
15 Online gaming and the Interactive Gambling Act

Key points

- Although still a relatively small part of the gambling market, online gaming and wagering have exhibited strong growth over the last 10 years.
- While the Australian ban on online gaming will have reduced its growth, international sites are being increasingly accessed, with the Australian ban having decreasing traction over time.
- Online gaming offers recreational gamblers better prices and more variety. However, it also poses risks:
 - it may increase problem gambling through its high level of accessibility
 - the current prohibition of online gaming means that Australian online gamblers can only use offshore sites, some of which have poor harm minimisation features and unscrupulous business practises.
- Regulated access has potential benefits over prohibition:
 - It could divert consumers from unsafe sites to ones that met stringent Australian probity and consumer safety standards
 - It would also increase competition in gambling, with better outcomes for consumers, and provide Australian businesses with greater commercial opportunities. (But given the globally footloose nature of this kind of business, it would probably yield governments limited additional tax revenue.)
- However, liberalisation also poses some risks:
 - Given the legitimacy domestic supply would provide, it would also probably lead to a much larger group of people participating in online gaming. If these players developed difficulties controlling their gambling in the domestic market, there is a risk that they would play abroad on unsafe sites, in order to bypass the restraining influence of the harm minimisation features offered by Australian licensed sites.
- The experiences of rapid liberalisation of gaming machines in the 1990s provides a salutary lesson about too rapid a change in the gambling environment.
- Consequently, a gradual approach to managed liberalisation that commenced with a relatively 'safe' form of online gambling — poker card games — would be appropriate. The effects of partial liberalisation could be evaluated, as could the harm minimisation measures in place, before any further liberalisation was considered.

The internet is progressively becoming a normal feature of commercial and social exchange. Yet this technology continues to transform the way we do business, connect to the marketplace, network and communicate with others. It has led to the development of a wide array of new goods and services, as well as changing the way businesses market and deliver existing goods and services, allowing geographically diverse parties to interact in order to exchange information and to trade.

The popularity of the internet as a means to buy and sell goods has had a growing impact on the gambling industry. For example, a web search for ‘internet gambling’ yielded about 7000 hits in 1999 (PC 1999) — today the same search yields over 12 million (as at 1 February 2009).

For both consumers and producers of online gambling products, the growth of the internet offers considerable benefits. But there are also new risks. For consumers, the internet can deliver more variety, convenience and value, but it can also expose new groups to the risks of problem gambling. For producers, the internet can reduce cost structures and enable growth by reaching new consumers. However, it also means established producers may be harmed by the emergence from other, previously excluded, jurisdictions of new competitors that may be subject to lower taxation or more permissive regulation.

Australia has adopted a mixed approach to the challenges posed by online gambling (the variety of different types of online gambling are described in box 15.1). While online wagering has been permitted (this is discussed in chapter 16), the provision of online gaming to Australians has been prohibited under the *Interactive Gambling Act 2001* (IGA). Given Australia’s limited jurisdiction over online suppliers domiciled abroad, the real effect of the IGA has been to prevent companies located in Australia from selling online gaming services to Australians. However, its impact on Australian consumers, who can legally access internationally based online gaming sites, is more contentious.

This chapter re-examines the rationales and consequences of the ban in the light of the new evidence that has since become available. While the focus is on online gaming on computers, the findings presented here apply equally to other platforms of delivery subject to Commonwealth control, such as mobile phones and television. The chapter begins with a background discussion of the debate leading to the prohibition (section 15.1) and moves on to discuss the relative harms and benefits of online gaming that are central to that debate (section 15.2). The efficacy of the prohibition is then analysed (section 15.3), followed by a discussion of the alternative regulatory approaches that could be employed (section 15.4). The

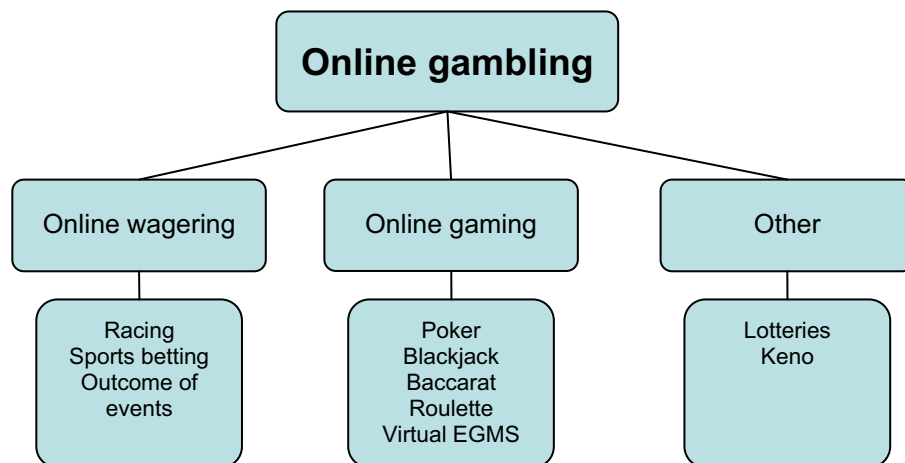
chapter concludes with recommendations as to the appropriate regulatory approach moving forward (section 15.5).

