeholders also indicated during the Review that certain online products that exploit loopholes in the Act should be outlawed to maintain the Act's original intent and the integrity and fairness of the betting market. For example, online in-play betting on sports is prohibited under the Act and some stakeholders indicate that allowing these bets could lead to integrity issues.<sup>78</sup>

At present, operators who are illegally offering gambling to Australians do not need to comply with requirements aimed at addressing integrity issues, while onshore operators do comply with these requirements. In a 2012 study estimating the size of the potential online market in Australia<sup>79</sup>, in-play betting was identified by stakeholders as the primary change that could increase the size of the regulated online gambling market, and consequently, increase the share of the market that is subject to the measures aimed at ensuring sport and racing integrity.

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<sup>76</sup> H2 Gambling Capital, Australian Offshore Interactive Wagering Independent Report, Prepared for Australian Wagering Council, November 2015.

<sup>77</sup> Callander, S. 2015, AWC warns SA gambling tax could 'cripple' industry, The Inside Word, 13 May 2015.

<sup>78</sup> Racing Australia submission, p 13.

<sup>79</sup> KPMG 2012, Estimating the Potential Size of an Online Gaming Market in Australia, February 2012.

## 3 Current Policy and Regulatory Framework

### 3.1 Online gambling regulation in Australia

As described briefly in Section 2.1, online gambling in Australia is governed by the Act, reflecting the Commonwealth's responsibility for regulating the provision of telecommunications in Australia. State and Territory governments, however, are responsible for gambling more broadly. As a result State and Territory governments are responsible for regulating and licensing the legal onshore online gambling operators. The information presented in this section reflects the publicly available information on the regulation of online gambling in Australia.

#### The Interactive Gambling Act 2001

The aim of the Act is to minimise the scope for problem gambling online by limiting the provision of online gambling services to Australians.<sup>80</sup> Under the Act, it is an offence to provide certain interactive gambling services to consumers located in Australia. This carries a maximum penalty of \$360,000 per day for individuals and \$1.8 million per day for corporations, which applies to all providers whether they are located in Australia or offshore.<sup>81</sup>

The drafting of the Act make it difficult to determine with certainty the legality of specific online wagering services. This has not been tested as, to date, no charges have been laid for breaches of the Act. In its submission to the Review, the Gibraltar Gaming Commission stated that:

*"Gibraltar requires its licence holders to obtain licences in those jurisdictions where the use of externally located remote gambling services by resident consumers is illegal, and there is a weight of legal opinion from Australian lawyers stating that such actions are not 'illegal'."*<sup>82</sup>

#### Box 3-1: The Interactive Gambling Act 2001

The Act prohibits operators from providing certain interactive gambling services to players in Australia but it does not prohibit Australian players from accessing online gambling services. It also does not prohibit the provision of online gambling services to players outside of Australia, unless they reside in countries declared to be designated countries under section 9(a) of the Act.

The responsible Minister can declare a country to be a designated country if:

- the Government of the country has requested the Minister do so; and
- the country prohibits the provision of online gambling services to players in that country.

The Act also prohibits the advertisement of prohibited online gambling services in Australia.

The prohibition of online gambling services does not apply to wagering services such as betting on racing, sporting or other events (placed before the event commences). It also does not apply to lotteries and other services declared exempt by the responsible Minister.

<sup>80</sup> DBCDE 2013, Review of the Interactive Gambling Act 2001. Australian Government. Canberra.

<sup>81</sup> Ibid.

<sup>82</sup> Gibraltar Gambling Commissioner submission, p 1.

## National advertising requirements

In addition to State- and Territory-based advertising guidelines for online wagering, operators are required to consider a number of nationally consistent obligations associated with advertising. A high level summary of the sources of these obligations is presented below:

- **the Act** – which prohibits operators from advertising prohibited online gambling services in Australia;
- **broadcast industry codes** – such as the Commercial Television Industry Code of Practice and Commercial Radio Australia Codes of Practice (for example, restrictions associated with advertising during live sport were introduced into a number of these codes in 2013); and
- **self-regulatory codes** – such as the Australian Association of National Advertisers (AANA) Code of Ethics (which is also a requirement of a number of State- and Territory-based responsible gambling codes of practice).

These obligations refer to broader advertising issues, such as the need for truth in advertising and the maintenance of community standards, as well as more specific gambling based issues such as the presentation of live odds and the association of gambling and alcohol.

## State based regulation and licensing

Each State and Territory is responsible for licensing and regulating gambling operators. Some of these operators will provide online wagering services. Each State and Territory has its own set of legislation, regulations and conditions for licensees. Table 3-1 below summarises the key legislation and regulation in the States.

*Table 3-1: Key state-based legislation and regulation*

State/territory	Regulatory body	Legislation
ACT	Gambling and Racing Commission	<ul style="list-style-type: none"> <li>• Casino Control Act 2006</li> <li>• Gaming Machine Act 2004</li> <li>• Interactive Gambling Act 1998</li> <li>• Lotteries Act 1964</li> <li>• Pool Betting Act 1964</li> <li>• Race and Sports Bookmaking Act 2001</li> <li>• Racing Act 1999</li> <li>• Totalisator Act 2014</li> <li>• Unlawful Gambling Act 2009</li> </ul>

State/territory	Regulatory body	Legislation
NSW	Office of Liquor, Gaming and Racing  Independent Liquor and Gaming Authority	<ul style="list-style-type: none"> <li>• Betting Tax Act 2001</li> <li>• Casino Control Act 1992</li> <li>• Charitable Fundraising Act 1991</li> <li>• Gambling (Two-Up) Act 1998</li> <li>• Gaming and Liquor Administration Act 2007</li> <li>• Gaming Machines Act 2001</li> <li>• Gaming Machines Tax Act 2001</li> <li>• Liquor Act 2007</li> <li>• Lotteries and Art Unions Act 1901</li> <li>• Public Lotteries Act 1996</li> <li>• Racing Administration Act 1998</li> <li>• Racing Administration Amendment (Sports Betting National Operational Model) Act 2014</li> <li>• Registered Clubs Act 1976</li> <li>• Totalisator Act 1997</li> <li>• Unlawful Gambling Act 1998</li> </ul>
NT	Department of Business	<ul style="list-style-type: none"> <li>• Gaming Control Act 2005</li> <li>• Gaming Machine Act 2005</li> <li>• Racing and Betting Act 2004</li> <li>• Soccer Football Pools Act 2004</li> <li>• Totalisator Licensing and Regulation Act 2004</li> <li>• Unlawful Betting Act 2004</li> </ul>
Queensland	Office of Liquor and Gaming Regulation	<ul style="list-style-type: none"> <li>• Brisbane Casino Agreement Act 1992</li> <li>• Breakwater Island Casino Agreement Act 1984</li> <li>• Cairns Casino Agreement Act 1993</li> <li>• Casino Control Act 1982</li> <li>• Charitable and Non-Profit Gaming Act 1999</li> <li>• Gaming Machine Act 1991</li> <li>• Interactive Gambling (Player Protection) Act 1998</li> <li>• Jupiters Casino Agreement Act 1983</li> <li>• Keno Act 1996</li> <li>• Lotteries Act 1997</li> <li>• Wagering Act 1998</li> </ul>

State/territory	Regulatory body	Legislation
SA	Independent Gambling Authority	<ul style="list-style-type: none"> <li>• Authorised Betting Operations Act 2000</li> <li>• Casino Act 1997</li> <li>• Gaming Machines Act 1992</li> <li>• Independent Gambling Authority Act 1995</li> <li>• Lottery and Gaming Act 1936</li> <li>• State Lotteries Act 1966</li> </ul>
Tasmania	Tasmanian Liquor & Gaming Commission	<ul style="list-style-type: none"> <li>• Gaming Control Act 1993</li> <li>• TT-Line Gaming Act 1993</li> <li>• Racing Regulation Act 2004</li> </ul>
Victoria	Victorian Commission for Gambling and Liquor Regulation	<ul style="list-style-type: none"> <li>• Casino Control Act 1991</li> <li>• Casino (Management Agreement) Act 1993</li> <li>• Gambling Regulation Act 2003</li> </ul>
WA	Department of Racing, Gaming and Liquor	<ul style="list-style-type: none"> <li>• Betting Control Act 1954</li> <li>• Bookmakers Betting Levy Act 1954</li> <li>• Casino (Burswood Island) Agreement Act 1985</li> <li>• Casino Control Act 1984</li> <li>• Gaming and Betting (Contracts and Securities) Act 1985</li> <li>• Gaming and Wagering Commission Act 1987</li> <li>• Gaming and Wagering Commission (Continuing Lotteries Levy) Act 2000</li> <li>• Racing and Wagering Western Australia Act 2003</li> <li>• Racing and Wagering Western Australia Tax Act 2003</li> <li>• Racing Restriction Act 2003</li> <li>• Racing Bets Levy Act 2009</li> </ul>
Norfolk Island	Norfolk Island Gaming Authority (NIGA)	<ul style="list-style-type: none"> <li>• Norfolk Island Act of 1979</li> <li>• Gaming Supervision Act 1998</li> <li>• Gaming Act 1998</li> <li>• Bookmakers Act 1998</li> </ul>



In most States and Territories there is no distinction in the approach to regulatory and licensing requirements for gambling and wagering operators, between whether their services are accessible on land or online.

The sections below provide a brief overview of the regulatory framework in each jurisdiction.

### **Australian Capital Territory**

In the Australian Capital Territory only expressly permitted forms of gambling are lawful. The *Unlawful Gambling Act 2009* makes all gambling illegal unless permitted under the Act or other laws, such as the *Race and Sports Bookmaking Act 2001*.

The *Interactive Gambling Act 1998* allows customers to set a limit on their wager amount. Any increase or revocation of the limit cannot take effect for seven days after the operator receives notice.

The Gambling and Racing Commission administers the Acts relating to gambling and racing in the ACT. Online bookmakers must hold an ACT Sports Bookmaking Licence.

Under the *Interactive Gambling Act 1998*, a licensed provider may apply to the Minister to conduct interactive gambling. Any telephone and internet systems used by a bookmaker must be approved by the Commission prior to commencement of services under the *Race and Sports Bookmaking (Rules for Sports Bookmaking) Determination 2015*. To obtain approval, an independent audit of the internet bookmaking and control systems details the integrity and security of the system that must be undertaken and evidence needs to be provided so that the system meets the standard for interactive wagering systems.

The Code of Practice sets out minimum standards that gambling operators must meet in providing gambling services, including wagering and interactive gambling. The Code covers gambling advertising and promotion, information provision to customers, staff training, harm minimisation measures and protection for gamblers who have difficulty controlling their gambling. Problem gamblers are able to sign a deed of exclusion for nominated gambling facilities. Gambling operators must also exclude customers if their welfare or their family's welfare is at risk due to problem gambling.

Recent changes to the Code of Practice have established an ACT Online Gambling Exclusion Database. This allows self-exclusions to be entered and distributed to nominated venues as soon the deed is completed and provided by the problem gambler. However, this is only mandatory for use by gaming machine licensees, the totalisator licensee and the casino; wagering and interactive gambling providers are only required to maintain a paper-based exclusion register.

ACT bookmakers are not allowed to offer inducements, such as free or discounted gambling credits, to open an account as per the Code of Practice, which has clear and precise requirements that could lead to prosecution.<sup>83</sup>

In November 2015, the ACT Government released a discussion paper to inform discussions and industry guidelines for gaming machine licences in the ACT on the Commission's view of acceptable promotions and inducements under the *Gambling and Racing Control (Code of Practice) Regulations 2002*.<sup>84</sup> The Discussion Paper was developed to clarify acceptable parameters of player reward schemes in order to achieve the above objectives. While the

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<sup>83</sup> Hing et al. 2015, Review and analysis of sports and race betting inducements, Southern Cross University, October 2015.

<sup>84</sup> ACT Government 2015, Consultation, December, accessed 17 December 2015, <<http://www.gamblingandracing.act.gov.au/community/consultation>>

Discussion Paper is focused on reward schemes in physical gambling locations, the Code of Practice also applies to licensed bodies under the Act.

The Paper outlines the key principles of the Code that are relevant to the issues surrounding player reward schemes and proposes a number of options for consideration. It concluded that to be compliant with the Code, an acceptable player reward scheme should only include elements in accordance with consumer protection and harm minimisation principles.

Some player reward schemes could be inconsistent with the Code in a number of ways. Elements of particular concern include:

- cash rewards on a regular (such as daily) basis for achieving certain gaming machine turnover or exceeding other patron's turnover in a given period;
- entry to promotions or rewards only by playing gaming machines; and
- 'bonus' points offered only to patrons playing gaming machines, particularly during identified or restricted periods of time.<sup>85</sup>

## New South Wales

New South Wales has a range of legislation that seeks to regulate its gambling market, which is overseen by the Office of Liquor, Gaming and Racing. All forms of land-based gambling are permitted under these Acts, while interactive gambling is restricted to a limited number of games.

The *Racing Administration Act 1998* is the key legislation that governs wagering activity. Under the *Racing Administration Act 1998* the Minister for Gaming and Racing is responsible for issuing the authorisation to bookmakers to accept bets on sporting events and for issuing authorisation for telephone and internet betting. The *Racing Administration Act 1998* allows the sporting controlling bodies to select what types of bets can be made available, and was based on a National Operating Model for Sports Betting and the *National Policy on Match-Fixing in Sport*.<sup>86</sup>

Internet betting is permitted under the *Racing Administration Act 1998* by an approved internet sports bookmaker if:

- the customer satisfies him/herself that all details on the internet betting confirmation screen are correct; and
- a customer can confirm the betting request by selecting the appropriate button on the screen.

In September 2014, new minimum-loss bet limits were introduced for online racing operators using race field information on single fixed-odds betting. Prior to this, operators could decline bets without any explanation, which had led to operators declining bets from successful customers.<sup>87</sup> The new rules require operators to lay bets to lose up to the minimum threshold amount.

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<sup>85</sup> ACT Gambling and Racing Commission 2015, Discussion Paper Promotions & Inducements under the Gambling and Racing Control (Code of Practice) Regulation 2002, November 2015.

<sup>86</sup> Queensland Government's Statisticians Office 2015, Australian Gambling Statistics.

<sup>87</sup> GBGC 2015, Global Gambling Report 10, GBGC, Isle of Man.

The *Compliance and Enforcement Policy* of the Office of Liquor, Gaming and Racing details the principles and practices that inform its enforcement processes.<sup>88</sup> The policy is risk-based and outcomes-focused. The regulatory approach seeks to encourage the responsible development of the industry and to promote voluntary compliance through engagement and guidance supported by risk-based supervision. The approach is underpinned by a robust intervention framework that can apply escalating enforcement action against misconduct.

There is a focus on voluntary compliance and on incentivising the industry to increase voluntary compliance. In NSW, a self-exclusion scheme exists for venues and internet gambling sites.

In November 2015, the NSW Government announced significant changes to the restrictions on the advertising of gambling services in NSW.<sup>89</sup> From 1 March 2016, NSW will become the first state in Australia to ban live odds advertising during sporting fixtures that last four hours or less, with maximum fines up to \$5,500 for breaches. There will also be new fines of up to \$11,000 or 12 months jail for unlicensed firms and individuals offering odds on NSW sporting events. From 1 December 2015, an existing ban on advertising betting inducements, including credit and reward schemes, was extended to cover a much larger range of inducement schemes designed to incentivise gambling.

### **Northern Territory**

Gambling is regulated by the Department of Business, with the Director-General of Licensing responsible for all gambling licences in the Northern Territory. In order to operate an internet gambling business a licence approved by the Minister for Racing, Gaming and Licensing is required. Licensees are required to undergo initial and subsequent audits by an independently commissioned auditor of their sites and software systems. The majority of corporate bookmakers licensed in Australia are based in this jurisdiction.

A number of mandatory Codes of Practice exist in the NT that govern wagering and online gambling. A new mandatory *Code of Practice for Responsible Online Gambling* comes into effect in March 2016. The key practices of responsible gambling in the Code are:

- the provision of responsible gambling information to clients;
- interaction with clients seeking assistance;
- responsible gambling training and skills development for staff;
- exclusion provisions for problem gamblers;
- other harm minimisation measures;
- measures in place to ensure the prohibition of services to minors;
- the approach to processing financial transactions, including deferred settlement facilities;
- the deployment of advertising and promotions;
- facilitation of gambling research and evaluation; and
- privacy protections applied to client information.

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<sup>88</sup> OLGR 2014, Compliance and Enforcement Policy

<sup>89</sup> The Daily Telegraph 2015, NSW to outlaw advertising of live betting odds during NRL, football, AFL, Twenty20 cricket among others, November 6 2015, accessed on 18 December 2015, <<http://www.dailytelegraph.com.au/news/nsw/nsw-to-outlaw-advertising-of-live-betting-odds-during-nrl-football-afl-twenty20-cricket-among-others/story-fni0cx12-1227599501337>>

Licensing NT, within the Department of Business, has been proactively regulating internet gaming for well over a decade and is widely recognised as an example of good regulation in this field. Gaming systems in the Northern Territory are tested by independent auditors to ensure all games are fair, auditable, secure and operating in strict accordance with the approved rules.

In order to maintain the integrity of gaming in the Northern Territory, Licensing NT ensures gaming equipment meets national standards, licence applications undergo extensive evaluation and probity checks, and licensees comply with relevant legislation and licence conditions and the payment of taxes.<sup>90</sup>

In terms of advertising and promotion regulation, the Northern Territory code makes the general statement that advertising and promotions are to be delivered in an honest and responsible manner with consideration given to the potential impact on people adversely affected by gambling.<sup>91</sup>

In October 2015, the Northern Territory government implemented a new Code of Practice for credit as a condition of a bookmakers licence. The Code includes requirements regarding the solicitation of credit and the procedures for approving deferred settlement facilities. This code is considered in greater detail in Section 5 of this Report.

## Queensland

Queensland permits all forms of land-based gambling, while interactive gambling is limited. Wagering licensing is regulated in Queensland by the Office of Liquor and Gaming Regulation under the *Wagering Act 1998*, *Wagering Regulation 1999* and *Wagering Rule 2010*.

A licence is required to conduct race or sports wagering in Queensland and can only be applied for by a corporation. New applications will not be considered until 30 June 2044, as TattsBet Limited is currently the exclusive licence holder in Queensland. Online wagering is permitted; however, the monopoly operator is allowed to refuse bets if it chooses to do so.

Gambling operators are guided by the Queensland responsible gambling Code of Practice; however, commitment is voluntary beyond legislative requirements and this code is geared towards land-based operators.

The key practices in the Code are:

- the provision of responsible gambling information to clients;
- interaction with clients seeking assistance, including staff training;
- exclusion provisions and advertising restrictions to excluded persons;
- the physical gambling environment, including ensuring that minors and intoxicated customers are not able to gamble;
- the availability of ATMs and credit for betting purposes; and
- ensuring advertising and promotions are delivered in a responsible manner with consideration given to the potential impact on people adversely affected by gambling.

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<sup>90</sup> NT Government Department of Business, Gambling and Licensing, accessed on 30 November 2015, at <<http://www.dob.nt.gov.au/gambling-licensing/Pages/default.aspx>>

<sup>91</sup> Hing et al. 2015, Review and analysis of sports and race betting inducements, Southern Cross University, October 2015.

In relation to inducements, adherence to the *Queensland Responsible Gambling Code of Practice* is voluntary. The Code relies upon the shared commitment of gambling industry providers to the guiding principle of ethical and responsible behaviour. The Code does not prohibit or restrict inducements, in contrast with most other states.

Queenslanders can access the full range of inducements offered by internet wagering operators, giving them a financial advantage over residents of more prohibitionist States.<sup>92</sup>

In terms of advertising and promotion regulation, the Queensland Code makes the generally worded statement that advertising and promotions are to be delivered in an honest and responsible manner with consideration given to the potential impact on people adversely affected by gambling.<sup>93</sup>

## South Australia

South Australia is the most progressive domestic jurisdiction and is recognised as applying the most rigorous requirements for bookmakers, particularly relating to advertising, which will be discussed below.

Gambling in South Australia is regulated by the Independent Gambling Authority. All forms of land-based gambling are allowed, while interactive gambling is limited. Under the *Bookmakers Licensing Rules 2000*, licensed bookmakers must have a Commission-approved system to offer online gambling services. Consumer and Business Services is responsible to the Independent Gambling Authority for scrutinising licensed betting operations. Consumer and Business Services also licences bookmakers and agents, approves the rules for on- and off-course wagering by the TAB and racing clubs and conducts compliance inspections and audits of licensees.

In 2013, amendments to all gambling-related Acts were passed through Parliament (with varying start dates) to reduce harm from problem gambling and to make improvements to existing regulatory measures.<sup>94</sup> These changes mainly affected gaming and casino operations.

The various codes of practice were unified as one *Gambling Code of Practice* in 2013. Key features of the new code are:

- greater prescription in mandatory warning messages, particularly with respect to advertising in the media and celebrity commentary;
- harmonisation of advertising standards to national minimum;
- a uniform model for inducements across all forms of gambling, and preclusion of offering inducements to encourage gambling;
- customer exclusion (including third party exclusion) and pre-commitment limits; and
- restriction of advertising of betting during play (live odds) to websites, print media, sports channels and telephone quoting of prices, thereby excluding radio and television advertising of in-play betting as well as around the ground scoreboard signage.<sup>95</sup>

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<sup>92</sup> Hing et al. 2015, Review and analysis of sports and race betting inducements, Southern Cross University, October 2015.

<sup>93</sup> Australian Wagering Council 2015, Harm Minimisation Measures.

<sup>94</sup> Queensland Government's Statisticians Office 2015, Australian Gambling Statistics.

<sup>95</sup> Ibid.

The Code has specific clauses around online gambling. These include:

- a prominent display that the gambling operator is governed by a code of practice and is available from the webpage, and be provided to new account holders;
- a prominent display of responsible gambling materials;
- a prominent display of warning messages at every point of sale;
- availability of responsible gambling materials in languages other than English; and
- referring customers to gambling help services who demonstrate difficulty in controlling their gambling.

In relation to inducements, in South Australia, the code specifically states through clear and precise requirements that a gambling provider must not offer or provide any inducement directed at encouraging patrons to gamble or directed at encouraging people to open gambling accounts.<sup>96</sup>

In April 2015, the South Australia Treasury announced an intention to apply a point-of-consumption tax to online gambling to replace the previous tax regime. The change would mean that operators would be taxed based on the location of the gambler rather than the location of the registered office. It was hoped that this would reduce problem gambling and provide a neutral tax system between online and land-based operators. It is thought that this could provide an additional \$47 million in revenue to the State government.<sup>97</sup>

Online betting operators licensed in other Australian States currently pay South Australia a \$1,500 annual fee but aren't required to pay the State any taxes on the activities of the estimated 74,000 South Australian residents who hold online betting accounts. Land-based gambling operators, who cite difficulties in competing with online sites, are in favour of the point of consumption tax.<sup>98</sup>

In October 2015, the State's Independent Gambling Authority proposed new regulations to crackdown on poor and unethical practices by online sports betting operators. These changes aim to combat documented practices including providing unsolicited credit, offering inducements of credit even when account holders are already in arrears and making it difficult for account holders to withdraw money from their account through the use of force or coercion. These practices exhibit little regard for the individual's circumstances.

The Independent Gambling Authority's proposed changes to the Code include:

- a ban on operators offering unsolicited credit for gambling;
- credit only to be offered after a thorough due diligence process;
- a requirement that gambling providers process withdrawals immediately; and
- spotters' fees be disclosed.

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<sup>96</sup> Hing et al. 2015, Review and analysis of sports and race betting inducements, Southern Cross University, October 2015.

<sup>97</sup> GBGC 2015, Global Gambling Report 10, GBGC, Isle of Man.

<sup>98</sup> Amsel, P. 2015, Online Betting Point Of Consumption Tax Coming To South Australia, Calvin Ayre, accessed 30 November 2015, <<http://calvinayre.com/2015/04/20/business/south-australia-online-betting-point-of-consumption-tax/>>

## Tasmania

The Tasmanian Gaming Commission regulates all forms of gambling in Tasmania. All forms of land-based gambling are allowed and interactive gambling is limited to certain games. The *Gaming Control Act 1993* and the accompanying *Gaming Licence Regulatory Framework* outline the regulation and control of gambling in Tasmania. A licence is issued to an operator by the Commission if they meet the required regulatory, financial and probity standards, and must be specifically endorsed to offer one or more activities, such as race wagering or sports betting. The licence is effective for five years and can be renewed. The totalisator licence is effective for 50 years.

A number of harm minimisation measures are a condition of the licence under the GCA. These include:

- the ability of gamblers to impose limits;
- self-exclusion;
- no credit betting; and
- a complaints mechanism.

The *Responsible Gambling Mandatory Code of Practice for Tasmania* is mandatory for all licence holders to abide by in addition to the conditions outlined in the Act. The areas of the code are:

- advertising;
- inducements;
- player loyalty programs;
- access to cash;
- payment of winnings;
- lighting;
- food and alcohol service;
- clocks;
- training to recognise problem gamblers; and
- information.

In its submission to this Review, the Tasmanian Government highlighted its strong regulatory framework (advertising restrictions, bans on inducements and complaints mechanisms) and harm minimisation measures (loss limits, self-exclusion and bans on unsolicited credit) to ensure the integrity of wagering in Australia. The Tasmanian Government views the emergence of illegal offshore gambling operators as a threat to these efforts. The Tasmanian Government supports this Review, and investigation of enforcement options and a national approach that aims to protect Australians from illegal offshore wagering.<sup>99</sup>

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<sup>99</sup> Tasmanian Government submission.

## Victoria

The Victorian Commission for Gambling and Liquor Regulation oversees the gambling legislation, regulation and licencing for gambling operators in Victoria. The *Gambling Regulation Act 2003* aims to minimise harm from problem gambling. Gambling operators must have a licence in order to conduct gambling activities. Tabcorp Wagering holds the licence to operate wagering activities in Victoria. Sporting organisations can apply to the Commission to control sports betting in their sport. The aim is to foster integrity in sports betting.

Racing Victoria is responsible for licensing bookmakers and internet betting for racing in Victoria. The *Bookmakers' Internet Betting Rules 2001* sets out the requirements to conduct betting via the internet. From September 2015, licenced and registered individuals who wager on Victorian racing with betting agencies not approved by Racing Victoria will be committing an offence.<sup>100</sup>

There is no standard code of conduct for gambling operators in Victoria, however, licence holders are required to have a responsible gambling code of conduct approved by the Commission.

In relation to inducements, it appears that only Victoria has actually prosecuted operators for breaching its prohibition on inducements to open wagering accounts. It is possible that other States have also issued fines or warnings to operators.<sup>101</sup>

In November 2015, the Victorian Government and the Victorian Responsible Gaming Foundation (VRGF) published a jointly commissioned report into the prevalence and distribution of problem gambling across Victoria. The study found an increase in online gambling and some increase in the number of at-risk gamblers since 2008, although the number of problem gamblers was stable. This study was discussed in Section 2.2.

## Western Australia

The Department of Racing, Gaming and Liquor is responsible for maintaining the integrity of lawful gambling activities in WA. The Department manages gambling licencing, auditing of licensees and internet betting operations. The Gaming and Wagering Commission of WA is responsible for administering legislation with respect to wagering. In WA bookmakers must operate from a racecourse, and an application to operate internet betting must be submitted along with authorisation from the controlling body of the racecourse from which the bookmaker operates from. The software that receives the internet bets must be located on the designated operating racecourse. The Commission also needs to approve any internet betting systems before use.

Racing and Wagering WA is responsible for racing integrity and the off-course wagering TAB functions. Racing and Wagering WA has its own Code of Practice, which is self-regulatory.

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100 GBGC 2015, Global Gambling Report 10, GBGC, Isle of Man.

101 Hing et al. 2015, Review and analysis of sports and race betting inducements, Southern Cross University, October 2015.



## Norfolk Island

The NIGA was established in 1998. NIGA has the power to regulate and enforce Norfolk Island's gaming and licensing legislation, the *Gaming and Supervision Act 1998*. The Authority, which is an independent statutory body consists of a Presiding Member and two members. The Authority ensures that its regulatory and supervisory approach meets the very highest of international standards.

The types of licenses that are available under the *Gaming and Supervision Act* and administered by NIGA include:

- bookmaking/totalisator/betting exchange licences;
- interactive home gaming licences; and
- online lottery licences.

The NIGA is a streamlined and efficient organization that provides for rapid approvals to licence applications. The Authority provides for:

- (a) rapid approvals to licence applications for an Interactive Home Gaming Licence under the Norfolk Island *Gaming Act 1998*; and/or
- (b) a Licence to conduct Bookmaking (including sports betting), under the *Norfolk Island Bookmakers Act 1998*; and/or
- (c) a Licence to conduct an internet/online Lottery, under the *Gaming Act* and as amended by the *Gaming (Lotteries Amendment) Act 2005*.<sup>102</sup>

## Integrity agreements

Mechanisms exist to ensure that sports and racing integrity is maintained and not subject to match fixing. The *National Policy on Match Fixing in Sport* was agreed by Australian governments in June 2011.<sup>103</sup> This agreement meant that all governments needed to ensure that they had consistent legislation to deal with match fixing.

