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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

INTERACTIVE GAMBLING AMENDMENT BILL 2016

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Communications
Senator the Honourable Mitch Fifield)

INTERACTIVE GAMBLING AMENDMENT BILL 2016

OUTLINE

The Interactive Gambling Amendment Bill 2016 (the Bill) will amend the *Interactive Gambling Act 2001* (the IGA) to implement the Government's response to recommendations in the *2015 Review of the impact of illegal offshore wagering* (the Review).

The Australian Government commissioned the Review to investigate the impacts of illegal offshore wagering on Australia, measures to mitigate its effects, and the efficacy of consumer protection controls. The Review found that offshore wagering has adverse effects on the Australian wagering, hospitality and sporting industries, problem and at-risk gamblers, consumers and government. Offshore operators pay no Australian taxes, racing or sporting fees, do not share information regarding suspicious betting activity with law enforcement or sporting bodies, offer gambling services prohibited under the IGA, and provide minimal harm minimisation and consumer protection controls.

Stakeholders informed the Review that the existing approach to enforcement of the IGA was insufficient to deter offshore operators from providing prohibited interactive gambling services to Australian consumers. There have been no prosecutions under the IGA since its inception in 2001, despite the significant number of complaints made in relation to prohibited interactive gambling services. Criminal prosecution is considered likely to be unsuccessful or ineffective due to the competing priorities of enforcement agencies, uncertainty around the legality of services under the IGA and the offshore location of interactive gambling operators.

The Review concluded that the aim of governments should be to reduce the scope of illegal offshore gambling activity and control the associated harms through a range of disruptive and deterrent measures and strong enforcement of regulation.

On 28 April 2016, the Australian Government released its response to the Review and agreed to implement recommendations 3 and 17 to clarify the legality of services and strengthen the enforcement of the IGA including providing greater powers to the Australian Communications and Media Authority (the ACMA).

The principal amendments in this Bill will clarify the law regarding illegal offshore gambling and empower the ACMA by strengthening the enforcement mechanisms under the IGA. The IGA currently contains an offence for providing an interactive gambling service to customers in Australia. This offence does not apply to a range of excluded services, including telephone betting and certain wagering and gaming services.

The Bill will:

- clarify the IGA by recognising two types of interactive gambling services – prohibited interactive gambling services ('illegal services') and regulated interactive gambling services (most of the current excluded services) – and include new provisions prohibiting a person providing regulated interactive gambling services to Australians unless the person holds a licence under the law of an Australian State or Territory ('unlicensed regulated interactive gambling services') (Schedule 1, items 6 to 12, 17, 19, 20, 22, 24, 26, 28, 30, 31, 33 to 49, 82 to 117, 119, 122 to 126, 128, 130 to 137, 140, 141 and 143 to 146).
- introduce a civil penalty regime to be enforced by the ACMA. Enforcement tools will include formal warnings, infringement notices, civil penalties and injunctions (Schedule 1, items 6, 7, 9, 12, 21, 29, 68 to 75, 118, 120, 121, 127, 129, 130 and 139).

- prohibit ‘click to call’ in-play betting services by tightening the definition of a ‘telephone betting service’ (a regulated interactive gambling service) to require dealings with customers to be wholly by way of spoken conversations between individuals (Schedule 1, items 7, 15, 16, 18 and 25).
- amend the *Australian Communications and Media Authority Act 2005* (the ACMA Act) to enable the ACMA to notify international regulators of information relating to prohibited or regulated interactive gambling services (including the names of operators) (Schedule 1, items 1, 2, 4 and 5).
- simplify and streamline the complaints handling and investigation process to remove mandatory requirements to refer matters to the police and enable the ACMA to handle the entire process from receipt of complaints to enforcement, similar to its complaints handling and enforcement role in relation to other legislation (Schedule 1, items 10, 13, 15, 28, 50 to 67 and 76 to 81).
- enable the Minister to determine by legislative instrument that a specific thing is, or is not, a sporting event for the purposes of the IGA. This will enable specific rules to be developed for new forms of a current sport or new sports that are developed over time (Schedule 1, items 7, 14 and 32).

Other disruption and deterrent measures introduced by the Bill include:

- establishing a register of certain legitimate regulated interactive gambling services (eligible regulated interactive gambling services) to be published on the ACMA website to raise awareness amongst consumers of services which should be avoided, as evidenced by their non-inclusion on the register (Schedule 1, items 7 and 142).
- amending the ACMA Act to enable the ACMA to notify the Department of Immigration and Border Protection of information relating to prohibited or regulated interactive gambling services, including the names of directors or principals of offending gambling services so they may be able to be placed on the Movement Alert List, and also so any travel to Australia may be able to be disrupted (Schedule 1, items 1, 3 and 5).

The Bill substitutes a new definition of ‘excluded gaming service’ to tighten the definition to continue to allow, for example, the interlinking of poker machines in places where the provider is licensed under a law of a State or Territory to provide such services, but prevent the exemption being exploited to enable electronic gaming services to be provided in other public places. A new definition of ‘place-based betting service’ clarifies that electronic betting terminals can continue to be provided in places where the provider is licensed under a law of a State or Territory to provide such services (e.g. TABs, casinos, hotels and clubs) (Schedule 1, items 7, 9, 23 and 27).

The Bill also contains application and transitional provisions (Schedule 1, items 147 to 149).

In response to recommendation 19 of the Review, the Government indicated that it will consult with internet service providers to assess the potential options and practicality of voluntarily disrupting access to overseas based online wagering providers who are not licensed in Australia. Accordingly, the industry code and industry standard provisions under Part 4 of the IGA are not amended by the Bill, and minimal changes are made so that the existing Code can operate with the new ACMA complaints handling and investigation

processes established by the Bill. Part 4 may be subject to subsequent legislative amendment following consultation with internet service providers.

Prohibit the provision of regulated interactive gambling services by unlicensed operators

The Bill will create an offence and civil penalty for a person who provides a regulated interactive gambling service to a person in Australia without holding a licence under the law of an Australian State or Territory (Schedule 1, item 39, new section 15AA). A regulated interactive gambling service is defined in the new section 8E (Schedule 1, item 28) and includes most of the services excluded from the definition of a prohibited interactive gambling service (including telephone betting and certain wagering and gaming services).

This amendment will clarify the licensing requirements for interactive gambling services in Australia. It will provide a simple to establish key criterion for enforcement agencies when investigating whether to take action against unlicensed services.

Civil penalty regime to be enforced by the ACMA

The Bill will introduce a civil penalty regime to enable the ACMA to apply a graduated range of enforcement tools to encourage and support improved compliance with the IGA. The Bill will trigger the *Regulatory Powers (Standard Provisions) Act 2014* (RP Act) and allow the ACMA to issue infringement notices and apply to the Federal Court or Federal Circuit Court for a civil penalty order or injunction for contraventions of the IGA (Schedule 1, item 139, new sections 64B, 64C and 64D). The ACMA will also have the option to issue formal warning notices (new section 64A).

These new enforcement actions will align with current regulatory practices and allow a quicker and more focused response as formal investigation or prosecution processes will not depend upon the priorities of other agencies. Criminal offence provisions have been retained in the IGA to allow the ACMA to refer complaints to the Australian Federal Police if warranted.

The RP Act contains ancillary contravention of civil penalty provisions which will see civil penalty provisions contained in this Bill extended to any person who aids, abets, counsels or procures a contravention of the IGA. This amendment will apply to any individual who assists the provision of illegal or unlicensed interactive gambling services to Australians, extending the ambit of enforcement to affiliates, agents and the like.

Prohibit 'click to call' in-play betting services

The IGA prohibits online in-play betting (placing a bet after the commencement of play) on a sporting event, e.g. Australian rules football, rugby league, cricket or a tennis match but allows in-play betting wholly by way of voice calls made using a standard telephone service. The latter falls within the definition of a 'telephone betting service', which is exempt from the operation of the IGA. This is because a conversation with the operator, during which the customer has to provide identification and betting information, slows the betting process and thereby reduces the scope for problem gambling, one of the objectives of the IGA.

'Click to call' in-play betting services include a mix of data entry on websites or mobile apps with a voice call. These services currently involve a consumer inputting betting information using a website or a mobile device application, which activates a call to a computerised voice that repeats the consumer's proposed bet and asks the consumer to confirm the bet by pressing a button on a website, application or keypad. The process can be completed in a very short period of time. These services claim to avoid the operation of the prohibition in the IGA by relying on the telephone betting service exemption.

The Bill will tighten the definition of a telephone betting service to prohibit ‘click to call’ in-play betting services (Schedule 1, item 25, new section 8AA). Under the new definition, a telephone betting service is a gambling service where dealings with customers are wholly by way of a voice call that consists of a spoken conversation (or an equivalent for a customer with a disability). The call content cannot include the use of a recorded or synthetic voice, or tone signals. Tone signals used for the sole purpose of call waiting or a menu system for transferring callers to an extension are exceptions to this requirement.

A service whereby any or all of certain information about the bet being placed can be provided by the customer to the operator otherwise by way of a voice call, for example through clicking or pressing an icon or entering betting information via a website, keypad or application, is not a telephone betting service for the purposes of the IGA. However, provision of information in relation to the identification of the customer electronically, prior to the call being placed (e.g. account name and number) is not intended to be prohibited.

ACMA to notify international regulators of operators providing illegal or unlicensed interactive gambling services

The Bill will amend the ACMA Act to enable the ACMA to notify international regulators about their licensees who are breaching the provisions of the IGA (Schedule 1, items 1, 2, 4 and 5). The offshore location of many interactive gambling operators makes it difficult to enforce the IGA. Establishing productive relationships with international regulators to raise awareness of Australian gambling laws and receive assistance in any enforcement actions, e.g. obtaining evidence, will assist the efforts of the ACMA to enforce the IGA in relation to foreign entities.

Simplify and streamline the complaints handling and investigation process

Subsection 21(2) of the IGA prohibits the ACMA investigating a complaint if it relates to internet content hosted in Australia and requires the ACMA to refer the complaint to the police if considered appropriate.

The Bill will amend the IGA to simplify and streamline the complaints handling and investigation process to remove mandatory requirements to refer matters to the police while retaining a discretion for the ACMA to refer them (Schedule 1 items 50 to 53). The Bill will enable the ACMA to handle the entire process from receipt of complaints to enforcement, similar to its complaints handling and enforcement role in relation to other legislation.

‘Sporting event’ determinations

The Bill inserts a provision to enable the Minister to determine by legislative instrument that a specific thing is, or is not, a ‘sporting event’ for the purposes of the IGA (Schedule 1, item 32, new section 10A).

From time to time, gambling operators claim that parts of sporting events, such as the innings of a test cricket match, are sporting events in their own right. It is therefore necessary to provide clear direction about what is to be treated as a sporting event in particular for the purposes of the prohibition against in-play betting on sporting events. Sporting events and betting markets continually evolve both in Australia and overseas so it is also necessary that specific rules can be developed in a timely fashion for new forms of a current sport or new sports. Allowing for the making of legislative instruments on this matter enables direction to be provided while allowing sufficient flexibility to deal with change.

Register of 'eligible regulated interactive gambling services'

The Bill will require the ACMA to maintain a register of 'eligible regulated interactive gambling services' (Schedule 1, item 142, new section 68). The register will be published on the ACMA website and may include the name of the gambling service, the provider and any other information relating to the service the ACMA considers should be included (other than personal information).

Many overseas gambling services are designed to appear to Australian customers to be of Australian origin, which makes it easy for customers to be misled into believing they are licensed in Australia. Customers have limited legal recourse if they encounter any difficulties recovering owed monies from offshore gambling providers. The purpose of the register is to raise awareness among Australian customers of interactive gambling services that should be avoided, as evidenced by their non-inclusion on the register.

Inter-agency information sharing to allow possible disruption of the travel of offenders to Australia

The Bill amends the ACMA Act to enable the ACMA to notify the Department of Immigration and Border Protection (DIBP) of information relating to prohibited or regulated interactive gambling services, to assist DIBP with the performance of its functions and exercise of its powers. Information provided could include the names of directors or principals of offending gambling services so they may be able to be placed on the Movement Alert List, and also so any travel to Australia may be able to be disrupted (Schedule 1, items 1, 3 and 5).

The availability of new enforcement measures in this Bill is expected to deter or disrupt both Australian and overseas based gambling operators from providing illegal or unlicensed interactive gambling services to persons in Australia. However, due to the practical and legal challenges associated with enforcing laws involving entities with no Australian presence, a reduction in activity can be expected but a successful outcome may not be achievable in all cases.

The amendments in this Bill will come into effect 28 days after Royal Assent to allow Australian and offshore gambling operators, and any other individuals or organisations, to make adjustments to their services as needed.

FINANCIAL IMPACT STATEMENT

The Bill is not expected to have any significant impact on Commonwealth expenditure or revenue.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Interactive Gambling Amendment Bill 2016

This Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Bill

The Interactive Gambling Amendment Bill 2016 (the Bill) will amend the Interactive Gambling Act 2001 (the IGA) to implement the Government's response to the 2015 Review of the Impact of Illegal Offshore Wagering (the Review).

The Australian Government commissioned the Review to investigate the impacts of illegal offshore wagering on Australia, measures to mitigate its effects, and the efficacy of consumer protection controls. The Review found that offshore wagering has adverse effects on the Australian wagering, hospitality and sporting industries, problem and at-risk gamblers, consumers and government. The Review concluded that the aim of governments should be to reduce the scope of illegal offshore gambling activity and control the associated harms through a range of disruptive and deterrent measures and strong enforcement of regulation.

On 28 April 2016, the Australian Government released its response to the Review and agreed to implement recommendations 3 and 17 to clarify the legality of services and strengthen the enforcement of the IGA including by providing greater powers to the Australian Communications and Media Authority (the ACMA).

The amendments in the Bill will clarify the law regarding illegal offshore gambling and strengthen the enforcement mechanisms available to the ACMA under the IGA. This includes:

- clarifying the services to which the IGA applies by recognising two types of gambling services (prohibited interactive gambling services which are not permitted, and regulated interactive gambling services, which cannot be provided to customers in Australia unless the provider holds a licence under the law of an Australian State or Territory);
- introducing a new civil penalty and enforcement regime to allow the ACMA to better enforce the IGA;
- prohibiting 'click-to-call' in-play betting services (i.e. services where a customer can place a bet during a sporting event without speaking to a human operator) by requiring certain information relating to the placement of the bet to be conveyed wholly by way of a voice call (or equivalent for persons with a disability);
- allowing the ACMA to disclose information it obtains through the exercise of its powers under Parts 3, 4 and 5 of the IGA to the Department of Immigration and Border Protection (DIBP) and foreign regulators where it would assist these entities to perform their functions and exercise their powers;

- simplifying and streamlining complaints handling and investigation processes;
- establishing a register of ‘eligible regulated interactive gambling services’ and defining ‘eligible interactive gambling services’ as those which are regulated interactive gambling services that are not provided in contravention of the IGA, in order to allow members of the public to identify gambling services which are likely to be legitimate.

Specific measures in the Bill which engage human rights and consideration of the implications of those measures are outlined below.

Human Rights Implications

The IGA Bill engages the following human rights under the *International Covenant on Civil and Political Rights* (ICCPR):

- right to a fair and public trial or hearing, right to a presumption of innocence, and minimum guarantees in criminal proceedings – Article 14 of the ICCPR;
- protection from arbitrary and unlawful interference with privacy – Article 17 of the ICCPR.

New civil and criminal penalties and Article 14 of the ICCPR

Article 14 of the ICCPR recognises a number of rights in relation to criminal proceedings, including:

- the right to a fair and hearing in criminal and civil proceedings, before a competent, independent and impartial court of tribunal established by law (Article 14(1));
- the right to the presumption of innocence until the prosecution proves a charge beyond reasonable doubt (Article 14(2));
- minimum guarantees in criminal proceedings, such as to be informed promptly and in detail of charges (Articles 14(3)-(7)).