Box 15.1 The different types of online gambling

The main forms of online gambling are online wagering and online gaming. Online wagering is comprised of betting on racing (thoroughbred, harness and dog), sports betting (such as the outcome of cricket match), and betting on the outcome of events (such as elections or reality TV shows). Online gaming comprises of casino games (Blackjack, Baccarat, Roulette), all forms of poker and virtual gaming machines. Lotteries and Keno can also be provided in an online environment.

While these games can have very different features in terms of the speed of play and the amounts typically wagered when played in physical venues, the distinction between them is reduced when played online. The tendency is for online gambling to involve small but high frequency wagers, similar to venue-based EGMs. For example, whereas traditional lotteries occur infrequently (once per day) and involve small wagers, online lotteries can potentially run at any frequency (given a large enough customer base). Similarly, venue-based wagering on sporting events traditionally involve betting on the outcome (which team will win and what the margin will be), the internet allows for frequent micro-bets to be placed during the course of an event. For example, in a cricket match, whether the next delivery will be a 'no ball'.

This implies that the variation in the risk profile (in terms of the harms arising from problem gambling) associated with different types of gambling are more compressed when played online, compared to physical venues.



15.1 Background

Prohibition is the most severe of all regulatory approaches. Its application to online gaming contrasts with the relatively liberal approach taken for most other gambling forms. The policy evaluation of prohibition is the same as for any other regulation — the central question remains: *Is this form of regulation better at meeting its objectives than all other feasible alternatives?*

Prohibition differs qualitatively from other forms of regulation in that in seeking to eliminate or reduce costs or harms, it also eliminates any benefit that may have been derived from the consumption of the product. For this reason, prohibition is usually only considered when the evidence is decisive or when the risk of harm is exceptionally high. Like all regulation, prohibition also carries its own costs. At a minimum, these include the costs of implementing a strict policy and its ongoing enforcement. Regulation also includes a risk of unintended, adverse consequences. For example, the prohibition of alcohol in the United States in the early 20th Century resulted in the criminalisation of a large number of otherwise law abiding citizens, as well as leading to a dramatic expansion of organised crime and corruption.

The prohibition of all online gambling (both wagering and gaming) was considered in the Commission's 1999 report. However, whilst noting the potential harms of online gambling to consumers and the gambling industry, the Commission recommended that the countervailing potential benefits of online gambling warranted 'managed liberalisation' (PC 1999):

Managed liberalisation – with tight regulation of licensed sites to ensure integrity and consumer protection – has the potential to meet most concerns, as long as the approach is national.

The Commission's report was followed by the Netbets review by the Senate Select Committee on Information Technology (2000). The Netbets review also favoured a managed liberalisation over prohibition, and detailed a number of regulatory features designed to minimise the harms associated with problem gambling. These represented significant improvements over the harm minimisation features available even today in venue-based gambling facilities. Indeed, state and territory governments had already developed sophisticated regulatory regimes, with the objective of securing opportunities for commerce and tax revenue, while allowing harm minimisation.

Notwithstanding these reports and the regulatory initiatives of state and territory governments, at the first meeting of the Ministerial Council of Gambling, the Commonwealth requested that the states and territories enact a 12 month voluntary

moratorium on new interactive gambling services. This moratorium was aimed at stemming the growth of online gambling so that ‘the feasibility and consequence of a permanent ban’ could be considered (Department of Communications, Information Technology and the Arts 2008). This was rejected by all states and territories, except New South Wales and Western Australia. Nevertheless, on 6 December 2000, the Senate passed a bill prohibiting the provision of interactive gambling for one year for any service not already being provided prior to 19 May 2000.

During the moratorium, the National Office for the Information Economy (NOIE) conducted research into the implications of banning interactive gambling. The report presented evidence in favour of prohibiting online gambling in principle, but could not identify a practical means to enforce the prohibition. Notwithstanding this, the *Interactive Gambling Act 2001* (IGA) was passed in June 2001, and is still in effect today (box 15.2). The IGA banned the provision of most forms of online gaming as well as ‘in the run’ online wagering (wagering that occurs after the event has begun).