The policy means that State and Territory governments are responsible for:

- registering a sport controlling body with the relevant state regulator;
- provisions to allow the sport controlling body to deal with betting agencies for betting and information sharing; and
- registration of events by the sport controlling body.

As a result, sport controlling bodies can enter into integrity agreements with betting operators in relation to betting. These integrity agreements provide a framework for cooperation between sport controlling bodies and betting operators with regard to the use of intellectual property and sharing of information to identify risks associated with the integrity of sport.

Integrity agreements define the payments made to sporting bodies by betting operators for the right to take bets on sporting events.<sup>104</sup> These payments are typically based on the betting operators' turnover associated with the specific sport.

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<sup>102</sup> Norfolk Island Gaming Authority 2015, Legislation, accessed 9 December 2015, <http://www.gaming.gov.nf/>

<sup>103</sup> Department of Health 2014, National Policy on Match-Fixing in Sport, accessed 20 November 2015, <<http://www.health.gov.au/internet/main/publishing.nsf/Content/national-policy-on-match-fixing-in-sport>>

<sup>104</sup> Ibid.

In addition, sporting bodies are able to control the bet types available in the market for their sport. This means that betting operators cannot offer bets on sporting events without agreement from the sports body.<sup>105</sup> For instance, in Australia, Cricket Australia and Tennis Australia have not provided approval for ball by ball bets in cricket and point by point bets in tennis respectively.

Integrity agreements also provide a framework for sporting bodies and betting operators to share information around betting practices to ensure integrity is maintained. This sharing of information is a key tool available to sports to manage integrity risks.

### Race Fields legislation

Australian States and Territories have Race Fields legislation that prohibits the use of race field information without approval from the relevant state racing body. This includes information used to accept or facilitate wagering.<sup>106</sup> The requirements mean that betting operators need approval to offer betting on races in the jurisdiction no matter where the gambling operator is based and that a fee is paid to the racing body to offer the betting.<sup>107</sup>

## 3.2 Regulation of online wagering in other jurisdictions

This section identifies and describes the role of the regulator and the measures and tools various jurisdictions use for authorising and supervising online gambling, and for the enforcement of national rules and standards across international jurisdictions.

Like Australian regulators, the tools available to gambling regulators across the globe include legislative prohibitions; regulatory authorities for the monitoring of online gambling activities; enforcement options, consumer information measures and sanctions.

Beyond legislation dedicated to the regulation of sports bets, regulators globally also have other regulatory powers at their disposal such as:

- injunctions addressed to illegal sites;
- drawing up a black list of illegal operators;
- blocking illegal sites;
- blocking the payment of winnings made through an illegal provider;
- prohibiting advertising by illegal operators;
- mutual exclusion whereby public authorities in charge of regulating bets can decide not to grant a national licence to an operator that does not comply with the rules established in another State and can also decide to revoke an operator's licence if the operator commits illegal acts in another country; and
- establishing an offence for illegal bets such that the individual is criminally responsible for betting on an illegal website.<sup>108</sup>

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<sup>105</sup> Victorian Responsible Gambling Foundation 2013, Sports betting: Rules, regulation and agreements, accessed 20 November 2015, <[https://www.responsiblegambling.vic.gov.au/\\_data/assets/pdf\\_file/0006/3939/Sports-Betting-Rules-Regulations-Agreements.pdf](https://www.responsiblegambling.vic.gov.au/_data/assets/pdf_file/0006/3939/Sports-Betting-Rules-Regulations-Agreements.pdf)>

<sup>106</sup> Racing NSW, Race Field Information Use, accessed 20 November 2015, <<http://www.racingnsw.com.au/default.aspx?s=race-field-publications>>

<sup>107</sup> Queensland Treasurer 2008, Queensland to Introduce 'Race Fields' legislation to protect future of racing (Media Statement), accessed 20 November 2015, <[ld.gov.au/Statement/ld/60614statements.q](http://ld.gov.au/Statement/ld/60614statements.q)>

<sup>108</sup> University Paris 1 Panthéon-Sorbonne and the International Centre for Sport Security (ICSS) 2014, Protecting the Integrity of Sport Competition: The Last Bet for Modern Sport, May 2014.

The focus of this section is on regulatory frameworks adopted in the EU, the United States and parts of the Asia Pacific region.

### Regulation across the European Union (EU)

This section addresses the regulatory stance taken by governments across the EU. It should be noted that references to the EU within this Report pertain to the broad geographic and economic area comprising the EU and its member states.

There is no common legislation across the EU or promulgated by the EU parliament that governs gambling across its jurisdiction. The EU supranational Government does not currently have a unified stance on gambling regulation that it applies across all member states. The discussion that follows seeks to build an understanding of the regulatory regimes found in selected member states of the EU.

Table 3-2 summarises the varied regulatory positions taken by some member states of the EU in response to the rising importance and prevalence of online gambling in their region. Due to the changing nature of gambling regulation and legislation, some countries are in a period of transition and do not appear in the table.

*Table 3-2: EU member state stance on online gambling*

Online gambling activity illegal	Protect State/Private Monopolies and Revenues	Foreign operators not allowed	Domestic internet based gambling allowed	Accepts cross border internet gambling	Liberal approach with licences offered
Luxembourg	Norway Austria Portugal	Belgium Denmark Hungary Netherlands	Austria Belgium France Germany Ireland Italy Portugal Slovakia Slovenia Spain Sweden	Cyprus Ireland	UK Latvia Malta Finland

Source: European Commission 2015, *The Economics of Gambling: Impacts of internet Gambling*.

## United Kingdom

Online wagering in the UK is regulated by the Gambling (Licensing and Advertising) Act 2014, which is administered by the UK Gambling Commission. The UK allows legal, regulated online gambling sites within its borders. The UK Government opposes the notion of prohibiting offshore gambling. As such, the Government's approach is tending towards complete liberalisation and a free market, relative to other industrialised nations such as the US. However, the British Government remains supportive of international co-operation in harmonising regulation, acknowledging that there are many issues of common interest to jurisdictions across the world.<sup>109</sup>

The UK experience suggests that having a legal gambling market that is attractive to consumers in terms of product choice and price competitiveness, and attractive to operators in terms of providing reasonable commercial return from gambling in a responsible way, will greatly reduce the scale of any illegal activity, especially when combined with effective monitoring and the ability to track player behaviour online.

This approach combines an attractive legal market, open to innovation with a wide range of products, with a regulatory framework that, while minimising the regulatory overhead, supports the pursuit of the licensing objectives such as:

- keeping gambling crime free;
- keeping gambling fair and open and protecting the vulnerable; and
- deterring the less responsible or plain illegal from undercutting and undermining the responsible licensees.

The UK approach is based on the concept that if players cannot get access to a reasonably priced, attractive range of gambling products, they are likely to shift their interest to offshore operators. If competing operators find the black market commercially attractive by being able to offer consumers products that are not permitted legally, such as in-play betting, that undermines the commercial viability and attractiveness of the licensed market with its overheads of responsible gambling provision.<sup>110</sup>

Until 2014, the *Gambling Act 2005*, administered by the UK Gambling Commission, regulated gambling in the UK on a nationwide basis. The UK Gambling Commission permitted remote gambling (including betting online, by telephone or other British-based communication device). Remote gambling is defined in the *Gambling Act 2005* (section 4) as "gambling in which persons participate by the use of remote communication (i.e. internet, telephone, television, radio or other technology for facilitating communication)". There was no restriction on the number of remote operating licences that the Commission could issue (with the exception of non-remote pool betting on horse racing, which was restricted to one licensee), but applicants needed to demonstrate that they are fit and proper to hold an operating licence. All forms of spread betting (including sports) fall outside of the remit of the Gambling Commission and instead are regulated nationally by the Financial Conduct Authority.

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<sup>109</sup> UK Gambling Commission submission.

<sup>110</sup> Ibid.

The *Gambling Act 2005* stipulated that the regulated activity in offshore gambling take place where the operator is located; the rationale being that the customer, wherever situated, must visit the operator's site to take part in the wagering event, and a bet is not struck until accepted by the operator.<sup>111</sup> However from 1 October 2014, the UK moved to a system of point of consumption regulation under the new *Gambling (Licensing and Advertising) Act*.

From this date, offshore operators transacting with players in Great Britain are required to have a UK-issued remote operating licence. This change to licensing rules has resulted in a requirement that, even if an operator does not have remote gambling equipment in Great Britain, if those facilities are used in Great Britain the operator will require a licence; otherwise an offence is committed.<sup>112</sup>

Additionally, there are no server location obligations in the UK. If an operator has gambling servers in the UK, this would constitute "remote gambling equipment" under the *Gambling Act 2005* and, therefore, the operator must hold a remote gambling licence as well as pay UK tax.

With respect to taxation, the point of consumption taxation, at a rate of 15 per cent on the betting provider's profits (gross gambling yield) for remote gambling, is implemented through the *Finance Act 2014*. This taxation regime is effective from 1 December 2014. The *Gambling (Licensing and Advertising) Act 2014* also provides for the payment of a horse race betting levy. The UK government is currently investigating extending the levy to offshore bookmakers.

The online wagering market in the UK is currently dominated by a select few bookmakers, betting exchanges or intermediaries, who offer live betting, in-play betting, fixed-odds and pari-mutuel betting, which are all permitted under the UK regulatory framework.

Key operators include:

- William Hill, Coral, Paddypower and Ladbrokes, the biggest internet revenue earners, specialising in betting, but also offering offshore licensed casino and gaming services;
- Sportingbet, a relatively small specialist internet operator; and
- Betfair, the dominant force in the betting industry and continually expanding its operations overseas.

There are several harm minimisation and responsible wagering measures prescribed under the Code for Responsible Gambling and Player Protection, which took effect on 1 March 2014, and the Licence Conditions and Codes of Practice:

- Age restriction: Age restrictions contained in the original *Gambling Act 2005* restrict participation in betting to those 18 years of age and above.
- Player Verification: The Licence Conditions and Codes of Practice regulate access to gambling by children and young persons. If age verification has not been satisfactorily completed within 72 hours of the customer applying to register to gamble the account will be frozen, no further gambling will be permitted until age verification has been completed and, if the customer fails the age verification, the operator must return to the customer any money paid in respect of the use of the gambling facilities, but no winnings shall be paid.

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<sup>111</sup> Ibid.

<sup>112</sup> European Commission 2014, Study on the role of regulators for online gambling: Authorisation, supervision and enforcement, Final Study Report.

- Gambling Payments: The Licence Conditions and Codes of Practice require that licensees should only accept payment from customers using their gambling facilities in Great Britain by a method that involves the provision of payment services as defined in Schedule 1 Part 1 of the *Payment Services Regulations 2009*.<sup>113</sup>

*Box 3-2: The UK and offshore licensing arrangements*

Offshore operators are required to have a licence if their facilities are used in the UK, even if no equipment is located onshore, and this applies irrespective of whether the operator knows or should know that their services are likely to be used in the UK.

Remote operators must register where they offer betting from outside the UK to gamblers in the UK. Operators are required to register online, submit returns every three months and pay any tax. If based outside the EU a UK representative needs to be appointed. If the operator has a history of poor compliance with its tax obligations, six months of estimated duty liability can be requested.

The compliance process is focused on effective self-regulation. However the UK Commission can:

- carry out reviews and visits;
- give advice and guidance to licence holders;
- take remedial or preventive action;
- vary or impose additional licence conditions; and
- review financial information.

The Commission undertakes assessments of arrangements at least every three years. The Gambling Commission is also able to:

- issue warnings to licence holders;
- add, remove or amend licence conditions;
- suspend or revoke licences; and
- impose financial penalties following a break of licence conditions.

The Gambling Commission also has the power to institute criminal proceedings if an offence has been committed. The penalty is a maximum 51 week prison term and/or a fine of up to £5,000.

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<sup>113</sup> Ibid.

## Gibraltar

Online wagering in Gibraltar is regulated by the UK's *Gambling (Licensing and Advertising) Act 2014*, which replaced the *Gambling Act 2005* and is administered by the Gambling Commissioner. Licensing is managed by the Licensing Authority. A number of businesses based in Gibraltar contested the introduction of the *Gambling (Licensing and Advertising) Act 2014* as it required them to obtain additional UK licences to operate in the remainder of the United Kingdom.

With the implementation of the *Gambling (Licensing and Advertising) Act 2014* the Gibraltar Betting and Gaming Association (GBGA) claimed that the *Gambling (Licensing and Advertising) Act 2014* breached EU law. Having expressed its intention to apply for judicial review in relation to the changes that the *Gambling (Licensing and Advertising) Act 2014* introduced, the GBGA considered them to be “unlawful” and “threatening the safety of consumers” online.<sup>114</sup>

Gibraltar is one of the largest markets for online gambling companies, particularly for those who service the UK market, which are drawn to operating there due to the favourable tax regime and commonality with the broader UK legislative and regulatory framework.

Gibraltar licensees have obtained licences across the world, including Australia, and a number of the world's leading remote gambling suppliers are located and licensed in Gibraltar. Gibraltar requires its licence holders to obtain licences in those jurisdictions where the use of externally located remote gambling services by resident consumers is illegal. The GBGA stated in its submission to the Review that there is a weight of legal opinion stating that the provision of services to Australians is not ‘illegal’.

Additionally, jurisdictions such as Gibraltar place great importance on having very high licensing and regulatory standards to ensure that gambling offers are fair and transparent, the controllers and beneficiaries are of good character, and that customer funds and rights are properly protected. Gibraltar accepts that this may not be the case for all suppliers supposedly ‘licensed’ in all other jurisdictions, but a distinction has to be made between the properly and diligently licensed and regulated offshore suppliers, and therefore trustworthy and reliable services available in Gibraltar, and the ‘light touch’, de facto insignificant licensing and regulation offered in some other jurisdictions.

It is important to note that whilst Gibraltar has made licensing online gambling a key economic growth area, not all offshore licensed bookmakers originating from Gibraltar are disreputable or have lax consumer protection standards. The intent of Gibraltar's regulatory regime is to provide licences for operators to provide services outside of the territory where they are licensed, not to take advantage of consumers. Along with other jurisdictions such as Alderney and the Isle of Man, Gibraltar is considered as having a stringent regulatory regime that represents best practice regulation.<sup>115</sup>

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<sup>114</sup> Ibid.

<sup>115</sup> Ibid.

## Belgium

Gambling and wagering activities are governed by the Gaming Commission in Belgium. The legislation and regulation over online gambling has been contentious and challenged over the past few years. Online gambling is allowed for operators through a licence, providing the operator already has a licence to operate land-based gambling in Belgium and servers, technical equipment and personnel are required to be located in Belgium. Belgian ISPs are required to block access to unlicensed gambling sites, and banks have agreed to voluntarily block payments. A blacklist of unlicensed providers who target Belgians is published on the Gaming Commission's website. A number of legal challenges by these operators have been undertaken but have not been successful.<sup>116</sup>

The Belgian Gaming Commission is able to fine both operators and players and has recently exercised its right to impose fines on both groups.<sup>117</sup> A recent study by the International Centre for Sport Security found that Belgium is a good example of enforcement and compliance.<sup>118</sup>

## Italy

Gambling operations in Italy are regulated by the Agenzia delle Dogane e dei Monopoli (Customs and Monopoly Agency). The Italian Policy on online wagering, *Comunitaria Law 2008*, focuses on protecting the state monopolies and concessionaires that provide land-based services.

Agenzia delle Dogane e dei Monopoli has the regulatory responsibility over:

- games of chance (lotteries, bingo and online casino games);
- gaming machines and internet fixed odds games;
- wagering (pools, racing and sports);
- games of skill (including poker); and
- other gaming machines.

Internet gambling in the form of poker and other casino games as well as betting and wagering are fully legal in Italy. To date, Italy's gaming regulation has authorised offerings through online channels for betting on sports and horseracing events, cash and tournament poker, lotteries, and online casino games, including online gaming machines, betting exchanges and betting on virtual events.

- Until 2006, Italy's gambling market was closed to foreign competition. However, two landmark decisions issued by the Court of Justice of the European Union (Gambelli and Placanica) and the need for additional tax revenues drove the Italian government to gradually liberalise the market.

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<sup>116</sup> GBGC 2015, Global Gambling Report 10, GBGC, Isle of Man.

<sup>117</sup> Ibid.

<sup>118</sup> University Paris 1 Panthéon-Sorbonne and the International Centre for Sport Security (ICSS) 2014, Protecting the Integrity of Sport Competition: The Last Bet for Modern Sport, May 2014.



- In mid-December 2010, a new law affecting gaming operations was approved. *Legge della Stabilità (Stability Law) no. 220* entered into force on 1 January 2011. Regarding gaming, the objective of the law was to curtail tax evasion and to implement a program to control public games, particularly online gaming, betting and entertainment machines.
- Additionally, in late 2012, Italian authorities completed the regulatory framework for the operation of betting on virtual events, and in early 2013 completed the technical standards for the operation of this form of gambling.<sup>119</sup>

Recently, the Italian gambling authority eased restrictions on a range of in-play wagers. Operators now have permission to offer wagers not specifically listed on the approved list, provided the results can be verified by “elements, news and information objectively verifiable”. The shift effectively allows onshore Italian operators to offer a product better equipped to compete with non-Italian licensed operators from overseas. There is potential for Italian-licensed international operators to enjoy an added advantage over their local competition, which is relatively inexperienced with in-play wagering.<sup>120</sup>

Italian advertising regulations prohibit gambling advertising via press, TV, radio and the internet as they can create an incentive to engage in gambling activity and negatively affect gamblers who are at-risk. The very broad wording might include any type of gambling advertisement.

The maximum fine for violation that can be imposed on gambling operators is €500,000.<sup>121</sup> However, offshore firms continue to offer internet gambling opportunities to Italians and even advertise their services freely.<sup>122</sup>

In its submission to the Review, the Customs and Monopoly Agency highlighted the importance of providing legal onshore alternatives to discourage the use of offshore operators. In particular, it noted that providing a licensed offering would be more effective than financial payment blocking (not used in Italy) or Internet Service Provider (ISP) blocking (used in Italy but easily avoided) in encouraging onshore gambling.

## Denmark

As the national regulatory body, the Danish Gambling Authority oversees gambling regulation in Denmark. The main purpose of its restrictive legislation, the *Act on Gaming 2010*, is to uphold the interests of the public as well as to limit damaging social consequences such as problem gambling and fraud. A secondary rationale, which is not without relevance, is that betting and lotteries may make a significant contribution to the financing of public interest activities such as social and charitable undertakings, sport or culture.<sup>123</sup>

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119 European Commission 2014, Study on the role of regulators for online gambling: Authorisation, supervision and enforcement, Final Study Report.

120 Stradbrooke, S. Italian Regulator lifts restrictions on in-play sports betting, Calvin Ayre, 25 October 2014, accessed at <<http://calvinayre.com/2014/10/25/business/italian-regulator-lift-restrictions-on-in-play-sports-betting/>>

121 Hing et al. 2015, Review and analysis of sports and race betting inducements, Southern Cross University, October 2015.

122 European Commission 2015, The Economics of Gambling: Impacts of internet Gambling.

123 Danish Gambling Authority submission.

Online gambling, including wagering, casino games and poker, was legalised in Denmark on 1 January 2012. Under the *Act on Gaming*, the Danish Gambling Authority may grant licences for betting and online casino services. The areas of land-based casino, gaming machines, charity lotteries, public poker tournaments, local pool betting and the monopolies Danske Lotteri Spil and the Danish Class Lottery are included within the Danish Gambling Authority's jurisdiction. Betting comprises games in which the participants enter their bets for the outcome of an event, such as Oddset and manager games.

Betting may be divided into two categories:

- fixed-odds betting such as Oddset – where the player bets directly against the provider of the bet and knows his possible winnings in advance; and
- pool betting such as manager games – where the whole gain or part of it is determined by the size of the pool or is divided between the winners.

A licence to provide betting services covers both online and land-based selling of bets. Online gambling services are those where the player and operator do not meet physically, for instance where games are sold via the internet (or even by telephone or television). The licence types and fees for betting and online casino (roulette, black jack, baccarat, punto banco, poker and gambling on gaming machines) are the same, and gambling providers can choose to apply for either betting or online casino, or for both. A licence remains valid for up to five years. Minor gambling providers can apply for a one year restricted revenue licence.<sup>124</sup>

Denmark permits the advertising of gambling inducements, described as 'bonus offers', but subject to highly detailed requirements. Essential conditions, such as benefits and restrictions, must be included in the first presentation or mention of the inducement, and not simply located elsewhere among the fine print conditions.

Below are examples of essential conditions:

- the bonus only applies to a limited group, such as a bonus that only applies to new customers;
- deposit requirements apply to receive the bonus;
- play through requirements apply to receive the bonus, including information about which bets count in the play through; and
- time limits in order to receive the bonus, such as the expiry of the bonus, or requirements of play through within a specified period.

The Danish Gambling Authority prescribes model wording for advertisements on TV, radio, text messaging, banner ads, email, websites and print media. The directions require the inclusion of as much of the essential conditions with the advertisement as is practicable with easy access, such as a direct internet link, to the full terms of the inducement. Gambling operators have the opportunity to ask the Danish Consumer Ombudsman for an advance opinion as to the lawfulness of a contemplated marketing campaign.

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<sup>124</sup> Ibid.

In May 2015, the Danish Gambling Authority announced that it would apply the EU Unfair Commercial Practices directive to sales promotion measures for gambling products. This change was the result of the number of complaints that the Danish Gambling Authority had received about gambling licence holders' sales promotion measures, specifically competitions with a purchase condition.<sup>125</sup>

## France

In June 2010, legislation for controlled expansion of online gambling was introduced and established the French Gambling Authority to regulate the industry.<sup>126</sup> Three types of online licences are available: sports betting, off-course racing and poker. Under the law, licensees must comply with a common regulatory framework that requires implementation of prevention measures for excessive gamblers and the promotion of responsible gambling.<sup>127</sup>

Other licence requirements include:

- proof of identity, solvency and clean criminal record;
- head office in one of the EU or European Economic Area (EEA) countries;
- bank account in one of the EU or EEA countries;
- website with the .fr top level domain;
- separate accounting for operations in French territory; and
- permanent tax correspondent in France.

ISP blocking, payment blocking and advertising bans are in place for unlicensed operators.<sup>128</sup>

From 2012, operators were required to limit account bonuses and are capped and bonus payments for losses have been prohibited. Exchange betting and spread betting were banned in February 2012, along with the introduction of rules to prevent match-fixing.<sup>129</sup>

Online operators are taxed on their turnover rather than their gross gambling revenue, which means that licensed operators struggle to develop a sustainable business and offer attractive products in the market. As a result, French gamblers continue to use offshore providers. A number of high profile operators left the market in 2012 as a result.<sup>130</sup>

Penalties for unlawful operators include a maximum seven year prison sentence and a fine of up to €200,000.<sup>131</sup> The French regulator has in the past taken legal action against illegal operators and has requested that ISPs block these websites.<sup>132</sup>

The French regulator has signed Memoranda of Understanding with a number of jurisdictions, such as Italy, the UK and Spain, to combat illegal online gambling.<sup>133</sup>

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<sup>125</sup> Hing et al. 2015, Review and analysis of sports and race betting inducements, Southern Cross University, October 2015.

<sup>126</sup> Working Group 2015, Offshore Racing and Sport Betting, Final Report, New Zealand.

<sup>127</sup> Costes, Kairouz, Eroukmanoff, Monson 2015, Gambling patterns and problems of gamblers on licensed and unlicensed sites in France, Journal of Gambling Studies.

<sup>128</sup> Working Group 2015, Offshore Racing and Sport Betting, Final Report, New Zealand.

<sup>129</sup> GBGC 2015, Global Gambling Report 10, GBGC, Isle of Man.

<sup>130</sup> Ibid.

<sup>131</sup> Working Group 2015, Offshore Racing and Sport Betting, Final Report, New Zealand

<sup>132</sup> GBGC 2015, Global Gambling Report 10, GBGC, Isle of Man.

<sup>133</sup> Ibid.

Table 3-3: European regulatory framework analysis

	UK	Gibraltar	Belgium	Italy	Denmark	France
<b>Permitted games</b>	<ul style="list-style-type: none"> <li>In-play betting</li> <li>Fixed-odds and pari-mutuel</li> <li>Betting exchanges or intermediaries</li> </ul>	<ul style="list-style-type: none"> <li>In-play betting</li> <li>Fixed-odds and pari-mutuel</li> <li>Betting exchanges or intermediaries</li> </ul>	<ul style="list-style-type: none"> <li>Online sports and horse race betting are also allowed.</li> </ul>	<ul style="list-style-type: none"> <li>Pool betting and fixed odds on sports and horse racing.</li> </ul>	<ul style="list-style-type: none"> <li>All wagering, apart from horse and dog race wagering.</li> </ul>	<ul style="list-style-type: none"> <li>Sports betting.</li> <li>Horse race betting.</li> </ul>
<b>Blocking measures</b>	<ul style="list-style-type: none"> <li>No requirements on website blocking and payment blocking.</li> </ul>	<ul style="list-style-type: none"> <li>No requirements on website blocking and payment blocking.</li> </ul>	<ul style="list-style-type: none"> <li>ISP blocking</li> <li>Payments blocking</li> <li>Server must be located in Belgium</li> </ul>	<ul style="list-style-type: none"> <li>ISP blocking</li> </ul>	<ul style="list-style-type: none"> <li>Payments blocking is legal but not yet in use.</li> <li>Server must be located in Denmark</li> <li>DNS blocking</li> </ul>	<ul style="list-style-type: none"> <li>ISP blocking</li> <li>Server must be located in France</li> </ul>
<b>Advertising restrictions</b>	<ul style="list-style-type: none"> <li>Those that advertise remote gambling to consumers in Britain through a British-facing business must be licensed.</li> </ul>		<ul style="list-style-type: none"> <li>Advertising bans on gambling not licensed in Belgium.</li> <li>Prosecution of gaming authorities if they facilitate unlawful gambling by allowing their</li> </ul>	<ul style="list-style-type: none"> <li>Advertising of unlawful gaming activities is prohibited by general rules of advertising rather than gaming regulation</li> <li>Use of only an '.it'. No</li> </ul>	<ul style="list-style-type: none"> <li>The advertising of unlicensed games in Denmark is prohibited and is punishable by a fine (Section 59(2) of the Act on Gaming).</li> </ul>	<ul style="list-style-type: none"> <li>Advertising bans on gambling not licensed in France.</li> <li>Advertisements should be accompanied by a warning message against gambling</li> </ul>

	UK	Gibraltar	Belgium	Italy	Denmark	France
			licensees to continue their operations in Belgium.	‘.com’ and ‘.net’ website suffixes.	The Act also restricts sponsorships from operators that are not licensed in Denmark.	addiction; prohibited on publications AV programs and movie theatres.
<b>Harm minimisation, consumer protection and responsible wagering measures</b>	<ul style="list-style-type: none"> <li>• Age restrictions</li> <li>• Player verification</li> <li>• Gambling Payments restricted to UK payment services.</li> </ul>	<ul style="list-style-type: none"> <li>• Age restrictions</li> <li>• Player verification</li> <li>• Gambling Payments restrictions.</li> </ul>	<ul style="list-style-type: none"> <li>• Age restrictions</li> <li>• Player verification</li> </ul>	<ul style="list-style-type: none"> <li>• Age restrictions</li> <li>• Player verification</li> </ul>	<ul style="list-style-type: none"> <li>• Age restrictions</li> <li>• Player registration</li> <li>• Player verification</li> <li>• Temporary gambling account set up until player verified</li> </ul>	<ul style="list-style-type: none"> <li>• Account based betting with maximum balance</li> <li>• Use of licensed payment providers</li> <li>• Player Verification</li> <li>• Operators must have geolocation to ensure players are directed to the .fr platform.</li> </ul>

Source: European Commission 2015, *The Economics of Gambling: Impacts of internet Gambling*; University Paris 1 Panthéon-Sorbonne and the International Centre for Sport Security (ICSS) 2014, *Protecting the Integrity of Sport Competition: The Last Bet for Modern Sport*, May 2014, Working Group 2015, *Offshore Racing and Sports Betting*, Final Report; European Commission 2014, *Study on the role of regulators for online gambling: Authorisation, supervision and enforcement*, Final Study Report.

## Regulation in the USA

United States gambling law is governed by three gaming regulatory regimes at the local, State and Federal levels.

At the Federal level:

- Unlawful internet gambling is enforced by the *Wire Act* of 1961, which orders financial institutions to stop any transactions to online gambling sites.
- The *Interstate Horseracing Act* of 1978 (amended 2000) allows bets across state lines by both telephone and “other electronic media”.
- The *Unlawful Internet Gambling Enforcement Act* (UIGEA) was passed in 2006 and outlawed the use of financial instruments in online gambling transactions. Box 3-3 further explains the application of the UIGEA.

