



Department of
Communications
Information Technology
and the Arts

REVIEW OF ISSUES RELATED TO COMMONWEALTH INTERACTIVE GAMBLING REGULATION

Call for Submissions

BACKGROUND

The *Interactive Gambling Act 2001* (IGA) establishes a regulatory framework at the Commonwealth level to address community concerns about the availability and accessibility of interactive gambling in Australia.

This framework has been in effect since August 2001 and followed a 12-month moratorium on the introduction of new interactive gambling services that was in place from 19 May 2000 until 18 May 2001.

The moratorium allowed the Commonwealth Government to investigate the feasibility and consequences of banning the provision of interactive gambling services to Australian residents. In line with previous inquiries, the Government found that the availability of gambling services on the Internet represents a 'quantum leap' in the accessibility of gambling, and has the potential to exacerbate problem gambling.

REGULATORY FRAMEWORK

Under the IGA, it is an offence to provide certain interactive gambling services to customers physically located in Australia. This offence, which carries a maximum penalty of \$220,000 per day for individuals and \$1.1 million per day for corporations, applies to all interactive gambling service providers, whether based in Australia or offshore, whether Australian or foreign owned. The IGA also makes it an offence to advertise interactive gambling services in Australia. These services typically involve the Internet to play games of chance, or games of mixed chance and skill.

The offences of providing and advertising interactive gambling services do not apply to all interactive gaming and wagering services. The IGA provides for a limited number of exclusions as follows:

- a telephone betting service;
- excluded wagering services including betting on a horse race, harness race, greyhound race or sporting event, or any other event, series of events or contingency, where the bet is placed prior to the event commencing;

- excluded lottery services; which include most forms of lottery service, except for online instant and scratch lotteries and other highly repetitive or frequently drawn keno-type lotteries;
- excluded gaming services that are provided to customers in a public place;
- services that have a designated broadcasting or datacasting link, including:
 - a program or series of programs broadcast on a broadcasting service;
 - programs or content transmitted on a datacasting service;
- certain contracts (including options and futures contracts) that are exempt from gaming or wagering laws under the *Corporations Act 2001*; and
- any service declared exempt by the Minister.

The advertising prohibition under the IGA extends to all forms of media, both electronic and non-electronic, including advertising via the Internet, broadcast services, print media, billboards and hoardings, subject to certain exceptions. These exceptions include political advertising and incidental or accidental advertising. The prohibition does not extend to advertisements published in overseas media, such as magazines that are published overseas, or websites that are aimed at non-Australian audiences.

As part of the framework established by the IGA, the Australian Broadcasting Authority (ABA) administers a complaints scheme under which Australian residents or companies trading in Australia are able to complain to the ABA if they believe that Australians can access prohibited Internet gambling content. The ABA is required to investigate the complaint and refer Australian-hosted prohibited Internet gambling content to the Australian Federal Police (AFP) or a State or Territory police force if it considers the complaint should be so referred. If the prohibited Internet gambling content is hosted overseas, the ABA is required to notify the makers of filters listed in Schedule 1 to the Interactive Gambling Industry Code (the Code).

The Code was developed by the Internet Industry Association, as required by the IGA, and deals specifically with the issue of overseas sourced material. The Code requires Internet Service Providers (ISPs) to provide their customers with one of the approved filters listed in Schedule 1 of the Code. The ABA may also refer overseas-hosted prohibited Internet gambling content to the AFP or a State or Territory police force where they believe the material is hosted in a country of interest to that police force.

While the IGA currently makes it an offence only to provide interactive gambling services to people in Australia, the Minister for Communications, Information Technology and the Arts has the ability under the Act to widen the offence to include the provision of such services to people in a 'designated country'. This requires the government of that country to request a designation from the Minister, and for that country to have in force legislation that corresponds with the main offence provisions of the IGA. No foreign country has been designated under this provision to date.

STATUTORY REVIEW

Section 68 Requirements

Under section 68 (1) of the IGA the Minister for Communications, Information Technology and the Arts (the Minister) must, before 1 July 2003, cause to be conducted a review of Commonwealth regulation of interactive gambling. The review is required to consider a broad range of matters that are specified in section 68 and are discussed below.