The findings in the NOIE report (2001) were based on a cost/benefit analysis that predicted that successfully prohibiting online gambling (both wagering and gaming) would deliver modest net social benefits. The analysis underlying this finding considered a number of types of bans, as well as different assumptions about the level of harm associated with online gambling (Econtech 2000). The modelling results indicated that if online gambling were at least as harmful as other forms of gambling, then all of the types of bans considered would generate a small increase in social welfare. However, the study had several flaws that limited the usefulness of its findings.

First, the NOIE report considered the ban in isolation from any other potential regulatory solutions that may have been able to minimise the harms without destroying the potential benefits for (non-problem) gamblers. The capacity for online gaming to provide sophisticated harm minimisation means that regulatory alternatives may be superior to a ban.

Second, the cost/benefit analysis assumed the ban would be effective at stemming demand for online gaming and would have zero implementation and enforcement costs (Econtech 2000). However, the NOIE report found that banning offshore provision of online gambling had little chance of success without some enabling technology. The available technical means surveyed were found to be either ineffective or excessively costly and none has been implemented to date.

Box 15.2 The Interactive Gambling Act 2001

The IGA targets the supply of online gaming, rather than its demand. It prohibits the *provision* of online gambling services to customers in Australia, but does not outlaw Australians from accessing online gambling services. Nor does it prevent Australian based companies from providing online gambling services to (non-Australian) customers in other countries. The Act states:

(1) A person is guilty of an offence if:

- (a) the person intentionally provides an interactive gambling service; and
- (b) the service has an Australian-customer link.

The IGA excludes several interactive gambling services. With the exception of ‘in the run’ betting, all forms of wagering are exempt from the ban, including: telephone betting; wagering on horse, harness or greyhound races; and wagering on a sporting event or any other event, series of events or contingencies. In addition, online lottery services are exempt, with the exception of instantaneous lotteries or lotteries that are highly repetitive or frequently drawn.

Gambling services prohibited under the IGA include:

- online casino games, like roulette, blackjack and all forms of online poker
- online versions of electronic gaming machines
- online bingo.

The IGA also prohibited the advertisement of these gambling services.

There are provisions within the IGA for the Minister to exclude any service from the prohibition at his or her discretion.

Source: Interactive Gambling Act 2001.

Third, the model used by Econtech incorporated many assumptions of questionable realism. For instance, it was supposed that, following a ban, some gamblers would shift to other forms of (equally hazardous) gambling, but others would shift to safe recreational activities, with the net outcome that harm would be reduced. However, those gamblers most likely to shift to other recreational activities would be those without gambling problems. In that case, there would be no gain through reduced harm, and indeed a loss from denying people a form of gambling that they found enjoyable.

Since the NOIE report, more evidence has emerged on the relative harms of online gaming, as well as on the efficacy of the prohibition itself. This evidence, combined with the doubts about the analysis underpinning the ban in the first place, suggest the need for a re-evaluation of online gaming policy. That re-evaluation should consider:

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- the relative harms and benefits of online gaming compared to venue-based gaming
 - the effectiveness of the prohibition, as well as any other additional costs it imposes
 - the scope for less restrictive regulation to minimise these harms whilst still allowing some of the benefits of online gaming to be realised.

15.2 What harms are associated with online gaming and how do they compare to other gambling?

The fundamental difference between online and venue-based gambling is in the degree of access and convenience it provides. The ability of the internet to allow consumers to purchase goods and services from their own homes is generally seen as a benefit of the technology. However, when the good being purchased (in this case gaming products) carries a degree of risk, the increase in access can magnify this risk. For some gambling products the difference in access will be relatively small. For example, EGMs are widely available in most communities and the additional convenience offered by the online provision of virtual gaming machines would be modest. On the other hand, casino games are offered at only 13 venues across Australia (typically one in each major city). As such, online gaming greatly increases the ease with which Australians can access casino games like roulette and blackjack.

The ease of access and use of credit cards increase the risks associated with online gaming

Greater access could increase the prevalence of problem gambling and its associated harms. Some Australians, for reasons of geographical isolation or disability, have no access to venues offering casino games at all. Therefore, the provision of online gaming exposes a new population group to the risks of problem gambling. Even, for those who live in cities that have casinos, the internet significantly reduces the time and transportation costs associated with gaming. As this allows a greater frequency of play, it may result in more people developing a gambling problem. Moreover, online gambling can be slotted into very small periods, increasing convenience, but also the opportunity for impulsive gambling ('morning tea' gambling).

Whereas many physical gambling venues have restrictions on the hours they can operate, online gaming operate 24 hours a day. This means that the natural control on binge gambling from the periodic closure of physical venues is not available for

online gamblers. (That said, most casinos operate 24 hours a day, and so this argument does not apply to casino-type games.)