### *Box 3-3: Application of the Unlawful Internet Gambling Enforcement Act 2006 (UIGEA) and financial transactions blocking by the US Government*

The US is an example of a jurisdiction that has successfully implemented technological measures (in the form of financial transactions blocking) to curb illegal wagering activity. While the offshore online gambling market in the United States remains significant, it has reduced slightly since 2006, while the global trend has been for the online gambling market to expand rapidly. GBGC estimates that the value of offshore gambling in the United States in 2006 was US\$6.9 billion. By 2013, this had reduced to US\$5.6 billion, a decline of 18.6 per cent (or 14.8 per cent when the small onshore market is included). In contrast, over the same period online gambling (onshore and offshore) in Australia increased by 208 per cent and global online gambling increased by 78 per cent.

Five payment systems are designated as covered by the UIGEA:

- automated clearing house systems;
- card systems;
- check collection systems;
- money transmitting businesses; and
- wire transfer systems.

A ‘participant’ is defined as “an operator of a designated payment system, a financial transaction provider that is a member of, or has contracted for financial transaction services with, or is otherwise participating in, a designated payment system, or a third-party processor.” This does not include a participant’s customer, unless the customer is also a financial transaction provider participating on its own behalf in the designated payment system.

All participants in designated payment systems are exempt from the requirement to have policies and procedures unless they are specified as ‘non-exempt’ under the regulations. In general, participants in a designated payment system are exempt unless they have direct relationships with commercial customers.

The regulations provide non-exclusive examples of acceptable policies and procedures that provide a safe harbour for non-exempt participants in the designated payment systems.

*Box 3-3: Application of the Unlawful Internet Gambling Enforcement Act 2006 (UIGEA) and financial transactions blocking by the US Government*

The regulations focus on due diligence to be conducted by financial institutions and third-party processors in establishing and maintaining commercial customer accounts.

Card systems are the only designated payment systems for which the regulations suggest that transactions could be blocked during processing, as they are the only payment systems that commonly use a merchant and transaction coding framework that affords such identification and blocking.

*Source: DBCDE 2012, Review of the Interactive Gambling Act, accessed 10 November 2015, <https://www.communications.gov.au/publications/interim-report-review-interactive-gambling-act-2001>*

*GBGC 2015 Interactive Gambling Dataset 2015*

In addition to Federal measures, some states have enacted legislation to prohibit some types of internet gambling. Each state determines what kind of gambling it allows within its borders, where the gambling can be located, and who may gamble. Some US states have gone so far as to outlaw online gambling outright. The states of New Jersey and Nevada, for example, have declared that all non-state regulated online gambling is illegal. The other anti-online gaming states outlaw internet betting in all forms.

At the local level, municipal and county gambling laws exist. Gaming legislation at this level tends to focus on specific problems that affect a community.<sup>134</sup>

## **Regulation in the Asia-Pacific region**

### **Singapore**

The *Remote Gambling Act 2014* is administered by the Ministry of Home Affairs and provides the framework to regulate remote gambling activities in Singapore. This regulatory framework has the objectives of prohibiting remote gambling to maintain law and order and protecting young vulnerable people from being exploited by remote gambling and criminal activity. In contrast to Australian jurisdictions other than New South Wales, in Singapore it is illegal for residents to gamble with offshore operators

The Gambling Regulatory Unit in the Ministry of Home Affairs administers the regulatory measures that are provided for in the *Remote Gambling Act 2014*. These include a set of comprehensive blocking measures such as website blocking, payment blocking and advertising bans. Websites that provide unauthorised remote gambling services are blocked under these measures.

The intention of payment blocking is to impede remote gambling operations. Financial transactions will be blocked if these transactions are made in relation to participation in any unlawful remote gambling activity. It is an offence for any individual to gamble remotely in Singapore with an operator that has not been exempted under the *Remote Gambling Act 2014*.

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<sup>134</sup> Cornell University Legal Information Institute 2015, Internet Gambling Federal Regulation, accessed 30 November 2015, <<https://www.law.cornell.edu/wex/gambling>>

## Hong Kong

Gambling in Hong Kong is restricted to a small number of authorised and regulated outlets. At present, such authorised gambling outlets include horse racing organised by the Hong Kong Jockey Club (HKJC), the Mark Six Lottery, authorised football betting, and gaming activities authorised by the public officer appointed by the Secretary for Home Affairs.

All forms of gambling are illegal under the *Gambling Ordinance*, administered by the Home Affairs Bureau, except those expressly allowed by the *Betting Duty Ordinance* (authorised horse racing and authorised football betting).

The rationale behind this policy is two-fold:

- Firstly, the Home Affairs Bureau recognises that there is always a demand for gambling, but that the conduct of gambling activities should be regulated to prevent harms to the individual and the community. Unregulated gambling activities can lead to a number of social problems – frauds, underage gambling, loan sharking – and become a potential source of income for criminal activities.
- Secondly, since it is impossible to reconcile the different community views on the extent to which licensed gambling outlets should be allowed to exist, a compromise approach is to allow only a limited number of authorised gambling outlets. In this way, the substantial and persistent demand for gambling outlets from the public can be satisfied and the public can be dissuaded from turning to illegal operators.<sup>135</sup>

The following case study in Box 3-4 provides a brief insight into the experience of Hong Kong when it moved to legalise off-course wagering.

### *Box 3-4: The Hong Kong experience of legalising off-course wagering*

The contemporary Chinese government banned all gambling-related activities under the Administrative Penalties for Public Security, as gambling does not concur with Communism. The Criminal Law, adopted in 1979 and subsequently revised in 1997 and 2006, stipulates that a person commits gambling crimes if he or she profits by gathering people to engage in gambling, running a gambling house or making gambling his/her profession, and is punishable by imprisonment and a fine.

In Hong Kong, the government responded differently to the public's huge demand for 'gaming'. Under British rule (1841–1997), the government authorized the HKJC to operate off-course horserace betting (since 1973) as a means of controlling gambling and supporting charity functions. It further approved the HKJC to operate football betting (since 2003). Laws prohibited other forms of gambling. The HKJC has become the largest single taxpayer and charity benefactor in Hong Kong, with a total bet amount and revenue of US\$19.6 billion (\$26.9 billion) and US\$3.8 billion (\$5.2 billion) respectively, in 2012-13. The minimum wager, however, is only US\$1.30 (\$1.37) for betting with the HKJC, implying that betting is intended by the government to be 'gaming', and probably seen similarly by many participants. The operation of HKJC is via governmental management of the huge public demand for 'gaming' and a means to support social welfare.

The Hong Kong experience may have since influenced the development of gambling regulations in mainland China.

Source: Wu, A.M.S. and Lau, J.T.F (2014) Gambling in China: socio-historical evolution and current challenges, *Addiction* 110, 210–216, Society for the Study of Addiction.

135 The Home Affairs Bureau 2008, District, Community and Public Relations.



## New Zealand

The New Zealand Racing Board is the sole provider of betting services in New Zealand and is a statutory body set up through the *Racing Act 2003*. Only gambling authorised under this Act or the *Gambling Act 2003* are lawful in New Zealand. The regulatory framework outlines that:

- the operation of the New Zealand Racing Board is benefits oriented, with surplus funds shared by racing and sports sectors;
- strong consumer protections are in place to minimise problem gambling and to protect sporting integrity; and
- the New Zealand Racing Board as a statutory authority is accountable to Parliament and trusted by New Zealand consumers.<sup>136</sup>

New Zealand is recognised as having strong provisions to prevent and minimise harm as a result of problem gambling, with services paid for by a sector levy. The Racing Integrity Unit is responsible for investigating signs of integrity breaches and all national sporting bodies must demonstrate that they are also maintain the integrity of their sport.<sup>137</sup>

In 2015, a Working Group was set up to investigate offshore wagering. A number of key recommendations were put forward by the Working Group to limit the use of illegal offshore wagering. These include:

- the introduction of legislation with explicit extraterritorial intent to require offshore gambling operators to register with New Zealand authorities and pay an 'Offshore Bookmaker Fee' to accept bets on New Zealand based events or accept bets originating in New Zealand;
- the support for a strong enforcement process such as power to the regulator to issue non-compliance notices to offshore gambling licensing bodies/regulators, collecting debts for unpaid fees and laying criminal charges on directors and management of offshore operators;
- that the Offshore Bookmaker Fee be based on turnover and that revenue from the fee be used for the development of racing and to increase the competitive position of the New Zealand Racing Board in its wagering products; and
- the support to charge Goods and Services Tax on offshore gambling services.<sup>138</sup>

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<sup>136</sup> Working Group 2015, *Offshore Racing and Sport Betting, Final Report, New Zealand*

<sup>137</sup> Ibid.

<sup>138</sup> Working Group 2015, *Offshore Racing and Sport Betting, Final Report, New Zealand*

### 3.3 Harm minimisation and responsible wagering

For most Australians, wagering is a legitimate form of entertainment and an enjoyable recreational and leisure activity. Whilst the majority of individuals who wager on racing and sport do so safely and responsibly, a small proportion of people experience some difficulties in limiting their gambling frequency and intensity.

The individuals can be described as “at-risk gamblers” and have been identified by the Problem Gambling Severity Index (PGSI) as being at either ‘moderate risk’ or ‘high risk’ of experiencing gambling problems. The problem is that often when at-risk gamblers commence betting, they have difficulty controlling their expenditure.<sup>139</sup>

Harm minimisation measures are currently imposed in order to assist at-risk individuals to make informed decisions about their recreational choices and to access support to manage their gambling activities responsibly.<sup>140</sup> In order to be effective, it is critical that harm minimisation strategies are targeted at those most at-risk of developing the specific problem.

According to a study by the Southern Cross University in 2011<sup>141</sup>, online gamblers are more likely to present in the “at-risk” category than their land-based counterparts. It should be noted that participants self-selected to be involved in this study and were recruited from only a selection of wagering sites, treatment sites, government sites and using search engines. The results therefore need to be considered in this context.

Internet gamblers were more likely to be at low or moderate risk of gambling problems as compared to non-internet gamblers. The non-internet gamblers were more likely to fall into either the “non-problem gambler” or “possible problem gambler” category (PGSI 8+).

The findings of the study are summarised below in Box 3-5.

*Box 3-5: Findings of An investigation of internet gambling in Australia, Southern Cross University (2011)*

A survey of 4,688 Australians who gamble online was undertaken and it revealed that:

- 30 per cent of online gamblers experienced low to moderate risks compared with 15 per cent of people who gamble using traditional, offline means;
- one-third of internet at-risk gamblers reported that their problems were caused by gambling online, and one quarter stated that their problems were based on land-based gambling; and
- compared to other internet gamblers, problem internet gamblers were slightly younger, and more likely to be single, have less formal education, and be unemployed or a student.

The survey respondents reported wagering and betting as the most common and frequent form of gambling.

<sup>139</sup> Hing et al. 2015, Review and analysis of sports and race betting inducements, Southern Cross University, October 2015.

<sup>140</sup> Australian Wagering Council (2015) Harm Minimisation Measures.

<sup>141</sup> Gainsbury, S., Hing, N., Blaszczynski, A., & Wood, R. 2011, An investigation of internet gambling in Australia. Lismore, NSW, Australia: Southern Cross University, Centre for Gambling Education & Research.

*Box 3-5: Findings of An investigation of internet gambling in Australia, Southern Cross University (2011)*

Participation in online gambling was greatest for race wagering and sports betting with online poker, casino games, and online lottery used by a smaller proportion of gamblers.

Wagering was identified by over one-third of at risk internet gamblers as the main form of gambling that has contributed to their problematic gambling behaviour.

Internet gambling appears to create challenges for at-risk individuals due to the benefits it has over land-based gambling such as the convenience of not having to leave the house, 24 hour availability, lack of crowds, greater privacy and anonymity and physical comfort. There are also specific challenges presented by the ease of using a credit card, availability and convenience:

- The use of a credit card or bank transfer was reported to increase the amount spent for just over half of problem internet gamblers as compared to around one in ten internet gamblers that were not at-risk.
- More than half of all at-risk individuals surveyed said that the convenience of online gambling made it easier to spend more money and over one-third stated that it was more addictive than offline gambling.

There are also significant risks to individuals and the community posed by illegal operators who may have a disregard for Australia harm minimisation standards, aggressive creditor practices and links to criminal networks. Although the majority of gamblers in the study were betting on trusted and regulated Australia-based sites, the lack of customer knowledge about the origin and security of online sites is an issue of concern. Greater public education could prove useful in increasing public awareness and understanding of the legality of internet gambling and the risks of playing on unregulated and offshore sites.<sup>142</sup>

Source: Gainsbury, S., Hing, N., Blaszczynski, A., & Wood, R. (2011). *An investigation of internet gambling in Australia*. Lismore, NSW, Australia: Southern Cross University, Centre for Gambling Education & Research.

## What is harm minimisation?

Harm minimisation is a central pillar of local, State and Territory and Commonwealth Government regulatory frameworks targeted at mitigating and minimising the effects of at-risk behaviours.

Since 1985, harm minimisation has been adopted by Australian governments as the national framework for addressing a range of issues and reducing the harmful consequences related to various risky human behaviours such as alcohol consumption, drug use and gambling, including wagering. The current model is a multifaceted and comprehensive approach as shown in Figure 3-1 below, and encompasses supply reduction, demand reduction and harm reduction channels.

This framework has been widely implemented through a range of initiatives at the local and community level, and is a hallmark of national and state public health strategies. It focuses on prevention and targeting at-risk groups.

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<sup>142</sup> Hing et al. 2015, Review and analysis of sports and race betting inducements, Southern Cross University, October 2015.

Figure 3-1: A multilayered and comprehensive approach to harm minimisation



Source: Department of Health, *Harm Minimisation*, Canberra, May 2008.

*Supply reduction*, as it pertains to illegal offshore wagering, aims to disrupt access by individuals and the community to illegal offshore wagering channels to regulate, control and eventually eliminate the problem in the community. This involves regulating against illegal offshore wagering through legislative and taxation measures, and then following up with compliance monitoring and enforcement by the relevant regulator. Policing measures could include disrupting domestic distribution networks, local policing and third party policing.<sup>143</sup>

*Demand reduction* aims to prevent or delay the uptake of illegal offshore wagering activity, or stop or reduce the activity once it has commenced. Demand reduction may be thought of along a spectrum, ranging from prevention and education to treatment interventions for at-risk individuals who engage in illegal offshore wagering. Demand reduction objectives include strategies that aim to:

- prevent the uptake and/or delay the onset of at-risk and illegal wagering online;
- reduce engagement with illegal offshore wagering in the community;
- support people to recover from dependence and reintegrate with the community; and
- support efforts to promote social inclusion and resilient individuals, families and communities.<sup>144</sup>

The term *harm reduction* refers to the policies, programs and practices that aim to reduce the harms associated with at-risk wagering in people who are unable or unwilling to stop due to addiction. Harm reduction accepts that despite prevention efforts, some at-risk individuals will develop a gambling and/or wagering problem.

For this reason, harm reduction measures are often criticised for tolerating risky or illegal behaviour and for sending a message to the community that such behaviour is acceptable as there is a focus on the prevention of harm, rather than prevention of activity, and a focus on people who continue to gamble at high levels of frequency and intensity.

The aim of harm reduction is to reduce wagering-related harm to the community through initiatives that meet the individual's current needs. It is important to individualise interventions to accommodate the preferences and needs of the particular at-risk person.<sup>145</sup> Overall, the approach aims to reduce the adverse health, social and economic consequences of wagering by minimising or limiting the harms to the individual without necessarily eliminating wagering activity.

143 Ritter A, Lancaster K, Grech K, Reuter P 2011, Monograph No. 21: An assessment of illicit drug policy in Australia (1985-2010): Themes and trends, Sydney: National Drug and Alcohol Research Centre.

144 Ministerial Council on Drug Strategy 2011, National Drug Strategy 2010-2015: A framework for action on alcohol, tobacco and other drugs. Canberra: Commonwealth of Australia.

145 Marlatt, G. A., & Witkiewitz, K. 2002, Harm reduction approaches to alcohol use, *Addictive Behaviors*, 27, pp. 867-886.

The effects of all supply, demand and harm reduction strategies must be examined over time to determine their effectiveness, that is, whether their net impact reduces or increases overall harm. There is a range of responsible gambling measures that provides powerful tools to minimise harm. Table 3-4 below identifies harm minimisation and responsible gambling strategies currently in place in Australia. Section 5 discusses the potential policy options considered by this Review in more detail.

*Table 3-4: Harm minimisation and responsible gambling strategies currently in place in Australia*

Strategy	Description
Prohibition of Underage Gambling	By law, in most countries individuals below the age of 18 are not permitted to engage in online (or land-based) gambling or wagering.
Responsible Gaming Policy	Some but not all operators adhere to a self-mandated Responsible Gaming Policy.
Self-Exclusion Provisions	Customers elect to exclude themselves, either on a temporary or permanent basis, from telephone and internet betting services. The period of the self-exclusion could be a specified amount of time or indefinite.
Voluntary Pre-Commitment	Pre-commitment provides a restriction on expenditure to prevent players spending more money than they originally intended. This is achieved by fixing a maximum limit on losses before the commencement of play. It is difficult to predict the results of a pre-commitment scheme in helping people control their gambling expenditure. Trials in Queensland, South Australia and overseas have indicated some limited benefits. <sup>146</sup>
Credit betting	The use of credit for gambling purposes is illegal in some jurisdictions. This means that customers can only place bets using money they already have in their account.
Account-Based Betting	All bets placed with vendors should be made through registered online accounts. This facilitates customer registration and verification of identity, which is critical to combating criminal and fraudulent behaviour. Vendors can accurately verify the identity of customers in line with anti-money laundering legislation and ensure that individuals under the age of 18 years are not able to access any wagering services.
Spend Tracking	Enables customers to readily track and monitor their wagering spend via activity statements that can be accessed by customers electronically at any time.

<sup>146</sup> Betsafe 2010, What is Pre-Commitment? September 2010.

Strategy	Description
Training of Customer Support Staff	Customer service staff are trained to identify those who may be experiencing difficulties, with the account-based nature of online wagering enabling individual customer activity to be monitored by trained staff. This promotes responsible and ethical marketing and education and awareness.
Responsible Gambling Information on Websites	Vendors should provide significant responsible gambling information on their websites including referral details for problem gambling services. This information is intended to ensure that customers who wish to assess their own circumstances are easily able to do so and ensures customers can be directed to support services.

## 4 Drivers of Change

The Terms of Reference for this Review require an examination of the impacts of illegal offshore wagering and potential measures available to the Government to reduce the impacts of illegal offshore wagering on Australian businesses and the economy. This section of the Report examines the impacts of illegal offshore wagering, discusses the rationale for action and intervention to address the problems associated with offshore wagering and the potential risks if left unaddressed. In particular this section:

- identifies the key impacts of illegal offshore wagering;
- defines the magnitude of the issues associated with offshore wagering;
- considers any impediments to the domestic industry competing with offshore wagering operators; and
- identifies weaknesses in the current approach to protecting consumers and minimising the harms associated with gambling.

Importantly, this section seeks to outline the size and scope of any impacts associated with illegal offshore wagering and the subsequent need for amendment to the regulatory framework to address these impacts. Section 5 then seeks to assess potential options considered by the Review. While the Terms of Reference of the Review focus on illegal offshore wagering, it should be noted that a number of the potential options to address illegal offshore wagering and the efficacy of consumer protection involve changes to the regulatory framework for the onshore wagering market. As a result, this section of the Report has considered potential issues in the onshore wagering market in line with the Terms of Reference.

### 4.1 Impacts of the offshore wagering market

The impacts of Australians betting with offshore wagering providers are felt by a broad range of stakeholders including:

- the individual consumer of wagering services;
- the consumer's immediate family;
- the domestic gambling industry, including related industries such as the sporting and racing industries;
- Commonwealth, State and Territory governments; and
- the remainder of the economy through the indirect impacts of expenditure in the local economy.

As part of the call for submissions, the Review asked stakeholders what are the key impacts of illegal offshore wagering and associated financial transactions. Stakeholders identified a number of impacts, largely based on the leakage of revenue offshore and the lack of transparency of betting activity.

Some of the impacts identified by stakeholders include:

- difficulties for consumers in disputes with offshore wagering providers;
- challenges to the integrity of racing and sport through the use of betting exchanges, lack of access to betting records and links between offshore operators and organised crime;
- reductions in the level of income earned by sporting and racing bodies as a result of offshore operators not paying product fees on events held in Australia;
- decreased community investment associated with reduced revenue available to racing and sporting clubs;
- increases in the negative impacts of gambling given that some offshore operators do not have consumer protection and harm minimisation measures in line with Australian standards; and
- reductions in gambling and other taxation revenue earned by governments as a result of decreased activity in the domestic industry.

Typically, the size of the offshore market is likely to drive the magnitude of the negative impacts, particularly with regard to economic and financial implications. For instance, the greater the size of the offshore market, the greater the reduction in taxation revenue. However, some social impacts, such as increases in the harm associated with offshore wagering or the difficulties regarding disputes, may be significant for specific stakeholders regardless of the size of the offshore market.

There was consensus amongst stakeholders regarding the impact of illegal offshore wagering. However, as there was diversity in relation to the size of the market, there is uncertainty surrounding the magnitude of the impact and the need for policy or regulatory responses to address these impacts.

## **4.2 Magnitude of these impacts**

This section seeks to identify the size of the market and measure the magnitude of the subsequent negative impacts associated with offshore gambling as identified in Section 4.1. Broadly speaking, while the market size is difficult to measure, there is broad stakeholder agreement that there are significant issues that should be addressed, both with regard to the impact of offshore wagering and the robustness of the existing consumer protection framework.



## Factors driving Australians to gamble offshore

As part of the stakeholder engagement phase, the Review sought to explore with stakeholders the reasons why Australian consumers seek to gamble with offshore operators. While a number of factors were identified by stakeholders, such as anonymity associated with offshore gambling and in some cases motivation to avoid detection<sup>147</sup>, the main reasons given by stakeholders were:

- product choice, specifically the availability of in-play wagering on sporting events;<sup>148</sup>
- product value, i.e. better odds;<sup>149</sup> and
- the ability to bet without limits imposed by the domestic industry.<sup>150</sup>

If the Government seeks to reduce the size of the illegal offshore wagering market, addressing these drivers will be important. It should be noted that not all of these drivers can be practically addressed by Government. For instance, a person gambling offshore seeking anonymity is not likely to be drawn back onshore regardless of the regulatory landscape.

Section 5 considers options that may be used to address the drivers of offshore wagering. However, any consideration of these options needs to assess the magnitude of the impacts, which is to some extent also reflective of the size of the offshore market. This is considered in detail in the following section.

## Size of the offshore market

As discussed in Section 1, given the challenge in determining the size of the offshore market with certainty, this Review has used a number of data sources to inform its view of the size of the offshore wagering market. Specifically, this Review has considered GBGC data as well as H2GC data and input from stakeholders. However, the insights drawn from these sources are inconsistent, which constrains the capacity of this Review to draw any definitive conclusions about the size of the offshore market.

This is an important consideration, as the size of the market is expected to be a driver of the magnitude of the impacts of illegal offshore wagering. For instance, the greater the size of the market, the greater the value of forgone tax revenue and product fees that would ordinarily be paid to Commonwealth, State and Territory governments and sporting and racing bodies. Likewise, if all else is equal, the greater the value of expenditure occurring offshore in the absence of integrity agreements or regulatory oversight, the more we would expect impacts associated with disputes between consumers and offshore operators and matters of betting integrity.

The size of the wagering market overall and the market share of the offshore market was raised in a number of the submissions to the Review. A number of stakeholders confirmed the difficulty of estimating the size of the wagering market and the offshore sector in particular.

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<sup>147</sup> Canberra Greyhound Racing Club submission, p 3.

<sup>148</sup> bet365 submission, p 5.

<sup>149</sup> bet365 submission, p 4.

<sup>150</sup> Name withheld submission, p 2.

In part, this is because of the lack of transparency associated with offshore wagering, particularly for operators that are licensed or operate in unregulated or lightly regulated markets. As a result, measurements of the size of the online market typically rely on estimation methods that collate the information available and extrapolate from this information to account for expected gaps in the data.

A number of stakeholders provided estimates of the market size based on figures released as part of earlier reports in the sector, such as the Productivity Commission's 2010 report on gambling and the DBCDE 2012 report. While these sources are robust, the online gambling market is rapidly evolving and these figures may not reflect more recent information.

Stakeholders provided estimates of the size of the online gambling market more broadly and the online wagering market specifically. The online gambling market refers to the market for all gambling services, including casino games, lotteries and wagering, which refers to betting on the outcomes of sporting, racing and other events. These ranges highlight the difficulty associated with estimating the size of the market. Ranges of estimates provided as part of the consultation phase of the Review include:

- Tabcorp suggested that \$1 billion is spent with unlicensed offshore operators (based on the findings of the DBCDE's 2012 report);
- independent modelling performed on behalf of Clubs Australia indicated that Australians spend \$1.6 billion per annum on illegal offshore gambling websites;<sup>151</sup>
- Sportsbet indicated that the entire online gambling market is \$1.6 billion per year and that offshore wagering accounts for \$480 million of that total;<sup>152</sup> and
- the Canberra Greyhound Racing Club cited a figure estimating that 14 per cent of wagering activity is conducted offshore.<sup>153</sup>

In addition, some stakeholders, such as the VRGF, did not provide estimates of the size of the problem but questioned the figures reported by industry and others.<sup>154</sup>

As discussed previously, this Report has sourced market information from GBGC and has also leveraged H2GC information provided by the AWC. While both these sources are well accepted, they also provide quite different estimates of the size of the offshore market. This highlights the difficulty in determining the scope of impacts associated with illegal offshore wagering.

GBGC estimates that the offshore wagering market in Australia in 2014 was worth \$63.9 million, down around 70 per cent since 2004.<sup>155</sup> In contrast, H2GC estimates that \$400 million in online wagering GGR is spent offshore, which amounts to 26 per cent of total online wagering, which is broadly in line with the range of estimates outlined in the submissions.

The range of estimates available to this Review, therefore, do not provide a clear indication of the size of the offshore market, nor of the magnitude of the impacts associated with consumers accessing the offshore market.

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151 Clubs Australia submission, p 6.

152 Sportsbet submission, p 3.

153 Canberra Greyhound Racing Club submission, p 2.

154 Victorian Responsible Gambling Foundation submission, p 1.

155 GBGC 2015, Interactive Gambling Dataset 2015, GBGC, Isle of Man.

At the lower end of the range of market size estimates, the likely revenue impact of illegal offshore wagering on Commonwealth, State and Territory governments and sporting and racing bodies is small; at the higher end of the range this is more substantial. However, even a small level of offshore wagering may indicate problems associated with the other negative impacts associated with illegal offshore wagering such as those relating to consumer protection and harm minimisation. Potential policy and regulatory options that may address these concerns are considered in Section 5.

### 4.3 Competitiveness of the domestic industry

In jurisdictions where online gambling is legal, or partially legal in the case of Australia, a competitive and dynamic domestic industry is important to encourage users to seek licensed onshore operators rather than unlicensed offshore operators. Through the consultation phase of the Review, a number of stakeholders indicated that the current regulatory framework limits the ability of the domestic operators to compete with offshore operators, particularly regarding price and product offering, but also regarding regulatory compliance. While there is little evidence of the impact of a lack of competitiveness on the domestic industry, stakeholders generally agreed that offshore operators provide a better value option than onshore operators in part due to the absence of regulatory compliance costs. The sections below consider these concerns and the likely impact on competitiveness of the domestic industry.

#### Regulatory barriers

As discussed in Section 4.1, two of the key drivers of offshore wagering are product choice and value (in terms of the odds available). Consultations with industry stakeholders in particular suggested that product choice was the key driver of offshore wagering for sporting events and value the key driver of offshore wagering for racing events. These views were generally confirmed by racing and sporting bodies.

Industry stakeholders noted that regulatory barriers restrict the domestic industry's ability to compete in these areas with offshore operators who are not subject to Australian licensing requirements or regulatory obligations. In particular, it was noted that:

- Offshore operators can and do offer online in-play betting options on sports to Australian users that are prohibited under the Act and that given the popularity of this option (based on estimates of the value of in-play wagering in Australia and the market share of these options in other jurisdictions) it represents a distinct competitive advantage to offshore operators.
- Offshore operators do not contribute to Australian sporting and racing bodies as Australian operators do. Australian licensed operators are obligated to pay product fees under integrity agreements and race fields legislation, or pay gambling taxes in line with Australian licensing requirements. As a result, stakeholders claim that offshore operators have a lower cost base than Australian operators and are therefore able to provide services at a lower cost than Australian operators, providing an advantage to offshore operators.

Importantly, while non-industry stakeholders did not all agree with industry stakeholders regarding the impact on competitiveness of in-play wagering, the price competitiveness of offshore operators was consistently seen as a concern of stakeholders.

In the wagering industry this pricing advantage takes the form of higher prospective odds on each wager. Importantly, evidence from European jurisdictions (as outlined in Section 3) highlights the importance of a competitive domestic industry in drawing online gambling activity onshore.