Item 39 of the Bill would insert a new section 15AA into the IGA that would require gambling providers to be licensed by an Australian State or Territory before providing a regulated interactive gambling service to customers in Australia. The provision would include both a new criminal offence and civil penalty provision in relation to the provision of a regulated interactive gambling service to a person in Australia without a licence. A regulated interactive gambling service is defined in the new section 8E proposed to be inserted by Item 28 of the Bill and includes most of the services excluded from the definition of a prohibited interactive gambling service (including telephone betting and certain wagering and gaming services).

The purpose of this amendment is to clarify the licensing requirements for interactive gambling services in Australia and ensure the ACMA can take action in relation to services which do not meet these requirements.

Items 36, 43, 70, 73, 118, 121, 127 and 129 of the Bill would also create new civil penalties for contraventions of the IGA, which would parallel the criminal offence and penalty provisions (both existing and proposed) in terms of the conduct they target. The new civil penalty provisions are intended to provide a more graduated enforcement regime to better encourage compliance with the IGA.

Item 139 of the Bill would also insert provisions to trigger the civil penalty and enforcement provisions in Parts 4, 5 and 7 of the *Regulatory Powers (Standard Provisions) Act 2014* (RP Act).

The amendments would mean the ACMA is authorised to apply to a relevant court (in this case the Federal Court or the Federal Circuit Court) for a civil penalty order requiring a person to pay the Commonwealth a pecuniary penalty for a contravention of the IGA under Part 4 of the RP Act.

Under section 82(3), the relevant court may order a person to pay the Commonwealth such pecuniary penalty as it determines is appropriate. Subsections 82(5) and (6) of the RP Act provide for how the amount of the pecuniary penalty in a civil penalty order is to be determined. The pecuniary penalty must not be more than five times the penalty specified in the civil penalty provision if the person is a body corporate, or otherwise, not more than the penalty specified.

The amendments will also enable authorised members of staff of the ACMA to issue an infringement notice under Part 5 of the RP Act where he or she believes, on reasonable grounds, that a civil penalty provision of the IGA has been contravened. A person who is given an infringement notice can choose to pay an amount as an alternative to court proceedings.

The amendments will also trigger Part 7 of the RP Act to allow the ACMA to apply to the Federal Court or Federal Circuit Court for an interim injunction or an injunction to restrain a person from engaging in conduct and/or requiring that person to do a thing in relation to acts or omissions that would constitute a contravention of the civil penalty provisions in the IGA.

New criminal penalty and Article 14(2)

Article 14(2) provides that everyone charged with a criminal offence shall have the right to be presumed innocent until proven guilty according to law. This imposes on the prosecution the burden of proving a criminal charge and guarantees that no guilt can be presumed until the charge has been proved beyond reasonable doubt.

Item 39 of the Bill would engage, but not limit, the rights to a presumption of innocence under Article 14(2) of the ICCPR.

Offences that contain 'reverse burden' provisions may amount to a limitation on the presumption of innocence. This includes where an 'evidential' or 'legal burden' defence is created by expressing a matter to be a defence or an exception to the offence or providing that the defendant must 'prove' the matter. This is because a defendant's failure to establish an absence of fault (for example, through a mistake of fact defence) or to discharge a burden of proof may permit their conviction despite reasonable doubts as to their guilt.

Proposed subsection 15AA(5) would create an exception to the new criminal offence and civil penalty provision in proposed subsections 15AA(1) and (3) respectively where a person did not know, and could not, with reasonable diligence, have ascertained that the service they were providing had an Australian-customer link. The note to subsection 15AA(5) provides

that, in a case of proceedings for an offence against subsection 15AA(1), the defence would bear the evidential burden in relation to the matters in subsection 15AA(5).

This means the defendant must raise evidence that his or her conduct fell within the exception. If the defendant discharges this evidential burden, the prosecution must disprove the matter beyond reasonable doubt.

Placing the evidential burden on the defendant in this case is appropriate as the matter required to be established—whether the defendant did not know or could not have ascertained with reasonable diligence whether the service they provided had an Australian-customer link—is a matter peculiarly within the knowledge of the defendant.

The Bill would not otherwise alter the process that would apply to the investigation or prosecution of the criminal penalty proposed to be inserted by Item 39 as compared to other offences in the IGA or under Commonwealth law. The quantum of the penalty (5,000 penalty units per day the offence continues) is appropriate to the seriousness of the conduct. This measure does not otherwise engage the rights in Article 14 of the ICCPR.

Accordingly, the new criminal offence proposed by Item 39 of the Bill is compatible with Article 14 of the ICCPR.

New civil penalties and Article 14

As outlined above, Article 14 of the ICCPR provides that, in determination of criminal charges, everyone shall be entitled to a fair and public hearing, a presumption of innocence and various other minimum rights in relation to criminal offences.

Including civil penalty provisions and triggering the RP Act could engage criminal process rights if the imposition of civil penalties is classified as ‘criminal’ under international human rights law.

A penalty may be ‘criminal’ for the purposes of the ICCPR even if it is ‘civil’ under Australian domestic law.

Determining whether penalties could be considered to be criminal under international human rights law requires consideration of the classification of the penalty provisions under Australian domestic law, the nature and purpose of the penalties, and the severity of the penalties.

In relation to the triggering of Part 4 of the RP Act, the proposed civil penalty provisions in Items 36, 39, 43, 70, 73, 118, 121, 127 and 129 of the Bill:

- expressly classify the penalties as civil penalties;
- target conduct which already, or as a result of the Bill will also, separately attract a criminal sanction for the same type of conduct;
- create solely pecuniary penalties in the form of a debt payable to the Commonwealth (see: sections 82(3), (4) and 83) of the RP Act);
- do not impose criminal liability, and do not lead to the creation of a criminal record;
- do not alter the maximum pecuniary penalties that may be imposed by a court through civil penalty orders under section 82 of the RP Act.

These factors indicate that the penalties proposed to be imposed by the Bill are civil rather than criminal in nature. Accordingly, the criminal process rights provided for by Article 14 of the ICCPR are not engaged by the Bill, except to the extent outlined below.

Application of Parts 4, 5 and 7 of the RP Act and Article 14(1)

Article 14(1) of the ICCPR requires that, in the determination of criminal charges, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. This can also apply to civil proceedings. The right is concerned with procedural fairness, rather than with the substantive decision of the court or tribunal.

Under section 82 of the RP Act, civil penalty orders can only be granted by a relevant court, which must consider all relevant matters before determining the amount of the penalty. The amendments to the IGA made by the Bill would specify that the Federal Court of Australia and Federal Circuit Court of Australia are the relevant courts for the purposes of enforcement of the civil penalties in the IGA under the Regulatory Powers Act. Accordingly, the right to a fair hearing is engaged, but not limited by the triggering of Part 4 of the RP Act.

Section 104 of the RP Act provides that an infringement notice is required to state that the person may choose not to pay the penalty specified in the notice, and notify them that, if they do so, proceedings seeking a civil penalty order may be brought against them in a court. Accordingly, the person must always be advised of the consequences of not paying the penalty, and of their right to have the matter dealt with by a court. As the person may elect to have the matter heard by a court, rather than pay the penalty, the right to fair hearing is engaged, but not limited by the triggering of Part 5 of the RP Act.

Under Part 7 of the RP Act, an injunction can only be granted by a court. Further, a court may only grant an injunction where a person has engaged, is engaging or is proposing to engage, in conduct that contravenes a provision of the IGA, or where a person has refused or failed, or is refusing or failing, or proposing to refuse or fail, to do a thing and that refusal or failure was, is or would be a contravention of a provision of the IGA. Thus, the right to a fair hearing is engaged, but not limited, by the triggering of Part 7 of the RP Act.

Accordingly, the amendments in Item 139 to apply Parts 4, 5 and 7 of the RP Act are consistent with the human rights in Article 14(1) of the ICCPR.

Right to privacy and information sharing by the ACMA

Subsection 59D(1) of the *Australian Communications and Media Authority Act 2005* (ACMA Act) allows for an ACMA official who has been authorised in writing by the Chair of the ACMA to disclose authorised disclosure information to specified authorities, if the Chair is satisfied that the information will enable or assist the authority to perform or exercise any of its functions or powers.

Item 3 of the Bill would amend the list of authorities to whom information may be disclosed under subsection 59D(1) of the ACMA Act to include the Secretary of the Department administered by the Minister administering the *Migration Act 1958* or an APS employee in that Department whose duties relate to that legislation. Item 4 would amend the list to include an authority of a foreign country responsible for regulating matters relating to the provision of gambling services.

Item 5 would insert a new subsection 59D(1A), which limits the type of information which is authorised to be disclosed to the authorities inserted by Items 3 and 4 to information relating to a prohibited interactive gambling service or a regulated interactive gambling service to ensure that the provision of information is confined to the scope of matters arising under the IGA.

The policy objective of the amendments made by Items 3 and 4 is to promote effective enforcement of the IGA by enabling the ACMA to notify international regulators and the DIBP of information relating to prohibited or regulated interactive gambling services.

Among other things, the amendments may allow the ACMA to provide names of directors and principals of offending gambling services to the Department of Immigration and Border Protection to allow it to take action, as necessary and appropriate, within the existing frameworks of migration legislation.

Article 17(1) of the ICCPR recognises the right to protection against arbitrary or unlawful interference with privacy. Article 17(2) recognises the right of everyone to the protection of the law against such interference.

There is no express limitation on the right to privacy in Article 17 of the ICCPR. However, there is an implication that the right to privacy may be limited where this limitation is not unlawful or arbitrary.

In providing for the disclosure of information to other agencies, which could include personal information of directors and principals of gambling services that have breached the IGA, the Bill engages the right to protection from unlawful or arbitrary interference with privacy in Article 17.

The disclosure or publication of this information in these cases would be lawful as it would be authorised by the ACMA Act and the IGA as amended by the Bill, but it may still be considered arbitrary if it is not reasonable, proportionate and necessary to the achievement of a legitimate policy objective.

There are several safeguards to limit the interference with privacy to situations where there is a real and cogent link between the disclosure of the information and the functions and powers of the person or body who receives the information. This precludes arbitrary disclosure merely on the basis that the information might be of interest to the person or body who receives the information.

Firstly, the disclosure of information by the ACMA to the persons or authorities listed in section 59D of the ACMA Act is only authorised if the ACMA is satisfied that the information will enable or assist the person or authority to perform any of the functions, or exercise any of the powers, of the person or authority.

Secondly, proposed subsection 59D(1A) will limit the type of information that is authorised to be disclosed to international regulators or DIBP to information relating to a prohibited interactive gambling service or a regulated interactive gambling service.

These limitations around the kinds of information that can be disclosed ensure that any limitation to individuals' rights to privacy imposed by the measures would be lawful and would only limit the right to the extent that is reasonable, necessary and proportionate to the achievement of the legitimate policy objective of allowing certain entities to exercise their powers and perform their functions.

The measures proposed by Items 3-5 of the Bill are consistent with the human rights recognised in Article 17 of the ICCPR.

Conclusion

The Bill is compatible with human rights because to the extent that it may limit human rights, those limitations are reasonable, necessary and proportionate.

REGULATION IMPACT STATEMENT

The Interactive Gambling Act 2001

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

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

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

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

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

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

2015 Review of the impact of Illegal Offshore Wagering

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

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

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

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

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

Government Response to the Illegal Offshore Wagering Review

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

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

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

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

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

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

Regulation Impact Statement

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

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

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

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

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

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

1. The problem

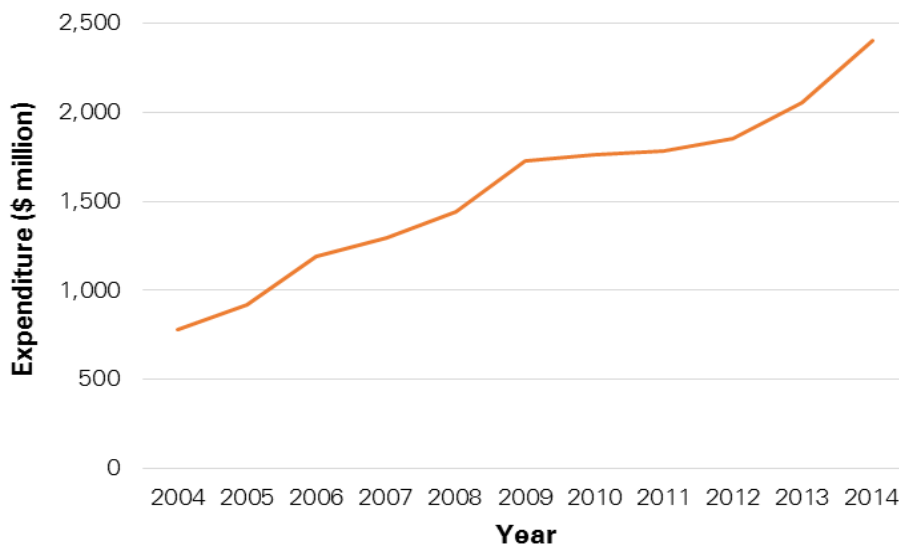
Australians are among the biggest gamblers in the world, spending \$1,245 per capita in 2014¹. Online gambling, in particular online wagering (betting on racing and sporting events), is growing in Australia due to the ubiquity of mobile devices and changes in consumer behaviour. Consequently, offshore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

Size and growth of the interactive gambling market

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

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

Figure 1 Interactive gambling expenditure 2004-2014



Source: 2015 Review of the impact of Illegal Offshore Wagering

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

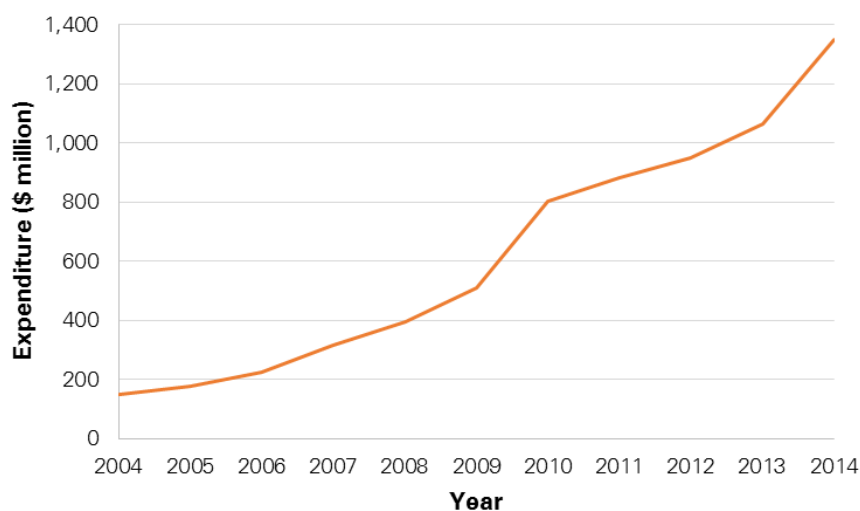
² ACMA Communications Report 2014-15, pages 3 and 42

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

Wagering services

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

Figure 2 Onshore online wagering 2004-2014

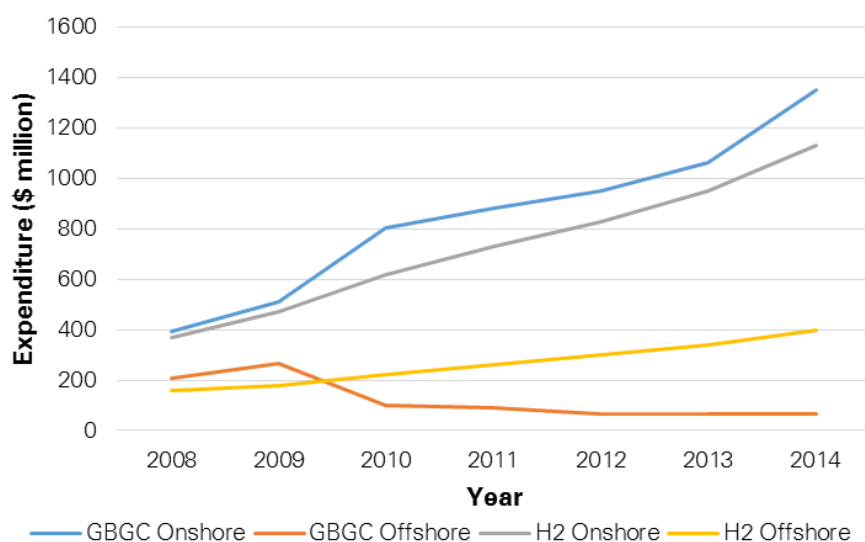


Source: 2015 Review of the impact of Illegal Offshore Wagering

Money spent with offshore gambling operators

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

Figure 3 Onshore and offshore wagering expenditure 2008-2014



Source: 2015 Review of the impact of Illegal Offshore Wagering

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

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

Negative social and economic effects of illegal offshore wagering

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

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

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

- Offshore operators provide gambling services that breach the IGA.