Several submissions also expressed the concern that betting using credit cards represents a threat to consumers. For example, Clubs Australia said:

... there is a clear difference between allowing a person to use money from their cheque or savings account to gamble as they see fit, and allowing a person to gamble on credit, where losses can be much higher and interest required on those losses. (sub. 164, p. 38)

As credit cards are the primary means of payment for internet purchases, this is particularly relevant to online gaming. For non-problem gamblers, the distinction between using a savings account or credit account is no different for gambling online than it is for shopping online or purchasing any other good or service from a physical location.¹ However, for problem gamblers, the reliance on credit cards in an online setting may magnify the financial harms from excessive gambling. While there are some positive features of account based credit betting (discussed below), the potential for increased harm to problem gamblers is a legitimate policy concern.

In addition to these major concerns, a number of other issues with online gambling are sometimes raised, though most are less compelling.

- Some particular gambling products — such as casino games or simulated EGMs — may be more socially isolating in an online environment than in venues. This may increase the likelihood of players of these games losing track of time and their spending. However, other forms of online gambling can have a strong social element (such as with poker and bingo).
- Online gambling providers are less able to monitor the behaviour of gamblers, apart from their spending. A person playing online can be disorderly, drunk or on drugs, and continue to gamble without interruption. However, online gambling providers are usually better equipped to monitor spending patterns than venue based gambling, due to the predominance of account based betting.
- Online gambling represents a greater risk to young people than venue-based gambling. Without staff on-hand to check patrons' age and identification, minors may be able to anonymously access online gambling sites. However, the predominance of credit-card gambling in the online environment means that underage gambling may be less likely than in physical venues.

¹ Wood and Williams (2009 p. 10) find that majority of internet gamblers report that use of credit cards rather than cash has no impact on their spending.

It is also observed that online gambling currently offers inadequate consumer protection for Australians. Disreputable offshore companies may offer deceptive and misleading products; have little interest in the welfare of their customers; fail to pay out on winnings or provide adequate security to users. However, a major reason for a reconsideration of online gambling policy is to address inadequate consumer protection.

Online gaming also has several features which mitigate its harms

Combined, the above considerations clearly indicate the need for some level of government involvement in the online gaming industry. However, it is not clear that online gaming is more harmful than other forms of gambling. There are a number of features of online gaming that ameliorate its inherent risks to some extent.

First, as anticipated in the 1999 Productivity Commission report, most internet gaming takes place within people's homes, as opposed to internet cafes or at work (Wood, Williams and Lawton 2007²). This puts online gamblers with partners and families in close proximity to people with a direct and personal interest in their wellbeing. Compared with staff at gambling venues, family members are likely to be more motivated to intervene, or seek outside help from counselling services or other family and friends, when evidence of a gambling problem emerges.

Second, while credit card betting may allow 'people to bet with money they don't have' (Clubs Australia, sub. 164, p. 45), it also prevents them from avoiding confronting the losses they have incurred. The tendency of problem gamblers to remember their wins but forget their losses is possible when gambling with cash (such as on EGMs). However, the use of credit cards when gambling online creates evidence of gambling transactions on credit card statements. This provides a monthly reminder to online gamblers of the full financial costs of their behaviour, as well as making it easier for other family members to detect any problems.

Third, due to lower cost structures and greater competition, online gaming is usually offered more cheaply than venue-based competitors such as casinos. This can occur by allowing lower bets or offering better odds. For a given duration and intensity of play, this results in smaller losses.

Fourth, online gaming allows players greater freedom to play at their own pace, rather than at the pace dictated to them by casino conventions. This is one of the

² The authors find that 86 per cent of North Americans who gamble online, primarily gamble in their homes. This is supported by Wood and Williams (2009) who find that around 93 per cent of internet gamblers primarily use their home computer.

main reasons why many people prefer online gambling to land-based venues (Wood, Williams and Lawton 2007). By contrast, taking a break from a blackjack table at a physical venue may result in the player losing their seat at the table, thereby encouraging longer uninterrupted periods of gambling.

Fifth, online gamblers do not fit the typical profile of a vulnerable or at-risk group within the community. Rather, they are more likely to come from higher socio-economic groups with above average education levels and income, and working in professional or managerial jobs.³ This is not to say that such groups are irrelevant from a policy perspective. However, it suggests that government action might have a higher payoff in other areas where gamblers are more likely to have misconceptions about gambling and for whom the financial consequences of problem gambling are likely to be worse.

Last, as users know the internet is a risky environment, online gaming companies have a strong incentive to self regulate. To attract business in an uncertain online environment, companies need to be able to signal their trustworthiness to potential customers. One way that businesses do this is through branding. As larger businesses become known for offering reliable products (or at least products that deliver what they promise), the costs they face from lost reputation far exceeds any potential benefit from ‘ripping off’ a customer. This business model appears to be taking root internationally as the online gambling market becomes characterised by larger firms and ‘one stop shop’ provision of multiple gambling products on single websites (Australian Internet Bookmakers Association, sub. 221, p. 9).