In the case of online wagering in Australia, stakeholders from within the wagering industry and outside the wagering industry indicated the importance of industry contributions to Government (through taxation) and Australian sport and racing (through product fees). In practice, regulatory barriers, such as restrictions on products, may prove to be ineffective where they drive users to offshore operators outside the regulatory landscape. As a result, the regulatory framework should consider the need for regulatory barriers, the likely impacts of the barriers put in place and other measures that can be used to ensure that the effect of regulation is consistent with its intent, i.e. measures that ensure that these barriers are not easily avoided by accessing offshore operators. If this is not the case, there is a risk that these barriers will encourage consumer migration to offshore websites operating outside the Australian regulatory framework. These matters are considered in more detail in Section 5.

### **Costs of compliance across jurisdictions**

In addition to the regulatory barriers outlined above, a number of industry stakeholders noted that the costs of compliance with regulations and licensing requirements in Australia is inflated by the number of jurisdictions and the varying levels of regulatory compliance obligations placed on operators. In particular, one industry stakeholder indicated that Australia has one of the more burdensome regulatory frameworks of all the countries in which it operates, given the number of different jurisdictions with differing obligations and the number of bodies with whom each operator must reach agreement before offering betting services. The AWC, as the peak body for the industry, suggested that a national regulator is necessary to fully address these concerns.

While cost of compliance was raised as a concern by operators, insufficient evidence has been provided to this Review to identify the magnitude of these costs and the impact of these costs on the odds offered to consumers. It is therefore not clear to what extent the cost of compliance across jurisdictions is a key driver of illegal offshore wagering or any of its subsequent impacts. It should be noted, however, that the need for nationally consistent regulation was identified as a key priority by industry and non-industry stakeholders alike, particularly regarding consumer protection and advertising.

## 4.4 Consumer protection

The fourth Term of Reference for this Review states that the Review will examine 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.

The efficacy of consumer protection and harm minimisation under the existing regulatory framework was a key concern of all stakeholders. In particular stakeholders indicated concern with the following:

- The differences in the consumer protection frameworks between jurisdictions that lead to inconsistent levels of protection to users. In particular, where this leads to ‘jurisdiction shopping’ in search of less robust consumer protection obligations that may lead to poorer outcomes for consumers. In addition, those operators licensed in jurisdictions with more robust consumer protection obligations may be placed at a competitive disadvantage as a result of greater costs of compliance.
- The level and nature of advertising across jurisdictions. In particular there was concern that this advertising is easily viewed by children and that the extent of advertising risks normalising gambling behaviour.
- The failure of the existing framework to protect consumers, particularly those presenting signs of at-risk or problem gambling behaviour.

While these issues are not directly related to offshore wagering, they are important to the Review given the fourth Term of Reference and the interconnectedness of the onshore and offshore markets for wagering. While it is difficult to generate a clear understanding of the impacts and effectiveness of the consumer protection framework, given a lack of consistent and reliable data gathered over time, stakeholders indicated concern that the current levels of protection are insufficient to address the harms associated with gambling and that the Australian consumer protection framework is less robust than global best practice. The sections below consider these issues in greater detail and Section 5 considers policy and regulatory options that may address these issues.

### Differences between jurisdictions

As discussed above, a number of stakeholders raised concerns about the differences between the regulatory frameworks across jurisdictions within Australia. This concern extends to the various consumer protection and harm minimisation measures required between jurisdictions and was shared by industry and non-industry stakeholders. In particular, stakeholders noted that:

- differing obligations based on the jurisdictions where operators are licensed provide varying levels of protection between operators and lessens the overall robustness of consumer protection for users of Australian operators; and
- differing obligations with respect to advertising and the provision of inducements increase compliance costs, particularly over distribution channels that are national in scope, such as through subscription television or online channels.

In general, differences between jurisdictions can raise compliance costs for operators, making them less competitive on price compared with offshore operators. Stakeholders also mentioned that a nationally consistent approach could effectively implement harm minimisation measures such as self-exclusion and pre-commitment.<sup>156</sup>

As a result, the effectiveness of approaches to protect consumers, a key component of the Terms of Reference, is limited by the fragmented approach to consumer protection measures across jurisdictions. This indicates that there is scope to improve the effectiveness of consumer protection through a nationally consistent approach. This was considered a significant problem by industry and non-industry stakeholders. Section 5 considers potential measures to provide a more consistent framework for consumer protection in Australia.

## Level of advertising

While advertising was not explicitly referred to in the Terms of Reference, it was a key focus of the stakeholder consultation process. There was also a widely held view that the level and nature of advertising on wagering was excessive compared to community standards and that there should be a reduction in the pervasiveness of advertising. While there was some disagreement over the impacts of excessive advertising, stakeholders were consistent in their view that it would be optimal for the quantity of advertising to decrease. In particular, stakeholders raised the following concerns regarding the current level of advertising:

- that it is pervasive during sporting broadcasts;<sup>157</sup>
- that it has increased significantly in recent years and advertising on sporting code “apps” does not meet best practice associated with not advertising to minors;<sup>158</sup> and
- that gambling is being legitimised and normalised for adolescent children.<sup>159</sup>

As a result, a number of stakeholders sought additional restrictions on advertising by online wagering operators such as prohibition of advertising for online wagering services during sports broadcasts and during children’s programming.<sup>160</sup>

Importantly, industry stakeholders indicated that the existing approach to advertising is driven by market competition and suggested that they would welcome a nationally consistent approach that would reduce the overall level of advertising, particularly through channels with high levels of visibility amongst children. In addition, a nationally consistent approach would address concerns over the guidelines for advertising across jurisdictions.

There were also some stakeholders who sought the complete prohibition of marketing.<sup>161</sup> However, the industry also highlighted that the ability to advertise is the key advantage that onshore operators have over offshore operators. As a result, any consideration of adjustments to the existing approach to advertising will need to balance the need for operators to reach customers and community expectations. Section 5 considers potential policy and regulatory options regarding the advertising of wagering products in more detail.

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<sup>156</sup> bet365 submission, p 2.

<sup>157</sup> Financial Counselling Australia submission, p 35.

<sup>158</sup> Australian Hotels Association submission, p 9.

<sup>159</sup> Victorian Responsible Gambling Foundation submission, p 8.

<sup>160</sup> Sen. Nick Xenophon submission, p 3. Financial Counselling Australia submission, p 35.

<sup>161</sup> Alliance for Gambling Reform submission, p 1.

## Stakeholder concerns with the failure to protect consumers

As part of the consultation phase, the Review received submissions from stakeholders regarding the failure of the existing regulatory framework to protect consumers. A number of these stakeholders suggested that this was a larger concern than the impacts of illegal offshore wagering on consumer protection given the size of the two markets and the behaviour of operators in the domestic industry. Specifically, the FCA noted that:

*“At every level, the Australian online gambling industry performs poorly when it comes to basic consumer protections.”<sup>162</sup>*

In particular, stakeholders raised concerns with the following aspects of the consumer protection framework:

- the **easy access to credit or deferred settlement facilities**, which allows gamblers to bet in excess of their capacity to pay;
- the **ineffectiveness of self-exclusion measures** that require the consumer to self-exclude from all accounts individually;
- the **level and structure of inducements** that seek to modify consumer behaviour so that users bet a greater amount and in riskier forms; and
- the **use of commission agents and sales representatives to target consumers** particularly where these agents are aware that the consumers display at-risk gambling behaviour.

While industry and non-industry stakeholders agreed that the existing consumer protection measures could be improved, there was disagreement on the extent to which the existing framework fails to protect consumers from adverse outcomes. In particular, industry stakeholders indicated a need to balance the need for effective consumer protection while considering the overall consumer experience.

In addition, industry stakeholders have indicated that the evolving national regulatory landscape has addressed or is in the process of addressing a number of the gaps in consumer protection. For instance, changes recently implemented or expected to be implemented in the near future include:

- In October 2015, the Northern Territory strengthened the process for bookmakers, including online bookmakers, to provide deferred settlement facilities.
- In October 2015, the South Australian Independent Gambling Authority proposed new regulations to address poor practices by online sports betting operators including a strengthened process for the provision of deferred settlement facilities.
- In November 2015, the NSW Government announced new and expanded restrictions on the advertising of live odds and inducements. These changes will be implemented from 1 December 2015 for the changes to inducements and 1 March 2016 for the advertising of live odds.
- In November 2015, the Australian Capital Territory released a discussion paper seeking to inform its investigation of inducements and loyalty schemes. While this is focused on physical facilities, bodies licensed under the Act are also subject to the ACT Code of Practice.

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<sup>162</sup> Financial Counselling Australia submission, p 3.

- From March 2016, the Northern Territory will have a strengthened Code of Practice for Responsible Online Gambling, which includes greater definition of the obligations for corporate bookmakers.

These changes may address some of the concerns of non-industry stakeholders regarding the effectiveness of consumer protection. However, all these measures are jurisdiction based, meaning that these changes will not impact all industry operators. As a result, the recent changes are not likely to completely address problems associated with an ineffective consumer protection framework. Section 5 outlines potential measures that may more completely address these concerns and that have been identified and assessed by the Review.



## 5 Policy and Regulatory Options

Section 4 of this Report examined the impacts of illegal offshore wagering and the rationale for action and intervention to address these issues, with key inputs into this discussion coming from a range of stakeholder consultations and written submissions. In particular Section 4 noted that:

- Assessments of the size of the offshore wagering market vary considerably.
- While the size of the market is uncertain the potential economic and social impacts of offshore wagering are more apparent and may be significant even if the market size is at the lower end of the estimates identified.
- Aspects of the existing regulatory framework may limit the competitiveness of domestic operators relative to offshore operators. This includes barriers that restrict the ability to compete on product offering and value as well as the costs of compliance associated with multiple jurisdictions.
- The efficacy of the consumer protection framework in Australia is impacted by inconsistency across jurisdictions. In addition, there is some evidence that existing guidelines around advertising, credit betting and harm minimisation have been insufficient to meet community expectations.

While the size of the market remains uncertain there is sufficient consensus among stakeholders to indicate that there is a need for a regulatory response to reduce the impact of the illegal offshore wagering market and to increase and harmonise the measures in place to protect consumers from the harms associated with gambling, including exposure to those offshore providers licensed in jurisdictions without robust consumer protection frameworks.

The sections below consider potential measures available to the Government to address these key issues. These measures have been identified either through the consultation phase of this Review or through a comparative analysis of the regulatory frameworks governing online gambling in international jurisdictions. Section 6 of this Report identifies the key findings and recommendations of this Review.

### 5.1 Establishing an evidence base for decision making

As discussed in Section 4.1.2, there is some uncertainty regarding the size of the offshore market for online wagering and its associated impacts. In addition, there is some uncertainty associated with understanding the broader impacts of gambling as research findings are constrained by their methodology and data source.

In general, the development of effective regulation requires an understanding of the size and scope of the problem that is being addressed. In the case of regulation of the online gambling or wagering markets, this refers to an understanding of:

- the size of the offshore wagering market and its subsequent economic and social impacts; and
- the size of the onshore online and land-based gambling markets and their subsequent economic and social impacts.

For both markets, the economic and social impacts include the costs associated with at-risk and problem gambling behaviours. At present, there is some uncertainty associated with the size of the offshore wagering market and uncertainty around the prevalence and impact of at-risk and problem gambling behaviours.

While there is sufficient consensus among stakeholders to indicate that there is a need for a regulatory response to the issues identified in Section 4, going forward the Government may opt to invest in dedicated research into these specific issues to reduce the existing level of uncertainty and provide a more robust evidence base for the development of future adjustments to the regulation of online gambling.

A number of stakeholders indicated that the UK is a good example of a jurisdiction understanding the size and scope of the online gambling market and the prevalence of at-risk gambling over time. In the United Kingdom, periodical prevalence studies have been conducted by the Gambling Commission and the Department of Health. These studies provide a robust and consistent whole-of-jurisdiction time series outlining consumer behaviour and the prevalence of at-risk or problem gambling. As a result, changes in the market over time are readily observed and the impact of regulatory changes can be assessed.

Other potential approaches to developing this research base may involve additional reporting requirements placed on domestic operators, or more effective and coordinated use of data reported under existing reporting requirements. Given the difficulties involved in generating robust information, these methods may be used to supplement information sourced through surveys and other research approaches.

If a research program was established in Australia, it would need to be consistent in implementation and national in scope in order to provide robust and consistent data to inform national policies. The research program would need to focus on existing information gaps, including the size of the market and the prevalence of at-risk behaviour.

As noted during the stakeholder consultations, investment in research is important and should be funded in advance to ensure the research is comprehensive, robust and complete. The Commonwealth, State and Territory governments do invest in gambling research; however, this research is generally ad hoc, limited to individual topics and specific to jurisdictions. There may be scope for existing research efforts and investments to be coordinated more effectively to meet the national-level research needs.

There have been nationally coordinated research efforts funded by Commonwealth and State and Territory regulators. Gambling Research Australia was a partnership between the Commonwealth, State and Territory governments to initiate and manage a national gambling research program between 2003 and 2014. A similar approach, with an adjusted model, may be able to effectively deliver nationally relevant research.

The Commonwealth also funds the Australian Gambling Research Centre (AGRC), located within the Australian Institute of Family Studies, a statutory research agency of the Australian Government. The AGRC has a focus on long term research of national significance relating to problem gambling and gambling harms, with an emphasis on research that informs policy and program development.

Alternatively, industry funding may be used to facilitate this research. In this case a Government agency or some other independent agency, such as a board with broad involvement from industry, government, community and researchers, would be required to coordinate the research to ensure that it is conducted at arm's length from industry.

The Review ultimately found that to facilitate the development of good public policy there is a need to refocus efforts on national level research supported by all levels of government in Australia.

## 5.2 Reducing the size of the illegal offshore wagering market

Section 4.1 of this Report identified the key impacts associated with Australian consumers gambling in the illegal offshore wagering market. The size of a number of these impacts increases based on the size of the illegal offshore wagering market. For instance, as the size of the illegal offshore wagering market increases:

- the amount of tax that would ordinarily be expected to be collected by Commonwealth, State and Territory governments is reduced as offshore operators do not pay domestic gambling taxes, GST or income taxes;
- the amount of product fees that would ordinarily be expected to be collected by Australian sporting and racing bodies is reduced as offshore operators typically do not meet the obligations associated with race fields legislation or enter into integrity agreements with racing and sporting bodies; this may have flow on effects for community investment by racing and other clubs;
- the number of disputes between Australian consumers and offshore operators may increase, resulting in a greater failure of consumer protection; and
- the challenges to integrity posed by the lack of transparency associated with offshore wagering may require greater investment by sporting and racing bodies associated with maintaining integrity.

Measures that are able to reduce the size of the offshore market would therefore be expected to reduce these impacts on Commonwealth, State and Territory governments, industry and sporting and racing bodies and the community. The sections below consider measures identified in this Review as potential options for reducing the size of the offshore market. These options are not exclusive and may be implemented as part of a suite of measures aimed at disrupting, rather than eliminating, the illegal offshore wagering market.

Unlike jurisdictions such as the United States, where prohibition of online gambling exists, in Australia a legal online wagering market is accessible to customers seeking access to these services. As a result, a policy associated with disrupting the offshore market may be expected to have greater success than in jurisdictions with no legal alternative to offshore gambling markets.

## Clarifying the definition of prohibited services under the Act

A number of stakeholders commented on the existing wording of the Act and its impact on the potential enforcement and prosecution of breaches of the Act. In particular there was some concern that the provision of services by offshore operators is enabled by the wording of the Act, which therefore increases the size of the offshore wagering market. There was some concern that the Act is unclear regarding what services are prohibited and that this results in onshore and offshore operators providing services that should be prohibited. In particular, stakeholders mentioned that:

- the Act does not directly prohibit the provision of wagering services by offshore providers;
- the current definitions within the Act make it difficult to enforce; and
- the Act does not make it illegal to bet on offshore websites.

In addition, there was some concern that enforcement of the Act is difficult given that offshore providers operate beyond the reach of enforcement agencies in Australia. A potential approach identified to address this concern would be to extend enforcement to affiliates and agents of the offshore operators who may be more easily reached by enforcement agencies in Australia (see the 'Enforcement' section below).<sup>163</sup>

The focus of this Review is on the economic impacts and profile of the illegal offshore wagering industry and the effectiveness of existing consumer protection mechanisms and other regulatory measures. Importantly, at present the Act does not prohibit the provision of all services offered by offshore operators. Instead the Act:

- prohibits the provision of certain gambling services through interactive channels; and
- provides an exemption for online wagering, except in the case of in-play wagering for sports.

As a result, not all offshore operators are by definition, acting in contravention of the Act by providing wagering services to Australian customers. However, these operators may be acting contrary to State- and Territory-based race fields legislation and commercial licensing arrangements by not paying product fees. This was raised by a number of stakeholders of the Review, including the submission of the gambling regulator of Gibraltar, which argued that the current labelling of offshore operators as illegal was not consistent with their understanding of the Act.<sup>164</sup>

While the Act does not deem all offshore wagering activity as illegal, it should be noted that the negative impacts associated with illegal offshore wagering typically apply to other forms of offshore wagering as well. For instance, an offshore operator providing only exempt wagering services to Australian customers would not be paying taxes to Commonwealth, State and Territory governments and would not typically be providing betting information to Australian sporting and racing bodies.

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<sup>163</sup> Australian Bookmakers Association submission, p 3.

<sup>164</sup> Gibraltar Gambling Commissioner submission, p 1.

A number of stakeholders suggested amending the Act so that all operators providing wagering services to Australian residents must be licensed in Australia.<sup>165</sup> It was noted that introducing this requirement has been effective in reducing the market share of offshore operators in European jurisdictions and this approach had widespread support amongst stakeholders of this Review. In Europe, the majority of jurisdictions that license online gambling services require every operator of online gambling offering services in their territories to obtain a licence within the jurisdiction.<sup>166</sup>

For instance, in 2011 the UK moved from a requirement for operators to be licensed in any jurisdiction with robust regulatory frameworks to a domestic licensing requirement. This was implemented in part due to the leakage of online gambling activity offshore.

In addition to clarifying whether offshore wagering services are prohibited, stakeholders commented that the existing wording of the Act is not sufficiently clear to enable successful enforcement and prosecution of potential breaches of the Act. This was raised specifically in regard to the introduction of 'click to call' style products, which effectively provide in-play sports wagering services online through a mobile device in contravention of the intent of the Act. Stakeholders who were against the expansion of online wagering products to include in-play betting on sports typically sought a strengthening of the Act to close these loopholes.<sup>167</sup> The arguments for and against in-play wagering are considered in more detail in Section 5.3.

It should be noted that a number of international jurisdictions have regulatory requirements that operators providing services to domestic customers be operating according to the law of each jurisdiction in which they operate. As a result, clarifying the definitions within the Act would also provide international regulators with a clearer view of what is prohibited within Australia and give offshore operators additional incentive to be licensed in Australia so that they do not risk their licences in other jurisdictions.

Another existing concern identified as part of the consultation phase of the Review was that placing bets with offshore operators is not currently illegal in Australian States and Territories other than NSW. There was some discussion as to whether this should be the case, although stakeholder views on this were more divided. Some stakeholders suggested this would criminalise ordinary people and would be very difficult to enforce.<sup>168</sup>

There are two strategies that could be adopted to reduce the number of offshore operators conducting business in Australia:

- liberalising the onshore market; and/or
- strengthening the regulatory and enforcement environment within Australia, including consideration of harm minimisation and consumer protection.

A key principle applied in many jurisdictions in addressing the issue of expanding product availability has been to ensure that robust and effective harm minimisation and consumer protection measures were in place and operational.

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<sup>165</sup> Racing Australia submission, p 3.

<sup>166</sup> European Commission (2012), Online Gambling in the Internal Market, Commission Staff Working Document, October.

<sup>167</sup> Greyhound Racing Victoria submission, p 5.

<sup>168</sup> Name withheld submission, p 1.

The current harm minimisation and consumer protection systems operating across Australian States and Territories are varied and inconsistent, enabling users and/or operators to avoid measures designed to assist at-risk individuals or people who are adversely affected by gambling. Any changes should be evidence-based and only allowed once a more robust regulatory and harm minimisation framework has been established.

## Enforcement of the Act

As discussed above, there was some concern raised by stakeholders as part of this Review regarding the existing approach to enforcing the Act and any potential breaches of the Act. In particular, a number of submissions noted the following evidence supporting their view that the existing approach to enforcement is not sufficient:

- the lack of any prosecutions since the inception of the Act in 2001;<sup>169</sup> and
- the recent developments with regards to ‘click to call’ products that seem to circumvent the prohibitions on in-play wagering in the Act but were not acted on by the Australian Federal Police (AFP).<sup>170</sup>

Effective enforcement of the Act is likely to reduce the scope for offshore operators to provide services to Australian customers, thereby reducing the size of the offshore wagering market. The reasons provided by stakeholders for the ineffectiveness of enforcement were varied. It was noted by some stakeholders that the existing wording of the Act restricts the ability of enforcement bodies to actively enforce the existing prohibitions within the Act, while other stakeholders suggested that this was a function of the core priorities of the agencies tasked with this responsibility (ACMA and AFP) being elsewhere and that a national regulator dedicated to gambling would be better placed to prioritise enforcement of the Act.

A number of stakeholders suggested that the existing approach to enforcement does not present a sufficient deterrent to offshore operators seeking to act contrary to the Act.<sup>171</sup> This view was shared by online operators with reference to offshore wagering providers who see themselves as ‘out of reach’ of the Act, as well as responsible gambling organisations who noted that the lack of enforcement also fails to ensure that onshore operators are acting appropriately.<sup>172</sup>

A number of potential solutions were identified during the consultation phase of the Review that may improve enforcement levels going forward. These include:

- **Better defining prohibited activities within the Act.** As discussed above, the existing definitions in the Act may restrict the effectiveness of enforcement efforts.
- **Better targeting of enforcement resources** to more effectively leverage the existing expertise of the State and Territory based gambling regulators as well as ACMA and AFP.

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<sup>169</sup> Australian Hotels Association submission, p 6.

<sup>170</sup> Sen. Nick Xenophon submission, p 4.

<sup>171</sup> Confidential submission.

<sup>172</sup> Financial Councillors Australia submission, p 3.

- **Implementing new penalties.** It was suggested that the ACMA should have the power to issue civil penalties (as opposed to requiring the AFP to charge people with criminal offences).<sup>173</sup> This was a key recommendation of the 2012 DBCDE review of the Act. Civil penalties require a reduced standard of evidence than criminal charges. As a result, the availability of these penalties may provide the enforcement bodies with a more effective tool for seeking redress from operators who breach the Act.
- **Extending the reach of enforcement** – by extending penalties to principals, affiliates and agents and by placing offshore offenders on the Movement Alert List (MAL).<sup>174</sup> An alternative to this suggestion would be using the Passenger Analysis Clearance Evaluation (PACE) system to monitor any attempts by these individuals to enter Australia.

Extending the reach of enforcement has been used in the United States to enforce its prohibition of online gambling services. In particular, stakeholders noted that well publicised arrests of principals and directors of online gambling websites (see the box below) act as a strong deterrent for offshore operators providing services to US customers.

*Box 5-1: Arrests of principals and directors of online gambling websites*

Online gambling is largely illegal in the United States, apart from the states of Nevada, New Jersey and Delaware. Providers licensed in these states and overseas operators are not able to offer services to residents of states other than those where the provider is licensed.

The United States has taken an active approach to enforcing the prohibition on online gambling through the use of financial payment blocking, website blocking and the arrest of owners and principals of offshore operators as they enter the country. High profile examples of this include:

- David Carruthers, Chief Executive of BetonSports, arrested in July 2006 while transiting through the US. He was subsequently sentenced to 33 months jail in 2010; and
- Peter Dicks, Chairman of Sportingbet, arrested in September 2006 at New York’s JFK Airport, over possible breaches of Louisiana morality laws. Extradition efforts in this case failed and he was subsequently allowed to return to the UK.

In addition, US authorities laid charges against eleven people, including the founders of a number of online poker operators servicing the US market in April 2011 for trying to avoid restrictions around the processing of payments to online gambling providers.

*Sources:*

*The Guardian (2006), US crackdown claims chairman of Sportingbet, September 8.*

*New York Times (2010), Gambling Executive Sentenced to Prison, January 8.*

*The Times (2006), Dicks free to return home as extradition fails, September 29.*

*Bloomberg Business (2011), Internet Poker Entrepreneurs Charged With Fraud, U.S. Says, April 16.*

It was argued by some stakeholders that additional penalties or extending the reach of enforcement would be ineffective without greater commitment to enforcement or greater clarity in the Act. As a result, no one potential solution would be effective in addressing the existing concerns regarding enforcement of the Act. Instead a number of changes may be necessary to ensure effective enforcement.

173 Tabcorp submission, p 8.

174 Tabcorp submission, p 8.

To facilitate better enforcement, establishment of a national policy framework using existing regulatory architecture would provide clarity around the respective roles of regulatory and enforcement bodies and facilitate better outcomes for industry and consumers.

This would also enable stronger enforcement at both the Commonwealth and the State and Territory level.

### **Blocking access to offshore operators**

Another potential approach to reducing the size of the Australian wagering market serviced by offshore operators is to seek to block the access of Australian users to offshore services. As part of the consultation phase of this Review, and in line with the 2012 DBCDE Review of the Act, a number of stakeholders raised the potential use of website blocking methods or financial transaction blocking methods to restrict access to offshore operators for Australian users.

In general, there were conflicting views on whether these approaches should be used to reduce the size of the offshore wagering market. While stakeholders typically supported restricting access to offshore operators<sup>175</sup>, a number of stakeholders indicated that these measures, particularly website blocking, were quite easy to avoid and therefore were not appropriate to impose obligations on service providers.<sup>176</sup> Typically stakeholders pointed to instances of website and financial payment blocking in other jurisdictions, which have met with mixed results. The table below provides a summary of blocking measures used in other jurisdictions and where possible, an assessment of their effectiveness.

In all cases of website blocking and financial payment blocking, given the ability to circumvent these blocks, stakeholders consistently supported the establishment of safe harbours to protect service or content providers from being liable for any issues arising from websites or payments that were not successfully identified as being illegal or in the case of inadvertently blocking access for legal websites or payments.<sup>177</sup> This was a key recommendation of the 2012 DBCDE report, providing scope for financial institutions to provide voluntary payment blocking services. Recommendation 8 of the DBCDE report stated that:

*The IGA should be amended to provide a safe harbour for financial institutions that choose to voluntarily block financial transactions between Australian consumers and unlicensed online gambling service providers (or any intermediaries involved in such transactions) as part of their services to customers. The list of prohibited gambling service providers identified and published by the ACMA should be drawn to the attention of financial institutions by the department.*<sup>178</sup>

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<sup>175</sup> Sen. Nick Xenophon submission, p 4.

<sup>176</sup> Australian Wagering Council submission, p 33.

<sup>177</sup> Digital Industry Group submission, p 2.

<sup>178</sup> DBCDE 2013, Review of the Interactive Gambling Act 2001. Australian Government. Canberra.



Table 5-1: Blocking access to offshore operators – Summary of international examples

Jurisdiction	Blocking scheme	Description
Belgium	Financial payments and website	<p>The Belgian Gaming Commission maintains a blacklist of unlicensed sites since February 2012. The Commission has entered into an agreement with a number of ISPs to block sites on the blacklist.</p> <p>The Commission has also entered into an agreement with the country's banking trade association to initiate payment blocking. Along with the USA, Belgium's enforcement approach is considered the most effective in the world.</p>
Bulgaria	Website	Website blocking for blacklisted sites has been in place in Bulgaria since 2013.
Cyprus	Website	Website blocking for blacklisted sites has been in place in Cyprus since 2013. So far more than 270 sites have been added to the blacklist.
Denmark	Financial payments and website	Website and payments blocking are both available to Danish regulators to address unlicensed operators. Denmark has increased the market share associated with licensed operators in recent years, but it is unclear to what extent this is associated with any blocking activities.
Estonia	Website	ISPs are obliged to block access to unlicensed operators. Processing providers are also prohibited from providing payments to unlicensed operators.
France	Financial payments and website	Website blocking was introduced in France since 2010. Payments blocking is also available to regulators, but has not yet been implemented. France has improved its market share for licensed operators, although this is likely due to the opening of the market to the private sector.
Greece	Website	Website blocking has been in place in Greece since 2011 and over 400 sites have been added to the country's blacklist.
Italy	Website	Italy was one of the first operators in Europe to block unlicensed websites. The Customs and Monopoly Agency of Italy has indicated that these blocks are easily avoided.