Problem gambling

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

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

The Review contained research data that showed the rate of problem gambling is higher among interactive gamblers compared to gamblers more generally. The study found that 2.7 per cent of interactive gamblers are problem gamblers compared to 0.9 per cent of all gamblers. A recent study found that 41 per cent of interactive gamblers were at risk of problem gambling compared with less than 20 per cent of non-interactive gamblers. However, the Review noted there is insufficient evidence to establish a causal link between online gambling and increased prevalence of gambling problems. Interactive gamblers with problem gambling issues may have developed these problems on non-interactive gambling activities, i.e. land-based gambling. As a result, it may be the case that interactive gambling itself does not cause problem gambling but rather that, for at-risk gamblers, use of online gambling is common and may contribute to gambling problems.

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

Minimal enforcement of the Interactive Gambling Act

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

There have been no prosecutions under the IGA since its inception despite the significant number of complaints referred to the AFP relating to prohibited internet gambling services

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

being provided to Australian consumers. There has been a total of 139 complaints referred to the AFP for investigation since 2007-08. Due to competing priorities and available resources, investigations of interactive gambling services are rarely conducted by the AFP. It should also be noted that criminal prosecution is considered likely to be unsuccessful or ineffective due to uncertainty about the legality of services under the IGA, evidence requirements and the offshore location of gambling operators. These impediments are considered by the AFP when deciding whether to conduct an investigation.

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

‘Click to call’ in-play betting services

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

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

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

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

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

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

School of Public Health and Preventative Medicine, stated that ‘the massive growth in sports betting is unrivalled, I think, in the history of Australian gambling’⁵.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. The need for government action

There is a clear need for government action as a key cause for the current problems is the ineffectiveness of the IGA. The objective of the IGA is to stop the provision and advertising of interactive gambling services to persons located in Australia. It was acknowledged by the

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

majority of industry, government and community stakeholders in the Review that the IGA is not delivering its objective and reforms are needed.

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

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

IGA reforms would contribute to:

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

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

Constraints and barriers

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

- offshore gambling providers may ignore a summons and refuse to appear in an Australian court if prosecution is commenced, and the company may operate in a jurisdiction where there are no extradition agreements in place;

- an offshore gambling provider may be operating lawfully within its jurisdiction, and foreign regulatory and enforcement agencies may be unwilling or unable to provide assistance in these circumstances;
- obtaining evidence could be difficult and any evidence provided may not satisfy Australian legal requirements; and
- difficulties in identifying specific persons within the offshore gambling organisation relevant to the offences.

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

‘Click to call’ in-play betting services

On 28 April 2016, the Government committed to closing down ‘click to call’ in-play betting services as they undermine the intent of the IGA to limit the scope of problem gambling in Australia. It was reported on 12 August 2016, that the Northern Territory Government had requested its licensed operators to cease providing ‘click to call’ in-play betting services within 28 days¹⁰. ‘Click to call’ services ceased being provided on 5 October 2016.

Legislation is required under the IGA to ensure ‘click to call’ type products are not offered by wagering operators licensed in other states or territories.

3. Policy Options

Option 1: Maintain the status quo

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

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

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

Option 3: Greater enforcement action by the AFP

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

¹⁰ <http://www.theaustralian.com.au/national-affairs/state-politics/crackdown-to-force-bookies-to-hand-over-millions/news-story/220acb392716e339bcbf800c7a217f70>

4. Impact Analysis

Option 1: Maintain the status quo

Description

Leave the existing regulatory and enforcement framework unchanged.

Analysis

Benefits	Shortcoming
<ul style="list-style-type: none"> Five Australian wagering operators would continue to receive revenue from ‘click to call’ in-play betting services. 	<ul style="list-style-type: none"> Gambling operators will continue to ignore the provisions and intent of the IGA. Gambling money spent with offshore operators resulting in loss of revenue for Australian licensed operators; loss of taxation revenue and sporting/racing payments. Limited to no harm minimisation and consumer protection controls for Australian consumers. Risk to integrity of Australian sport as offshore operators do not share information with sporting codes and organisations around suspicious betting activities Increased risk of money laundering and other criminal activities as offshore providers operate outside of Australian law Provision of prohibited interactive gambling services to Australians. Prohibiting ‘click to call’ services may see a percentage of money being spent with offshore providers on in-play betting products.

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

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

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

The five Australian licensed providers of ‘click to call’ in-play betting services would continue to benefit from offering this product. The effects of these products on problem

gambling is currently unknown but allowing these services to continue could pose a risk to problem and at-risk gamblers.

Regulatory Costs

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

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

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

Description

Option Two reflects the Government's response to the 2015 Review of the impact of Illegal Offshore Wagering released on 28 April 2016. The Response agreed to legislative measures to prohibit 'click to call' in-play betting services and strengthen the enforcement of the IGA. These enforcement measures are as follows:

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

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

Analysis

Benefits	Shortcomings
<ul style="list-style-type: none"> • Stronger enforcement action against breaches of the IGA. • Clear message to operators and associates that the Australian government is serious about compliance with its gambling laws. • Clearer IGA provisions give more certainty to gambling operators and enforcement agencies. 	<ul style="list-style-type: none"> • Cross jurisdictional issues will continue to impede prosecution - enforcing Australian law overseas is challenging and successful outcomes will not always be possible. • Prohibiting 'click to call' services may financially impact Australian licensed online wagering operators and money may be wagered with offshore providers which could increase

<ul style="list-style-type: none"> • Prohibition of 'click to call' in-play betting services reducing the risk of higher rates of problem and at-risk gambling. • Decreased loss of money going offshore leading to more revenue for licensed operators, and greater taxation and fees paid in Australia. • Potentially decreases risk to integrity of Australian sport, money laundering and other criminal activities. • Greater awareness amongst Australian consumers of the risks of gambling offshore. • Greater awareness of Australian gambling laws amongst offshore operators and regulators. 	<p>risks to the integrity of Australian sport.</p>
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Prohibit 'click to call' in-play betting services

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

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

Prohibit unlicensed gambling providers under the IGA

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

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

The new provision may create an incentive for reputable offshore online gambling operators to obtain a licence in Australia. These operators may not wish to jeopardise current or future

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

licensing agreements in other jurisdictions and may decide to either obtain an Australian licence or withdraw their services.

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

ACMA to notify international regulators of illegal operations

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

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

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

ACMA to issue civil penalties for breaches of the Act

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

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

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

Extend the ambit of enforcement to affiliates and agents

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

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

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

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

Related amendments

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

Impacts on stakeholders

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

- provide an incentive for Australian consumers to bet with onshore operators;

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

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

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

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

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

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

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

The Review stated a range of estimates for in-play betting expenditure by Australian consumers. In 2014, according to the GBGC, the amount of money spent on online in-play

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

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

¹⁴ <http://www.theaustralian.com.au/national-affairs/state-politics/crackdown-to-force-bookies-to-hand-over-millions/news-story/220acb392716e339bcfb800c7a217f70>

betting was estimated to be \$64.5 million in 2013. Given that online in-play betting on sports is prohibited in Australia, and this figure was derived the year prior to the introduction of ‘click to call’ in-play betting products, it is likely that this market is dominated by offshore providers. According to H2GC data, online in-play betting in Australia was valued at \$218.1 million in 2014, almost all of which was conducted offshore.

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

Measures to strengthen the enforcement of the IGA

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

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

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

Tabcorp argued that a number of changes be made to improve the current enforcement regime to deter wagering providers (whether within Australia or overseas) from breaching Australian interactive wagering laws’. It proposed a number of deterrence mechanisms similar to the recommendations in the Review of the Interactive Gambling Act 2001 - 2012 Final Report including introducing a civil penalty regime; a public register of noncompliant persons; non-compliant directors to be placed on a Movement Alert List; and a provision

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

¹⁶ CrownBet public submission to the 2015 Illegal Offshore Wagering Review

preventing non-compliant persons from receiving a licence for a period of time. Racing Australia also recommend civil penalties, a register of illegal offshore operators and the use of a Movement Alert List, and greater enforcement of existing criminal provisions of the IGA. Racing Australia also called for the blocking of websites and financial transactions relating to illegal offshore wagering.

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

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

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

Regulatory costs

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

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

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

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

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

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

Option 2: Average annual regulatory costs				
Change in costs (\$ million)	Business	Community organisations	Individuals	Total change in costs
Licence requirement	\$0.06	\$ 0	\$ 0	\$ 0.06
Total, by sector	\$0.06	\$ 0	\$ 0	\$ 0.06

Option 3: Greater enforcement action by the AFP

Description

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

Analysis

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

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

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

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

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

Regulatory Costs

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

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

5. Preferred Option

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

Prohibiting 'click to call' in-play betting services

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

As mentioned previously, the Australian Gambling Statistics revealed that Australians lost almost \$23 billion to gambling in 2014-15. Sports betting accounted for \$814 million (around 3.5 per cent of Australian gambling losses) which was a 30 per cent increase on the previous year- the biggest increase of all gambling products. The uptake of mobile devices, and its use for gambling activity with continuous access, including to financial transfers, is

exacerbating the incidence and severity of problem gambling in Australia, particularly among younger people. Among interactive gamblers, sports betting was used by a significantly greater proportion of those with at least some level of gambling problems, a finding not replicated among land-based only gamblers. This is consistent with previous Australian research finding that problem interactive gamblers were more likely to gamble on sports than problem land-based gamblers¹⁸.

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

Licensed wagering operators such as bet365, Sportsbet and CrownBet, state that allowing in-play betting services legally in Australia will stop a considerable amount of money being wagered with offshore providers. Online in-play betting in Australia was valued at \$218.1 million in 2014, almost all of which was conducted offshore. Other stakeholders believe that the amount of revenue going offshore on in-play betting products is overstated. It would be likely that legalising in-play betting products in Australia would see an increase in domestic wagering revenue, gambling taxes and sporting fees. However, the introduction of in-play betting may simply see a shift from one gambling product to another with no real gain in taxes or fees. Any gains would also be compromised if there was an increase in the rates of problem gambling as a result of the introduction of in-play betting products.

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

Measures to strengthen the enforcement of the IGA

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

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

¹⁸ Gainsbury, Russell et al., in press

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

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

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

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

Changes to preferred option based on consultation

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

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

Net benefits

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

There are minor regulatory costs (\$58,400 annually) associated with this package of enforcement measures as the majority of measures will only impact operators if they breach

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

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

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

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

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

Alternative Option: Maintain the status quo (Option 1)

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

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

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

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

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

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

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

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

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

Limitations of the preferred option

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

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

6. Consultation

Interactive Gambling Amendment Bill 2016 (preferred option)

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

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

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

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

The 2015 Review of the impact of Illegal Offshore Wagering

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

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

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

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

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

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

2012 Review of the Interactive Gambling Act

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

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

7. Implementation and evaluation

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

Role of the ACMA

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

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

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

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

Review of the ACMA

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

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

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

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

Evaluation

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

Conclusion

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

The negative effects of illegal offshore gambling are well documented. Offshore operators pay no Australian taxes or sporting fees; do not share information regarding suspicious betting activity with law enforcement or sporting bodies, offer gambling services prohibited under the IGA, and provide minimal harm minimisation and consumer protection controls.

The harms affect nearly all stakeholders - Australia's wagering, racing and sporting industries, problem and at-risk gamblers, consumers and government.

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

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

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

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

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

ABBREVIATIONS

The following abbreviations are used in this explanatory memorandum.

ACMA	Australian Communications and Media Authority
ACMA Act	<i>Australian Communications and Media Authority Act 2005</i>
Bill	Interactive Gambling Amendment Bill 2016
BSA	<i>Broadcasting Services Act 1992</i>
IGA	<i>Interactive Gambling Act 2001</i>
ISP	Internet Service Provider
Minister	Minister for Communications
Regulatory Powers Act	<i>Regulatory Powers (Standard Provisions) Act 2014</i>

NOTES ON CLAUSES

Clause 1 – Short title

Clause 1 provides that the short title of the Act is the *Interactive Gambling Amendment Act 2016*.

Clause 2 – Commencement

Clause 2 provides for the commencement of the Bill.

Clauses 1 to 3 of the Bill, and anything else not covered in the table, will commence on the day the Act receives Royal Assent. These provisions are formal provisions.

Schedule 1 to the Bill will commence on the 28th day after the Act receives Royal Assent. This delay in commencement will allow Australian and overseas-based interactive gambling service providers time to alter their business practices to comply with the amended Act. It will also give the ACMA time to put in place processes to allow it to undertake its new enforcement role.

Clause 3 – Schedules

Clause 3 provides that legislation that is specified in a Schedule to the Bill is amended or repealed as set out in the applicable items in that Schedule, and any other item in a Schedule has effect according to its terms. It also provides that the amendment of any regulation by items in the Bill does not prevent the regulation being amended or repealed by the Governor-General (items 144 to 146 amend the *Interactive Gambling Regulations 2001*).

SCHEDULE 1—AMENDMENTS

Part 1 – Amendments

Australian Communications and Media Authority Act 2005

Item 1 – Section 3 (after subparagraph (b)(i) of the definition of *authorised disclosure information*)

Section 3 of the ACMA Act defines the term *authorised disclosure information*. Paragraph (b) of this definition provides that information obtained by the ACMA as a result of the exercise of any of its powers under the legislation specified in subparagraphs (i)-(v) is *authorised disclosure information*. Such information may be disclosed by the ACMA in accordance with Part 7A of the ACMA Act.

Item 1 would insert a reference to Parts 3, 4 and 5 of the IGA into this list of specified legislation so that information obtained by the ACMA in the exercise of its powers under those Parts of the IGA would be *authorised disclosure information* for the purposes of the ACMA Act.

Item 2 – Section 3

Item 2 would insert definitions of *foreign country* and *gambling service* in section 3 of the ACMA Act, as a consequence of the amendment proposed to subsection 59D(1) of the ACMA Act by Item 4 of the Bill.

Foreign country would include a region that is a colony, territory or protectorate of a foreign country; part of, or under the protection of, a foreign country; a region over which a foreign country exercises jurisdiction or control or where a foreign country is responsible for that region's international relations. *Gambling service* would have the same meaning as in the IGA.

Item 2 would also insert definitions of *prohibited interactive gambling service* and *regulated interactive gambling service* into the ACMA Act, as a consequence of the insertion of new subsection 59D(1A) by Item 5 of the Bill.