Subsection 68(4) of the IGA requires that services that are currently excluded under the IGA be considered by the statutory review. Consequently, the review will consider issues related to all forms of interactive gambling services, whether or not currently prohibited. In line with this requirement, 'interactive gambling services' for the purposes of the review shall refer to all interactive gaming and wagering services.

On 16 January 2003, the Minister announced that he had instructed the Department of Communications, Information Technology and the Arts (the Department) to undertake the required review.

Section 69A

Under section 69A of the IGA, the Government may make regulations providing that an agreement for the payment of money for the supply of an illegal interactive gambling service has no effect. The use of this regulatory power is to be in accord with the overall aim of the IGA, which is to limit potential problem gambling in Australia associated with interactive gambling.

The Government has not made any regulations under section 69A but has consulted stakeholders on how their intent could best be given effect. The issues are complex and the Government is concerned not to create unintended regulatory effects or to impose undue regulatory burdens.

The Minister has directed the Department to further consider matters associated with section 69A in the context of the statutory review.

Consultancy

The Department has invited tenders for research into issues related to Commonwealth interactive gambling regulation in Australia. The successful tenderer will assist the Department in the conduct of the review by providing research, analysis and other supporting material on certain of the issues required to be considered. As part of that consultancy, the successful tenderer will also liaise with key stakeholders associated with interactive gambling in Australia.

ISSUES

The Growth of Interactive Gambling Services

The review is required to provide an assessment of the development of interactive gambling services both in Australia and overseas. This will include an assessment of

the size and projected growth of the interactive gambling industry. The industry response to the introduction of the Commonwealth's interactive gambling legislation will also be assessed, along with the impact of regulatory measures introduced in other jurisdictions. The review will also provide an assessment of the availability of interactive gambling services and the incidence of use of these services in Australia.

Comments are invited on these issues.

The Social and Commercial Impact of Interactive Gambling Services

As mentioned above, the overall aim of the IGA is to limit potential problem gambling in Australia associated with interactive gambling services. The review is required to consider the social and commercial impact of interactive gambling services and the effectiveness of the IGA in dealing with these impacts. This will involve analysis of the incidence of problem gambling in Australia with respect to both illegal and excluded interactive gambling services relative to the incidence of problem gambling in offline equivalents.

Comment is sought on the social and commercial impacts of interactive gambling, particularly by comparison with non-interactive forms of gambling. Submitters may also wish to comment on the effectiveness of the IGA in dealing with such impacts.

Comment is also invited on any other relevant social or commercial impacts of interactive gambling services. These might include matters such as the demand for welfare and other support services or the role of interactive gambling services in the development of the Australian information and communication technology sector.

The Operation of the IGA and the Effect of Existing Exclusions

The Commonwealth's regulatory framework is comprised of three elements:

- the offence provisions in the IGA
 - and the exclusions outlined above;
- the complaints scheme administered by the ABA; and
- the operation of the Interactive Gambling Industry Code.

In the period 11 January to 31 December 2002, the ABA received 13 complaints about Internet gambling content. Eleven investigations were completed, with two investigations terminated due to lack of sufficient information (in both cases the ABA was unable to locate any Internet content at the addresses provided by the complainants). Of the 11 investigations completed, seven resulted in location of prohibited Internet gambling content hosted outside Australia and the ABA notified the details of the content to the makers filter software products, in accordance with the procedure set out in the Code. Two investigations resulted in location of Australian hosted content that was not prohibited. In relation to the advertising prohibition under the IGA, two complaints have been received and are currently under investigation.

Comments are invited on the operation of the IGA and on the effect of the existing exclusions.

Technological developments relevant to the regulation of interactive gambling services or capable of assisting in the management of problem gambling

Technologies relevant to the regulation of interactive gambling would include those capable both of assisting regulation, such as filtering technologies, and conversely those used either to promote interactive gambling or to undermine the offence provisions and complaints scheme of the IGA.