Jurisdiction	Blocking scheme	Description
Norway	Financial payments	Norway has a long experience of payment blocking having implemented payment blocking in 2010. While this was found to complicate access to gambling operators without a licence, it was not as effective as anticipated.
Spain	Financial payments and website	Financial payments and website blocking is available based upon requests from the regulator.
United Kingdom	Financial payments	In the UK, while financial payment blocking is not part of the regulatory framework, there are voluntary agreements with the major credit card companies to restrict payments to illegal gambling providers.
United States of America	Financial payments and website	<p>As discussed in Box 3-3, the UIGEA restricts financial payments to online gambling operators and blocks the use of credit cards for these purposes. Online gambling is largely prohibited in the United States, and while the UIGEA has not successfully eliminated the online wagering market, the size of the market has decreased since 2006 on the basis of financial payment blocking, domain seizures and well publicised enforcement measures.</p> <p>In addition to financial payment blocking, US authorities have actively blocked access to websites and in some cases seized domain names, such as those for a number of established online poker operators.</p>

## Website blocking

Stakeholders generally observed that website blocking is ineffective in stopping access to offshore websites as:

- blocks can be avoided through the use of virtual private networks (VPNs) to hide the user's location;<sup>179</sup> and
- offshore operators can easily take measures to circumvent these blocks by changing their IP address or URL.<sup>180</sup>

In addition, representatives of the telecommunications industry confirmed that this reactive style of website blocking, while technologically feasible, is easily avoided and is not effective for all users, such as those accessing the internet through a private Domain Name System (DNS).<sup>181</sup> More proactive measures of website blocking, such as filters that seek to identify and remove content or block access without a notice being provided, were not supported by the telecommunications industry and were not raised by other stakeholders.

However, it should be noted that this measure was still considered a useful measure to discourage the use of offshore operators and to raise awareness by some stakeholders. There are a number of different approaches that may be used to implement website blocking. The box below provides a brief outline of these options.

### *Box 5-2: Options for blocking access to the websites of offshore gambling operators*

As part of its submission to the Review, Sportsbet attached a report prepared by the Centre for Internet Safety (CIS) on website and financial payment blocking in the context of online wagering. This report included a brief summary of the potential approaches used to block access to websites.

In general, ISPs are responsible for implementation of blocking arrangements. This is commonly done by one of two methods:

- **DNS filtering** – where a user is prevented from accessing a pre-defined website; and
- **IP blocking** – which prevents the connection between a server/website and one or more Internet Protocol (IP) addresses.

According to the CIS, IP address blocking is the more common and effective form of blocking. However, CIS found that these measures are easily avoided through:

- the use of tunnelling software to bypass any blocking programmes;
- operators changing their website configuration to a different IP address; or
- the use of methods that hide a user's IP address (such as VPNs) to bypass these blocking methods.

*Source:*

*Centre for Internet Safety (2015), IP and Financial Transaction Blocking in the context of Online Wagering, April.*

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<sup>179</sup> Sportsbet submission, p 26.

<sup>180</sup> Sportsbet submission, p 26.

<sup>181</sup> Centre for Internet Safety 2015, IP and Financial Transaction Blocking in the context of Online Wagering, April.

Website blocking, if effective, would reduce the size of the offshore wagering market as customers face difficulty accessing offshore operators. While website blocking may be easy to avoid for motivated users, less motivated users would be expected to shift to the onshore market to avoid any disturbance associated with website blocking. This is consistent with the view that measures such as website blocking are more effective at disrupting, rather than eliminating, the illegal offshore wagering market. In particular, those Australians who are currently unaware that they are using offshore operators may shift to onshore operators as they become aware that their existing providers are not based onshore.

Website blocking as a mechanism is already a legal requirement in relation to websites under laws relating to child exploitation material and intellectual property. Website blocking is currently complaint-based. It could be implemented in relation to illegal offshore gambling either as a voluntary practice under relevant agreements or as a required practice under legislation. Compulsory website blocking in relation to illegal offshore wagering would require extensive consultation with industry stakeholders as a precursor to relevant legislative changes.

### Financial payment blocking

Financial payment blocking was also raised by a number of stakeholders and in the DBCDE review of the Act in 2012. Financial payment blocking refers to actions taken by financial institutions to block the transactions between an individual and an offshore wagering operator. Typically this refers to the blocking of payments using credit card facilities, but may also refer to the blocking of other forms of payment.

Some stakeholders consider that financial payment blocking is an important and effective method of restricting the access of Australian customers to offshore operators and noted that this had been done with some success in the United States.<sup>182</sup> However other stakeholders, including the AWC, suggested that evidence from the United States and Norway indicated that financial payment blocking was ineffective and costly.<sup>183</sup> The box below provides detail on the use and effectiveness of financial payment blocking in Norway. Discussion of the effectiveness of financial payment blocking in the United States has been provided in Box 5-3.

*Box 5-3: Evaluating the effectiveness of Norway's approach to financial transaction blocking*

In Norway, online gambling is delivered as a state monopoly service provided by Norsk Tipping and Nors Rikstoto, although there have been proposals made to open up the market. All other operators are therefore unlicensed at present.

Norway first implemented payment blocking measures to offshore gambling websites in June 2010 using merchant category codes (MCCs) as the basis for financial payment blocking.

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<sup>182</sup> Clubs Australia submission, p 8.

<sup>183</sup> Australian Wagering Council submission, p 33.

*Box 5-3: Evaluating the effectiveness of Norway's approach to financial transaction blocking*

A study evaluating the effectiveness of such measures concluded that:

- 35 per cent of online gamblers found it more difficult to access online gambling sites; and
- 28 per cent said that as a result of the measures it had become more difficult to gamble online.

The increased payment blocking measures had also impacted on the recruitment of new players to unlicensed gambling websites as the number of players on overseas websites had not increased. However, the payment ban has had less impact on the rate of gambling on offshore websites than expected by the regulators.

A Norwegian Gaming Board report released on 25 January 2012 showed that:

- 54 per cent of online gamblers played as frequently as they did prior to the prohibition; and
- 5 per cent of players played more frequently on foreign websites.

Financial transaction blocking has not been as successful as expected due to the ease of circumvention and the increasing use of payment options that do not involve financial institutions. The report has, however, reinforced that the ban has made it more difficult for casual players to use unlicensed providers and for unlicensed operators to recruit new online gamblers.

*Source:*

*Department of Broadband, Communications and Digital Technology 2013, Review of the Interactive Gambling Act 2001, March 2013*  
*European Commission 2013, Study on the role of regulators for online gambling: Authorisation, supervision and enforcement.*

It should be noted that in the cases of Norway and the United States financial payment blocking has been implemented in an environment with a less dynamic onshore market than Australia. In Norway, the sole onshore operators are Government monopoly gambling businesses and online gambling in the United States is largely prohibited. As a result, users seeking a competitive online gambling service are likely to seek methods of bypassing payment blocking. As a result, Norway is investigating opening up its market to private sector competition. In Australia however, there is a competitive onshore market, as a result financial payment blocking may provide sufficient disruption to offshore operators to encourage users to gamble with licensed operators.

The Review sought input from financial institutions and service providers to understand whether financial payment blocking is viable from a technological standpoint, noting that it has been implemented in a number of other jurisdictions worldwide either through legislation (as in the United States) or through voluntary agreements (as in the United Kingdom).

Consultations with representatives of banks and payment providers indicated that while some payments, such as those involving crypto currencies, e-wallets and bank transfers may be difficult to block under existing infrastructure, credit card payments could be blocked through the blocking of MCCs associated with gambling.<sup>184</sup>

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184 Clubs Australia submission, p 8.

While MCC blocking for credit cards would mean that customers could use other payment methods to access offshore operators, it would disrupt any transactions using credit cards, which is the most significant form of payment for online gambling and online e-commerce more broadly. This suggests that credit card blocking could be an effective tool to disrupt access to offshore operators and subsequently reduce the size of the offshore wagering sector.

While consultations with financial institutions and service providers indicated that blocking of financial transactions through credit cards was possible, there were a number of concerns identified with this approach, including:

- the incompleteness of credit card blocking, particularly given that more determined operators and users will use other forms of payment to access offshore sites;
- the potential for MCCs to be mishandled so that offshore operators would not be identified as gambling providers. While this concern was noted, there was some indication that existing auditing procedures would reduce the scope for this to occur in practice; and
- stakeholders did not agree on who is best placed to be responsible for blocking transactions (for instance, the issuing bank of credit card holders, the acquiring bank of credit card merchants or the credit card companies themselves).

While these concerns were noted by the Review, financial payment blocking, if effective, would reduce the size of the offshore wagering market as customers face difficulty transferring funds to offshore operators. While these forms of payment blocking may be easy to avoid for motivated users, less motivated users would be expected to shift to the onshore market to ensure access to these services.

This is consistent with the view that measures such as financial payment blocking should be used to disrupt, rather than eliminate, the illegal offshore wagering market and shift users to licensed and regulated operators.

Blocking of financial transactions is also required of banking and credit providers under anti-money laundering legislation. It could be implemented in relation to illegal offshore gambling either as a voluntary practice under relevant agreements or as a required practice under legislation. Compulsory transaction blocking in relation to illegal offshore wagering would require extensive consultation with industry stakeholders as a precursor to relevant legislative changes.

In all cases of website blocking and financial payment blocking, given the ability to circumvent these blocks, stakeholders consistently supported the establishment of safe harbours to protect service or content providers from being liable for any issues arising from websites or payments that were not successfully identified as being illegal.<sup>185</sup>

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<sup>185</sup> Digital Industry Group submission, p 2.

## Consumer education and awareness

A number of stakeholders indicated that a key reason why Australian customers use offshore wagering operators is because they are unaware that the operator is not based onshore, particularly given the betting products available (including Australian sports and races) and the design of the website.<sup>186</sup> As a result, a number of stakeholders indicated the potential for consumer awareness programs to discourage customers from using offshore operators.

Specifically, stakeholders identified consumer education, trademark labelling and awareness programs as potentially useful tools that could encourage users to avoid offshore wagering providers.<sup>187</sup> Specific measures include:

- A **trademark symbol** that could be used by licensed operators to indicate that they are licensed in Australia.<sup>188</sup> This is used in a number of other jurisdictions to signal to consumers that the website is regulated.
- **Advertising strategies** to outline the dangers of wagering on offshore websites and potentially also the dangers of online gambling more broadly.
- A **list of licensed operators** published on a government website, potentially maintained by the ACMA as the regulator.
- A **'name and shame' list of unlicensed operators** and potentially one for directors and principals, to be published on a government website (possibly the ACMA website).

While some stakeholders indicated that consumer education programs do not work in general, other stakeholders indicated that it is an important part of the suite of measures needed to reduce the size of the offshore sector. A number of these tools have been used in other jurisdictions to signal to customers and to industry which operators are licensed to provide gambling services to domestic customers and which operators are operating outside the existing regulatory framework.

Consumer awareness strategies, if effective, could reduce the size of the offshore wagering market as customers become aware of the potential impacts associated with gambling on offshore websites. While consumer awareness strategies may not impact the decision to use a specific operator for motivated users, it may impact the decision for those who would prefer an onshore operator. This is consistent with the view that measures that seek to reduce the size of the offshore wagering are likely to disrupt the market rather than eliminate it.

As part of a suite of harm minimisation and consumer protection measures, enhanced consumer education could be beneficial in highlighting the risks of wagering offshore. The options of a nation-wide trademark symbol, list of licensed operators and a 'name and shame list' would provide protection for consumers, while a national awareness raising campaign could be another element of a broader strategy to support harm minimisation and consumer protection.

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<sup>186</sup> Name withheld submission, p 1.

<sup>187</sup> Sen. Nick Xenophon submission, p 5.

<sup>188</sup> Australian Wagering Council submission, p 38.

### 5.3 Reducing barriers to competition for the domestic industry

Section 4.3 of this Report identified concerns about the ability of the domestic online wagering industry to compete with offshore alternatives given the existing regulatory framework. In particular, onshore online wagering operators indicated that they face a competitive disadvantage compared with offshore providers based on the products they are able to offer (specifically the ability to offer online in-play betting services on sports) and on value based on the odds they can offer customers.

While stakeholder input was mixed regarding the importance of in-play wagering on sports with regard to the competitiveness of the domestic industry, all stakeholders agreed that offshore operators are able to provide better value than domestic operators given that they are not required to pay gambling taxes or product fees.

It is unclear to what extent the existing leakage of online wagering activity offshore (and the subsequent negative impacts associated with offshore wagering) is caused by the competitive advantages available to offshore operators. While the present amount of online in-play sports wagering activity with offshore providers is likely to reflect a clear preference for this product, it is difficult to estimate the impact of the price advantage held by offshore operators. However, a competitive and dynamic domestic industry is typically important to encourage users to seek licensed onshore operators rather than unlicensed offshore operators.

The sections below consider the main policy and regulatory options to improve the competitiveness of the domestic industry identified as part of the consultation phase of the Review.

#### Product availability

As discussed above, evidence from consultations and submissions suggested that product choice is an important driver of illegal offshore wagering demand. In particular, corporate bookmakers and the major professional sporting bodies have suggested that the Australian prohibition on online in-play wagering for sporting events is driving Australian consumers to offshore operators.<sup>189</sup> In particular, the corporate bookmakers indicated that in jurisdictions where this form of gambling is legal, its market share is significant, indicating significant consumer demand for this product.

In Europe, where online gambling is generally legal, regulated in-play wagering is more than half of the total sports betting market (see the figure below). In other regions, such as Oceania, where there is typically less access to online gambling, the share of the sports betting market attributed to in-play is much less. However, the importance of this type of gambling to Australian consumers was disputed by the VRGF, which indicated that the likely use of in-play wagering in the offshore wagering market was overstated.<sup>190</sup>

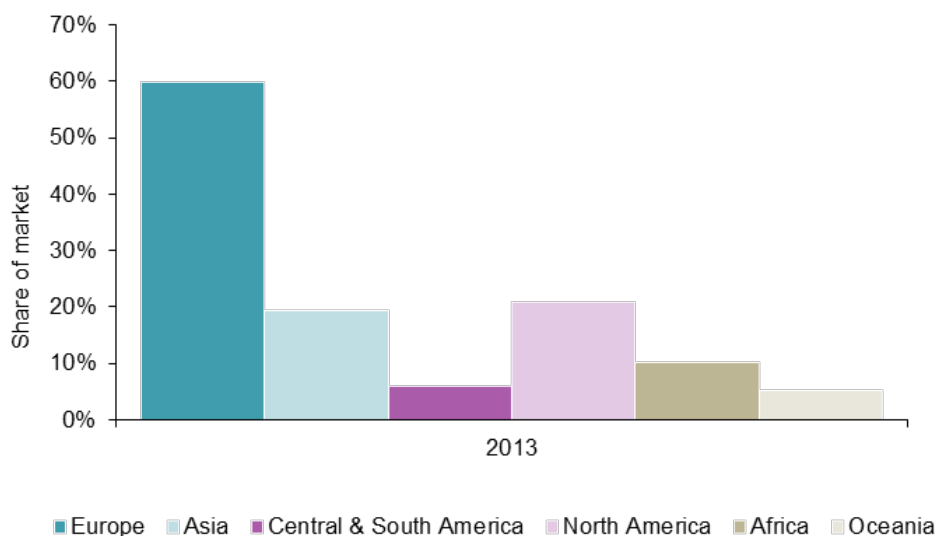
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<sup>189</sup> Australian Wagering Council submission, p 19. The Coalition of Major Professional and Participation Sports submission, p 3.

<sup>190</sup> Victorian Responsible Gambling Foundation submission, p 18.



Chart 5-1: Market share of online sports betting market attributed to in-play betting by region



Source: GBGC 2015 *Interactive Gambling Dataset 2015*

According to GBGC, online in-play wagering in Oceania in 2013 amounted to \$64.7 million in GGR and this was estimated to have grown to \$84.1 million in 2014. GBGC predicts that the online in-play wagering market will continue to grow in Oceania to around \$120 million by 2019. Given the size of the Australian gambling market compared with the remainder of Oceania, it is expected that these estimates are reflective of the Australian experience as well.

H2GC data provided as an appendix to the AWC submission also indicates that the online in-play market is growing quickly. H2GC estimates that online in-play wagering in Australia in 2014 amounted to \$218.1 million in GGR, of which 98.6 per cent occurred offshore. This is broadly in line with responses to the consultations, which indicated that in-play wagering was focused on sports (prohibited under the Act) rather than racing (allowed under the Act).<sup>191</sup> H2GC also indicated that this was expected to grow significantly in the years to 2020.

This data suggests that there is a significant demand for online in-play sports wagering in Australia. In addition, given the international experience, this would likely be a popular form of wagering if the prohibition was relaxed.

It should be noted that the DBCDE review of the Act in 2012 recommended that the prohibition on in-play wagering on sport be lifted. A number of stakeholders referred to the recommendations of the DBCDE Report throughout their submissions. At the time, the DBCDE noted that the prohibition of in-play wagering was inconsistent with the principle of platform neutrality and that:

*'This approach should help consumer understanding of the rules, as well as reducing compliance costs for gambling service providers'.<sup>192</sup>*

<sup>191</sup> Greyhound Racing Victoria submission, p 5.

<sup>192</sup> DBCDE 2013, Review of the Interactive Gambling Act 2001. Australian Government. Canberra.

Broadly speaking, the ‘online only’ wagering operators and sporting bodies support a change to the existing prohibition on online in-play sports betting, as it would:

- provide an incentive for Australian consumers to bet with onshore operators;<sup>193</sup>
- 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;<sup>194</sup> and
- be consistent with regulatory practices around the world that do not differentiate between pre-event and in-play wagering.<sup>195</sup>

A number of stakeholders, however, did not support a relaxation of the prohibition on online in-play sports betting.<sup>196</sup> These stakeholders typically sought no change,<sup>197</sup> or a strengthening of the existing prohibition to address the recent development of ‘click to call’ products by online gambling providers (as per the discussion in Section 5.2).<sup>198</sup> In some cases stakeholders sought expansion of the prohibition to include online racing products or all in-play wagering products.<sup>199</sup>

Typically, stakeholders who sought to maintain or extend the prohibition on online in-play wagering products were those with significant land-based operations, racing bodies and responsible gambling advocates.

In general, the reasons given for continuing the prohibition were as follows:

- the issue of in-play wagering was overstated and would not likely impact the size of the illegal offshore market;<sup>200</sup>
- allowing in-play wagering on sport would introduce significant integrity issues such as concerns about match-fixing;<sup>201</sup>
- that online in-play wagering on sport would be expected to result in an increase in behaviour consistent with problem gambling<sup>202</sup>; and
- that online in-play wagering on sport would reduce the amount of money wagered on racing (either through its popularity or because of an effort by online operators to ‘push’ this product), which would harm the traditional racing industries economically.<sup>203</sup>

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193 Australian Wagering Council submission, p 19.

194 Australian Wagering Council submission, p 16.

195 bet365 submission, p 9.

196 Sen. Nick Xenophon submission, p 1.

197 Canberra Greyhound Racing Club submission, p 5.

198 Greyhound Racing Victoria submission, p 5.

199 Victorian Responsible Gambling Foundation submission, p 22.

200 Victorian Responsible Gambling Foundation submission, p 2.

201 NSW Trainers Association submission, p 1.

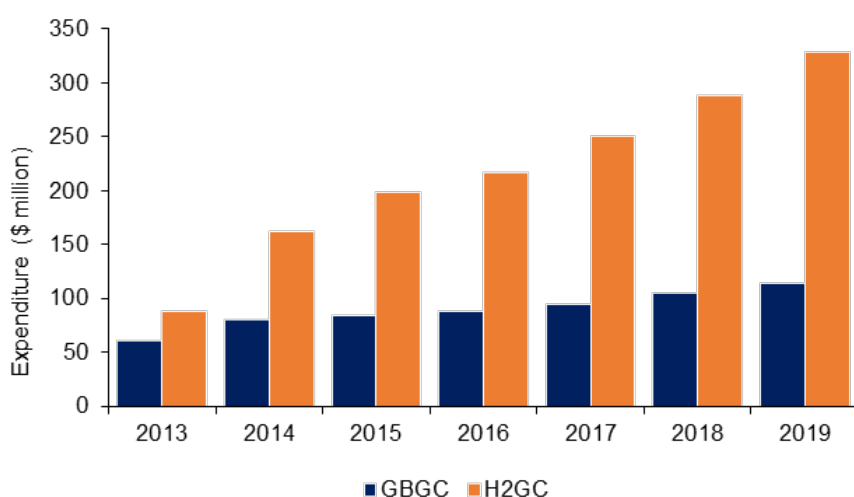
202 Australian Hotels Association submission, p 9.

203 Confidential submission.

Importantly, the UK Gambling Commission provided a submission to this Review indicating that the UK had previously considered whether to ban in-play wagering but considered that a robust regulatory framework would be best to address concerns associated with sports and racing integrity. Since this decision was made, the UK's experience suggested that the concerns associated with sports integrity and problem gambling have been unfounded in practice.<sup>204</sup> Given the UK experience, it may be appropriate to ensure that the regulatory framework is sufficiently robust prior to considering any changes in product availability in Australia. Section 4 highlights the existing weaknesses in the Australian regulatory framework; options to address these weaknesses are discussed further in Section 5.4.

If the prohibition on in-play wagering was lifted, it would be expected that the market share of onshore operators providing in-play betting services would mirror the market share of the online pre-event market. Based on H2GC and GBGC data, this would result in a significant shift to onshore wagering and a reduction in the subsequent economic impacts as outlined at a high level in the chart below.

*Chart 5-2: Projected onshore expenditure on in-play wagering based on existing onshore market share*



Source: GBGC 2015 *Interactive Gambling Dataset 2015*. H2GC, *Australian Offshore Interactive Wagering Independent Report, Prepared for Australian Wagering Council*.

In addition to in-play wagering, a number of submissions referred to the status of micro-betting, which refers to a specific category of in-play gambling that involves the placement of bets that are repetitive and of a high frequency (for example, on a per ball basis in a game of cricket or a per point basis in tennis) and where the time between placing a bet and knowing the outcome is very short (usually less than five minutes, excepting appeals, intervals and interruptions).

<sup>204</sup> Gambling Commission (UK) submission, p 10.

In general, while some submissions noted that this form of betting is available elsewhere in the world, no stakeholders suggested that it was necessary for this type of betting product to be made available in Australia. The DBCDE report in 2012 recommended that these types of bets be prohibited across all platforms and technologies due to concerns of potential negative impacts associated with at-risk gambling behaviour and integrity concerns.

A number of stakeholders mentioned that micro-betting is currently not available in Australia. This is because sporting bodies have not given their approval for these types of bets, which is a requirement under the integrity agreements that wagering operators enter into with sporting bodies for all betting markets on Australian sport.<sup>205</sup> Some stakeholders indicated that this arrangement should be maintained and was sufficient; however, it was noted that sporting bodies may allow these bets in the future in return for larger returns from wagering.

Any changes in the availability of in-play betting would represent a significant departure from the intention of the Act, which was based on the perceived higher risk of harm arising from such activity relative to other forms of gambling.<sup>206</sup> As previously noted, any changes should be evidence-based and only allowed once a more robust regulatory and harm minimisation framework has been established.

### **Harmonisation of regulation across jurisdictions**

As discussed in Section 4.3, the fragmented nature of gambling regulation in Australia, with different regulatory and licensing obligations placed on operators by the Commonwealth Government and individual State and Territory governments, increases the cost of compliance for operators relative to a system with a single consistent national framework. As offshore operators are not governed by these obligations, any increase in compliance costs is expected to decrease the competitiveness of the domestic industry as the lower cost base of offshore operators may allow them to provide users with better odds than their onshore competitors.

The need for a consistent approach to online wagering regulation was raised by a large number of stakeholders across the broad stakeholder groupings.<sup>207</sup> For instance, industry groups note that the existing differentiation between States and Territories, particularly regarding the rules surrounding wagering advertising and harm minimisation measures, increases the costs of complying with regulation. In particular, online operators noted the burden of compliance in Australia relative to other jurisdictions such as the UK where there is a single national regulatory framework governing online wagering.<sup>208</sup>

Non-industry stakeholders, such as responsible gambling organisations, are also supportive of a national regulatory framework, typically to harmonise responsible gambling measures and provide clear responsibility for the prosecution of any breaches.<sup>209</sup>

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205 Coalition of Major Professional and Participation Sports submission, p 3.

206 Australian Bookmakers' Association, Submission to the DBCDE Review of the Interactive Gambling Act 2001, p 24.

207 Hon. Wilson Tuckey submission, p 3. Australian Wagering Council submission, p 25.

208 bet365 submission, p 8.

209 Financial Counselling Australia submission, p 10.

There are a number of options available to the Government if it seeks nationally consistent regulation with regard to online gambling. These options include:

- establishing a new national regulator to oversee online gambling regulation; and
- introducing a consistent national policy framework to provide consistent and robust requirements for online gambling operators across Australia, which would then be monitored and enforced by the existing Commonwealth and State and Territory based regulators.

Each of these options, if properly implemented, would provide for consistent regulation across Australia and therefore decrease the costs associated with compliance across multiple jurisdictions. However, these options have different costs to Government. For instance, a new national regulator may increase the cost to Government of regulation as it duplicates some of the effort of the existing regulators. Importantly, a new regulatory body would need to invest in developing sufficient expertise in the field, whereas the existing regulators have this expertise based on their long history of regulation.

A number of stakeholders recommended that a national regulatory body is necessary to implement and enforce a consistent national regulatory framework.<sup>210</sup> In particular, these stakeholders indicated that the current approach is lacking given that gambling is a low priority of the ACMA and the AFP.<sup>211</sup> However, it should be noted that, while these stakeholders recommended that a new regulator be established, their main concern was that the regulations be consistent and enforced.

There was little support from any stakeholders for a continuation of the existing approach, which has led to widely varying requirements across the different States and Territories.

The former National Gambling Regulator was abolished as it represented duplication of State and Territory regulatory functions. An effective and enforceable national policy framework, similar to the model adopted for the *National Policy on Match-Fixing in Sport*, would achieve greater harm minimisation and consumer protection.

## 5.4 Improving consumer protection

The fourth Term of Reference for this Review outlined that the Review will examine 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.

Section 4.3 above highlights the concerns associated with the existing approach to consumer protection in Australia. Specifically, stakeholders have identified that the Australian approach is not consistent with best practice approaches in other parts of the world and that the current approach to consumer protection leads to inconsistent protection outcomes. In addition, there was some concern that the lack of a nationally consistent approach provided an uneven playing field between operators and left gaps in the protection framework.

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<sup>210</sup> Sen. Nick Xenophon submission, p 2.

<sup>211</sup> Australian Bookmakers Association submission, p 3.

A robust approach to consumer protection is a requirement of industries, such as gambling, with significant potential for negative community impacts. In jurisdictions where liberalisation of online gambling markets has occurred, this has typically been accompanied by enhanced consumer protection measures that aim to minimise the harm associated with online gambling.

The sections below consider the main policy and regulatory options, identified as part of the research and consultation phases of the Review, which may improve the consumer protection outcomes of the existing framework in Australia.

### **Harmonisation of consumer protection across jurisdictions**

As discussed in Section 5.3, there is a demand from stakeholders that the regulation of online gambling be harmonised across Australia to ensure consistency and avoid jurisdiction shopping, as well as to reduce the costs of compliance with obligations imposed by multiple jurisdictions across all levels of government. This extends to the imposition of consumer protection and harm minimisation obligations, which are currently set on a jurisdictional basis. Importantly, while each State and Territory has specific licensing requirements that operators licensed in those jurisdictions must meet, they also impose obligations on operators licensed in other States or Territories who provide services within their jurisdiction.

A number of stakeholders raised concerns about this approach. In particular, stakeholders noted that:

- differing obligations based on the jurisdictions where operators are licensed provides varying levels of protection between operators and lessens the overall robustness of consumer protection for users of Australian operators; and
- differing obligations with respect to advertising and the provision of inducements increases compliance costs, particularly over distribution channels that are national in scope, such as through subscription television or online channels.

As with online gambling regulation more broadly, the Government is able to impose nationally consistent consumer protection and harm minimisation through a number of methods, including:

- implementing measures through Commonwealth legislation, potentially within the existing Act or through model legislation passed on a jurisdiction by jurisdiction basis;
- empowering a new or existing agency to develop and impose any measures it considers necessary through regulations; and
- developing a nationally consistent code of practice to be enforced by the existing State- and Territory-based regulators.

While a number of stakeholders considered a nationally consistent approach to consumer protection necessary, there was little discussion of the mechanism that should be used to implement this approach. Importantly, however, there was significant focus by stakeholders on measures that could be included within a nationally consistent framework to improve the approach to consumer protection and harm minimisation. These measures are discussed in the following sections.

## Self-exclusion

Self-exclusion with regard to gambling refers to a request from users to restrict their access to online gambling services. These requests are typically made by users who have difficulty controlling their gambling behaviour. Self-exclusion is therefore an important tool in reducing the harms to at-risk and problem gamblers associated with the activity and ties in directly to the Terms of Reference of this Review.

Self-exclusion services are offered by online operators in Australia; however, there was concern among stakeholders that operator-based self-exclusion registers may be ineffective as users need to self-exclude on an operator by operator basis from all online operators within Australia. That is, to self-exclude completely from all operators, the customer would need to individually contact each operator licensed in Australia (including those with which they do not currently hold an account). This is a time consuming process that would be made easier for at-risk and problem gamblers if there was a national system for self-exclusion.

It should be noted that the FCA submission suggested that some of the current problems with self-exclusion facilities relate to the sharing of client information by online operators as a means of circumventing self-exclusion requests. This issue is discussed further in Section 5.4.5.

There was consensus among stakeholders that a national self-exclusion register is necessary to provide an effective and robust self-exclusion option for Australian consumers.<sup>212</sup> In particular, self-exclusion and related short term products should be easy to access for users within the website, and instantaneous so that a customer is unable to gamble immediately upon requesting self-exclusion.