Another way businesses can demonstrate the safety of their product is through accreditation with an independent testing body, such as e-Commerce and Online Gaming Regulation and Assurance (eCOGRA). Companies that meet the range of operational and player practice standards required by eCOGRA are entitled to display the eCOGRA ‘safe and fair’ seal and are included in a list of approved sites on the eCOGRA web site (see box 15.3). These standards are enforced through:

³ For example Woolley (2003) found that around 53 per cent of Australian online gamblers worked as professionals or managers and administrators. This is a considerably higher proportion than the Australian population as a whole, of whom around 27 per cent reported holding these positions around that time (2001 census). Similarly Woolley (2003) found a median income of \$40 000 to \$50 000 per year, compared to the population median of \$34 149 (ABS 5673.0.55.003 - Regional Wage and Salary Earner Statistics, Australia - Data Cubes, 2003-0). These results appear to be mirrored internationally. Wood and Williams (2009) found Canadian internet gamblers to have a higher income education level than Canadians in general. In the United States, the 2006 AGA survey of casino entertainment found online gamblers to be a particularly affluent group with around 40 per cent earning over US\$ 75 000 per year.

... inspections, review and continuous monitoring of every aspect of online gaming operations, including business efficiency, dispute procedures, customer service and support, responsible gaming measures and fair gaming (eCOGRA 2009)

Self regulation will tend to be directed towards the provision of consistent product standards, rather than delivering the kind of harm minimisation features that may ultimately be desired. Moreover, there will always be some unethical operators. Nevertheless, the benefits that online companies receive from their reputation and from accreditation go some way to addressing concerns about the inherent probity and other risks of online gaming. In particular, consumers who gamble at popular, well-established websites could normally expect suppliers to meet minimum product safety standards.

Box 15.3 eCOGRA

eCOGRA is a not-for-profit organisation that was founded in 2002 by two publicly listed companies:

- 888.com — an online casino operator
- Microgaming — a internet gaming software provider.

These companies provided the seed money to launch eCOGRA and continue to fund around 10 per cent of its operations. The remainder is made up of compliance review fees and other data analysis services.

In addition to accrediting online casinos, eCOGRA also mediates disputes between players and certified casinos.

eCOGRA is presided over a board, which is comprised of three non-executive directors, four independent non-executive directors and one executive director. The independent directors have responsibility over testing procedures and seal approval. They are drawn from diverse backgrounds and must have no interests in the funding entities.

Source: <http://www.ecogra.org>.

What does the evidence show?

There is a very small, but growing, literature dedicated to online gambling, mainly based on prevalence surveys. In general, the evidence suggests that people who have gambled online at some stage in the past tend, on average, to have a considerably higher rate of problem gambling than people who have never gambled online (table 15.1). For example, Wood and Williams (2009) collected online surveys from people viewing a particular gambling website and found that 16.4 per cent of those who gambled online in the previous 12 months were moderate to

severe problem gamblers.⁴ In comparison, 5.7 per cent of those who gambled, but had never gambled online, were found to be moderate to severe problem gamblers. Whilst finding a considerably smaller overall prevalence, Griffith et al. (2008) also found that people who have *ever* gambled on the internet are more likely to be problem gamblers than those who had *never* gambled online (5 per cent and 0.5 per cent respectively).⁵ ⁶ On the face of it, these figures are concerning.

However, the literature on problem gambling associated with online gaming has to be carefully interpreted. Online gambling is a relatively rarely used and ‘new’ gambling form, so that random population surveys elicit few responses on which to base any assessment of the risk of harm. For instance, a random telephone sample of 2008 Australians found only 19 internet gamblers (table 15.1). Prevalence estimates of problem gambling drawn from this small group could not be reliable. In response to this difficulty, some researchers have sampled directly from the target population: online gamblers (such as Wood and Williams 2009). That provides more reliable measures among the selected group, but can involve self-selection biases.

The magnitude of problem gambling among online players is further confused by the loose definition of what constitutes an ‘online gambler’. Due to difficulty in sampling sufficient numbers, respondents need only have gambled online once in the last year (or ever in their whole life in some surveys) to be classified as an online gambler. Many in this group will gamble online very infrequently, and their primary means of gambling will still be venue-based. The presence of such people obscures any genuine causal link between online gambling and developing a gambling problem. (In contrast, the Commission’s analysis of problem gambling and EGMs considers how risks are affected by the degree of exposure.)

For example, problem gamblers tend to participate in more forms of gambling than other gamblers (Wood and Williams 2009 estimate that problem gamblers participate in an average of 4.7 different types of gambling). This increases the likelihood that they will at some stage experiment with online gambling and could lead to the misleading conclusion that online gambling has caused their addiction. In this case, it is their gambling problem that has led them to online gambling, and not vice versa. (However, it is still important to assess whether it has intensified their problems.)