Prohibited interactive gambling service and *regulated interactive gambling service* would have the same meaning as in the IGA.

These definitions will ensure that the ACMA is able to provide authorised disclosure information relating to *prohibited interactive gambling services* and *regulated interactive gambling services* to an appropriate range of international authorities with responsibility for gambling regulation, including at the state or provincial level.

Item 3 – After paragraph 59D(1)(g)

Item 4 – At the end of subsection 59D(1)

Item 5 – After subsection 59D(1)

Subsection 59D(1) of the ACMA Act allows an ACMA official who has been authorised in writing by the Chair of the ACMA to disclose *authorised disclosure information* to specified authorities, if the Chair is satisfied that the information will enable or assist the authority to perform or exercise any of its functions or powers.

Item 3 would amend the list of authorities to whom information may be disclosed under subsection 59D(1) to include the Secretary of the Department administered by the Minister administering the *Migration Act 1958* or an APS employee in that Department whose duties relate to that legislation. Item 4 would amend the list to include an authority of a *foreign country* responsible for regulating matters relating to the provision of *gambling services*.

The amendments made by items 3 and 4, along with the amendments made by items 1 and 2, are intended to promote effective enforcement of the IGA by enabling the ACMA to notify international regulators and the Department of Immigration and Border Protection (DIBP) of information relating to prohibited or regulated interactive gambling services.

In light of the offshore location of many gambling service operators, the amendments would allow the ACMA to develop the productive relationships with international regulators required to enforce the IGA against foreign entities. This could include informing international regulators of the Australian law and requesting assistance in enforcement actions.

The amendments will also allow the ACMA to provide names of directors and principals of offending gambling services to DIBP so they may be able to be placed on the Movement Alert List, and also so any travel to Australia may be able to be disrupted.

To ensure the provision of information is necessary and proportionate to the outcomes sought to be achieved, Item 5 would insert a new subsection 59D(1A), which limits the type of information which is authorised to be disclosed to the authorities inserted by Items 3 and 4 to information relating to a *prohibited interactive gambling service* or a *regulated interactive gambling service*.

Interactive Gambling Act 2001

Item 6 – Section 3

Section 3 of the IGA provides a simplified outline of the Act. Item 6 would amend the outline to reflect the amendments made by the Bill, including changes in terminology, the new prohibition on providing or advertising *unlicensed regulated interactive gambling services*, and changes to ACMA complaint handling and investigation arrangements.

Item 7 – Section 4

Item 7 would insert new definitions for the terms *ACMA official*, *carriage service*, *civil penalty order*, *civil penalty provision*, *designated interactive gambling service*, *electronic equipment*, *Federal Circuit Court*, *illegal interactive gambling service* and *in-play betting service* in section 4 of the IGA.

ACMA official would have the same meaning as in the ACMA Act and would be inserted as a consequence of the insertion of new section 68 into the IGA, as proposed by Item 142.

Carriage service would have the same meaning as in the *Telecommunications Act 1997* and would be inserted as a consequence of the amendments made by Item 25.

Civil penalty order and *civil penalty provision* would have the same meaning as in the *Regulatory Powers Act*. These new definitions would be included as a consequence of the

amendments to Parts 2, 2A, 3 and 7A of the IGA to expand the enforcement regime under the Act to include civil penalties.

Designated interactive gambling service would mean a *prohibited interactive gambling service* or an *unlicensed regulated interactive gambling service*. The definition would be inserted as a consequence of the amendments to Parts 2 and 7A of the IGA to extend existing prohibitions on the provision and advertising of *prohibited interactive gambling services* to *unlicensed regulated interactive gambling services*. The use of one term to encompass both kinds of services allows for simplified drafting.

Electronic equipment would include an electronic apparatus or electronic device. The definition is used in proposed paragraphs 8B(1)(b) and 8BA(1)(b) to restrict the types of service which meet the definitions of *excluded gaming service* and *place-based betting service*, which would be inserted by item 27.

Federal Circuit Court would mean the Federal Circuit Court of Australia. This definition would be included as a consequence of new sections 64B and 64D, to be inserted into the IGA by item 139, which deal with the enforcement of civil penalty provisions.

Illegal interactive gambling service would mean a *prohibited interactive gambling service* that is provided in contravention of new subsection 15(2A) (to be inserted by item 36). This definition is a consequence of the insertion of a new sections 8F and 68, proposed by items 28 and 142 respectively.

In-play betting service would have the meaning given by new section 10B, to be inserted by item 32. The definition would be inserted as a consequence of new section 8A (Excluded wagering service), substituted by item 26.

Item 8 – Section 4 (definition of *interactive gambling service*)

Item 8 would repeal the definition of *interactive gambling service* from section 4 of the IGA. The proposed repeal is a consequence of the amendments to section 5 proposed by items 19 and 20, and the proposed adoption of the new terms *prohibited interactive gambling service* and *unlicensed regulated interactive gambling service* (together *designated interactive gambling services*).

Item 9 – Section 4

Item 9 would amend section 4 of the IGA to insert new definitions of *place-based betting service*, *personal information* and *prohibited interactive gambling service*.

Personal information would have the same meaning as in the *Privacy Act 1988* and would be inserted as a consequence of proposed limits on the type of information that may be included on the register to be established by the ACMA under new section 68 of the IGA (item 142).

Place-based betting service would have the meaning given by new section 8BA, proposed to be inserted by Item 27.

Prohibited interactive gambling service would have the meaning given by section 5 of the IGA, as amended by items 19-22. This definition would be inserted as a consequence of the amendments made to terminology throughout the Act to clarify the scope of application of the IGA.

Item 10 – Section 4 (definition of *prohibited internet gambling content*)

Item 10 would repeal the definition of *prohibited internet gambling content* and substitute a new definition specifying that *prohibited internet gambling content* would have the meaning given by section 8F (see item 28 below).

Item 11 – Section 4 (definition of *prohibited internet gambling service*)

Item 11 would repeal the definition of *prohibited internet gambling service* from section 4 of the IGA, as a consequence of the amendments made by items 6, 10, 24, 28, 52 and 54-66.

Item 12 – Section 4

Item 12 would insert a new definition of *regulated interactive gambling service* into section 4 of the IGA, referring to proposed section 8E (see item 28 below).

Item 12 would also amend section 4 of the IGA to insert a new definition of *Regulatory Powers Act*. The term would be defined to mean the *Regulatory Powers (Standard Provisions) Act 2014* and is used in the context of the expanded enforcement regime in the IGA, as amended by item 139.

Item 13 – Section 4 (definition of *special access-prevention notice*)

Item 13 would repeal the definition of *special access-prevention notice* from section 4 of the IGA. This term is no longer used, as a consequence of the proposed repeal of sections 27, 28, 30 and 31 of the IGA by item 66.

Item 14 – Section 4

Item 14 would insert a provision into section 4 of the IGA to provide that the term *sporting event* has a meaning affected by new section 10A, proposed to be inserted by Item 31. The term *sporting event* is used in provisions relating to *excluded wagering services* (item 26) and *in-play betting services* (item 32).

Item 15 – Section 4

Item 15 would amend section 4 of the IGA to repeal the definitions of *standard access-prevention notice* and *standard telephone service*.

The repeal of *standard access-prevention notice* is a consequence of the repeal of paragraph 24(1)(c), subsections 24(2)-(6), and sections 27, 28, 30 and 31 of the IGA proposed by Items 59-62 and 66.

The repeal of *standard telephone service* is a consequence of amendments proposed to the definition of *telephone betting service* by items 16 and 25. The amended definition of *telephone betting service* would no longer refer to the term *standard telephone service*.

Item 16 – Section 4 (definition of *telephone betting service*)

Item 16 would amend section 4 of the IGA to repeal and substitute a new definition of *telephone betting service*. The substituted term would have the meaning given by section 8AA of the IGA, proposed to be inserted by Item 25.

Item 17 – Section 4

Item 17 would insert definitions of *trade promotion gambling service*, *unlicensed regulated interactive gambling service*, and *wholesale gambling service*.

A *trade promotion gambling service* would have the meaning set out in new section 8BB, proposed to be inserted by Item 27.

An *unlicensed regulated interactive gambling service* would be defined as a *regulated interactive gambling service* provided in contravention of new subsection 15AA(3) (to be inserted by Item 39). That subsection would prohibit a person from providing certain regulated interactive gambling services without holding a relevant licence under a law of a State or Territory.

A *wholesale gambling service* would be defined as a *gambling service* to the extent which it is provided to a person who is the provider of the *gambling service* and holds a licence (however described), under the law of a State or Territory that authorised the provision of that service.

The definitions of *trade promotion gambling services* and *wholesale interactive gambling services* are required as a consequence of amendments proposed by Items 23A and 27.

Item 18 – Section 4 (definition of *voice call*)

Item 18 would repeal the definition of *voice call* from section 4 of the IGA, as a consequence of the new definition of *telephone betting service* set out in proposed new section 8AA (to be inserted by item 25). A *voice call* for the purposes of that section would instead be defined in subsection 8AA(3).

Item 19 – Section 5 (heading)

Item 20 – Subsection 5(1)

Item 21 – Subsection 5(1) (note)

Item 22 – Subsection 5(3)

Item 23 – After paragraph 5(3)(ab)

Item 23A – After paragraph 5(3)(b)

Subsection 5(1) of the IGA defines an *interactive gambling service* for the purposes of the Act. Subsection 5(3) lists a number of services which are not *interactive gambling services*.

Items 19, 20 and 22 would amend section 5 of the IGA so that what is currently referred to in the Act as an *interactive gambling service* would now be referred to as a *prohibited interactive gambling service*. The new terminology better reflects the effect of the IGA and is included to assist readers.

Item 21 would amend the note to subsection 5(1) to refer to both offence provisions and civil penalty provisions, as a consequence of the proposed introduction of new civil penalty provisions in section 15 and Part 7A of the IGA.

Item 23 would include a *place-based betting service* in the list of excluded services, being services which are specified not to be a *prohibited interactive gambling service*, in subsection 5(3) of the IGA. A *place-based betting service* is defined in new section 8BA, proposed to be inserted by Item 27.

Item 23A would also include a trade promotion gambling service and a wholesale gambling service in the list of excluded services in subsection 5(3) of the IGA. A trade promotion gambling service would have the meaning set out in new section 8BB, proposed to be inserted by Item 27, while wholesale gambling service would be defined in section 4 in accordance with the amendments proposed by Item 17.

Item 24 – Section 6

Item 24 would repeal section 6 of the IGA, which defines a *prohibited internet gambling service*. *Prohibited internet gambling content* (as defined in section 4) is internet content that is available for access by a customer of a *prohibited internet gambling service*. Part 3 of the IGA provides a system for complaints about *prohibited internet gambling content*.

The definition of *prohibited internet gambling service* is no longer required as a result of changes to the definition of *prohibited internet gambling content* made by items 10 and 28 and the changes to Part 3 proposed by items 51-66 of the Bill. These would allow persons to complain to the ACMA about, and the ACMA to investigate, the provision and advertising of all unlicensed or prohibited interactive gambling services.

Item 25 – After section 8

A *telephone betting service* is currently defined in section 4 of the IGA to be a gambling service provided on the basis that dealings with customers are wholly by way of voice calls made using a standard telephone service (as defined under section 6 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999*).

A *voice call* is currently defined in section 4 of the IGA as: (a) a voice call, within the ordinary meaning of that expression; or (b) a call that involves a recorded or synthetic voice; or (c) if a call covered by paragraph (a) or (b) is not practical for a particular customer with a disability, a call that is equivalent to a call covered by either of those paragraphs; whether or not the customer responds by way of pressing buttons on a telephone handset or similar thing.

Item 25 would insert a new section 8AA into the IGA, setting out a new definition of *telephone betting service*.

The amendments to the definition of a *telephone betting service* are intended to prohibit ‘click to call’ in-play betting services, whereby bets are placed after a sporting event commences using services which combine a mix of data entry on websites or mobile smartphone applications with a voice call. These transactions are able to be completed within a matter of seconds, and there is no conversation between the operator (computerised) and consumer. This allows for a rapid number of bets to be placed in short timeframes, which is inconsistent with the intent of the IGA to protect problem and at-risk gamblers.

Under proposed subsection 8AA(1), a *telephone betting service* would mean a gambling service provided on the basis that dealings with customers are wholly by way of voice calls made using a carriage service, and where the conditions (if any) that are determined by the Minister under subsection 8AA(2) are satisfied.

Proposed subsection 8AA(2) would empower the Minister, by legislative instrument, to determine one or more conditions that must be satisfied for the purposes of establishing whether a gambling service is a *telephone betting service* under subsection 8AA(1).

The new definition of *telephone betting service* removes the requirement that the voice call be made using a ‘standard telephone service’ and replaces this with a requirement that the voice call be made using a ‘carriage service’. It is intended that the revised definition of a *telephone betting service* capture spoken conversations between the consumer and the gambling service operator, regardless of the particular telephony service.

Proposed subsection 8AA(3) defines what constitutes a *voice call* for the purposes of section 8AA. Under paragraph 8AA(3)(a), the term is defined as a voice call (within the ordinary meaning of that expression) the content of which consists wholly of a spoken conversation between individuals. Where a call covered by paragraph 8AA(3)(a) is not practical for a particular customer with a disability, for example, because of a hearing impairment, paragraph 8AA(3)(b) provides that a voice call is a call that is equivalent to a call covered by paragraph 8AA(3)(a). This is intended to ensure that the use by hearing impaired persons of the National Relay Service, or electronic devices for text communications, is still considered to be a voice call within the meaning of subsection 8AA(3).

The revised definition of a *voice call* removes the possibility of a call involving a recorded or synthetic voice, except in limited circumstances set out in new subsections 8AA(6) and (7), as described below.

Proposed subsection 8AA(4) provides, for clarification, examples of calls that are not *voice calls* for the purposes of paragraph 8AA(3)(a). These are where the content of a call includes a recorded or synthetic voice; or includes one or more tone signals.

The definition of a *voice call* in paragraph 8AA(3)(a), and the examples in subsection 8AA(4) of things that are not *voice calls*, are subject to the limited exceptions in subsections 8AA(6) and 8AA(7).

Under proposed subsection 8AA(6), a recorded or synthetic voice used for call waiting or for a menu system for transferring callers to an extension, will not be excluded from the definition of a *voice call* for the purposes of paragraph 8AA(3)(a). Under proposed subsection 8AA(7), a tone system used for the sole purpose of a menu system for transferring callers to an extension, will similarly not be excluded from the definition of a *voice call* for the purposes of paragraph 8AA(3)(a). It is intended that proposed subsections 8AA(6) and 8AA(7) allow for recorded or synthetic voices, or tone signals, where necessary for administrative purposes only, for example to place customers temporarily on hold where there are no live operators available to take the call.

Proposed subsection 8AA(8) would clarify that, despite subsection 8AA(1) a gambling service is not a *telephone betting service* for the purposes of the IGA if it is provided on the basis that any or all of certain information can be provided by a customer otherwise than by way of a *voice call*. The information would be: a selection of a bet; a selection of a bet type; a nomination of a bet amount; a confirmation of a bet; or information of a kind determined by the Minister under proposed subsection 8AA(9). The ability for the Minister to determine additional kinds of information provided by a customer to a service provider (other than by way of a voice call) that will result in a service not being considered a ‘telephone betting service’ is included as an anti-avoidance measure and to provide flexibility to address new types of products/services.

Subsection 8AA(8) is intended to ensure that all information relating to the substance of a particular bet being placed must be conveyed by the customer by way of a voice call. For

example, a service which allows the customer to provide to the service provider electronically any or all of the specified details necessary to place a bet and be provided with a generated code which they can quote to a phone operator in order to expedite or finalise the service would not be a *telephone betting service*. However, this is not intended to prevent customers from providing their customer or account number electronically prior to the call being placed, or codes or shorthand being provided to customers, for example, on websites, that allow them to conveniently identify the event (e.g. an NRL match) they wish to place a bet on.