Ladbrokes, an online wagering operator, indicated that industry had discussed a self-imposed register in the past, but that this had been difficult to implement. As a result of the issues associated with an industry-led approach, Ladbrokes advised that a national register should be implemented and overseen by an independent body. This was consistent with the views of other online operators and trends in European jurisdictions. In addition, other stakeholders agreed that this should be led by the Commonwealth Government, with a number of stakeholders suggesting that a national regulator could have responsibility for administration of the national self-exclusion register.<sup>213</sup>

It is understood that the Northern Territory will establish a Territory-wide self-exclusion register in 2016. This register will cover all online operators licensed in the Northern Territory. This could form a template for a potential national self-exclusion register, or a national register could be an extension of the Northern Territory register. The box below provides a high level summary of the function of the Northern Territory scheme.

### *Box 5-4: Self-exclusion in the Northern Territory from March 2016*

The Northern Territory has announced the commencement of the *Northern Territory Code of Practice for Responsible Gambling 2016* from 1 March 2016. This code includes scope for a self-exclusion register applying to all operators licensed in the Northern Territory.

<sup>212</sup> bet365 submission, p 2. Financial Counselling Australia submission, p 21.

<sup>213</sup> Financial Counselling Australia submission, p 21, Sportsbet submission, p 39.

*Box 5-4: Self-exclusion in the Northern Territory from March 2016*

Key features of the code associated with self-exclusion include:

- all operators must offer a self-exclusion facility to clients who may be concerned that they have a gambling problem;
- the option should also be offered to clients to exclude from all Northern Territory online gambling operators;
- the operator must offer this option via an online process or a form based process, and must ensure suitable internal procedures are in place to have any self-exclusion request dealt with immediately;
- the operator must also be able to process requests originating from the regulator through the regulator's own exclusion process;
- operators will pay out any funds in the account of excluded persons, subject to the relevant checks;
- operators will promptly offer clients who seek self-exclusion contact information for appropriate counselling agencies;
- operators will assist clients who self-exclude to exclude from other Australian operators; and
- operators will ensure that excluded persons do not receive promotional material.

*Sources:*

*Department of Business (NT 2015)*

*Northern Territory Code of Practice for Responsible Online Gambling 2016.*

### **Voluntary pre-commitment**

Voluntary pre-commitment refers to the setting of limits to gambling behaviour by users in order to assist them manage their gambling levels. The setting of limits, while useful to manage at-risk or problem gambling behaviour, may be used by all customers to manage their expenditure and minimise the harm associated with gambling. At present, online operators who offer these services indicate that a large number of customers select to impose deposit limits upon registration, indicating that this is also of use to customers who are not problem gamblers. Voluntary pre-commitment is therefore an important consumer protection tool, not just for those gamblers who present at-risk gambling behaviour but also for the broader set of gamblers. As such it is linked directly to the Terms of Reference of this Review.

Voluntary pre-commitment as a consumer protection measure along these lines would not require users to set a limit, but would require operators to offer this option. A number of operators currently provide pre-commitment options to users upon registration, and/or through scheduled prompting.



While there was broad support for pre-commitment facilities overall as a key consumer protection measure, there was consensus among stakeholders that these options could provide a higher level of consumer protection. Potential options for pre-commitment identified by stakeholders included:

- a suggestion by operators that pre-commitment requirements be standardised and extended to include loss limits, win limits or time limits; and
- a suggestion by other stakeholders, including responsible gambling organisations, that pre-commitment be provided on a national basis so that one limit would be provided across all operators (this was considered unworkable by gambling industry stakeholders).

In addition, there was some discussion around how pre-commitment tools should be administered. This included discussion of how quickly changes could be made (with stakeholders typically suggesting that limit decreases should be instantaneous and that limit increases should be subject to a cooling off period) or how often users should be prompted to update their limits.

In South Australia, pre-commitment facilities are an existing requirement and all users are required to be prompted about setting a limit every two years. A brief summary of the South Australian approach is provided in the box below. A nationally consistent approach to pre-commitment, included as part of a national policy framework, may be based on this framework or another approach as relevant.

*Box 5-5: Voluntary pre-commitment measures in South Australia*

South Australia has implemented a number of measures through its Code of Practice to temper the marketing of online wagering products through:

- prescription of mandatory warning messages;
- banning “free” bets and other inducements; and
- mandating and requiring the promotion of pre-commitment.

Pre-commitment requirements in South Australia are governed by *Gambling Codes of Practice Notice 2013*. They include minimum standards for pre-commitment and a requirement that operators periodically prompt account holders to refresh their limits. Specifically, Chapter 3, Part 4, Section 60 states that:

- 1 A gambling provider must, in respect of account based gambling, provide a pre-commitment scheme.
- 2 A pre-commitment scheme referred to in sub-clause (1) must meet the following minimum requirements—
  - a) an account holder must be able to set a pre-commitment limit for a fixed period of seven days (the “relevant period”);
  - b) the pre-commitment limit set by the account holder may apply, at the election of the gambling provider, to—
    - i. net betting losses by the account holder (regardless of the number of accounts held) during the relevant period;
    - ii. deposits made to the account during the relevant period; or
    - iii. a combination of both;

*Box 5-5: Voluntary pre-commitment measures in South Australia*

- c) a gambling account must not be able to be used until the account holder has set a pre-commitment limit or chosen not to set a pre-commitment limit;
  - d) the gambling provider, at intervals of no less than two years, must contact each account holder who has chosen not to set a pre-commitment limit to offer the choice to set a pre-commitment limit;
  - e) a decision by an account holder to —
    - i. increase or revoke a pre-commitment limit; or
    - ii. change the start day for the relevant period—  
must not come into effect for a period of seven days;
  - f) a decision by an account holder to decrease a pre-commitment limit must be given effect as soon as practicable.
- 3 A pre-commitment scheme referred to in sub-clause (1) may include additional limits and features so long as they do not conflict with the minimum requirements set out in sub-clause (2).

*Source:*

South Australia, *Gambling Codes of Practice Notice 2013*.

## **Credit betting and payday lending**

A key focus of the stakeholder consultation phase of the Review was the use of credit facilities provided by operators and third parties to access online gambling services and in particular, the capacity to pay of users accessing these facilities. The sections below discuss these issues and potential measures to minimise the harm associated with these features.

### **Credit betting**

A key topic raised by stakeholders as part of the consultation phase of the Review was the use of deferred settlement facilities, otherwise known as credit betting. These deferred settlement facilities allow users to bet on credit and to defer settlement of their bets until a later date. It is important to note that these deferred settlement facilities are distinct from the use of credit cards for the purpose of depositing monies into gambling accounts. While the term credit betting is often used to refer to these deferred settlement facilities, they do not accrue interest and are therefore not subject to the rules of credit that other lenders (such as banks or retailers that issue credit cards) are obligated to comply with.

The availability of credit betting, whilst providing convenience for many users, also presents risks to those users who gamble beyond their capacity to pay. As a result, it is important that the consumer protection framework for gambling more broadly considers these deferred settlement facilities and balances the convenience of these deferred settlement facilities for users with their potential harms.

Online operators indicated that these facilities are the evolution of similar deferred settlement facilities that have been traditionally provided at racing venues between on-course bookmakers and known clients. They consider these facilities to be important because:

- they allow account holders to bet without incurring cash advance fees on their credit cards;
- they provide convenience for account holders; and
- the vast majority of these deferred settlement facilities are for small amounts that are unlikely to cause significant harm.

However, a number of non-industry stakeholders indicated that the use of credit betting by online operators is responsible for negative outcomes for consumers, particularly those without the capacity to pay who may be encouraged by inducements or other measures to gamble unsustainably. In particular, there was significant criticism associated with the decision to provide large sums of money in credit to people without regard to their income levels. In addition, there was some concern that these consumers were then encouraged to access payday lending providers to settle outstanding wagering debts (see next section on payday lenders). These stakeholders have sought significant restrictions or outright bans on these deferred settlement facilities for online operators.

Options to restrict these deferred settlement facilities may include restrictions for eligibility based on net worth, or more detailed screening processes to better understand the capacity to pay. It should be noted that access to credit was considered an important reason why users access illegal offshore markets by some stakeholders; if this is the case, excessive restrictions may drive users to offshore providers. The Northern Territory has recently implemented reforms to strengthen the regulation of these deferred settlement facilities that incorporate some of these measures. A summary of this reform is outlined in the box below. While this may address the concerns of industry stakeholders and be a potential template for a nationally consistent approach to managing these deferred settlement facilities, it is too soon to determine whether these reforms will be effective at this time. Industry stakeholders have suggested that these changes should be implemented and their effectiveness measured before additional changes to the regulation of these deferred settlement facilities are considered.

*Box 5-6: Deferred Settlement Facilities offered by operators licensed in the Northern Territory*

The Northern Territory has recently implemented an updated code of practice for the provision of deferred settlement facilities by operators licensed in the jurisdiction. The *Mandatory Code of Practice for the Provision of Deferred Settlement Facilities for Northern Territory Licensed Sports Bookmakers 2015* came into force on 1 November 2015.

The objective of the code of practice is to:

*“provide a robust framework for mandatory sports bookmaker regulation in relation to the provision of DSF to ensure this funding option accords with the promotion of responsible gambling while allowing sports bookmakers to remain competitive against offshore, unlicensed wagering operators.”*

*Box 5-6: Deferred Settlement Facilities offered by operators licensed in the Northern Territory*

The code does not apply to professional gamblers or bookmakers 'laying off' bets. The requirements of the code are as follows:

- 1 The DSF must be applied for. Sports bookmakers must not offer a DSF on an unsolicited basis and no incentives or promotional offers are to be offered to encourage customers to open a DSF.
- 2 Sports bookmakers can only advertise the provision of a DSF on the provider's own website, in the ordinary course of business through its business development managers (or equivalent) or in electronic direct marketing (EDM) with members who have agreed to receive such materials.
- 3 Either the sports bookmaker or an independent external assessment institution must undertake an appropriate credit assessment of an application for a DSF. Such checks must include:
  - a) verification of identity in accordance with anti-money laundering requirements;
  - b) confirmation of age;
  - c) confirmation of current residential address;
  - d) contact details including phone and email address; and
  - e) assess credit worthiness by establishing employment or source of income or by other means.
- 4 Settlement of the account is to occur weekly or monthly. Monthly settlement may only occur with facilities over \$20,000 (although such facilities may still be settled in a shorter timeframe).
- 5 A wagering provider cannot charge interest on the account or charge any fees for the administration of the account.
- 6 A DSF must not be approved for an amount in excess of a pre-commitment level set by a customer.
- 7 Facilities cannot be approved for any customer whose account verification process has not been finalised.
- 8 For a DSF over \$20,000 the sports bookmaker or an independent external assessment institution must interview the customer. Interviews should occur on a recorded phone line or be appropriately documented and filed, to assist in the assessment of the customer's ability to service the DSF.
- 9 A customer shall be prohibited from placing bets if their account balance at any time is equal to or exceeds the DSF amount.
- 10 Reminder notices and the follow-up of any overdue monies for the DSF will be undertaken by appropriately trained staff for at least the first 21 days of arrears before the matter can be referred to an external collection agency.
- 11 The sports bookmaker may institute debt recovery proceedings against the customer to recover the outstanding account balance if a customer has not settled their account within a 21 day period of the agreed settlement period.

*Box 5-6: Deferred Settlement Facilities offered by operators licensed in the Northern Territory*

12 The sports bookmaker must maintain a register of all customers that have an approved DSF.

13 The sports bookmaker must review an existing DSF where there has been a failure to repay by a scheduled settlement date to ensure that limit remains appropriate.

14 The customer must be provided with a copy of the code.

*Source: Department of Business (NT 2015), Mandatory Code of Practice for the Provision of Deferred Settlement Facilities for Northern Territory Licensed Sports Bookmakers 2015.*

A small minority of stakeholders also considered a ban on the use of credit cards to deposit funds in online wagering accounts. This was typically proposed for one of the following reasons:

- to restrict the negative impacts of credit betting on those without the capacity to pay; and
- to be technology neutral, given that physical venues such as licensed pubs and clubs are unable to offer credit to their clients.

### **Payday Lending**

As discussed in the section above, some stakeholders raised concerns that customers of online operators are being directed to payday lenders through advertising on the websites of the online operators or through direct partnerships between payday lenders and operators. Payday lenders refers to businesses that provide loans to consumers to manage fluctuations in short term cash flows. These loans are typically for a short term and are obtained at relatively high interest rates.

Stakeholders raised concern that links between payday lenders and onshore operators served only to ensure that users without the capacity to pay are able to settle their deferred settlement facilities through access to loans at high interest rates. This would reduce the efficacy of consumer protection measures seeking to reduce harm to customers by providing tools to assist them to manage their gambling expenditure.

These stakeholders suggested that these links between online operators and payday lenders have a negative impact for users and should be prohibited. The operators themselves did not address these issues in consultations or in submissions.

### **Advertising, inducements and sharing player information**

Advertising, inducements and the sharing of player information for marketing purposes were key issues identified in the process of the Review. Importantly, the impacts of advertising, inducements and sharing of player information about gambling behaviour was a key concern of non-industry stakeholders. The sections below consider these issues separately and identify potential measures to reduce any associated negative impacts.

## Advertising

While not referred to in the Terms of Reference, advertising was raised by a number of stakeholders as an important issue. Advertising, while providing operators with the opportunity to inform potential customers about their services, has also been identified as a potential driver of at-risk gambling behaviour. In addition, there is concern that advertising risks normalising gambling within sport, particularly amongst children. However, according to the UK Gambling Commission this is not consistent with the experience of the UK.

In general, a number of concerns were raised by a broad range of stakeholders, including:

- Online operators identified the right to advertise as a key competitive advantage that the onshore sector has relative to the offshore sector. They argued that there should remain some scope for advertising of wagering services to maintain this advantage.
- Online operators raised concern over the fragmented approach to advertising restrictions in different States and Territories, which increases the compliance costs associated with operating in Australia and makes it difficult to comply across national distribution channels such as subscription TV. They have sought a national approach to regulating advertising. A potential approach has been forwarded by industry through the release of a discussion paper outlining a proposed code of conduct for advertising (see the box below).
- A broad range of industry and non-industry stakeholders indicated that the existing levels of advertising are excessive and often viewed by children.

In addition, it was noted during stakeholder consultations that a number of the existing guidelines apply to television or radio broadcasting but do not apply to digital or social media. While a number of social media businesses indicated that they do not allow illegal services to be advertised across their platforms, legal services advertised by onshore operators are present on social media with less restrictions than is the case in other media.

In response to concerns about wagering advertising, the Australian Association of National Advertisers (AANA) released a discussion paper regarding potential guidelines for wagering advertising. The purpose of the discussion paper is to engage with stakeholders and inform the development of a draft code. As part of the discussion paper, a number of potential standards and principles were identified by the AANA. Box 5-7 below discusses these standards and principles in more detail. Importantly, the discussion paper indicates that any potential code would apply to digital marketing, including mobile and social media and user generated content.

*Box 5-7: AANA Discussion Paper on potential advertising guidelines for online wagering operators*

The AANA is in the process of drafting a code for the self-regulation of wagering advertising. The code would be in addition to existing requirements placed on operators by Commonwealth, State and Territory governments. These requirements include:

Wagering advertising and marketing:

- must comply with applicable State/Territory and Federal laws;
- must comply with all sports controlling bodies and racing bodies obligations; and
- must comply with the relevant industry codes of practices such as the broadcast industry codes (which are registered by the ACMA) and other AANA codes such as the AANA Code of Ethics.



*Box 5-7: AANA Discussion Paper on potential advertising guidelines for online wagering operators*

As part of the discussion paper, the following concepts were identified as a potential basis for the standards and principles to be applied in the code for the purpose of providing an effective and robust framework for the responsible advertising and marketing of wagering products and services in Australia:

In relation to vulnerable persons, wagering advertising and marketing:

- must not depict minors, unless they are shown in an incidental role in a natural situation (for example, in a team playing sport) and where there is no implication they will engage in wagering activities;
- must not depict an adult who is under 25 years of age unless:
  - they are shown in an incidental role in a natural situation (for example, in a team playing sport) and where there is no implication they will engage in wagering activities;
  - they are not engaging in wagering activities in a visually prominent manner; or
  - they are shown in an advertising or marketing communication that has been placed in an age restricted environment such as premises that do not admit minors or a suitably age restricted digital platform;
- must not, with regard to the theme, visuals and language used, be targeted to or appeal particularly to minors;
- must not reflect or be associated with youth culture, including by featuring a character or personality with particular appeal to minors; and
- must respect the need to protect minors and other vulnerable persons from harm or exploitation.

In relation to social responsibility, wagering advertising and marketing:

- must promote responsible gambling;
- must not suggest that winning will be a definite outcome of participating in wagering activities;
- must not suggest that participation in wagering activities is likely to improve a person's financial prospects;
- must not suggest a link between gambling and seduction, sexual success or enhanced attractiveness;
- must not depict or promote the consumption of alcohol whilst engaged in a wagering activity;
- must not expressly state that a customer's skill can influence the outcome of a wagering activity; and
- must ensure that terms and conditions associated with marketing promotions have been made available.

*Source: AANA (2015), AANA Discussion Paper: AANA Wagering Advertising & Marketing Communications Code.*

In addition to the industry's proposed advertising guidelines, a number of individual jurisdictions have proposed changes to advertising in recent months. The table below provides a summary of the status of advertising across States and Territories and outlines any proposed changes to these guidelines.

Table 5-2: Advertising guidelines in different States and Territories

State/territory	Description
ACT	Part 1.4 of the <i>Gambling and Racing Control (Code of Practice) Regulation 2002</i> restricts the manner in which advertising is presented and places additional restrictions on promotions and inducements, although these largely refer to land-based gambling.
NSW	<p>Division 2 of the <i>Racing Administration Regulation 2012</i> restricts the manner in which advertising is presented as well as responsible gambling messaging to be included in advertisements.</p> <p>In November 2015 the NSW Government announced significant changes to the restrictions on the advertising of gambling services in NSW. From 1 March 2016, NSW will ban live odds advertising during sporting fixtures that last four hours or less. From 1 December 2015, an existing ban on advertising betting inducements, including credit and reward schemes, was extended to cover a much larger range of inducement schemes designed to incentivise gambling.</p>
NT	The <i>Northern Territory Code of Practice for Responsible Online Gambling 2016</i> requires operators to comply with any relevant codes established by the AANA including the overarching Code of Ethics and codes established by the Communications Council. Any television advertising and promotion must also comply with the Commercial Television Industry Code of Practice established by Free TV Australia.
Queensland	The Queensland <i>Responsible Gambling Code of Practice</i> provides high level guidance on the implementation of advertising and promotion of wagering activities. In particular, it requires providers to comply with the AANA's Code of Ethics.
SA	<p>In 2013 the various gambling codes of practice were combined into a single South Australian <i>Gambling Codes of Practice Notice 2013</i>. This includes restrictions on gambling advertising as follows:</p> <ul style="list-style-type: none"> <li>• restrictions on the images and situations depicted in advertising;</li> <li>• restrictions on the terminology (such as the term 'win');</li> <li>• the use of mandatory warnings;</li> <li>• the use of celebrity endorsements; and</li> <li>• the timing of advertisements, with no advertising allowed between 4pm and 7:30pm on weekdays except on a dedicated sports channel.</li> </ul>
Tasmania	The <i>Responsible Gambling Mandatory Code of Practice for Tasmania</i> that came into effect in 2012 restricts the manner in which advertising is presented and places additional restrictions on promotions and inducements, although these largely refer to land-based gambling.



State/territory	Description
Victoria	There is no standard code of conduct for gambling operators in Victoria, however, licence holders are required to have a responsible gambling code of conduct approved by the Commission for Gambling and Liquor Regulation. The guidance for these codes indicates measures must be considered with regard to wagering. In particular, it requires providers to comply with the AANA's Code of Ethics.
WA	The Western Australian Government has not issued specific advertising guidelines for online wagering except with regard to advertising of unlawful gaming, which is prohibited under the <i>Gaming and Wagering Commission Act 1987</i> .

A number of stakeholders also raised concerns that the existing approach to advertising, which allows the placement of advertisements during sporting broadcasts that are viewed by minors, is inappropriate and should be restricted. In addition, some stakeholders noted that the existing approach to social media advertising blurs the line between advertising and commentary and should be restricted in line with existing restrictions in place on television.

### Inducements

In addition to concerns about advertising, there were a number of concerns about the provision of inducements to consumers. The feedback regarding these services was broadly consistent with feedback in response to advertising. These concerns included:

- Online operators highlighted that inducements are popular with users and were seen by the Productivity Commission in 2010 as a facilitator of competition by reducing the costs of switching between operators. They therefore considered it important that they be able to continue to offer these inducements to their customers.<sup>214</sup>
- Online operators also raised concerns that the existing approach to regulating inducements across States and Territories restricts their ability to service their customers consistently and restricts the effectiveness of advertising.

However, non-industry stakeholders raised concerns that online operators are circumventing these restrictions and that inducements are likely to encourage risky gambling behaviour. The provision of inducements would therefore indicate a failure of consumer protection and harm minimisation as it encourages risky gambling behaviour.

These concerns reflect the need to balance robust competition in the industry with effective consumer protection. A number of stakeholders sought to restrict or ban the provision of inducements, citing the potential negative impacts associated with these products.

In addition, a number of jurisdictions have implemented measures to reduce the availability of inducements (see the table below), although the effectiveness of these measures has been questioned.

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<sup>214</sup> Sportsbet submission, p 45.

Table 5-3: Inducement guidelines in different States and Territories

State/territory	Description
ACT	<p>Part 1.4 of the <i>Gambling and Racing Control (Code of Practice) Regulation 2002</i> restricts the use of promotions and inducements, although these largely refer to land-based gambling. Specifically, this states that:</p> <p><i>A sports bookmaking licensee must not induce people to open a bookmaking customer deposit account.</i></p> <p><i>Example: offering free or discounted gambling credits.</i></p>
NSW	<p>The NSW Government restricts the advertising of inducements. From 1 December 2015, the existing ban on advertising betting inducements, including credit and reward schemes, was extended to cover a much larger range of inducement schemes designed to incentivise gambling.</p>
NT	<p>The <i>Northern Territory Code of Practice for Responsible Online Gambling 2016</i> does not restrict the provision of inducements, but requires the terms and conditions of all promotions to be easily accessible.</p>
Queensland	<p>The Queensland <i>Responsible Gambling Code of Practice</i> does not restrict the provision of inducements.</p>
SA	<p>Clause 54 of the <i>Gambling Codes of Practice Notice 2013</i> restricts the provision of inducements as follows:</p> <ol style="list-style-type: none"> <li>1. A gambling provider must not offer or provide any inducement – <ol style="list-style-type: none"> <li>a) directed at encouraging patrons to gamble;</li> <li>b) directed at encouraging people to open gambling accounts.</li> </ol> </li> <li>2. Sub-clause (1)(a) does not apply to – <ol style="list-style-type: none"> <li>a) the offering or provision of participation in an acceptable loyalty program;</li> <li>b) the offering or provision of participation in an acceptable trade promotion lottery or of a complimentary gambling product;</li> <li>c) the offering or provision in a gambling area of an inducement in the form of complimentary non-alcoholic beverages and refreshments of nominal value; or</li> <li>d) the offering or provision of an inducement in respect of a pre-commitment trial approved in writing by the Authority, within and subject to the terms of the instrument of approval.</li> </ol> </li> <li>3. This clause does not prevent the payment of commissions to, or in respect of, identified high value patrons.</li> </ol>
Tasmania	<p>The <i>Responsible Gambling Mandatory Code of Practice for Tasmania</i> restricts the value of inducements and the amount of gambling required to be eligible for inducements.</p>
Victoria	<p>Victorian law prohibits the provision of inducements to open an account, although other inducements are allowed.</p>

State/territory	Description
WA	The Western Australian Government has not issued specific guidelines regarding inducements.

### Sharing player information for marketing purposes

As discussed above a number of stakeholders raised concerns that users seeking to self-exclude themselves from an operator had been contacted by other operators with inducements to gamble. It was suggested that this was the result of operators sharing player information amongst themselves for marketing purposes. As a result of these arrangements, the referring person or operator is paid a commission based on the amount that the user gambles.

While a national self-exclusion register would address any concerns that the contact details of people adversely affected by gambling is shared between operators, a number of stakeholders recommended that this practice be prohibited to protect at-risk gamblers from predatory marketing practices.

### Proactive responsible gambling research

A number of stakeholders outlined that online operators have the ability to use data analysis to understand customer gambling patterns. This information is used for a number of reasons, such as to fulfil Know Your Customer obligations, to identify suspicious betting behaviour for the purposes of identifying potential integrity issues and to manage operator risk or to identify customers eligible for additional incentives or marketing.

There was some discussion from stakeholders, including organisations providing responsible gambling services, as well as selected online operators that indicated that this information may be used to identify behaviour consistent with at-risk gambling. This information could then be used to engage with users and intervene to provide support and assistance in a timely manner. This would be a useful tool to be included within a robust consumer protection framework and would tie in directly with the Terms of Reference of this Review.

Stakeholders mentioned that there are methods available to accurately identify at-risk gambling behaviour according to gambling patterns. In addition, bet365 mentioned that this information has been, or shortly will be, used in European jurisdictions as a consumer protection measure.<sup>215</sup> It also should be noted that this is being investigated by the South Australian Government as a potential measure for protection of South Australian consumers (see box below).

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<sup>215</sup> bet365 submission, p 2.

### *Box 5-8: Predictive monitoring in South Australia*

The Independent Gambling Authority of South Australia introduced predictive monitoring requirements into the relevant codes of practice following its review of these codes from 2011-2013. The commencement date for predictive monitoring is 1 July 2016. The approach used for predictive monitoring is currently being reviewed and stakeholder input sought.

The Independent Gambling Authority describes predictive monitoring as the application of the technique of predictive analytics to the monitoring of gamblers. This is aimed at land-based and online operators using information sourced from loyalty programs.

The Independent Gambling Authority notes that predictive analytics is used in the gambling industry currently to detect fraud and to:

- tailor experiences to the customer from a marketing angle; and
- look at the return on investment a player will yield.

It suggests that it should not be difficult to use these tools to identify at-risk gambling behaviour.

Under predictive monitoring, the assessment of harm will be the responsibility of the gambling operator, however the Independent Gambling Authority identified the following basic parameters that should be considered in any predictive monitoring framework:

- frequency of play;
- duration of play; and
- expenditure.

*Source: Independent Gambling Authority (2015), Predictive monitoring consultation – Guide for participation, August.*

Stakeholders were typically supportive of using data analysis to identify and address at-risk gambling behaviour. In addition, some stakeholders provided guidance on how this should be administered, specifically on the extent to which this should be conducted through a national coordinating body or through the provision of third party programs.

### **Bet restrictions**

As discussed in Section 4.1, a number of stakeholders indicated that an important driver of the use of offshore wagering operators is the restriction on some individuals betting onshore by onshore operators who consider them to be too profitable.<sup>216</sup>

There is limited evidence available to show the extent to which this issue drives offshore wagering. While non-industry stakeholders indicated that this was a key driver of offshore wagering, onshore wagering operators indicated that betting restrictions had been placed on a small group of around 200 users and that overall around one in every 10,000 bets is altered or rejected on the basis of risk management reasons or integrity concerns.<sup>217</sup>

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<sup>216</sup> Name withheld submission, p 1. Name withheld submission, p 1.

<sup>217</sup> Sportsbet submission, p 46.

This issue is relevant to the Terms of Reference of the Review given the impact of betting restrictions on the size of the offshore market. Where this issue drives offshore wagering, addressing this issue would reduce the size of the offshore market and any subsequent negative impacts. In addition, this issue reflects the effectiveness of consumer protection measures.

As discussed above, a large number of individual submissions were received that stated that they had been forced offshore by onshore operators implementing betting restrictions, account closures or modified odds set at levels below those offered to the general public.<sup>218</sup> These individuals typically contested the assertion that they were professional gamblers, with some individuals indicating that they were long-term losing gamblers.<sup>219</sup>

Online bookmakers reasoned that betting restrictions were valid tools because:

- the cost of product fees makes certain customers unprofitable;<sup>220</sup>
- the restrictions allow them to provide better odds to other customers;<sup>221</sup>
- given the obligations of operators to ‘Know Your Customer’, they should be able to use this knowledge to manage risk in their business;<sup>222</sup> and
- that operators risk their own capital when accepting a bet and that they should have the right to manage that risk as they see fit.<sup>223</sup>

The operators also noted that consumers have existing protections under Australian consumer law and that this is sufficient. A number of bookmakers also indicated that they would be more willing to accept these bets if reforms to the product fee arrangements make these customers profitable.<sup>224</sup> While product fees are not outlined in the Terms of Reference of this Review, they are discussed briefly in Section 5.5.