⁴ That is, a CPGI score of three or above.

⁵ Here problem gambling was defined as scoring three or more using the DSM-IV criteria.

⁶ Both Wood and Williams (2009) and Griffith et al. (2008) examine all online gambling, including online wagering which is not prohibited under the IGA.

Table 15.1 The prevalence of problem gambling among online gamblers

<i>Study</i>	<i>Country</i>	<i>Method</i>	<i>Finding</i>
Griffith and Barnes (2007)	United Kingdom	473 university students were contacted via email and surveyed.	Of the 26 problem gamblers identified in the survey, 20 had gambled online in their lifetime.
Wood and Williams (2009)	Canada and international	Results from two surveys were used in conjunction with each other: <ul style="list-style-type: none"> • a self selected sample of 12 521 people recruited from a gambling website • a random digit telephone survey of 8498 Canadian adults, of which 179 gambled online. 	16.4% of internet gamblers were found to have a moderate to severe gambling problem according to their CPGI score. In comparison only 5.7% of non-internet gamblers were in the same CPGI range.
Wood, Griffith and Parke (2007)	United Kingdom	422 university students, who self defined as being online poker players, were contacted via email and surveyed.	18% were defined as being problem gamblers using the DSM-IV criteria. However, only 3.5% reported losing more than £100 per month.
Griffith et al. (2008)	United Kingdom	9003 people responded to a randomised mail out. Of these 6% had ever gambled on the internet.	5% of internet gamblers were identified as problem gamblers using the DSM-IV criteria (i.e. scored 3 or above). In comparison only 0.5% of non-internet gamblers were in the same CPGI range.
Allens (2003)	Australia	Two surveys were combined: <ul style="list-style-type: none"> • 73 respondents who were known to gamble on the internet from previous Roy Morgan Research • a random telephone sample of 2008 people, yielding a further 19 internet gamblers. 	9.6% of internet gamblers were found to be at risk of problem gambling (with a SOGS score of 5 or above). This figure was compared with the Commissions 1999 finding that 15.4% of regular non-lottery gamblers were at-risk of problem gambling.
La Plante et al. (2008)	International	Player spending for 3445 internet gambler service subscribers was tracked over two years. The study focused on poker players who played at least once every six months.	The median cost of gambling was €1.8 per session. The most involved players (top 5% of in terms of amount wagered) had a smaller percentage loss than less serious players (median 3% of money wagered, compared to a median 21%).
Ladd and Petry (2002)	United States	Questionnaires were left in health and dental clinics over 13 months. 389 patients were included in this study. 31 of these reported that they had gambled online in their lifetime.	74% of respondents who had gambled online in their lifetime had a SOGS score of three or more. In contrast 22% of respondents who had never gambled online had a SOGS score of 3 or more. (However, a SOGS score of 3+ would include many people rated as low risk under the CPGI.)
LaBrie et al. (2008)	International	Player spending for 4222 internet gambler service subscribers was tracked over two years. The study focused on poker players who played at least once every six months.	The median gaming frequency was once every two weeks, and the median amount lost was €6.5 per session. However, a small group of players significantly deviated from this. The top 5% of bettors gambled once every five days and lost a median of €46 every session.

Moreover, as online gambling is still relatively new, many occasional gamblers may not yet be comfortable with the medium (this is likely to be particularly so for older age cohorts). Heavy gamblers and problem gamblers will inevitably be early adopters of the technology and will thus be over-represented amongst online gamblers during its formative stages. As the industry matures and becomes normalised, it will become more attractive to recreational (non-problem) gamblers, and the prevalence of problem gambling may decline.

Finally, compositional differences in the types of gambling people engage in over the internet can erroneously give the appearance that online gambling is associated with a higher degree of risk. Gambling in lotteries is known to be a very low risk activity, and for many people, it is the only type of gambling they participate in. It is also primarily conducted through purchases at land-based venues. The over representation of this group amongst non-internet gamblers drives a wedge between the observed rate of problem gambling of internet gamblers and non-internet gamblers. However, this wedge doesn't reflect any difference in the inherent risks associated with the internet.

Whilst an ideal experiment would compare online and venue-based gambling by type of gambling activity, the small number of internet gamblers makes this practically impossible to achieve in a random survey. At the very least, types of gambling known to have very little risk should be excluded, and the comparison between results should use the same problem gambling screen. The risks of problems associated with online gaming and playing EGMs in physical venues appear to be closer to each other.