Item 26 – Section 8A

Section 5 of the IGA contains a number of excluded services that are not interactive gambling services and are therefore not prohibited under the IGA. One of these is an *excluded wagering service*, as defined in section 8A of the IGA.

Section 8A of the IGA currently defines an *excluded wagering service* as a service to the extent to which it relates to betting on, or on a series of, or on a contingency that may or may not happen during, any or all of the following: a horse race; a harness race; a greyhound race; or a sporting event (see subsection 8A(1)). However, under subsection 8A(2), an *excluded wagering service* will not include a service which relates to betting on the outcome of a sporting event, where the bets are placed, made, received or accepted after the beginning of the event; or betting on a contingency that may or may not happen in the course of a sporting event, where the bets are placed, made, received or accepted after the beginning of the event.

Item 26 would repeal the current definition of *excluded wagering services* under section 8A and insert a new definition.

The amendments to the definition of *excluded wagering services* in section 8A are largely intended to simplify the drafting of the definition, without substantially changing the effect of the provisions, other than as described below.

Under existing subsection 8A(1A), regulations may specify additional conditions for what constitutes an *excluded wagering service* for the purposes of subsection 8A(1). Under the amended definition, the Minister would be empowered to determine conditions for that purpose by legislative instrument under proposed subsections 8A(2) (in relation to racing), 8A(4) (in relation to sporting events) and 8A(6) (in relation to other events and contingencies).

Proposed subsection 8A(7) would provide that for the purposes of the application of paragraph 8A(5)(a), which provides that a service is an *excluded wagering service* to the extent that it relates to betting on an event, series of events or a contingency, and is not covered by subsection 8A(1) or 8A(2), it is to be assumed that no conditions have been determined under subsection 8A(2) or 8A(4), and paragraph 8A(3)(b) is to be disregarded.

The content of existing subsection 8A(2) relating to in-play betting, with some changes, would now be dealt with in new section 10B, proposed to be inserted by item 32 (see below).

Item 27 – Section 8B

Section 5 of the IGA contains a number of excluded services that are not *interactive gambling services* and are therefore not prohibited under the IGA. One of these is an *excluded gaming service*, as defined in section 8B of the IGA.

Subsection 8B(1) defines an *excluded gaming service* as a service for the conduct of a game covered by paragraph (e) of the definition of *gambling service* in section 4, to the extent which the service is provided to customers who are in a public place. Paragraph (e) of the definition of *gambling service* refers to a service for the conduct of a game of chance, or mixed chance and skill, played for money or anything else of value, where a customer of the service agrees to give consideration to play or enter the game.

Subsection 8B(2) defines a *public place* as a place, or part of a place, to which the public, or a section of the public, ordinarily has access, whether or not by payment or invitation. Examples listed are a shop, casino, bar or club. Subsection 8B(2) further defines a *section of the public* as including members of a particular club, society or organisation, but not a group consisting only of persons with a common workplace or employer.

Item 27 would repeal and substitute section 8B to narrow the scope of *excluded gaming service*.

Proposed subsection 8B(1) would provide that an *excluding gaming service* is a service for the conduct of a game covered by paragraph (e) of the definition of *gambling service* in section 4 only to the extent the service is provided in a particular place, on a particular basis and in accordance with specified conditions.

Under proposed paragraphs 8B(1)(a) and (b), a service would be an *excluded gaming service* only to the extent that it is provided to customers at a particular place, and on the basis that dealings with customers involve the use of *electronic equipment* made available to any customers at the particular place. In addition, paragraphs 8B(1)(c) and (d) would require that the service provider hold a licence under a law of a State or Territory that authorises the provision of the service in the particular place, and any other conditions specified by the Minister, by legislative instrument, have been satisfied. Proposed subsection 8B(2) would allow the Minister to determine, by legislative instrument, one or more conditions for the purposes of paragraph 8B(1)(d), which would have to be satisfied in order for a service to be an *excluded gaming service*.

The substituted section 8B is intended to continue to allow the provision of services which meet the requirements in new subsection 8B(1), such as interlinking of poker machines, in places where service providers are authorised to provide such services under a State or Territory licence. However, the substituted section 8B is intended to prevent electronic gaming services from being provided in other places or through the use of private devices.

Item 27 would also insert new section 8BA to define a *place-based betting service*, which would be another type of excluded service under section 5 (and therefore not prohibited under the IGA).

Proposed subsection 8BA(1) would provide that a *place-based betting service* is a service covered by paragraph (a) or (b) of the definition of *gambling service* in section 4 only to the extent the service is provided to customers who are at a particular place, on a particular basis and in accordance with specified conditions. Paragraph (a) of the definition of *gambling service* refers to a service for the placing, making, receiving or acceptance of bets. Paragraph (b) of the definition of *gambling service* refers to a service the sole or dominant purpose of which is to introduce individuals who wish to make or place bets to individuals who are willing to receive or accept those bets.

Under proposed paragraphs 8BA(1)(a) and (b), the service would be a *place-based betting service* only to the extent that it is provided to customers at a particular place and on the basis that dealings with customers involve the use of *electronic equipment* made available to any customers at the particular place and not available for use by customers in connection with another gambling service (unless the other gambling service is provided by the provider of the first-mentioned gambling service). In addition, paragraphs 8BA(1)(c) and (d) would require that the service provider holds a licence under a law of a State or Territory that authorises the provision of the service in the particular place, and any other conditions specified by the Minister, by legislative instrument, have been satisfied. Proposed subsection 8B(2) would allow the Minister to determine, by legislative instrument, one or more conditions for the purposes of paragraph 8BA(1)(d), which would have to be satisfied in order for a service to be a *place-based betting service*.

The insertion of section 8BA is intended to clarify that electronic betting terminals in places where service providers are authorised to provide such services under a State or Territory licence, such as TABs, casinos, hotels and clubs, racecourses, sporting stadiums and other public places where providers may be authorised to provide services (e.g. Martin Place or Federation Square) are not intended to be *prohibited interactive gambling services* and can continue to be provided.

Proposed subsection 8BB(1) would define a *trade promotion gambling service* for the purposes of the IGA as a service for the conduct of a lottery, or a game of chance or mixed chance and skill, in connection with a competition for the promotion of trade. A *trade promotion gambling service* would be another type of *excluded service* under section 5 and therefore not prohibited under the IGA (item 23A refers).

The insertion of section 8BB is intended to clarify that trade promotions, for example, online draws conducted by retailers which consumers may enter online to win a prize, and which are unlikely to pose any threat to problem gamblers, are not prohibited.

Proposed subsection 8BB(2) would allow the Minister to determine, by legislative instrument, one or more conditions for the purposes of subsection 8BB(1). Proposed subsection 8BB(1) would specify that any conditions determined under subsection 8BB(2) would also have to be satisfied in order for a service to be a *trade promotion gambling service* under section 8BB(1).

Proposed subsection 8BB(3) would provide that for the purposes of new section 8BB, *trade* does not include the provision of a gambling service. This is intended to ensure that a service for the conduct of a lottery or game in connection with a competition for the promotion of a gambling service would not be an excluded service.

The ability of the Minister to determine conditions and specify kinds other kinds of places under proposed subsections 8B(2), 8B(3), 8BA(2), 8BA(3), and 8BB(3) is intended to provide flexibility in dealing with changing technology or any unintended applications of the provisions in subsections 8B(1) and 8BA(1).

Item 28 – After section 8D

Item 28 would insert a new section 8E, to define *regulated interactive gambling service* for the purposes of the IGA. This term is used in proposed section 15AA, inserted by item 39, which would create an offence and civil penalty regime prohibiting the provision of

interactive gambling services to persons in Australia by a person who does not hold a gambling licence under the law of an Australian State or Territory (to be known as *unlicensed regulated interactive gambling services*). This gives effect to the Government's policy intention to prohibit the provision of gambling services to the Australian public by unlicensed offshore operators.

New subsection 8E(1) would provide that, for the purposes of the IGA, where a service of a type specified in paragraphs (a)-(h) is provided in the course of carrying on a business and using one of the service-delivery methods specified in paragraph (j), it is a *regulated interactive gambling service*.

The relevant types of service are: a telephone betting service; an excluded wagering service; an excluded gaming service; a place-based betting service; a service that has a designated broadcasting link; a service that has a designated datacasting link; an excluded lottery service; or an exempt service.

The relevant service-delivery methods are any of the following: an internet carriage service; any other listed carriage service; a broadcasting service; any other content service; or a datacasting service.

In the case of an exempt service, new paragraph 8E(1)(k) also requires that a determination under new subsection 8E(2) must be in force for subsection 8E(1) to apply. New subsection 8E(2) allows the Minister to determine by legislative instrument that each exempt service included in a specified class of exempt services is covered by new paragraph 8E(1)(k).

New subsection 8E(4) would provide that a *trade promotion gambling service* and a *wholesale gambling service* are not *regulated interactive gambling services* for the purposes of the IGA. *Trade promotion gambling service* would be defined in new section 8BB, proposed to be inserted by Item 27. *Wholesale gambling service* would be defined in section 4, as proposed to be amended by Item 17.

The exclusion of *trade promotion gambling services* from the definition of *regulated interactive gambling service* is intended to ensure that the types of services described in new section 8BB, such as online competitions the public can enter to win prizes, which pose minimal risks to problem gamblers, are not required to be licensed under the IGA and are not prohibited as *unlicensed interactive gambling services*.

The exclusion of *wholesale gambling services* from the definition of *regulated interactive gambling service* is intended to ensure that 'business-to-business' betting services that may be provided by unlicensed gambling service providers to other gambling service providers (for example to manage risk, as opposed to the general public, are not prohibited as *unlicensed regulated interactive gambling services*.

Proposed subsection 8E(3) would provide that proposed subsection 8E(1) has effect subject to proposed subsection 8E(4).

Item 28 would also insert a new section 8F into the IGA containing the defined term *prohibited internet gambling content*. The section would provide that internet content is *prohibited internet gambling content* for the purposes of the IGA if the content is accessible by end-users in Australia and an ordinary reasonable person would conclude the sole or primary purpose of that particular internet content is to enable a person to enter into dealings

in the capacity of a customer of either or both of one or more *illegal interactive gambling services* or *unlicensed regulated interactive gambling services*.

This definition is included as a consequence of the amendments made by Items 6, 10, 24, 28, 52 and 54-66.

Item 29 – Paragraph 9A(3)(b)

Subsection 9A(1) of the IGA allows the Minister to declare by legislative instrument that a foreign country is a *designated country* for the purposes of the IGA. Paragraph 9A(3) of the IGA prohibits the Minister from declaring a foreign country under subsection 9A(1) unless the Government of that country has requested the Minister to make the declaration; and there is legislation in force in that country corresponding to section 15 of the IGA (offence of providing an interactive gambling service to customers in Australia).

Item 29 would substitute a new paragraph 9A(3)(b) as a result of the introduction of civil penalty provisions in section 15, as proposed to be amended by items 34 - 38. Under new paragraph 9A(3)(b) it would be sufficient for there to be legislation in force in the relevant foreign country corresponding to section 15, as currently, or to section 15 other than the offence provision or the civil penalty provision. This amendment will ensure that a foreign country need only have equivalent civil penalty or criminal offence provisions (but not necessarily both) in order for paragraph 9A(3)(b) to be satisfied for the purpose of the restriction on the Minister making a *designated country* declaration.

Item 30 – Subsection 10(1)

Item 31 – Subsection 10(1)

Subsection 10(1) of the IGA allows the Minister to determine by legislative instrument that each service included in a specified class of services is an exempt service for the purposes of the IGA.

Items 30 and 31 would amend subsection 10(1) to replace references to “service” with the defined term *gambling service*, so that the Minister may determine by legislative instrument that each *gambling service* included in a specified class of *gambling services* is an exempt service for the purposes of the IGA. This is a technical amendment to clarify the scope of section 10.

Item 32 – After section 10

Item 32 would insert new sections 10A and 10B in the IGA.

There is currently no definition of ‘sporting event’ in the IGA. The term is relevant to the application of rules regarding the provision of services relating to betting on the outcome of sporting events or contingencies (see for example proposed new 8A(3), inserted by item 26, which provides that such services are *excluded wagering services* in certain circumstances).

Proposed section 10A of the Bill would empower the Minister, by legislative instrument, to determine whether a specified thing is taken to be, or not to be, a sporting event, for the purposes of the IGA. It is intended that these powers would allow the Minister to clarify what is, or is not, a sporting event (or contingency) to deal with the application of the requirements of the IGA to existing sports, new forms of existing sports or new sports that may arise in the future.

Proposed subsection 10A(1) would provide that the Minister may, by legislative instrument, determine that a specified thing is taken to be a *sporting event* for the purposes of the IGA.

Proposed subsection 10A(2) would provide that the Minister may, by legislative instrument, determine that a specified thing is taken to be a *sporting event* for the purposes of the IGA, and the outcome of the specified thing is taken not to be a contingency for the purposes of proposed new paragraph 10B(b) (as described below). This clarifies that where the Minister determines that a specified thing is a *sporting event*, and that the outcome of that *sporting event* is not a contingency for the purposes of paragraph 10B(b), a gambling service relating to betting on the outcome of that *sporting event* will not be an *in-play betting service* under the IGA.

Proposed subsection 10A(3) would provide that the Minister may, by legislative instrument, determine that a specified thing is taken not to be a *sporting event* for the purposes of the IGA.

Proposed subsection 10A(4) sets out examples of the things that may be specified to be taken to be, or not to be, a *sporting event* for the purposes of the IGA. Proposed subsection 10A(4) provides that a match, a series of matches, a race, a series of races, a stage, a time trial, a qualification session, a tournament or a round may each be determined to be taken to be, or not to be, a *sporting event*.

Proposed section 10B would insert a definition for an *in-play betting service* into the IGA.

Proposed paragraph 10B(1)(a) provides that for the purposes of the IGA, to the extent to which a gambling service relates to betting on the outcome of a sporting event, the service will be an *in-play betting service* where the bets are placed, made, received or accepted after the beginning of the event.

Proposed paragraph 10B(1)(b) provides that for the purposes of the IGA, to the extent to which a gambling service relates to betting on a contingency that may or may not happen in the course of a sporting event, the service will be an *in-play betting service* where the bets are placed, made, received or accepted after the beginning of the event.

Item 33 – Part 2 (heading)

Item 34 – Section 15 (heading)

Item 35 – Paragraph 15(1)(a)

Item 35A – Subsection 15(1) (penalty)

Item 36 – After subsection 15(2)

Item 37 – Subsection 15(3)

Item 38 - Subsection 15(3) (note)

Part 2 of the IGA contains criminal offences relating to the provision of *interactive gambling services* to customers in Australia.

Item 33 would amend the heading of Part 2 of the IGA to read “Designated interactive gambling services not to be provided to customers in Australia”. This amendment reflects the changes in terminology proposed by items 7 and 17, which would replace the term *interactive gambling service* with the new terms *prohibited interactive gambling service* and *unlicensed regulated interactive gambling service* (collectively known as *designated interactive gambling services*).

Items 34 and 35 would amend the heading of section 15 of the IGA, and paragraph 15(1)(a) of the IGA, to substitute references to *interactive gambling services* with references to *prohibited interactive gambling services*.

Item 34 would also make minor technical amendments to the heading of section 15 to reflect that the section now contains both criminal offence and civil penalty provisions (see item 36).

Item 36 would make amendments to section 15 of the IGA.