However, technological developments are also able to provide more effective consumer protection mechanisms, including for example complete transaction records and effective mechanisms for pre-commitment on spending. These may mitigate the incidence of problem gambling associated with interactive gambling services.

Comment is invited on these issues. It should be noted, however, that in this regard the review is to assess technological trends and capabilities broadly. Promotional material for particular technology products is not sought if it does not elucidate broader issues.
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The feasibility of and capacity to regulate financial transactions associated with the provision of interactive gambling services

As mentioned above, under section 69A of the IGA the Government may make regulations providing that an agreement for the payment of money for the supply of an illegal interactive gambling service has no effect.

Shortly after the passage of the IGA, the Government initiated a process of public consultation on how the intent of regulations under section 69A might best be given effect. This process, which began in September 2001 with a call for public submissions by the National Office for the Information Economy (NOIE), has continued throughout 2002.

These consultations have indicated that the Government's ability to render agreements that provide for the payment of money for the supply of illegal interactive gambling services unenforceable is uncertain. There are a number of legal and practical considerations that may limit the capacity to regulate financial transactions associated with interactive gambling services or otherwise make them unfeasible. Given these concerns, the Government has not made regulations to date.

The Government is concerned that any intervention in this area is appropriate to the level of problem gambling associated with illegal interactive gambling services. The Government is also concerned not to create unintended regulatory effects or to impose undue regulatory burdens.

Consultations have indicated that two broad approaches might be available for the development of regulations under section 69A.

- Make regulations under the provisions of section 69A

The purpose of such regulations would be to render agreements for the provision of illegal interactive gambling services to customers in Australia unenforceable after any debt has been incurred.

It is unclear, however, whether Australian law would cover agreements and related payments for services provided by individuals/institutions in jurisdictions other than Australia. It is possible that under this approach, the liability for interactive gambling debt may rest with Australian financial institutions because the capacity for these institutions to recover payments made to overseas interactive gambling merchants appears uncertain.

- Require financial institutions to block credit card transactions related to illegal interactive gambling services.

Following similar developments in some jurisdictions in the United States, this option would require Australian credit card issuing institutions to identify and decline authorisation requests from gambling merchants for illegal interactive gambling transactions.

Should Australian financial institutions respond to this requirement through the use of credit card transaction service codes, such measures appear likely to be effective for credit card purchases occurring directly between the consumer and the gambling merchant, where the merchant has correctly coded the gambling transaction.

There appear, however, to be a number of means by which the correct identification of illegal interactive gambling transactions might be avoided. These include establishment of player accounts with offshore financial institutions, the use of online payment providers, and the potential for gambling merchants to use incorrect credit card transaction service codes in order to avoid identification of gambling transactions. It is also uncertain how any such regulations would discourage the use of alternative payment systems and emerging payment technologies, such as e-cash.

Comment is sought on the Government's ability to regulate financial transactions associated with the provision of interactive gambling services. This would include an assessment of the options outlined above as well as any other approaches and the potential impact of relevant overseas developments on the regulation of financial agreements associated with interactive gambling services.

Comment is also sought on whether available options represent an appropriate response to the level of problem gambling associated with interactive gambling in Australia.

SUBMISSIONS

Submissions are invited from interested parties on the matters covered in this paper. Submissions are also invited to address any other relevant issues not specifically addressed in this paper.

Submissions should be provided by Tuesday, 22 April 2003 and should be addressed to:

Manager
Broadcasting and Online Content
Licensed Broadcasting
Department of Communications, Information Technology and the Arts
GPO Box 2154
CANBERRA ACT 2601

Submissions may be provided electronically, preferably in a format compatible with Microsoft Word 97, and should be emailed to iga.review@dcita.gov.au. Further information on this review can be obtained from the Department's website at www.dcita.gov.au or from Rhyan Bloor at email: rhyan.bloor@dcita.gov.au or telephone 02 6271 1869, facsimile 02 6271 1717.

Submissions will be made public unless otherwise specified. Persons providing a submission should indicate clearly whether any aspect of the submission should not be made public. Submissions will be considered in the preparation of a review report, which will be tabled by the Minister in both Houses of Parliament.