The individuals raising these concerns support the implementation of a minimum bet size that any online operator would be required to accept.<sup>225</sup> Typically, these submissions referred to rules implemented by Racing NSW, which mandate that all bookmakers must accept all bets up to a certain liability limit (see the box below). While there is some indication from submissions that this rule may be difficult to enforce,<sup>226</sup> individuals were highly supportive of a similar rule being applied to racing events held outside of NSW and all sporting events.<sup>227</sup>

It should be noted that a minimum bet rule would address bet restrictions, but would not address concerns over account closures or differential odds. Only Topsport, an online wagering operator, indicated that bookmakers should not be allowed to close accounts for financial reasons.<sup>228</sup>

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218 Name withheld submission, p 1.

219 Name withheld submission, p 1.

220 Topsport submission, p 1.

221 Confidential submission.

222 Australian Wagering Council, p 36.

223 Australian Wagering Council, p 36.

224 Topsport submission, p 1.

225 Name withheld submission, p 1.

226 Australian Wagering Council, p 36.

227 Name withheld submission, p 1.

228 Topsport submission, p 2.

*Box 5-9: Racing NSW minimum bet rules*

From 1 September 2014, Racing NSW adopted a rule requiring specified bookmakers to accept reasonable bets from all account holders on NSW thoroughbred races. The adoption of this rule followed extensive consultation with wagering operators and consumers. These rules were reviewed following their introduction and refined from 1 June 2015. The minimum bet condition in place from that time is outlined below.

5.7 Betting Limits

- a. The Approval Holder is required to accept a fixed odds bet at odds that are Publicly Displayed by the Approval Holder for any NSW Thoroughbred Race up to the maximum amounts specified below.

*For Australian Wagering Operators with Net Assessable Turnover on NSW Thoroughbred Races greater than or equal to \$5 million*

Race type	Bet (Win and/or Each Way/*Win & Place)
Metropolitan NSW Thoroughbred races	\$2,000 (*place component \$800)
Non-metropolitan NSW Thoroughbred races	\$1,000 (*place component \$400)

*For Australian Wagering Operators with Net Assessable Turnover on NSW Thoroughbred Races less than \$5 million*

Race type	Bet (Win and/or Each Way/*Win & Place)
All NSW Thoroughbred races	\$1,000 (*place component \$400)

*Note: When the person claims the Approval Holder for a win and place bet that is greater than the limits prescribed by this rule, the Approval Holder must bet the person the proportional equivalent of an each-way wager.*

- b. The Approval Holder must display the relevant betting limits to which they are bound.
- c. The Approval Holder must not do any act or refuse to do any act to avoid complying with clause 5.7(a) including but not limited to:
- 1) refusing to accept a fixed odds bet;
  - 2) closing a person's account;
  - 3) refusing to open a person's account;
  - 4) placing any restrictions on a person's account;
  - 5) refusing to lay fixed odds to any person when those fixed odds are Publicly Displayed;
  - 6) laying lesser odds to a person than those Publicly Displayed;
  - 7) any other act or refusal to do an act in order to avoid complying with clause 5.7(a).

*Box 5-9: Racing NSW minimum bet rules*

- d. The Approval Holder is not required to comply with its obligations in clauses 5.7(a) or 5.7(c) if:
- 1) the bet is a betting transaction on a betting exchange;
  - 2) the person has not provided the Approval Holder with sufficient funds to pay for the bet;
  - 3) the bet is placed prior to 9am (NSW time) on the day of the NSW Thoroughbred Race or 2pm (NSW time) for a night race meeting;
  - 4) the Approval Holder has already accepted a fixed odds bet or number of fixed odds bets up to the limit in clause 5.7(a) on that horse from the person and/or another person (or other persons) as their agent;
  - 5) there has been an official price fluctuation or the Approval Holder's own price fluctuation has changed, the Approval Holder is not compelled to accept any bet at the pre-changed price;
  - 6) where the Approval Holder has in excess of ten retail outlets, the Approval Holder is not required to comply in respect of a cash (non-account) bet placed in any retail or commercial outlet (including at a racecourse or in agencies, hotels, pubs and clubs) for such time as Racing NSW considers that it is unfeasible for it to apply to such cash bets, including for reasons such as difficulties in determining whether the person is the beneficial owner of the bet. For the avoidance of doubt, the obligation still applies in respect of any non-cash bets in any retail or commercial outlet placed by a person holding an account with the Approval Holder and Racing NSW will notify the Approval Holder in writing if it no longer considers it unfeasible to apply to such cash bets;
  - 7) where the person is not the beneficial owner of the bet with the Approval Holder and:
    - i. the person has not provided the Approval Holder with details of the beneficial owner; or
    - ii. the Approval Holder has already accepted a fixed odds bet or number of fixed odds bets up to the limit in clause 5.7(a) on that horse from the beneficial owner and/or another person (or other persons) with the same beneficial owner;
  - 8) the Approval Holder has refused to accept the bet, done an act or refused to do any act due to:
    - i. the person being warned off or disqualified;
    - ii. the person has engaged in fraudulent activity;
    - iii. the person has breached a material condition of the agreement with the Approval Holder, unless the dominant purpose of such condition is to avoid complying with clause 5.7(a) or the material condition is assessed by Racing NSW to be an unreasonable condition;



*Box 5-9: Racing NSW minimum bet rules*

- iv. the Approval Holder's statutory obligations including but not limited to the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth)* and any responsible gambling legislation;
  - v. any other reason that in Racing NSW's assessment raises serious integrity concerns;
- 9) where Racing NSW is satisfied that the reason the Approval Holder has not complied properly falls within the Racing NSW list entitled "Further reasons where an Approval Holder is not required to comply with clauses 5.7(a) or 5.7(c)" as published on its website and amended from time to time.
- e. This varied clause 5.7 applies from 1 June 2015 or such later date notified to the Approval Holder by Racing NSW.

*Source: Racing NSW (2015), Race Field Information Use Standard Conditions 2014-15 Minimum Bet Limit – Clause 5.7, August.*

## **Identity Verification**

At present, online operators are typically required to verify the identity of new users within 45 days of joining in the Northern Territory or 90 days elsewhere. This verification is done through electronic means. The verification of the identity of new account holders is an important tool to ensure that users of online wagering web sites are eligible to gamble. For instance, identity verification is important to determine that users are not underage. This is therefore a critical consumer protection tool that ties in directly with the Terms of Reference.

A number of stakeholders raised concern with the existing verification process given that:

- the existing process allows consumers to gamble for up to 90 days but does not allow players to access any winnings until after the identity verification has been completed; and
- the existing process does not require manual verification, which may mean that underage players can establish an account using an adult's contact information.

There was some consensus among stakeholders that identity verification could be completed within shorter periods of time. Online operators mentioned during consultations that this may be facilitated through providing greater access to government information databases.

Quicker age verification processes would be expected to identify gamblers operating under assumed names or underage gamblers and reducing the potential harms associated with this behaviour.

## **Statements of account activity**

Account activity statements refer to statements (in soft copy or hard copy form) that detail the betting history including the outcomes of individual bets and aggregate wins and losses. A number of stakeholders indicated that these statements were difficult to obtain from operators or the format in which they are presented made it difficult to determine the amount gambled.



Responsible gambling organisations mentioned the importance of confronting individuals presenting at-risk or problem gambling behaviours and indicated that mandating the delivery of regular statements that are easy to understand would be a useful tool in assisting individuals identify their own at-risk behaviours. In addition some mentioned that hard copy statements may assist third parties (such as family members) identify these behaviours and intervene.

## Staff training

Responsible gambling organisations noted that training is of vital importance to staff in order to help employees recognise and handle customers who may be experiencing gambling-related difficulties, and that consequently training in consumer protection is an integral aspect of gambling industry practice and should be an on-going process with the content of the training being monitored by the relevant State or Territory regulator or an independent body.<sup>229</sup>

State and Territory regulations require that staff involved in the provision or oversight of gambling services should undergo appropriate training and certification, which in most cases comprises Responsible Conduct of Gambling or Responsible Service of Gambling education. Training and certification in most States and Territories must be provided by an organisation approved by the relevant gambling regulator; these may be independent educational or vocational institutions, but in some cases include accredited 'in-house' training by betting service providers.

As standards for responsible gambling training are specific to State and Territory jurisdictions there is variation between the different States and Territories: for example, in the ACT staff members involved in providing or overseeing gambling services must complete and approved training program before they begin working at a gambling facility,<sup>230</sup> in Queensland staff carrying out gaming duties within a licensed club or hotel must complete such training within three months of starting employment,<sup>231</sup> and in Victoria all employees working in gaming machine areas must complete an approved course within six months of starting work.<sup>232</sup> Table 5-4 below provides a high level outline of staff training requirements in the different jurisdictions of Australia.

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229 Alliance for Gambling Reform submission, pp 42-44.

230 Access Canberra website, <<http://www.gamblingandracing.act.gov.au/community/education-training/>>, 17 December 2015.

231 Queensland Government business and industry portal, <<https://www.business.qld.gov.au/industry/liquor-gaming/liquor/training/rsg>>, 17 December 2015>.

232 Victorian Commission for Gambling and Liquor Regulation website, <http://www.vcglr.vic.gov.au/home/gambling/education+and+training/responsible+service+of+gaming/>, 17 December 2015.

Table 5-4: Staff training requirements across the States and Territories

State/territory	Description
ACT	Requires training for staff at physical venues. Has no specific training requirements for staff of online wagering operators.
NSW	Requires training for staff at physical venues with gaming machines. Has no specific training requirements for staff of online wagering operators.
NT	<p>The Northern Territory <i>Code of Practice for Responsible Online Gambling 2016</i> requires all new staff, engaged in client interaction, complete appropriate responsible gambling training within three months of commencing employment.</p> <p>The Code also requires all staff, including senior staff and managers overseeing these employees, who have interaction with clients, complete refresher training courses regularly, but at least every 12 months, to maintain optimum understanding of harm minimisation strategies and promote a responsible gambling environment.</p> <p>It is preferred that this training is completed with a registered training organisation, however in-house training is sufficient to meet the operators' obligations under the code.</p>
Queensland	<p>Section 2.4 of the Queensland <i>Responsible Gambling Code of Practice</i> requires the operator to have in place mechanisms to ensure that appropriate and ongoing responsible gambling training is provided to staff who provide gambling products to customers.</p> <p>In addition, the relevant owners, boards and managers are required to receive appropriate information to guide decision making in relation to responsible gambling.</p>
SA	<p>The South Australian <i>Gambling Codes of Practice Notice 2013</i> requires all people involved in selling an operator's gambling products, or otherwise dealing with patrons, to receive problem gambling training. Additional training requirements are placed upon staff in a supervisory role.</p> <p>This training is required to be completed as part of the staff induction process and refresher training must be completed every two years.</p>
Tasmania	<p>According to the <i>Responsible Gambling Mandatory Code of Practice</i> for Tasmania, relevant prescribed licence holders must ensure that special employees and staff in totalisator outlets and lottery outlets are fully trained in the Responsible Conduct of Gaming and that the requirements for the enhanced course are met. This applies to online wagering operators as well as land-based operators.</p>

State/territory	Description
Victoria	There is no standard code of conduct for gambling operators in Victoria, however, licence holders are required to have a responsible gambling code of conduct approved by the Commission. The guidance for these codes includes the suggestion that staff receive appropriate training with regard to the responsible conduct of gambling and access to responsible gambling materials.
WA	The Western Australian Government has not issued specific staff training guidelines for online wagering.

Effective improvement to the harm minimisation and consumer protection measures outlined above should be among the key objectives of any national policy framework. A number of these measures can only provide robust protection from gambling-related harms if implemented across gambling providers, and across Australian jurisdictions, rather than, as at present, on a jurisdiction by jurisdiction basis. A national framework should set national minimum standards across key measures (including self-exclusion, voluntary pre-commitment, credit availability, identity verification, staff training and advertising) with those standards to be given effect as appropriate through Commonwealth or State and Territory regulation.

## 5.5 Other policy and regulatory options

As part of the consultation phase of this Review, a number of issues were raised that, while important for a consideration of the broader impacts of online gambling and the impacts of the policy and regulatory options outlined above, are not directly addressed in the Terms of Reference. The sections below discuss these additional issues raised by stakeholders in a general sense. However these issues are not considered in the Findings and Recommendations of this Review outlined in Section 6.

### Sports and betting integrity

While the integrity of sports and racing are not specifically included in the Terms of Reference, a number of stakeholders indicated that a key impact of leakage to the offshore wagering market is the potential increase in sports and racing integrity issues. In particular, the concern is that while onshore wagering information is shared with sports and racing bodies to identify suspicious betting behaviour, there is little transparency with offshore wagering providers. In particular, Cricket Australia has sought to obtain information from an offshore operator and received no response. This means that suspicious betting activity conducted offshore would not be identified by sporting or racing bodies.

Integrity issues were of particular concern to racing bodies, which highlighted evidence from the HKJC that suggested potential problems associated with illegal offshore wagering based in Asia. Racing bodies also raised concerns that in-play betting would further raise potential integrity issues.<sup>233</sup>

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<sup>233</sup> Racing Australia submission, p 5.

In order to address these concerns, a number of racing bodies suggested that the need for consistency across jurisdictions applies to measures related to betting integrity in addition to the form of regulation and consumer protection framework. They suggested the following potential approaches to address integrity issues:

- development of a national commission, which would be responsible for facilitating the sharing of information between wagering providers and sports and racing bodies;<sup>234</sup> and
- investment in the conduct of ongoing research and analysis of wagering information.

## Taxation

In addition to consideration of the consistency of the regulatory framework and its enforcement, a number of stakeholders addressed the existing taxation framework, specifically the mismatch of where taxation is incurred and where it is paid. Specifically, some stakeholders indicated concern that:

- differential tax rates between jurisdictions result in States and Territories competing by offering lower tax rates to operators. This 'race to the bottom' results in an overall decrease in total tax revenue received;<sup>235</sup> and
- the revenue mismatch (as revenue is earned in the jurisdiction of the operator, not the gambler) means that the social costs of gambling are not incurred in the jurisdictions that earn revenue from gambling. This reduces the scope for revenue earned from gambling taxes to address the social costs of gambling, through the provision of gambling support services such as subsidised counselling services for people adversely affected by gambling.<sup>236</sup>

In order to address these concerns, a number of stakeholders discussed the potential for a point of consumption tax that would tax gambling services at the point of consumption.<sup>237</sup> For instance, any gambling services provided to a Victorian resident would result in taxes paid in Victoria. It was noted that this would address the existing mismatches and that this also resulted in some success (under different circumstances) in encouraging offshore providers to come onshore in the United Kingdom.

In contrast, online operators, many of whom currently incur relatively low tax costs as a result of being licensed in jurisdictions with lower tax rates, suggested that a point of consumption tax was unnecessary because:

- the online gambling industry is not sufficiently different to other e-commerce industries that it would need special forms of taxation; and
- online operators already collect GST, which is a point of consumption tax.

It should be noted that, while a number of stakeholders raised taxation for consideration in this Review, it is not currently within the direct scope of the Review. Given the scope of this issue, this Review has not considered the impacts of changes in taxation in detail.

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<sup>234</sup> Racing Australia submission, p 15.

<sup>235</sup> Sen. Bridget McKenzie submission, p 5.

<sup>236</sup> Confidential submission.

<sup>237</sup> Clubs Australia submission, p 13.

## Product fees

As part of the existing regulatory framework in Australia, online onshore wagering operators are required to make payments to sporting and racing bodies based on the amount of wagering activity they service on each sporting or racing event. The magnitude of these payments is typically based on integrity agreements signed between wagering operators and the sporting and racing bodies, however in some States payments to racing bodies are determined by race fields legislation.

A number of stakeholders raised potential changes to product fees in submissions and consultations. In general these submissions referred to the cost of product fees and its impact on industry competitiveness<sup>238</sup> or the importance of product fees to the sustainability of sporting and racing codes.<sup>239</sup>

While online wagering operators more broadly indicated that they accept the need to pay for access to race fields information and sporting products, a number of operators indicated that this can impact their ability to compete with offshore operators given that the offshore sector does not bear these costs.<sup>240</sup> As discussed above, stakeholders more broadly saw value, in the form of better odds, as a key driver of offshore wagering by Australian consumers.<sup>241</sup> This was considered particularly the case for racing products, as product fees in racing are higher than for the sporting codes.<sup>242</sup>

A number of stakeholders identified that large product fee obligations (particularly those based on turnover) are a key reason for online operators to reject bets from successful consumers (as discussed in more detail in Section 5.4.7). It is noted in these submissions that these customers are unprofitable because their expected losses do not recover the costs of providing betting services, such as product fees.<sup>243</sup> Some online operators indicated that reform of product fees for successful clients and professional gamblers is necessary for these bets to be accepted by online providers.<sup>244</sup>

Conversely, racing bodies highlighted the importance of product fees to the sustainability of their businesses and the broader racing industries in Australia.<sup>245</sup> In general, these stakeholders were particularly concerned that:

- leakage to offshore wagering operators represents lost revenue in the form of product fees, which threaten the sustainability of the racing sector;<sup>246</sup> and
- expansion of in-play wagering for sport is likely to shift betting activity from racing to sport, which would reduce returns to the racing industry.

Product fees have been considered when examining the impacts of offshore wagering and the decision to make changes to existing regulations to reduce the size of the offshore market. However, given the scope of this Review, changes to the structure and magnitude of product fees have not been considered in this Report.

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<sup>238</sup> Topsport submission, p 1.

<sup>239</sup> Tasracing submission, p 1.

<sup>240</sup> Topsport submission, p 1.

<sup>241</sup> bet365 submission, p 3.

<sup>242</sup> Australian Sports Commission submission, p 4.

<sup>243</sup> Topsport submission, p 1.

<sup>244</sup> Topsport submission, p 1.

<sup>245</sup> Confidential submission.

<sup>246</sup> NSW Trainers Association submission, p 1.

## 6 Key Findings and Recommendations

This section details the key findings and recommendations of the Review. These findings and recommendations have been informed by discussions with stakeholders throughout the consultation phase of this Review and have been developed with regard to the Review's own research into the size of the issues associated with illegal offshore wagering and the suitability of the options identified by stakeholders to address these issues.

### 6.1 General principles

As discussed in Sections 4 and 5, while there is little certainty regarding the magnitude of the impacts associated with offshore wagering, there is some consensus among stakeholders about existing issues associated with online wagering more broadly. In addition, while estimates of the size of the market vary, given the significance of the estimates and the growth in online gambling, this Review considers it important and reasonable that improvements are made to the regulatory framework.

Specifically these improvements should seek to address the following issues:

- the lack of independent, reliable and robust information available regarding online gambling including market size and the prevalence and magnitude of the harms associated with it;
- the failures caused by a lack of consistency of harm minimisation and consumer protection measures in shielding consumers from the risk associated with gambling; and
- the competitiveness of the domestic industry, including:
  - the variations in regulation across jurisdictions, which increases compliance costs for the onshore industry; and
  - the availability of products currently offered by offshore operators but not onshore operators.

In general, the Review considers that these issues can be addressed through a suite of measures that seek to:

- ensure that harm minimisation and consumer protection measures in place in Australia are consistent and robust;
- restrict the ability of offshore operators to provide illegal services to Australian consumers;
- encourage Australian consumers to avoid offshore operators; and
- provide a consistent and forward looking national policy framework.

This section outlines the Review's general findings and recommendations. Subsequent sections outline recommendations for the harm minimisation and consumer protection framework and the regulatory framework including implementation and enforcement.

## Research

As discussed above, there is little certainty regarding the size of the offshore market for online wagering and its associated impacts. There is also some uncertainty associated with understanding the broader impacts of gambling as research findings are constrained by their methodology and data source.

Historically research into gambling, including online wagering, has been undertaken by independent researchers working within academic settings and by State and Territory agencies.

In 2003 Gambling Research Australia (GRA) was established as an initiative of the Ministerial Council on Gambling. In 2013 the Australian Gambling Research Centre (AGRC) was established to conduct research into the harm caused by gambling and measures to reduce that harm. AGRC is part of the Australian Institute of Family Studies.

Good public policy should be evidence-based. The better the evidence the more effective is the development, implementation and achievement of goals of policy measures. As a result, a key finding of this Review is that there should be a renewed co-operative effort made by Commonwealth, State and Territory governments to develop an effective evidence base to underpin future policy and regulatory decisions.

Commonwealth, State and Territory governments should work to develop strategic research priorities that not only meet the needs of individual jurisdictions but also provide greater holistic insight into gambling across Australia.

Through greater scope and depth of publicly funded research governments will have the information required to develop and implement effective public policy.

### Recommendation 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.*

## National policy framework

There was a consensus among stakeholders that nationally consistent regulation is critical to improving outcomes in the wagering industry. Importantly, the need for consistent regulation is seen as an important part of sustaining a dynamic and competitive industry while also maintaining robust and effective harm minimisation outcomes.

Current Australian regulatory arrangements are inconsistent and complex, which can impede harm minimisation and consumer protection efforts. They also create burdens for Australian licensed operators not faced by illegal offshore operators.

A national policy framework should be established to remedy this situation. A similar approach was undertaken by Commonwealth, State and Territory governments in 2011 in relation to match-fixing in sport.

The key objectives of the national policy framework should be to:

- encourage competition, both within the domestic industry and between the industry and offshore competitors; and
- protect consumers, both in terms of protection from unfair market practices and protection from the harms associated with gambling.

Consumer protection and harm minimisation elements of the national policy framework should include:

- self-exclusion from gambling services;
- voluntary pre-commitment and the setting of gambling limits;
- credit or deferred settlement betting;
- the provision of activity statements;
- timing associated with the verification of identity;
- staff training requirements;
- advertising controls;
- standard responsible gambling messaging; and
- streamlining access to gambling counselling advice across jurisdictions.

## Recommendation 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.*

### Product availability

Online in-play wagering on sporting events was a key focus of stakeholder input to the Review. In addition, it was also a key consideration of the 2012 DBCDE Review of the *Interactive Gambling Act 2001* completed by DBCDE.

During this Review stakeholders highlighted concerns about the existing approach to regulating in-play wagering for sport:

- **it is inconsistent** – as it allows in-play wagering for sports at physical venues or via telephone, but not over the internet and it allows in-play wagering over the internet for racing events but not sporting events;
- **it is difficult to enforce** – in particular recent market developments have shown the existing prohibition to be ineffective given the current drafting of the Act; and
- **it is available from offshore providers** – reducing the capacity of Australian operators to compete, resulting in Australians seeking to engage in offshore online wagering.

The Review notes that similar concerns were raised when other national governments have sought to deal with the issues arising from the activities of illegal offshore online operators.



A key principle applied in many of those jurisdictions, including the United Kingdom, in addressing this issue has been to ensure that robust and effective harm minimisation and consumer protection measures were in place and operational.

As noted previously, the current harm minimisation and consumer protection systems operating across Australian States and Territories are varied and inconsistent, enabling users and/or operators to avoid measures designed to assist at-risk individuals or people who are adversely affected by gambling.

Until the proposed national framework is established and operating, consideration of additional in-play betting products should be deferred. In the meantime legislative steps should be taken to respect the legislation's original intent.

During the Review no stakeholders argued for the legalisation of micro-bets and there was very little support from industry or responsible gambling organisations for the legalisation of online casino style games.

Under current Integrity Agreement arrangements in those States and Territories where the provisions of the *National Policy on Match-Fixing in Sports* have been given effect, the approval of sporting associations is required for the types of bets being offered by operators.

In its submission, the National Sports Integrity Unit highlighted potential risks associated with this approach for less well-financed sporting bodies. If in-play sports wagering is to be expanded in future, further work is required to identify practical ways to avoid or minimise these risks.

### **Recommendation 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 Interactive Gambling Act 2001.*

## **6.2 Consumer protection and harm minimisation**

Consumer protection and harm minimisation should be a key objective of the national policy framework. It is important that Australia's consumer protection and harm minimisation framework be robust, effective and consistent across all jurisdictions. The sections below represent the Review's findings and recommendations with respect to specific components of the consumer protection and harm minimisation framework.

### **Self-exclusion**

At present, a number of onshore operators provide self-exclusion options to consumers who seek it. However, given that many people gambling online have accounts with more than one operator, the fact that these facilities are not coordinated between operators reduces their effectiveness.

To be effective, any self-exclusion system should cover all operators, so that a customer's request to exclude from accessing one service would apply to all their accounts.

From 1 March 2016, as part of its *Code of Practice for Responsible Gambling*, the Northern Territory is seeking to implement a self-exclusion system, which would enable customers to exclude from all operators licensed in the territory (see Box 5-4).

Given over half of Australia's online operators are licensed in the Northern Territory, this initiative offers an opportunity to effect a national self-exclusion register covering all Australian licensed operators. Efforts should be made investigate the best means of including all Australian operators in the proposed Northern Territory self-exclusion system.

Alternatively, if expanding the NT system is not feasible, a national register should be established.

Any costs associated with either proposal should be borne by online operators.

#### **Recommendation 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.*

#### **Voluntary pre-commitment**

At present a number of operators offer pre-commitment options to customers upon registration. These facilities are popular and represent a useful tool for consumers to effectively manage their exposure to the harms associated with gambling.

Operators should be required to offer customers an opportunity to set voluntary limits on their wagering activities. Limits should cover a range of options, including betting and deposit limits.

South Australia currently mandates the use of voluntary pre-commitment options, including a requirement that users are prompted every two years to confirm whether they would like to impose or review their limits. This should be a feature of the national policy framework to ensure all users access voluntary pre-commitment.

#### **Recommendation 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.*

## Credit or deferred settlement betting

The provision of 'credit' or deferred settlement betting received attention in submissions.

Those concerned about the impact of problem gambling highlighted the ease of access and unsolicited nature of offers. At the same time, gambling operators noted that the availability of credit from illegal offshore operators would act as an incentive for some Australians to wager offshore if deferred settlement facilities were made less readily available.

In part due to the absence of any interest charged on this type of transaction, a number of existing consumer protection measures in relation to credit do not currently apply to deferred settlement facilities. The application of such measures would help reduce risks to consumers (as they do in other areas where credit is involved).

Two options available to address this situation are to either:

- apply the National Credit Code to online operators; or
- adopt similar provisions to those currently applying in the Northern Territory.

### Recommendation 6

*Operators should be required to apply additional consumer protections where 'credit' or deferred settlement betting is available.*

Additionally, concerns were raised about the links between online operators and payday and other lenders – whether by direct agreement or through advertising on the operators' websites. These links should be discouraged.

### Recommendation 7

*Links between online wagering operators and payday and other lenders should be discouraged.*

## Activity statements

Stakeholders have identified that it can be difficult to access a clear and simple record of a consumer's gambling history making it harder to self-identify at-risk gambling behaviour. The Review considers it important that users are readily able to access this information.

The national policy framework should ensure that users are regularly sent online statements detailing their wagering activity including total wagered, winnings and losses. These statements should also be readily accessible to the customer through the operator's website.

### **Recommendation 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.*

### **ID checking**

At present, operators are required to verify the identity of users within 90 days of registration with an online operator (45 days in the Northern Territory). Industry and non-industry stakeholders alike indicated that it is possible to reduce the time necessary to complete this process.

As part of the national policy framework, the verification period should be set at a maximum of 45 days.

However, the suggestion by at least one stakeholder that this time could be further reduced to as little as seven days should be investigated.

### **Recommendation 9**

*As part of the national policy framework, the current 90 day verification period should be reduced to at least 45 days.*

### **Staff training**

At present staff training requirements are inconsistent across the States and Territories. In particular the roles of staff required to participate in mandatory training varies between jurisdictions.

The national policy framework should ensure that all staff involved with online users have undertaken appropriate training in the responsible conduct of gambling provided through an accredited provider.

### **Recommendation 10**

*All staff involved with online users must undertake appropriate training in the responsible conduct of gambling – provided through an accredited provider.*

## Advertising

Advertising of online wagering is a key concern of most industry and non-industry stakeholders.

Advertising of online services is covered by both Codes and State and Territory regulations. Industry stakeholders are concerned about the costs associated of complying with differing State and Territory regulations.

Given that advertising of online wagering services is one of the competitive advantages of being a licensed operator, and recognising Australia's national media market, it is strongly desirable that consistent, enforceable rules for advertising of online gambling be included in the national policy framework.

### Recommendation 11

*That the national policy framework include consistent, enforceable rules about advertising of online gambling.*

Existing guidelines, including Codes or State/Territory regulations, do not cover digital or social media in the same manner as other media.

The Review was informed that, as a result both offshore and online operators were using social media and other digital platforms to actively promote services and products.

Given support for existing restrictions applying to other media, the omission of a Code or enforceable rules relating to digital or social media should be remedied.

### Recommendation 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.*

## Standard responsible gambling messaging

At present, the anti- or responsible-gambling messages provided to consumers are inconsistent across jurisdictions. There are a range of messages, presented in a variety of ways.

The Review heard that greater consistency about such messaging was more likely to support the considerable efforts jurisdictions invest in harm minimisation and consumer protection initiatives.

The national policy framework should provide for the development and use of nationally consistent and standardised messaging to assist efforts to ensure responsible gambling.

### **Recommendation 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.*

#### **Access to gambling counselling advice**

Equally, at present there are multiple websites and telephone services, including Gambling Help Online (a national 24-hour helpline and web portal), that offer help and advice to people seeking assistance with gambling problems.