Subsection 15(1) of the IGA provides that a person commits an offence if they intentionally provide an *interactive gambling service* with an Australian-customer link. Subsection 15(2) provides that a person who contravenes subsection (1) commits a separate offence in respect of each day during which the contravention continues (including a day of conviction for the offence or any later day).

Australians are among the biggest gamblers in the world. Interactive gambling is growing in Australia due to the ubiquity of internet-enabled devices and changes in consumer behaviour. The Review referred to a 2015 presentation to the United Nations Congress on Crime Prevention and Criminal Justice which estimated 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. Consequently, offshore gambling operators target Australians which leads to negative social and economic effects on industry, racing and sporting associations, problem and at-risk gamblers, consumers and government.

To reduce the adverse effects, the penalty amounts for contraventions of the IGA need to be high, in particular for major offences including the provision of prohibited interactive gambling services and unlicensed regulated interactive gambling services, to deter offshore global entities from providing services to the Australian market.

Item 35A would increase the amount of the maximum penalty for commission of the offence in subsection 15(1) from 2,000 penalty units to 5,000 penalty units, in recognition of the significant harm caused to the Australian community by the provision of prohibited interactive gambling services. The increased penalty will ensure that the offence provides a sufficient deterrent, and will provide consistency with the new offence provision in proposed section 15AA (regarding provision of an unlicensed regulated interactive gambling service).

Item 36 would insert new subsections 15(2A) and (2B) into the IGA to introduce parallel civil penalty provisions where a person provides a *prohibited interactive gambling service* that has an Australian-customer link (as defined in section 8 of the IGA).

Proposed subsection 15(2A) provides that the civil penalty for providing a *prohibited interactive gambling service* that has an Australian-customer link is 7,500 penalty units. Although subsection 15(1) and proposed subsection 15(2A) deal with the same conduct, the

penalty for contravention of proposed subsection 15(2A) is higher than the pecuniary penalty for contravention of subsection 15(1) in acknowledgement of the effect or stigma of the criminal conviction that would arise if a person is found guilty of breaching subsection 15(1). The increased penalty will ensure that the offence provides a sufficient deterrent, recognising the commercial incentives that may exist to provide prohibited services and the costs to the community of the harm caused by prohibited services, and will provide consistency with the new offence provision in proposed section 15AA.

Proposed subsection 15(2B) provides that there will be a separate contravention of subsection 15(2A) in respect of each day during which the contravention occurs, including the day the relevant civil penalty order is made or any later day.

Item 37 would amend subsection 15(3) of the IGA. Subsection 15(3) provides that subsection 15(1) does not apply if the person did not know and could not, with reasonable diligence, have ascertained that the service had an Australian-customer link. The amendments to subsection 15(3) would provide that new subsections 15(2A) will also not apply in those circumstances.

Subsection 15(3) also contains a note that the defendant bears the evidential burden in relation to the matters in subsection 15(3) under subsection 13.3(3) of the *Criminal Code Act 1995*. Item 38 would make a minor technical amendment to the note to subsection 15(3) to make clear that the application of the note is limited to proceedings for an offence against subsection 15(1) of the IGA.

This is one of several amendments to insert civil penalty provisions into the IGA in addition to existing criminal offences to provide the ACMA with a greater and more graduated range of enforcement options.

Item 39 – At the end of Part 2

Item 39 would insert a new section 15AA to create both a criminal offence and civil penalty provision in relation to the provision of an *unlicensed regulated interactive gambling service* to customers in Australia. The effect would be to require gambling providers to be licensed by an Australian State or Territory before providing particular interactive gambling services to customers in Australia.

Proposed subsection 15AA(1) would provide that a person commits an offence if they intentionally provide a particular kind of *regulated interactive gambling service* (as defined by proposed section 8E) with an Australian-customer link (as defined by section 8) without holding a licence under a law of a State or Territory that authorises the provision of that kind of service in the State or Territory. The penalty for this offence would be 5,000 penalty units. Proposed subsection 15AA(2) provides that a separate offence is committed in respect of each day that contravention of subsection 15AA(1) continues (including a day of conviction for the offence or any later day).

Proposed subsection 15AA(3) would create a civil penalty of 7,500 penalty units for a person who provides a particular kind of *regulated interactive gambling service* with an Australian-customer link without holding a licence under a law of a State or Territory that authorises the provision of that kind of service in the State or Territory. Proposed subsection 15AA(4) would provide that a separate contravention of subsection 15AA(3) is committed in respect of

each day during which contravention of that subsection occurs (including a day of relevant civil penalty order or any later day).

The penalties for offences against proposed section 15AA(1) and contraventions of proposed section 15AA(3) have been set having regard to the desirability of consistency with the offences and prohibitions contained in section 15 as proposed to be amended (relating to the provision of *interactive gambling services* to customers in Australia).

Although proposed subsections 15AA(1) and proposed subsection 15AA(3) deal with the same conduct, the penalty for contravention of proposed subsection 15AA(3) is higher than the pecuniary penalty for contravention of subsection 15AA(1) in acknowledgement of the effect or stigma of the criminal conviction that would arise if a person is found guilty of breaching subsection 15AA(1), in addition to the pecuniary penalty.

The penalty amounts are appropriate and necessary to deter contraventions of these provisions, recognising the commercial incentives that may exist to provide prohibited services and the costs to the community of the harm caused by prohibited services.

The offence and civil penalty provisions in proposed subsections 15AA(1) and (3) rely on the definition of a *regulated interactive gambling service* proposed to be inserted by Item 28 of the Bill. The definition includes, among other things, a telephone betting service; an excluded wagering service; an excluded gaming service; and a place-based betting service.

Proposed new or amended sections 8AA-8BB in Items 25-27 of the Bill define each of these services. The proposed or amended sections also allow the Minister to determine one or more conditions by legislative instrument that must be satisfied for a service to meet the definition.

Such ministerial determinations would require readers to consider the effect of delegated legislation in order to determine the full content of the offence of providing an *unlicensed regulated interactive gambling service* in proposed section 15AA. It is appropriate and necessary to allow for the future prescription of matters that may affect the content of the offence and civil penalty in subsections 15AA(1) and (3) given the dynamic nature of the gambling industry. Attempts to cover all possible matters that may need to be addressed would produce lengthy, technical legislation which may still provide insufficient flexibility to deal with changes to the types of events that are gambled on, the places in which gambling may occur, and the technology used to provide gambling services.

Any ministerial determinations under sections 8AA-8BB would be required to be registered on the Federal Register of Legislation and would be subject to Parliamentary scrutiny and disallowance, under the *Legislation Act 2003* (the Legislation Act). The Legislation Act would also require the Minister to be satisfied that any consultation which they consider appropriate, and which is reasonably practicable to undertake, has been undertaken before making the instruments.

Proposed subsection 15AA(5) would provide that subsections 15AA(1) and 15AA(3) do not apply if the person did not know and could not, with reasonable diligence, have ascertained that the service in question had an Australian-customer link. The note to this subsection clarifies that, in proceedings for an offence against subsection 15AA(1), the defendant bears the burden of adducing evidence in relation to the matters in subsection 15AA(5) (the evidential burden), in line with section 13.3(3) of the *Criminal Code Act 1995*.

It is appropriate for the evidential burden to lie with the defendant in relation to this defence, as the matters are peculiarly within the knowledge of the defendant (i.e. what the defendant actually knew or could have ascertained, in their circumstances, with reasonable diligence). Once the defendant has adduced evidence suggesting a reasonable possibility that those matters exist, the legal burden lies with the prosecution to disprove the matters beyond reasonable doubt.

Proposed subsection 15AA(6) provides further guidance on how it would be determined (for the purposes of proposed subsection 15AA(5)) whether the person could, with reasonable diligence, have ascertained the service had an Australian-customer link. The subsection would require that the following matters be taken into account: whether prospective customers were informed that the provision of the services to customers physically present in Australia is prohibited under Australian law; whether customers were required to enter into contracts subject to an express condition that the customer was not to use the service if they were physically present in Australia, whether the person required customers to provide personal details, and if so, whether those details suggested the customer was not physically present in Australia; whether the person has network data that indicates they were physically outside Australia when their account was opened and throughout the period of service; and any other relevant matters.

Proposed subsection 15AA(7) provides that if a person holds a licence under a law of a State or Territory that authorises the provision of a particular kind of *regulated interactive gambling service* in that State or Territory, the person does not contravene subsections (1) or (3) by providing that kind of service in or outside of the State or Territory. This means that if, for example, a company providing a particular kind of *regulated interactive gambling service* with an Australian-customer link has a licence under a law of the Northern Territory that authorises the provision of that kind of service in the Northern Territory, the company would not be in breach of proposed subsections 15AA(1) or (3) of the IGA if it provided the service in other parts of Australia.

Proposed subsection 15AA(8) makes clear that proposed subsection 15AA(7) is enacted for the avoidance of doubt.

Proposed subsection 15AA(9) provides that section 15.4 of the *Criminal Code Act 1995* (extended geographical jurisdiction – category D) would apply to an offence against subsection 15AA(1). Section 15.4 is an extension of the standard geographical jurisdiction set on in section 14.1 of the *Criminal Code Act 1995*, which would otherwise apply to the offence. Section 14.1 provides that a person only commits an offence to which the section applies if the conduct constituting the offence occurred wholly or partly in Australia, or wholly outside Australia and a result of the conduct occurs wholly or partly in Australia. Section 14.1 also provides a defence where the offence occurs wholly in a place in a foreign country where there is no corresponding offence in force in that place in that country.

Section 15.4 of the *Criminal Code Act 1995* instead provides that an offence applies whether or not the conduct constituting the alleged offence, or a result of that conduct, occurs in Australia. There is no defence relating to whether a corresponding offence is in force in the place where the conduct constituting the offence occurs.

Because it would be possible for offshore gambling service providers to commit the conduct constituting the offence in section 15AA(1) wholly in a foreign country where there may not

be a corresponding offence in force, this extension of jurisdiction is necessary to ensure the effectiveness of the offence.

Item 40 – Part 2A (heading)

Item 41 – Section 15A (heading)

Item 42 – Paragraph 15A(1)(a)

Item 42A – Subsection 15A(1) (penalty)

Item 43 – After subsection 15A(2)

Item 44 – Subsection 15A(3)

Item 45 – Subsection 15A(3) (note)

Item 46 – Subsection 15A(6)

Item 47 – Subsection 15A(6)

Item 48 – Subsection 15A(7)

Item 49 – Subsection 15A(8)

Part 2A of the IGA contains a criminal offence relating to the provision of Australian-based *interactive gambling services* to customers in designated countries. Items 39-48 would introduce corresponding civil penalty provisions and make related amendments.

Item 40 and 41 would amend the headings of Part 2A and subsection 15A, respectively, to substitute references to *interactive gambling services* with references to *prohibited interactive gambling services*. These amendments are consequential to the changes to terminology proposed by Items 8 and 9.

Items 42-49 would make amendments to section 15A of the IGA.

Subsection 15A(1) of the IGA provides that a person commits an offence if they intentionally provide an Australian-based *interactive gambling service* and the service has a designated country-customer link (as defined in section 9B of the IGA). Subsection 15A(2) provides that a person commits a separate offence in respect of each day during which the contravention continues (including a day of conviction for the offence or any later day).

Item 42 would amend subsection 15A(1), consequential to the changes in terminology proposed by Items 8 and 9. Item 42 would amend subsection 15A(1) of the IGA to substitute a reference to an ‘Australian-based *interactive gambling service*’ with a reference to an ‘Australian-based *prohibited interactive gambling service*’.

Item 42A would increase the penalty for the offence in section 15A(1) from 2,000 penalty units to 5,000 penalty units, in recognition of the significant harm caused by the provision of prohibited Australia-based interactive gambling services to customers in designated countries. The increased penalty will ensure that the offence provides a sufficient deterrent, and will provide consistency with the penalties proposed in section 15 and new section 15AA.

Item 43 would insert new subsections 15A(2A) and (2B) into the IGA to introduce parallel civil penalty provisions stating that a person must not provide an Australian-based *prohibited interactive gambling service* that has a designated country-customer link (as defined in section 9B of the IGA). The civil penalty for contravention of proposed subsection 15(2A) is 7,500 penalty units. To ensure international cooperation on interactive gambling matters, it is imperative that Australia implements penalties for Australian-based operators providing prohibited services to other jurisdictions in contravention of those countries’ gambling laws

that are equally as strong as the penalties for provision of services in Australia in contravention of Australian laws.

Although subsection 15A(1) and proposed subsection 15(2A) deal with the same conduct, the penalty for contravention of proposed subsection 15(2A) is higher than the pecuniary penalty for contravention of subsection 15A(1) in acknowledgement of the effect or stigma of the criminal conviction that would arise if a person is found guilty of breaching subsection 15A(1), in addition to the pecuniary penalty.

Proposed subsection 15A(2B) provides that there will be a separate contravention of subsection 15A(2A) in respect of each day during which the contravention occurs, including the day the relevant civil penalty order is made or any later day.

This is one of several amendments to insert civil penalty provisions into the IGA in addition to existing criminal offences to provide the ACMA with a greater and more graduated range of enforcement options.

Subsection 15A(3) of the IGA provides that subsection 15A(1) does not apply if the person did not know and could not, with reasonable diligence, have ascertained that the service had a designated country-customer link.

It is appropriate for the evidential burden to lie with the defendant in relation to this defence, as the matters are peculiarly within the knowledge of the defendant (i.e. what the defendant actually knew or could have ascertained, in their circumstances, with reasonable diligence).

Item 44 would amend subsection 15A(3) of the IGA so that new subsection 15A(2A) will also not apply in those circumstances.

Subsection 15A(3) contains a note that the defendant bears the evidential burden in relation to the matters in subsection 15A(3). Item 45 would make a minor technical amendment to the note to subsection 15A(3) to make clear that the application of the note is limited to proceedings for an offence against subsection 15A(1) of the IGA.

The amendments proposed by Items 46-49 are consequential to the changes to terminology used in the IGA proposed by Items 8 and 9. Item 46 would amend subsection 15A(6) of the IGA to substitute a reference to an *Australian-based interactive gambling service* with a reference to an *Australian-based prohibited interactive gambling service*. Items 47, 48 and 49 would amend subsections 15A(6), 15A(7) and 15A(8), respectively, to substitute references to *interactive gambling services* with references to *prohibited interactive gambling services*.

Item 50 – Part 3 (heading)

Part 3 of the IGA sets out the process by which people may complain to the ACMA about, and the ACMA may investigate, *prohibited internet gambling content*. Item 50 would amend the heading of Part 3 to reflect changes proposed by items 51 – 66 below.

Item 51 – Section 16

Item 52 – Paragraph 21(1)(a)

Items 51 and 52 would amend section 16 and paragraph 21(1)(a) of the IGA, respectively, to expand the types of matter about which persons may complain to the ACMA, and the ACMA may investigate.

Section 16 outlines the process for a person to make a complaint about *prohibited internet gambling content* to the ACMA. Item 51 would repeal and substitute section 16 to broaden the scope of complaints that may be made to the ACMA. Under section 16, as amended, a person may complain to the ACMA about a potential contravention of any prohibition set out in Part 2 (Designated interactive gambling services not to be provided to customers in Australia), Part 2A (Australian-based prohibited interactive gambling services not to be provided to customers in designated countries) or Part 7A (Prohibition of advertising of designated interactive gambling services) of the IGA.

Paragraph 21(1)(a) of the IGA empowers the ACMA to investigate, at its own initiative or in response to a complaint made pursuant to section 16, whether an ISP is supplying an internet carriage service that enables end-users to access prohibited gambling content hosted outside Australia. Item 52 would repeal and substitute paragraph 21(1)(a) to broaden the scope of the ACMA's investigation powers, so that the ACMA would be empowered to investigate, at its own initiative or in response to a complaint, whether a person had contravened Part 2, 2A or 7A of the IGA.