Some studies support the view that online gambling only partly contributes to the problems gamblers face. Wood and Williams (2009) found that, of the problem gamblers who had also gambled online in last 12 months, only 11.3 per cent nominated internet gambling as the format that most contributed to the problem. They concluded that:

...while internet gambling is an important contributing factor to gambling problems in a portion of problem gamblers, it does not appear to be the main cause of problem gambling for most of them (Wood and Williams 2009, p. 91)

Wood, Griffith and Parke (2007) examined a sample of university students who self define as being online poker players and found that 18 per cent were defined as problem gamblers by the DSM-IV criteria.⁷ However, most poker players in this sample played for small amounts of money, with only 3.5 per cent losing more than £25 (A\$50) per week. The finding of relatively small losses amongst online poker players was supported by LaPlante et al. (2009), who found that the median loss per

⁷ That is, they met four or more of the DSM-IV criteria.

session was around 1.8 Euros (A\$3). Interestingly, the players most involved in online poker (the top 5 per cent in terms of the amount wagered) lost a substantially lower percentage of their total wagers compared to other players (a median of 5 per cent and 21 per cent, respectively).

The bottom line on harms

While the risks associated with online gambling are likely to be overstated, the relatively high prevalence of problem gamblers is still a cause for concern. At the very least, it indicates that the internet is very attractive to this group and, though the evidence is weak, gambling online may exacerbate already hazardous behaviour. In any case, it is clear that careful regulation of the industry is warranted. The efficacy of the current prohibition as the sole tool for the regulation of online gaming industry is discussed next.

15.3 Has the prohibition ‘worked’?

Has prohibition significantly constrained demand for online gaming?

The evidence reveals that Australians continue to access online gaming services (through non-Australian based sites) that are prohibited under the IGA. However, this does not necessarily indicate policy failure. Very few prohibitions completely prevent the consumption of a product, yet they may still be considered to be justified if they can reduce the consumption of a harmful product (below what it would have been without the prohibition).

The relevant issue for determining effectiveness is the extent to which the ban has curtailed demand. There are two difficulties in assessing this:

- there is inconsistent evidence about participation rates in online gaming
- it is hard to estimate the degree to which the ban has led to slower growth compared with the ‘counterfactual’ of managed liberalisation.

Participation rates

Most surveys of participation find that between 0.1 and 1 per cent of Australians play casino type games online:

- In 2003, a survey of 2000 adults estimated that 0.12 per cent of the adult population participated in online gaming (Allens 2003). Given sampling errors,

this implies that participation rates at that time would be likely to be somewhere between zero and 0.3 per cent.

- A similarly sized survey undertaken in 2006 found an upper estimate of online gaming of around one per cent (AC Nielson 2007).
- Large sample surveys by the Productivity Commission (1999) and the Queensland Household Gambling Survey (2003) found participation rates of 0.4 and 0.3 per cent respectively.

Subject to low non-sampling errors, these estimates strongly suggest that relatively few adults participate in online gaming. Given the imprecision in the estimates from sampling errors and the likelihood of at least some non-sampling errors, the survey data cannot accurately determine how strongly participation rates have risen. (That said, the data are *not* inconsistent with strong growth since, were the point estimates accurate, participation might have risen ten fold from around 0.1 per cent to 1 per cent of the adult population from 2003 to 2006.)

International industry estimates provide more solid evidence of strong growth, but, in contrast to the population survey evidence, the participation rates are much higher for all periods (table 15.2). Using active player accounts as the metric, the estimates suggest that, in 2008, around 700 000 Australians played online casino-types games — some 4 per cent of the adult population. This represents a doubling in participation rates since 2004. Notably, growth rates are declining over time, which is consistent with a maturing industry.

The estimates of the prevalence of online casino gambling drawn from the active player accounts in Australia (4.3 per cent) are broadly similar to the prevalence rates in the United States (4 per cent) and the United Kingdom (3 per cent).⁸

The fact that online gamblers will often hold multiple accounts with different providers may at least partly reconcile the differences between the population survey and industry-based evidence. For this reason, the underlying participation rates associated with the player account statistics could be significantly lower than those suggested by table 15.2. Nevertheless, the Gross Gambling Yield (turnover minus money paid out as winnings) suggest the presence of a substantial online gaming market with Australians spending around 790 million dollars on online casino games and poker combined (Ibus Media Ltd, sub. 178, p. 34).⁹

⁸ American Gambling Association (2006) and Wardle et al. (2007).

⁹ Specifically, the ibus Media Ltd submission suggests that Australians spent around \$US670 million on online casino games and poker. This equates to around \$A790 million using the average daily exchange rate for 2008.