A more uniform approach to accessing gambling counsellors and advice would improve the ability of consumers to access the services funded and support by governments across Australia.

### **Recommendation 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.*

#### **Restrictions on betting**

The Review heard complaints from a number of individuals that onshore operators had slowed and/or reduced their bets or, in some instances, stopped them from holding betting accounts, because, it was claimed, they were 'too successful'. They cited this as a reason for some Australians to wager offshore and urged the implementation of minimum betting rules similar to those adopted by Racing NSW.

Industry stakeholders contested the magnitude of this problem.

In the absence of independent analysis, it is unclear whether Racing NSW-style minimum bet requirements could remedy the situation and provide greater incentive for users to stay onshore.

### **Recommendation 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.*

### 6.3 Regulatory response framework

This Review has considered how the national policy framework should be implemented and any changes necessary to the *Interactive Gambling Act 2001* or its enforcement to address the issues identified in Section 6.1.

This section considers the implementation of the national policy framework and enforcement measures that may help to reduce the size of the offshore market.

#### Implementation of the national policy framework

The proposed national policy framework could be implemented through:

- Commonwealth legislation creating a regulation making power under which the framework could be established; or
- COAG using the 2011 *National Policy on Match-Fixing in Sport* precedent and implemented through nationally consistent legislation.

Given existing jurisdictional responsibilities for gambling regulation, and reflecting the Review's opinion that a collaborative approach can achieve the most effective outcome, the latter option is preferred.

Despite a number of suggestions that a national regulator be established, the Review considers improved outcomes would be achieved through the proposed national policy framework using existing structures and agencies. This approach would leverage the existing expertise of the relevant Commonwealth, State and Territory agencies, similar to that adopted through the *National Policy on Match-Fixing in Sport*.

#### Recommendation 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.*

#### The Interactive Gambling Act 2001

The Review heard from stakeholders that the existing approach to enforcement of the Act was insufficient to deter offshore operators from providing illegal services to Australian consumers.

Consistent with enforcement approach to the proposed national framework outlined previously, the ACMA will be charged with responsibility for oversight and enforcement of the *Interactive Gambling Act 2001*.

In undertaking these responsibilities, it is proposed that the Act be amended to:

- 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 DBCDE review; and
- 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.

Throughout the consultation it was clear that no single strategy was likely to completely eliminate illegal offshore wagering. The aim of 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 strong enforcement of regulation.

#### **Recommendation 17**

*The Act should be amended to:*

- *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 DBCDE review; and*
- *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.*



## Other enforcement measures

### Payment blocking

This Review has heard that developments in technology since the completion of previous reviews has allowed a number of jurisdictions to implement measures seeking to disrupt illegal offshore gambling by requiring banks and credit cards not to authorise payments for illegal transactions. For instance these measures are in place in the United States, the United Kingdom (as a voluntary arrangement) and in Norway.

Treasury and other relevant agencies should work with Australian banks and credit card providers to strengthen the intent of the Act by identifying and implementing the most effective international approach to stop payments to illegal offshore operators.

As recommended in the 2012 DBCDE Review, 'safe harbour' legislation should be implemented to support these efforts.

#### Recommendation 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 2012 DBCDE Review of the Interactive Gambling Act 2001 relating to 'safe harbour' provisions should be adopted to support these efforts.*

### Website blocking

A number of jurisdictions apply website blocking methods to disrupt the use of offshore operators by domestic consumers. ACMA should seek to pursue voluntary agreements with ISP and/or content providers to block identified sites fostering illegal wagering activity within Australia.

Should attempts to secure voluntary agreements prove unsuccessful, ACMA should identify and implement international legislative measures that seek to disrupt promotion of illegal online operators.

#### Recommendation 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.*

## Appendix A: Terms of Reference

While regulation of gambling primarily rests with State and Territory governments, the Commonwealth Government is committed to a national approach to gambling policy developed in a cohesive and consultative way.

The Government's policy on gambling sets out several commitments including matters relating to extending lines of credit to gamblers, controlling gambling advertising during sporting events, the impact of illegal offshore wagering and maintaining existing restrictions on online gambling services such as poker. The Government is delivering on the commitment it made prior to the 2013 election, to investigate methods of strengthening the enforcement of the *Interactive Gambling Act 2001* and ensuring Australians are protected from illegal online gambling operators.

As a result of operations of illegal offshore gambling operators, there is also a need to examine the emerging problems, as well as the effectiveness of enforcement options to address the operations of these services.

It is estimated that offshore wagering is a \$1 billion annual illegal business in Australia. A presentation in April 2015 to the United Nations Congress on Crime Prevention and Criminal Justice, estimated the global sports betting market to be worth up to \$3 trillion and that the illegal amount is estimated at around 90 per cent of that sum.

Evidence suggests a significant number of illegitimate offshore operators are targeting Australian customers of racing and sports. Australian headquartered organisations are attempting to avoid legal obligations by basing their operations in unregulated international regions such as the Pacific and Asia.

Some State and Territory governments have legislated to require betting services to be authorised. Additionally, the *Interactive Gambling Act 2001* prohibits online gambling services and exempts wagering in limited and express circumstances. The Act outlines requirements on penalties for breaches, and complaints systems.

A number of wagering operators are now moving offshore, leading to operators being able to avoid paying the product and other fees that assist with funding racing and sports facilities, integrity measures, prize money and participant payments and other operational costs. Importantly, offshoring operations also prevents regulators from having access to all betting transaction information. By avoiding the proper checks and balances and evading the fees, this arrangement has the potential to undermine the integrity of racing and sports in Australia.

A number of countries have developed actions to address issues of unauthorised wagering providers including the implementation of greater enforcement measures within their financial and telecommunication legislation.

## The Review

Respecting jurisdictional frameworks, the Review will address the impact of illegal offshore wagering on the economic viability and integrity of the racing and sports industries. The Review will examine regulation in overseas jurisdictions that could be applied in Australia, and also review other technological and legislative options.

The Review will undertake an inquiry into the practice of providing offshore wagering services to customers in Australia under the *Interactive Gambling Act 2001*.

An independent reviewer appointed by the Minister for Social Services will lead the Review and be supported by a secretariat in the Department of Social Services and expert consultants. It will be undertaken in close consultation with stakeholders, in particular State and Territory governments, the industry and community. There will also be a call for public submissions.

The Review will examine:

1. the economic impacts of illegal offshore wagering and associated financial transactions on legitimate Australian wagering businesses, including size of the illegal industry, growth, organisation and interrelationships with other criminal industries and networks;
2. international regulatory regimes or other measures that could be applied in the Australian context;
3. what other technological and legislative options are available to mitigate the costs of illegal offshore wagering; and
4. 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.

The Review will provide both a draft and final report to the Minister for Social Services and the Minister for Communications for their consideration. It will contain recommendations including those for mitigating illegal offshore wagering including but not limited to, through improved government controls, industry codes and standards, and information to customers to enhance self-responsibility.

## Duration

The Review will report by 18th December 2015.

## Appendix B: Stakeholder Consultations Strategy

The stakeholder consultation approach involved two processes: stakeholder meetings and a call for submissions (see Appendix C). Stakeholder consultations were an important part of the Review process in informing the Review’s evidence base, findings and recommendations. These stakeholders hold specific and diverse views on issues and approaches to address the matters in the Terms of Reference.

A series of stakeholder meetings were conducted during November 2015 with key stakeholders across industry, academia, responsible gambling groups, problem gamblers and other gamblers, State and Territory governments and Commonwealth agencies. The meetings were used to identify key issues and possible approaches to address issues arising in the Review, and involved stakeholders directly involved in the matters outlined in the Terms of Reference. Informal meetings or discussions with stakeholders were also held outside the stakeholder meeting schedule at the discretion of the Review lead.

A list of all stakeholders who were consulted as part of the Review is provided below.

Stakeholders Consulted (Organisations)		
Category	Stakeholder	
Licensed online wagering organisations	Australian Wagering Council Betfair bet365 Crownbet Draft Kings	Ladbrokes Sportsbet Unibet William Hill
Online and land-based Wagering and Gaming and Hospitality	Australasian Gaming Council Australian Hotels Association Bookmakers Association Clubs Australia	Crown Melbourne Tabcorp Tatts Group
Sporting Associations	Australian Sports Integrity Network Coalition of Major Professional and Participation Sports	Racing Australia

Stakeholders Consulted (Organisations)		
<b>Commonwealth Government Organisations</b>	Attorney-General's Department AUSTRAC Australian Communications and Media Authority Australian Crime Commission Australian Federal Police Australian Gambling Research Centre	Australian Taxation Office Commonwealth Treasury Department of Finance Department of Health – National Integrity of Sport Unit Department of Prime Minister and Cabinet Director of Public Prosecutions
<b>State and Territory governments</b>	Gambling and Racing Commission (ACT) Independent Gambling Authority (South Australia) Norfolk Island Gaming Authority	Victorian Commission for Gambling and Liquor Regulation Victorian Minister for Gaming and Liquor Regulation
<b>Financial institutions</b>	Australian Bankers Association Australian Payments Clearing Association	Mastercard PayPal
<b>Service and Content Providers</b>	Baker & Mackenzie Communications Alliance Google	Netsweeper Optus
<b>Responsible Gambling Organisations</b>	Financial Counselling Australia Gambler's Help Southern Uniting Communities	Victorian Inter-Church Gambling Taskforce Victorian Responsible Gambling Foundation
<b>Academics</b>	Professor Charles Livingstone (Monash University) Dr Anna Thomas (Australian Gambling Research Centre)	Associate Professor Samantha Thomas (Deakin University)

## Appendix C: Submissions to the Review

The Department of Social Services sought written submissions from interested parties addressing the Terms of Reference, including industry stakeholders and community support services, state and territory governments, and Commonwealth agencies, as part of this Review.

A call for submissions was published on the Department of Social Services website on 15 October 2015. Interested stakeholders are invited to provide written responses against the Terms of Reference. A series of questions was provided as a guide for submissions. The submission period ran for four weeks with a closing date of 10am, Monday 16 November 2015. Submissions were published on the Department of Social Services website after the closing date unless otherwise specified by respondents.

A list of all submissions made to the Review is provided below

Organisation	Jurisdiction	Representative
Individual Submissions		
Senator Bridget McKenzie, Victoria (NP)	VIC	
Professor Charles Livingstone, School of Public Health and Preventive Medicine, Monash University	VIC	
The Hon Wilson Tuckey	WA	
Senator Nick Xenophon, South Australia (Ind)	SA	
Individual Submission, Ms Shona Harris		
Individual Submission, Mr Patrick Hill		
Individual Submission, Mr Richard Irvine		
Individual Submission, Name Withheld		
Individual Submission, Name Withheld		
Individual Submission, Name Withheld		

Organisation	Jurisdiction	Representative
Individual Submission, Name Withheld		
Individual Submission, Name Withheld		
Individual Submission, Name Withheld		
Individual Submission, Name Withheld		
Individual Submission, Name Withheld		
Individual Submission		
Individual Submission		
Individual Submission		
Individual Submission		
Individual Submission		
Individual Submission		
Individual Submission		
State/Territory Government		
Government of Victoria	VIC	Adam Giles MLA, Chief Minister
Government of Tasmania	TAS	Hon Peter Gutwein MP, Treasurer
Government Submission		
Government Submission		
Government Submission		
International Organisations		
Customs and Monopoly Agency Italy	Italy	Francesco Rodano, Remote Gaming Director
ESSA	Belgium	Khalid Ali, General Secretary

Organisation	Jurisdiction	Representative
Gambling Commission Great Britain	UK	Jenny Williams, Adviser – Chief Executive and Commissioner (until end Sep 2015)
Gambling Commissioner – Gibraltar	UK	Phillip Brear, Head of Gambling Regulation
International Organisation Submission		
International Organisation Submission		
Australian Organisations		
Alliance for Gambling Reform	VIC	Mark Henley
Australia and New Zealand Casino and Gaming Regulators		
Australian Bankers' Association	NSW	Lena Rizk, Policy Manager – Retail Policy
Australian Bookmakers Association	NSW	Peter Fletcher, CEO
Australian Hotels Association	ACT	Stephen Ferguson, National CEO
Australian Sports Commission	ACT	Susan Garrido, Executive Officer
Australian Wagering Council		
Bentleigh Bayside Community Health	VIC	Alvin Efklides, Operations manager Gambler's Help
bet365	NSW	Daniel Moran, CEO
Canberra Greyhound Racing Club	ACT	Debbie Collier, Secretary
Clubs Australia	NSW	Daniel Mitchell, Senior Policy Officer
Coalition of Major Professional and Participation Sports	VIC	Malcolm Speed, Executive Director
Communications Alliance	NSW	Christiane Gillespie-Jones, Director Program Management



Organisation	Jurisdiction	Representative
CrownBet/Betfair Australia	VIC	Andrew Menz, Legal and Corporate Affairs Director
Digital Industry Group Inc.	NSW	Samantha Yorke, Public Policy & Government Relations
Financial Counselling Australia	VIC	Lauren Levin
Free TV Australia	NSW	Julie Flynn, CEO
Gambling Impact Society (NSW) Inc.	NSW	Kate Roberts, Executive Officer
Greyhound Racing Victoria	VIC	Stuart Laing, General Manager Wagering & Partners
Harness Racing Australia Incorporated	VIC	Andrew Kelly, Chief Executive
Institute of Public Affairs	VIC	Simon Breheny, Director, Legal Rights Project
Moreland City Council	VIC	
National Integrity of Sport Unit	ACT	
New South Wales Trainers Association Ltd.	NSW	Steve McMahon, Chief Executive
Racing Australia	VIC	
Racing Victoria	VIC	
Southern Cross University	NSW	Sally Gainsbury, Senior Lecturer, Centre for Gambling Education and Research
Sportsbet	VIC	Brad Addison, Government Relations Manager
Tabcorp	NSW	David Attenborough, CEO
Tasracing	TAS	Dr Eliot Forbes, CEO
TopSport	QLD	Tristan Merlehan, Director

Organisation	Jurisdiction	Representative
Victorian Responsible Gambling Foundation	VIC	Serge Sardo, CEO
Australian Organisation Submission		
Australian Organisation Submission		
Australian Organisation Submission		
Australian Organisation Submission		
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## Appendix D: Literature Review

The following documents were reviewed in forming the evidence base underpinning the findings and recommendations of this Report. The list of sources includes academic journals, Government and stakeholder websites, and publicly and privately available datasets.

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## Appendix E: Productivity Commission 2010 Gambling Report No.50 Recommendations

Following a decision by the COAG, the Australian Government requested the Productivity Commission undertake a public inquiry into gambling. The inquiry provided an update on developments since the **Commission's 1999 report**. Its recommendations largely involved either the re-calibration of existing government policies or the wider adoption of effective policies that some jurisdictions have already implemented.

While the Productivity Commission Review considered all aspects of gambling in Australia and the treatment of problem gambling, it made specific recommendations relating to online gambling. These recommendations included limited liberalisation of online gambling and the implementation of national harm minimisation measures, issues that are relevant and significant to this Review. The recommendations in relation to online gambling are detailed in Chapter 15 of the report (Online Gaming and the Interactive Gambling Act) and are outlined below.

### Recommendation 15.1

In consultation with state and territory governments, the Australian Government should amend the Interactive Gambling Act to permit the supply of online poker card games.

Online poker, along with other gambling forms currently exempted from the Interactive Gambling Act, should be subject to a regulatory regime that mandates:

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

The Australian Government should monitor the effectiveness of these harm minimisation measures, as well as the performance of the regulator overseeing the national regulatory regime. The Australian Government should also evaluate whether:

- the provision of online poker card games should continue to be permitted
- liberalisation should be extended to other online gaming forms.

## Recommendation 15.2

The Australian Government should assess the feasibility and cost effectiveness of:

- Australia-wide self-exclusion and pre-commitment options for equivalent online providers
- the capacity for extending self-exclusion through the payments system or through software solutions selected by problem gamblers
- the scope for agreement on international standards on harm minimisation and their enforcement through self-regulatory or other arrangements.

## Appendix F: DBCDE 2012 Review of the Interactive Gambling Act Recommendations

The DBCDE released its Final Report as part of its review of the Act in 2012. The Report made a total of 32 recommendations, which were intended to create significant changes to the Australian regulatory landscape concerning online gambling. The recommendations, which are outlined below, are directly relevant to online gambling and the impetus and focus of this Review.

### Recommendation 1

The IGA should provide for the development of a national standard, applicable to all Australian licensed interactive gambling providers, that establishes the framework for a minimum set of harm minimisation and consumer protection measures for all types of interactive gambling that are permitted by the IGA.

- The standard should be developed by a joint working party of Commonwealth, state/territory, industry, gambling researchers and responsible gambling bodies under the auspices of the COAG Select Council on Gambling Reform.
- There should be clear timelines established for the development and implementation of the minimum standard—there may need to be a different timeline and some different features for this standard for online wagering and the proposed trial of online tournament poker.
- The minimum standard should be incorporated into state/territory legislation.
- States/territories should continue to be responsible for enforcement of harm minimisation and consumer protection as they are now.

### Recommendation 2

Online gambling providers that do not become licensed by an Australian state/territory jurisdiction, and thus do not sign up to the national standard, should be prohibited under the IGA.

### Recommendation 3

The harm minimisation and consumer protection measures in the proposed minimum standard should include (but not be limited to):

- standardised and significantly more prominent responsible gambling messages
- tightened rules around the capacity of online gambling providers being able to provide lines of credit to users—already announced
- limits on the types of betting inducements that can be offered, particularly those that encourage individuals to encourage other individuals to open an account—already announced
- a pre-commitment capability including in terms of total spend, total time played, number of bets placed and deposits made, including making it mandatory for users to set their own deposit limits
- protection of customer funds—already announced
- protection and storage of customer information consistent with Australian privacy principles making data on the uptake and use of harm minimisation and consumer protection measures (consistent with Australian privacy principles) publicly available for research purposes
- quick identity verification and age identification of customers when opening a betting account, including consideration of using the Document Verification Service to expedite verification processes and a requirement to roll back all transactions in cases of proven underage gambling
- establishment of a national self-exclusion database to be jointly funded by state/territory governments and industry in proportion with their share of online gambling revenue
- highly accessible spend tracking facilities including a very prominent message on losses/profits incurred to date by the account holder at the point they log in
- targeted warning messages alerting consumers to gambling behaviour that is indicative of problem gambling (subject to consultations with vendors of software that may block such warning messages)
- prominent links to the National Gambling Helpline available on all pages of the websites of regulated online gambling service providers
- a link on the websites of regulated gambling service providers to the state/territory gambling regulatory authorities to which consumers can lodge complaints—state/territory gambling authorities should report publicly annually on the number and types of complaints made against each licensed online gambling service provider.

### Recommendation 4

The IGA be amended to include a provision for a director, principal or other person acting in an official capacity for a provider to be issued with a notice requiring them to cause the provider to cease offering services in contravention of the IGA, with failure to comply with the notice being a strict liability offence.

## Recommendation 5

The ACMA should be the body responsible for administering civil penalties for the provision of prohibited gambling services hosted in Australia including:

- Issuing civil (including pecuniary) penalties by way of an infringement notice – this would be in addition to the existing criminal penalties in the IGA, which are the responsibility of the AFP.
- Issuing take-down notices to internet gambling service providers in relation to prohibited internet gambling content hosted in Australia – this would be similar to the provisions in Schedule 7 of the *Broadcasting Services Act 1992* in regard to prohibited content.
- Applying to the Federal Court for injunctive relief, if an Australian-hosted internet gambling service provider acts in contravention of the above proposed civil penalties or take-down notice. Subject to consistency with overarching Commonwealth legal policy, there should be a provision expressly conferring jurisdiction on the Federal Court to grant injunctive relief where such an application is made by the ACMA.
- Using discretionary powers to action complaints and investigations about prohibited internet gambling services.

## Recommendation 6

The list of known prohibited internet gambling providers should be published and regularly updated on the ACMA website accompanied by very clear information discouraging Australians from using these sites because of the risks they would be taking. This listing should be drawn to the attention of the operators of the prohibited online gambling service noting that failure to take reasonable steps to cease providing these services to Australian consumers may result in the commission of offences under the IGA, criminal liability for directors/principals of the provider and the placement of directors/principals of the service on the Movement Alert List. It may be appropriate for this website to also include a link to the websites of state/territory regulators which list the online gambling services that are licensed by states/territories and not prohibited by the IGA.

## Recommendation 7

Online gambling service providers that are confirmed by the ACMA as providing prohibited services in contravention of the IGA, that do not respond to contest this assessment, and continue to offer the service within 28 days of the notice should be subject to appropriate action as discussed above, including placement of the names of principals/directors of prohibited online gambling service providers onto the Movement Alert List, as well as being referred to relevant state/territory authorities and ASIC. The relevant persons should be notified of the actions taken.

## Recommendation 8

The IGA should be amended to provide a safe harbour for financial institutions that choose to voluntarily block financial transactions between Australian consumers and unlicensed online gambling service providers (or any intermediaries involved in such transactions) as part of their services to customers. The list of prohibited gambling service providers identified and published by the ACMA should be drawn to the attention of financial institutions by the department.

## Recommendation 9

The department and the Treasury should continue to monitor developments overseas in the use of financial payment blocking to prohibited gambling sites and draw relevant developments to the attention of Australian financial industry bodies.

## Recommendation 10

Online gambling service providers that are confirmed by the ACMA as providing prohibited services in contravention of the IGA should continue to be included on the ACMA's list of prohibited URLs and/or websites that are subject to blocking by vendors of PC filters on the IIA's family friendly filter scheme. The IIA should also expand its family friendly filter scheme to include all popular filters used by Australians.

## Recommendation 11

The Australian licensed online gambling industry, in conjunction with the department, should consult with major ISPs and the vendors of security software on the possibility of them voluntarily enabling a standard warning page appearing whenever an Australian consumer accesses an unlicensed online gambling website as identified by the ACMA. The page would alert the user to the fact the website they have accessed is not regulated by any Australian authority, that standard Australian consumer protections may not be available, as well as alerting the consumers to a list of Australian licensed online gambling providers.

## Recommendation 12

The Cybersafety Help Button should include a link to the National Gambling Helpline under the 'TALK' function, as well as other help button functionalities that would be of value in alerting users of the Help Button to the risks of using prohibited online gambling service providers. The National Gambling Helpline should be able to explain, on request, the difference between licensed and unlicensed providers.

## Recommendation 13

Relevant ACMA programs should be tailored to address issues related to the risks to children of accessing online gambling sites, particularly prohibited online gambling sites.

## Recommendation 14

The Consultative Working Group on Cybersafety should continue to monitor the risks to children of access to online gambling, including via social networking sites, and recommend appropriate action.

## Recommendation 15

State and territory governments, in conjunction with industry, should also take steps to increase consumer awareness about the risks associated with using prohibited online gambling services.

## Recommendation 16

The advertising provisions of the IGA should include civil penalties (including pecuniary penalties) in addition to the existing criminal provisions under the IGA, as part of the range of penalties available under Part 7A of the IGA. The civil penalties should be administered by the ACMA. If an advertiser fails to comply with these civil penalty provisions, the ACMA should be able to apply to the Federal Court for injunctive relief in accordance with the proposed new express injunctive relief provision outlined above. This would provide clarity and certainty for the ACMA in exercising its powers.

## Recommendation 17

That amendments be made to the IGA to clarify that the defendant has the burden of proof in relation to a defence or exemption to the advertising offence provisions.

## Recommendation 18

That the Australian licensed online gambling industry establish an industry code of conduct to ensure such advertising is not contrary to community standards and expectations.

## Recommendation 19

The definition of an 'accidental or incidental' advertisement as used in section 61ED of the IGA should be clarified to permit the broadcast of events taking place outside of Australia where the broadcaster has not added the writing, still or moving picture, sign, symbol or other visual image or audible message and does not receive any direct or indirect benefit for the in broadcast advertising in addition to any direct or indirect benefit that the person receives from broadcasting the event.

## Recommendation 20

Part 7A of the IGA should be amended to put beyond doubt that advertisements for free-play sites that are associated with prohibited 'for money' sites are prohibited as they are promoting the prohibited service.

## Recommendation 21

The strengthened regulatory framework for the prohibition on advertising of prohibited interactive gambling services, as provided by the recommendations in this chapter, should continue to operate at the federal level and be administered by the ACMA.



## Recommendation 22

The IGA should be amended (subject to a sunset clause) to enable and encourage (currently prohibited) online gaming sites (as well as currently licensed sites that prevent Australians from accessing their online poker tournaments) to become licensed in Australia on condition that they:

- cease offering higher risk online gaming services to Australians and only offer online tournament poker (that is, the lowest risk type of online gaming)
- adopt the harm minimisation and consumer protection measures in the proposed national standard specific to regulated access to online tournament poker.

## Recommendation 23

To test that such an approach would be effective in reducing problem gambling risks, this amendment to the IGA should be introduced on the basis of a five-year trial where:

- there is a minimum break in play for consumers after they have completed a tournament and have been playing for a defined period (subject to completion of any other tournaments they may be participating in at that time)
- the return to players from each tournament should be transparent to players before they enter the tournament
- no television advertising of these services should be permitted other than on programs that broadcast poker tournaments; all other types of advertising should be permitted subject to the standard restrictions
- industry makes an appropriate contribution, linked to the level of participation in this form of gambling by each provider, to funding support services for problem gamblers.

## Recommendation 24

This trial should not start before the proposed national minimum standard for harm minimisation and consumer protection (as applicable to online poker tournaments) has been adopted and should only continue after its five-year sunset clause if recommended by a committee of eminent Australians and consideration by parliament. Enforcement and prevention measures in Chapter 4 should be timed to commence in conjunction with the trial.

## Recommendation 25

The department, FaHCSIA and the Treasury should consult with states and territories, industry and leading Australian gambling researchers on the design and implementation of governance arrangements for the pilot, including more effective data collection to enable monitoring of the trial.

## Recommendation 26

Because of the greater harm associated with micro-betting from a problem gambling perspective, micro-betting should be prohibited irrespective of the electronic medium (that is, telephone, internet, etc.) by which the bets are placed. This ban should also apply to wagering services provided through other devices and technologies such as smartphone applications and interactive television (that is, be platform neutral). For the purpose of this recommendation, the following definition of micro-betting should be adopted:

Micro-betting involves the placement of bets having the following characteristics and circumstances:

- the placing, making, receiving or the acceptance of bets on particular events occurs during a session of a match or game
- the betting opportunity is repetitive, of a high frequency and is part of a structured component of the match or game (for example, ball-by-ball betting in a game of cricket; point-by-point betting in tennis)
- a bet is placed on one of a limited number of outcomes, although the number of possible outcomes may be more than two (for example, whether the next serve will be a fault; whether the next ball will be a no ball)
- the time between placing a bet and knowing the outcome is very short (usually less than five minutes, excepting appeals, intervals and interruptions).

The minister responsible for administering the IGA should be given the power to make regulations specifying whether a particular bet type is or is not a micro-bet.

## Recommendation 27

State/territory governments should also prohibit micro-betting at all physical outlets.

## Recommendation 28

The IGA be amended to dovetail its provisions regarding sports wagering with the provisions being developed by the Minister for Sport to deal with integrity in sports and match fixing:

- sports betting, irrespective of the electronic medium by which the bets are placed (that is, platform neutrality) or whether they are pre-event or after the event has started, be permitted only where they have been authorised by the state/territory regulatory authority and the relevant national sports controlling body where one exists
- where a national sports controlling body does not exist, betting on that sports event be permitted only where it has been authorised by both the state/territory regulatory authority licensing the wagering provider and the relevant state/territory regulatory authority where the event is to take place
- For overseas-based sporting events the relevant governing body is the Australian state/territory regulatory authority in consultation with, where appropriate, the relevant Australian sports governing body for that sport.

## Recommendation 29

The enhanced prevention and enforcement measures outlined in Chapter 4 should also apply to those overseas-based wagering providers that are not licensed in Australia and do not comply with the requirements outlined in Recommendations 26 and 28. Recommendations 26 and 28 only be implemented after the national standard for harm minimisation and consumer protection at Recommendations 1-3 has been adopted as it relates to online wagering.

## Recommendation 30

Popular social media services, mobile content providers, console providers and online game developers closely monitor the impact of their user policies regarding the provision of online gambling services (both licensed and unlicensed) as well as gambling-style services that are popular with children to ensure the implementation of these policies aligns with Australian laws and community expectations. In particular, these providers should closely monitor gambling-style services to ensure that they are not inappropriately targeting younger children or that they possess simulated payout ratios that differ significantly from actual gambling services as a means of misleading children about their prospects for success with real gambling services.

## Recommendation 31

In addition to Recommendation 30 and subject to the outcome of proposed GRA research in this area, the department should consult with gambling regulators in like-minded countries regarding potential measures to address the access and marketing of online gambling-style services to children.

## Recommendation 32

That the treatment of fantasy sports under the IGA be the subject of further consultation with the Coalition of Major Professional and Participation Sports (COMPPS), state and territory governments, and the promoters of fantasy sports competitions.