These amendments will simplify and streamline the complaints handling and investigation process under the IGA by allowing the ACMA to handle the entire complaints and investigation process from the receipt of a complaint to enforcement, in line with its handling and enforcement role under other legislation. These measures complement the proposed inclusion of civil penalty provisions in the IGA by other items in the Bill. The ACMA will still have the ability to refer complaints alleging the contravention of offence provisions to the police if necessary or appropriate, in accordance with the amendments proposed by Item 53 (see below).

Item 53 – Subsection 21(2)

Subsection 21(2) of the IGA requires that where a complaint made under subsection 21(1) relates to internet content hosted in Australia, the ACMA must not investigate the complaint, and if the ACMA considers that the complaint should be referred to an Australian police force, the ACMA must so refer the complaint and provide written notice to the complainant stating that the complaint has been so referred.

Item 53 would amend subsection 21(2) of the IGA to remove the restriction on the ACMA investigating complaints relating to internet content hosted in Australia. This will enable the ACMA to investigate complaints across a range of carriage services and irrespective of where content is hosted, i.e. Australia or overseas. Item 53 also amends subsection 21(2) to reflect the broadened scope of complaints that may be made to the ACMA, so that the ACMA may refer to an Australian police force any complaint relating to an alleged contravention of an offence provision of the IGA.

Item 54 – Division 3 of Part 3 (heading)
Item 55 – Section 24 (heading)
Item 56 – Subsection 24(1)
Item 57 – Subsection 24(1)
Item 58 – Paragraph 24(1)(b)
Item 59 – Paragraph 24(1)(c)
Item 60 – Subsection 24(1) (note)
Item 61 – Subsections 24(2) to (6)
Item 62 – Paragraph 25(1)(a)
Item 63 – Paragraph 25(1)(a)
Item 64 – Paragraph 26(b)
Item 65 – Paragraph 26(b)
Item 66 – Sections 27, 28, 30 and 31

Division 3 of Part 3 of the IGA deals with action to be taken by the ACMA in relation to a complaint about *prohibited internet gambling content* hosted outside Australia. In summary, the ACMA must:

- if the ACMA considers that the content should be referred to a law enforcement agency—notify the content to a member of an Australian police force; and
- notify the content to internet service providers so that the providers can deal with the content in accordance with procedures specified in an industry code or industry standard (for example, procedures relating to the provision of regularly updated internet content filtering software to subscribers).

Items 54 to 66 would amend Division 3 of Part 3 to ensure that the ACMA is able to take appropriate action in relation to prohibited interactive gambling content, regardless of where that content is hosted, and to ensure that the existing industry code and standard scheme under Part 4 can continue to operate alongside the new complaints handling and investigation procedures under Divisions 1 and 2 of Part 3.

If, in the course of an investigation under Division 2, the ACMA is satisfied that internet content is *prohibited internet gambling content*, paragraph 24(1)(a) currently requires the ACMA to notify the content to a member of an Australian police force (or another person or body, if authorised) if the ACMA considers the content should be referred to a law enforcement agency.

Paragraph 24(1)(b) requires the ACMA to also notify the content to internet service providers under the *designated notification scheme* set out in an industry code or standard, if such a code is registered, or standard determined, under Part 4 of the IGA. Paragraph 24(1)(c) requires the ACMA to give each internet service provider known to it a *standard access-prevention notice* directing the provider to take all reasonable steps to prevent end users from accessing the content if paragraph 24(1)(b) does not apply. The note at the foot of section 24 provides that the ACMA may be taken to have given a notice under paragraph 24(1)(c) and directs the reader to see section 31.

Subsections 24(2) and (3) provide guidance on determining whether steps are reasonable for the purposes of paragraph 24(1)(c).

Subsections 24(4)-(6) deal with *recognised alternative access-prevention arrangements* which may be declared by the ACMA for the purposes of the application of Division 3 to one

or more specified end-users, in which case an internet service provider is not required to comply with a *standard access-prevention notice* in relation to those particular end-users.

Section 25 allows the ACMA to defer taking action that would be required under subsection 24(1) until the end of a particular period if a member of an Australian police force has satisfied the ACMA that the action should be so deferred to avoid prejudicing a criminal investigation.

Sections 27, 28, 30 and 31 deal with the issue of *special access-prevention notices* by the ACMA in relation to internet content similar to that notified to internet service providers in a *standard access-prevention notice*, compliance with access prevention notices, and when the ACMA is taken to have issued access-prevention notices.

Where there is an industry code registered or standard determined under Part 4, section 26 requires the ACMA to also notify the internet service providers, under the *designated notification scheme* in the code or standard, of internet content the ACMA is satisfied is both *prohibited internet gambling content* and the same as, or substantially similar to, internet content that has been notified to internet service providers under paragraph 24(1)(b).

Items 54-57, 62, 63 and 65 would remove the references to ‘a complaint’, ‘hosted outside Australia’ and ‘in the course of an investigation under Division 2’ (and other forms of these words) from the headings of Division 3 and section 24, subsection 24(1), and paragraphs 25(1)(a) and 26(b). This reflects the intention that the ACMA should be able to consider and address prohibited interactive gambling content regardless of where that content is hosted and whether it is the subject of a complaint being investigated under Division 2.

Item 59 would repeal paragraph 24(1)(c) as it no longer has an application due to an industry standard already having been registered for the purposes of section 24(1)(b). Items 60, 61 and 66 would repeal the note to subsection 24(1), subsections 24(2)-(6), and sections 27, 28, 30 and 31 as a consequence of the repeal of paragraph 24(1)(c) proposed by Item 59.

Item 58 would make a minor technical amendment to paragraph 24(1)(b), as a consequence of the repeal of paragraph 24(1)(c) proposed by Item 59.

Item 64 would make a minor technical amendment to paragraph 26(b) to insert the words ‘there is’ after the words ‘satisfied that’ to ensure grammatical correctness as a result of the amendment proposed by Item 65.

Item 67 – Paragraphs 54(a) and (b)

Item 68 – Section 55

Item 69 – Section 55 (note)

Item 70 – At the end of section 55

Item 71 – Subsection 56(4) (penalty)

Item 72 – Subsection 56(4) (note)

Item 73 – At the end of section 56

Item 74 – Section 57

Item 75 – After Section 57

Part 5 of the IGA relates to contraventions of the *online provider rules* as defined in section 54 of the Act.

Paragraphs 54(a) and 54(b) of the IGA provide that the rules set out in subsections 28(1) and 28(2) respectively are *online provider rules* for the purposes of the Act. Item 67 would repeal these paragraphs as consequence of the repeal of section 28 of the IGA proposed by Item 66.

Section 55 of the IGA provides that a person commits an offence if an *online provider rule* is applicable to the person and the person engages in conduct that contravenes the rule. The penalty for the offence is 50 penalty units.

If an internet service provider has contravened or is contravening an *online provider rule*, subsections 56(1) and 56(2) allow the ACMA to give the provider a written direction requiring the provider to take specified action directed towards ensuring that the provider does not contravene the rule, or is unlikely to contravene the rule, in future. Subsection 56(3) sets out examples of the kinds of remedial directions the ACMA may give to a provider. Breach of a remedial direction under subsection 56(2) is an offence under subsection 56(4). The penalty for the offence in subsection 56(4) is currently 50 penalty units.

Section 57(1) of the IGA provides that a person who breaches an *online provider rule* or a remedial direction commits a separate offence in respect of each day during which the contravention continues (including the day of conviction for the offence or any later day) (continuing offence). Subsection 57(2) limits the maximum penalty for each day that a continuing offence continues to 10% of the maximum penalty that could be imposed in respect of the principal offence.

Item 70 would insert a new subsection 55(2) to create a civil penalty provision in addition to the criminal offence in subsection 55(1). The provision provides that a person must not contravene an *online provider rule* that is applicable to the person. The penalty for contravention is 75 penalty units.

Item 73 would similarly insert a new subsection 56(5) to create a civil penalty provision in addition to the criminal offence in subsection 56(4). The provision provides that a person must not contravene a direction of the ACMA given under subsection 54(2). The penalty for contravention is 75 penalty units.

As part of a number of measures in the Bill, Items 70 and 73 make amendments to the IGA to introduce a civil penalty regime to enable the ACMA to take a graduated approach in relation to enforcement which encourages and supports improved compliance with the IGA. This new enforcement regime would be in line with current regulatory practice and will enable the ACMA to deal with compliance issues more quickly, as formal investigation or prosecution processes will not depend upon the priorities of other agencies.

Although subsections 55(1) and 56(4) and proposed subsection 55(2) and 56(5) respectively deal with the same conduct, the penalty for contravention of the proposed new subsections is higher than the pecuniary penalty for contravention of the existing provisions in acknowledgement of the effect or stigma of the criminal conviction that would arise if a person is found guilty of breaching those provisions. The amount of the penalties in proposed subsections 55(2) and 56(5) is appropriate to ensure that the offence provides a sufficient deterrent to encourage compliance with online provider rules.

Item 75 would insert a new section 57A to provide for continuing contravention of the new civil penalty provisions in subsections 55(2) and 56(5), consistent with the arrangements for offence provisions in section 57 as outlined above.

Items 68, 69, 71, 72 and 74 would also make minor technical amendments to sections 55-57 of the IGA.

Item 68 would make a minor technical amendment to section 55 to insert a subsection number (1) before the existing provision, consequential to the insertion of a new subsection 55(2) by Item 70.

Items 69 and 72 would remove the notes at the foot of section 55 and subsection 56(4), which direct the reader to see also section 57. The notes have been repealed to ensure that the penalty is at the foot of the sections, so that section 4D of the *Crimes Act 1914* applies.

Item 71 would amend the penalty in subsection 56(4) to omit the words “for contravention of this subsection” after the word “penalty”, in line with current drafting practice.

Item 74 would amend the reference in subsection 57(1) to section 55 to instead be a reference to subsection 55(1), as a consequence of the amendment made by Item 68.

Item 76 – Subsection 60(1)

Item 77 – Subsection 60(2)

Items 76 and 77 would amend section 60 of the IGA, which provides ISPs with protection from civil proceedings in certain circumstances.

Subsection 60(2) provides that civil proceedings do not lie against ISPs in respect of anything done by the provider in compliance with section 28 of the IGA (which requires ISPs to comply with standard and special-access prevention notices by a particular time).

Item 77 would repeal subsection 60(2), as a consequence of the repeal of section 28 by Item 66. Item 76 would make a minor technical amendment to subsection 60(1) to remove the subsection number (1) as a result of the repeal of subsection 60(2) by Item 77.

Item 78 – Subsection 61(1)

Item 79 – Subsection 61(3)

Item 80 – Paragraph 61(5)(b)

Item 81 – Subsection 61(6)

Section 61 of the IGA provides for certain decisions by the ACMA to be reviewed by the Administrative Appeals Tribunal (AAT). Persons whose interests are affected by the following decisions of the ACMA may apply to the AAT for a review of the decision: a decision to give an ISP a standard or special access-prevention notice; and a decision under section 42 or 56 of the IGA to give a direction to an ISP, vary a direction applicable to a provider, or refuse to revoke a direction applicable to that provider.

Item 78 would repeal subsection 61(1) and substitute a new subsection 61(1). The new subsection provides for the AAT to review decisions by the ACMA under section 42 or 56 of the IGA to give a direction to an ISP, vary a direction applicable to a provider, or refuse to revoke a direction applicable to that provider. The new subsection no longer contains rights to review of a decision to give an ISP a standard or special-access prevention notice, as a consequence of the proposed repeal of paragraph 24(1)(c), subsections 24(2)-(6), and sections 27, 28, 30 and 31 by Items 59, 61 and 66.

Subsection 61(6) provides that for the purposes of the section, *Tribunal* means the Administrative Appeals Tribunal before the commencement of Parts 4 to 10 of the *Administrative Review Tribunal Act 2001*, and the Administrative Review Tribunal after the commencement of Parts 4 to 10 of the *Administrative Review Tribunal Act 2001*.

This subsection reflects the intention at the time the IGA was enacted to replace the Administrative Appeal Tribunal and a number of other federal merits review bodies with one Administrative Review Tribunal through the *Administrative Review Tribunal Bill 2000*. As that Bill was never enacted, Item 86 would repeal subsection 61(6). Items 79 and 80 would also accordingly make amendments to subsection 61(3) and paragraph 61(5)(b) of the IGA, respectively, to replace references to the “Tribunal” with references to the “Administrative Appeals Tribunal”.

Item 82 – Part 7A (heading)
Item 83 – Section 61AA
Item 84 – Section 61AA
Item 85 – Section 61AA (definition of publish)
Item 86 – Division 2 of Part 7A (heading)
Item 87 – Section 61BA (heading)
Item 88 – Subsection 61BA(1)
Item 89 – Paragraph 6BA(1)(a)
Item 90 – Paragraph 61BA(1)(b)
Item 91 – Paragraphs 61BA(1)(c), (d) and (e)
Item 92 – Paragraph 61BB(1)(a)
Item 93 – Section 61BB
Item 94 – Subsection 61BB(2)
Item 95 – Section 61BC
Item 96 – Paragraph 61BC(a)
Item 97 – Section 61BD
Item 98 – Section 61BE
Item 99 – Section 61BF (heading)
Item 100 – Paragraph 61BF(1)(a)
Item 101 – Paragraph 61BF(1)(b)
Item 102 – Subsection 61BF(1)
Item 103 – Section 61BG
Item 104 – Section 61BGA
Item 105 – Division 3 of Part 7A (heading)
Item 106 – Section 61CA (heading)
Item 107 – Subsection 61CA(1)
Item 108 – Section 61CB
Item 109 – Section 61CC
Item 110 – Section 61CC
Item 111 – Section 61CC
Item 112 – Section 61CD
Item 113 – Section 61CE
Item 114 – Section 61CF
Item 115 – Division 4 of Part 7A (heading)
Item 116 – Section 61DA (heading)
Item 117 – Paragraph 61DA(1)(a)
Item 119 – Paragraph 61DA(2)(a)
Item 122 – Subsection 61DB(1)
Item 123 – Subsection 61DC(1)
Item 124 – Division 5 of Part 7A (heading)
Item 125 – Section 61EA (heading)
Item 126 – Paragraph 61EA(1)(a)
Item 128 – Paragraph 61EA(2)(a)
Item 130 – Subsection 61EA(3)
Item 131 – Subsection 61EB(1)
Item 132 – Subsection 61ED(1)
Item 133 – Subsection 61EE(1)
Item 134 – Paragraph 61EE(1)(a)
Item 135 – Subsection 61EF(1)
Item 136 – Section 61FA

Item 137 – Section 61FD

Part 7A of the IGA prohibits the advertising of *interactive gambling services*.

Items 82 – 117, 119, 122 – 126, 128 and 130 – 137 would amend Part 7A to extend the prohibition on advertising in the IGA to include the types of services that will now be known as *unlicensed regulated interactive gambling services*. It would substitute references to *interactive gambling service*, *interactive gambling service advertisement* and *interactive gambling service provider* with references to, respectively, *designated interactive gambling service*, *designated interactive gambling service advertisement* and *designated interactive gambling service provider*. In accordance with the new definition to be inserted by Item 7 of the Bill, *designated interactive gambling service* would mean a *prohibited interactive gambling service* or an *unlicensed regulated gambling service*.

Item 83 would insert new definitions of *designated interactive gambling service advertisement* and *designated interactive gambling service provider*. A *designated interactive gambling advertisement* would have the meaning given by Division 2 of Part 7A (as amended by Items 86-104). A *designated interactive gambling service provider* means a person who provides a *designated interactive gambling service*.

These amendments are consequential to the changes to terminology used in the IGA proposed by Items 7, 8 and 9.

Item 118 – After subsection 61DA(1)

Item 120 – Subsection 61DA(2) (penalty)

Item 121 – At the end of section 61DA

Division 4 of Part 7A of the IGA deals with the broadcasting or datacasting of *interactive gambling service advertisements* in Australia.

Sections 61DA(1) and 61DA(2) provide that a person commits an offence if they broadcast or datacast, or authorise or cause to be broadcast, an *interactive gambling service advertisement* in Australia and the broadcast or datacast is not permitted by section 61DB or 61DC.

Item 118 would insert a new subsection 61DA(1A) to introduce a parallel civil penalty provision to the offence in section 61DA(1). Subsection 61DA(1A) would apply where a person broadcasts or datacasts a *designated interactive gambling service advertisement* in Australia if the broadcast or datacast is not permitted by sections 61DB and 61DC of the IGA. Subsection 61DA(1A) would provide that the applicable civil penalty is 180 penalty units.

Item 121 would insert a new subsection 61DA(3) to introduce a parallel civil penalty provision to the offence in section 61DA(2). Subsection 61DA(3) would apply where a person authorises or causes a *designated interactive gambling service advertisement* to be broadcast or datacast in Australia if the broadcast or datacast is not permitted by sections 61DB and 61DC of the IGA. Subsection 61DA(3) would provide that the applicable civil penalty is 180 penalty units.

Although subsections 61DA(1) and 61DA(2) and proposed subsection 61DA(1A) and 61DA(3) respectively deal with the same conduct, the penalty for contravention of the proposed new subsections is higher than the pecuniary penalty for contravention of the existing provisions in acknowledgement of the effect or stigma of the criminal conviction that would arise if a person is found guilty of breaching those provisions. The amount of the

penalties in proposed subsections 61DA(1A) and 61DA(3) is appropriate and necessary to deter contraventions of the provisions.

Item 120 would make a minor amendment to subsection 61DA(2) to bring the penalty provision into line with current drafting practice.

These amendments would provide the ACMA with a greater and more graduated range of enforcement options in dealing with contraventions of the IGA.

Item 127 – After subsection 61EA(1)

Item 129 – After subsection 61EA(2)

Division 5 of Part 7A of the IGA relates to the publication of interactive gambling service advertisements in Australia.

Section 61EA(1) and 61EA(2) provide that a person commits an offence if they publish, or authorise or cause to be published, an interactive gambling service advertisement in Australia and the publication is not permitted by sections 61EB, 61ED, 61EE or 61EF of the IGA.

Item 127 would insert a new subsection 61EA(1A) to introduce a parallel civil penalty to the offence in subsection 61EA(1). Proposed subsection 61EA(1A) would apply where a person publishes a *designated interactive gambling service* in Australia if the publication is not permitted by sections 61EB, 61ED, 61EE and 61EF of the IGA. Subsection 61EA(1A) would provide that the applicable civil penalty is 180 penalty units.

Item 129 would insert a new subsection 61EA(2A) to introduce a civil penalty provision parallel to the offence in subsection 61EA(2). Proposed subsection 61EA(2A) would apply where a person authorises or causes a *designated interactive gambling service* to be published in Australia if the publication is not permitted by sections 61EB, 61ED, 61EE and 61EF of the IGA. Subsection 61EA(2A) would provide that the applicable civil penalty is 180 penalty units.

Although subsections 61EA(1) and 61EA(2) and proposed subsection 61EA(1A) and 61EA(2A) respectively deal with the same conduct, the penalty for contravention of the proposed new subsections is higher than the pecuniary penalty for contravention of the existing provisions in acknowledgement of the effect or stigma of the criminal conviction that would arise if a person is found guilty of breaching those provisions, in addition to the pecuniary penalty.

The majority of advertisements for prohibited interactive gambling services are provided via online channels. Illegal offshore operators deliberately target Australians by including Australian imagery and colloquialisms to give the impression that their services are legal in Australia. Some advertisements can also be provided by third parties who receive commissions for new customers. The amount of the penalties in proposed subsections 61EA(1A) and 61EA(2A) is appropriate and necessary to deter contraventions of the provisions. As part of a number of measures in the Bill, these amendments would provide the ACMA with a greater and more graduated range of enforcement options in dealing with contraventions of the IGA.

Item 138 – Section 61FE

Section 61FE of the IGA requires the Minister to cause a report to be prepared and tabled in Parliament each calendar year on the number and nature of contraventions of Part 7A of the Act in the previous 12 months and on any action taken by the Minister or a Commonwealth agency in response to each contravention.

Item 138 would repeal this section as this information will be included in the ACMA's annual report, which is also tabled in Parliament. Item 149 contains a transitional provision to ensure that section 61FE continues to apply to any contraventions of Part 7A that occurred during the 12 month period ending at 31 December 2015. The final report to be tabled under current section 61FE will be for the 2015 calendar year.

Item 139 – After section 64

Parts 2, 2A, 5 and 7A of the IGA currently contain criminal offence and penalty provisions in relation to providing and advertising interactive gambling services. These criminal provisions involve high evidentiary requirements, and prosecutions rely on the investigation priorities of the AFP and the prosecution priorities of the Commonwealth Director of Public Prosecutions.

It is desirable that in addition to criminal sanctions, there be a graduated enforcement regime in place so that there is a range of enforcement responses available to the ACMA in dealing with contraventions of the IGA. This includes the addition of civil penalty provisions and a toolkit of provisions to allow a graduated approach to enforcing these penalties.

Item 139 would insert new sections 64A, 64B, 64C and 64D into the IGA to implement the enforcement regime around the new civil penalty provisions that the Bill would insert.

Proposed section 64A would empower the ACMA to issue a formal warning if a person contravenes subsection 15(2A), 15AA(3), 15A(2A), 55(2), 56(5), 61DA(1A), 61DA(3), 61EA(1A) or 61EA(2A) of the IGA.

Proposed section 64B(1) provides for civil penalty provisions in the IGA to be enforceable under Part 4 of the Regulatory Powers Act. As the note to new section 64B(1) explains, Part 4 of the Regulatory Powers Act allows a civil penalty provision to be enforced by obtaining an order for a person to pay a pecuniary penalty for the contravention of the provision. Under subsection 64B(2), the ACMA would be an authorised applicant for the purposes of exercising powers under Part 4 of the Regulatory Powers Act in relation to the civil penalty provisions in the IGA. Proposed subsection 64B(3) provides that the Federal Court and the Federal Circuit Court are the relevant courts for the purposes of the ACMA exercising powers under Part 4 of the Regulatory Powers Act in relation to a civil penalty provision. Proposed

subsection 64B(4) clarifies that Part 4 of the Regulatory Powers Act, as it applies in relation to civil penalty provisions in the IGA, extends to every external Territory and to acts, omissions, matters and things outside Australia.

Proposed section 64C(1) provides for subsections 15(2A), 15AA(3), 15A(2A), 55(2), 56(5), 61DA(1A), 61DA(3), 61EA(1A) and 61EA(2A) to be subject to an infringement notice under Part 5 of the Regulatory Powers Act. As explained in the note to subsection 64C(1), Part 5 of the Regulatory Powers Act creates a framework for using infringement notices in relation to provisions in other legislation. Proposed subsection 64C(2) provides that for the purposes of Part 5 of the Regulatory Powers Act, a member of the staff of the ACMA authorised in writing by the ACMA for the purposes of this subsection is an infringement officer in respect of the provisions mentioned in subsection 64C(1) (listed above). Under proposed subsection 64C(3), for the purposes of exercising powers under Part 5 of the Regulatory Powers Act, the Chair of the ACMA is the relevant chief executive in relation to the provisions listed in subsection 64C(1). Under proposed subsections 64C(4) and (5), the powers and functions of the ACMA Chair as the relevant chief executive under Part 5 of the Regulatory Powers Act may be delegated, in writing, by the ACMA Chair to a member of the ACMA staff or an SES employee or acting SES employee, and that staff member or SES employee must comply with any directions of the ACMA Chair. Proposed subsection 64C(6) clarifies that Part 5 of the Regulatory Powers Act, as it applies in relation to the provisions mentioned in subsection 64C(1) (listed above), extends to every external Territory and to acts, omissions, matters and things outside Australia.

Proposed section 64D(1) provides for subsections 15(2A), 15AA(3), 15A(2A), 55(2), 56(5), 61DA(1A), 61DA(3), 61EA(1A) and 61EA(2A) to be enforceable under Part 7 of the Regulatory Powers Act. As the note to new subsection 64D(1) explains, Part 7 of the Regulatory Powers Act creates a framework for using injunctions to enforce provisions. Under subsection 64B(2), the ACMA would be an authorised person in relation to the provisions mentioned in subsection 64D(1) (listed above). Proposed subsection 64B(3) provides that the Federal Court and the Federal Circuit Court are the relevant courts for the purposes of provisions mentioned in subsection 64D(1). Proposed subsection 64D(4) clarifies that Part 7 of the Regulatory Powers Act, as it applies in relation to the provisions mentioned in subsection 64D(1), extends to every external Territory and to acts, omissions, matters and things outside Australia.

The ability to issue formal warnings and infringement notices under proposed sections 64A and 64C will enable the ACMA to act quickly on contraventions of the IGA without the need to take court action. The ability to apply for an injunction under proposed section 64D would give the ACMA greater ability to prevent contraventions of, or require future compliance with the IGA, rather than only responding to past contraventions. These powers and functions are in line with current regulatory practice, and with the enforcement roles of the ACMA under other legislative regimes.

Item 140 – Subsection 66(1)

Item 141 – Subsection 66(2)

Section 66(2) of the IGA provides that paragraph 18(2)(j) of Schedule 3 to the BSA does not apply to a notice given under the IGA. Schedule 3 of the BSA was repealed by the *Australian Communications and Media Authority (Consequential and Transitional Provisions) Act 2005*. Item 141 would repeal subsection 66(2) of the IGA as a consequence of the repeal of Schedule 3 of the BSA. Item 140 would make a minor consequential amendment.

Item 142 – After section 67

Item 142 would insert a new section 68 in the IGA to require the ACMA to establish a register of *eligible regulated interactive gambling services*, and provide for related matters. The purpose of the register is to raise awareness among Australian customers of interactive gambling services that should be avoided, as evidenced by their non-inclusion on the register, due to the risks associated with gambling on these websites.

Proposed paragraph 68(1)(a) would require the ACMA to maintain a register in which it may include the names of *eligible regulated interactive gambling services* (the register). If the name of an *eligible regulated interactive gambling service* is included in the register, proposed paragraph 68(1)(b) allows the ACMA to also include the name of the provider of the service and such other information relating to the service as it considers should be included in the register.

In order to ensure an appropriate balance between the effectiveness of the register and protecting individuals' interests in privacy, proposed subsection 68(2) would provide that the ACMA's authorisation to include in the register relevant information relating to the service pursuant to sub-paragraph 68(1)(b)(ii) does not authorise the inclusion of personal information.

The register would be required to be maintained by electronic means and made available for inspection on the ACMA's website under proposed subsections 68(3) and 68(4), respectively.

For the avoidance of doubt, subsection 68(5) specifies that the register is not a legislative instrument within the meaning of subsection 8(1) of the *Legislation Act 2003*. This provision is included to assist readers and is merely declaratory of the law and is not a substantive exemption from the *Legislation Act 2003*.

Proposed subsection 68(6) would provide protection to the Commonwealth, the ACMA and ACMA officials from liability to an action or other proceeding for damages in relation to an act or matter, done or omitted to be done in good faith, in the performance or purported performance of any function, or the exercise or purported exercise of any power, conferred on the ACMA by new section 68.

As decisions under proposed subsection 68(1) not to include the name of an *eligible regulated interactive gambling service* will, or are likely to, affect the interests of a person, subsection 68(7) would provide a right to apply to the Administrative Appeals Tribunal for merits review of such a decision by the ACMA.

Proposed subsections 68(8) would define an *eligible regulated interactive gambling service* to be, for the purposes of new section 68, a *regulated interactive gambling service* that is covered by paragraph (a) or (b) of the definition of *gambling service* in section 4 and is not provided in contravention of subsection 15AA(3) (the prohibition on providing unlicensed regulated interactive gambling services to customers in Australia).

Item 143 – Subsection 69A(3)

Section 69A of the IGA provides for regulations to be made dealing with the unenforceability of agreements relating to *illegal interactive gambling services*. Subsection 69A(3) of the IGA provides that for the purposes of section 69A, an interactive gambling service is an *illegal*

interactive gambling service only if the provision of the service contravenes a provision of the Act that creates an offence.

Item 7 of the Bill would insert a new definition of *illegal interactive gambling service*, being a *prohibited interactive gambling service* provided in contravention of subsection 15(2A), and item 143 would repeal subsection 69A(3) as a consequence.

Interactive Gambling Regulations 2001

Item 144 – Section 3 (heading)

Item 145 – Section 3

Item 146 – Paragraph 3(b)

Section 3 of the *Interactive Gambling Regulations 2001* (the regulations) provides exceptions from the definition of *interactive gambling service advertisement* for the purposes of Part 7A of the IGA.

Item 144 would amend the heading to replace the reference to *interactive gambling service advertisements* with the term *designated interactive gambling service advertisements*. Item 145 would omit the words “an interactive” wherever occurring in section 3 and substitute “a designated interactive”. Item 146 would insert the word “designated” before the words “interactive gambling services in general” in paragraph 3(b).

These amendments are consequential to the amendments to terminology in the IGA proposed by Item 7.

Part 2 – Application and transitional provisions

Item 147 – Application of amendments – investigations

Item 147 provides that the IGA will continue to apply in relation to investigations under Division 2 of Part 3 that began before the commencement of Item 147 as though the amendments made by the Bill to Part 1, Division 1 of Part 3 and Division 2 of Part 3 had not been made.

Item 148 – Transitional – industry code

There is currently an industry code (the code) registered under Part 4 of the IGA. The code makes reference to and incorporates wording from the IGA, including incorporating the definition of *prohibited internet gambling content* by reference, and referring to content ‘hosted outside Australia’.

Section 148 would make the minimum transitional arrangements necessary to allow the continued operation of the code alongside the amendments made to Division 1 and 2 of Part 3 of the IGA by Items 51-53.

The item would apply to an industry code registered under Part 4 of the IGA immediately in force before the commencement of Item 148.

The item would provide that section 10 of the *Acts Interpretation Act 1901* applies to the code as if it were an Act. Section 10 of the *Acts Interpretation Act 1901* allows for references in an Act to the short title of another Act provided by law for citation to be construed as including that Act as originally enacted and as amended from time to time. As a result, references to *prohibited internet gambling content* in the code would be read to meaning as defined in the IGA as amended by Items 10 and 28 of the Bill.

The item would also provide that the code has effect as if the words ‘hosted outside Australia’ were omitted from the headings to Part 5 and clause 5.1 of the code, as a consequence of the amendments made to remove the distinction between the notification of content hosted within and outside Australia by Items 53, 54, 55, 57, 63 and 65.

The item clarifies that it does not, by implication, prevent the code from being replaced in accordance with section 41 of the IGA.

Item 149 – Application of amendments – reports to Parliament

Section 61FE of the IGA requires the Minister to prepare and table reports in Parliament each calendar year on the number and nature of, and any actions taken by the Minister or a Commonwealth agency in relation to, contraventions of Part 7A of the IGA in the preceding 12 months.

Item 149 would provide that section 61FE of the IGA continues to apply in relation to any contraventions of Part 7A that occurred in the 12-month period ending at the end of 31 December 2015, as if the Bill had not repealed section 61FE (proposed by Item 138). The final report to be tabled in Parliament under section 61FE will be the report for 2015.