Table 15.2 Active player accounts

		<i>Units</i>	<i>2004</i>	<i>2005</i>	<i>2006</i>	<i>2007</i>	<i>2008</i>
Casino	Number	000s	324.9	405.1	540.9	630.1	703.3
	Growth	%		24.7	33.5	16.5	11.6
	Participation	%	2.1	2.6	3.4	3.9	4.3
Poker	Number	000s	131.3	203.1	259.4	338.9	363.1
	Growth	%		54.7	27.7	30.7	7.1
	Participation	%	0.9	1.3	1.6	2.1	2.2
Bingo	Number	000s	6.2	18.1	30.0	44.3	50.3
	Growth	%		193.2	65.5	47.7	13.5
	Participation	%	0.0	0.1	0.2	0.3	0.3

Source: Ibus Media Ltd, sub. 178, p. 34 - Originally sourced from Interactive Gambling Report prepared by Global Betting & Gaming Consultants. Participation rates were calculated using adult population estimates from ABS, *Population by Age and Sex, Australian States and Territories, June 2008* Cat. no. 3201.0.

It does appear that there has been increased interest in some forms of online gambling — most notably the poker game ‘Texas Hold’em’ — both in Australia and internationally. This can be observed in a number of ways:

- poker tournaments have recently begun to be televised on free to air television (Ibus Media Ltd, sub. 178, p. 13)
- there has been a rapid growth in poker clubs in Australia (currently around 800 000 members in the top two poker clubs in Australia — the Australian Poker League and the National Poker League (Ibus Media Ltd, sub. 178, p. 13)
- there has been a rapid growth in prize pools at poker tournaments (in physical venues). For example, in 1998, the first Australasian Poker Championship at Crown Casino offered a total prize pool of \$74 000. This had increased to \$1.2 million in 2003 and by 2009 the total prize pool had reach \$13 million (John Beagle, sub. 249, p. 2)
- there has been prominent marketing campaigns for free play poker sites, which are commonly linked to play for money sites (Australian Internet Bookmakers Association sub. 221, p. 39-41).

This evidence suggests that Australians are playing more poker through legal means (such as tournaments or private games). However, it is likely that some of this growth has spilled onto the online environment (which is not illegal from the perspective of Australian *consumers*). One participant in this inquiry contended that up to 95 per cent of competitors in the major tournaments also play poker online (John Beagle, sub. 249, p. 3).

Growth relative to the counterfactual of no ban

A prerequisite for analysing the casual impact of the IGA on online gaming is reliable data on demand. As discussed above, the existing data are far from reliable, which limits statistical analysis.

Nevertheless, the player account data and the Gross Gambling Yield from Australian consumers are not consistent with the strong effectiveness of the current regulatory regime. Player accounts point to a participation rate in online gaming that is similar to UK (where no ban exists) and the US (where a ban exists and is much more rigorously policed than in Australia). That said, discriminating between the effect of the IGA and other influences determining demand for online gaming is difficult.

It would be surprising if the ban had *no* effect, for no other reason than it limits advertising of online gaming and means that Australians cannot gamble with providers that they recognise to be safe brands for venue-based gambling in Australia.

Overall, it is probable that the prohibition on online gaming, and in particular the prohibition on advertising online gaming, has reduced the growth in demand below what it otherwise would have been. Nevertheless, it is not clear that the effect has been large. Australian consumption of online gaming has grown and will continue to do so, making the prohibition less effective over time.

What has the prohibition meant for online gamers and the online gaming industry?

The IGA has clearly prevented any Australian-based company from providing online gaming to Australian residents. Whilst the IGA also nominally prohibits the provision of gaming services by overseas companies, it has no meaningful way of enforcing this and the legislation appears to have been largely ignored. In effect, therefore, the IGA has ensured that domestic consumption of online gaming services will be exclusively provided by offshore companies. This has had a number of adverse impacts.

- Problem gamblers with a preference for online gaming have been offered minimal protection. While the number of easily accessed international websites has risen dramatically in recent years, the extent of harm minimisation features varies greatly from website to website, and generally falls short of best practice.
- Recreational gamblers who would have preferred to gamble on Australian sites have been subject to a greater risk of being ‘ripped off’ by some unscrupulous

overseas operators. While there are many reputable gaming sites, Australians are nevertheless disadvantaged when trying to resolve disputes with overseas companies due to:

- the absence of well defined international laws, as well as legal bodies to enforce them
 - unfamiliarity with the legal environment in the countries in which overseas companies operate
 - the difficulty in communicating effectively with companies based on the other side of the globe.
- Domestic providers of traditional forms of gambling have faced greater online competition from jurisdictions with much looser regulatory requirements.
 - Recreational (non-problem) gamblers who are discouraged from gambling online due to the prohibition have less choice and are, accordingly, worse off.
 - Tax revenue that would otherwise have been collected from legitimate Australian sites is now collected by foreign governments. Due to the mobility of international online gaming providers, it is unlikely that this industry could be taxed at equivalent rates to companies providing venue-based gambling products. However, the benefits that online providers would derive from locating in Australia (primarily the value of signalling to consumers that they adhere to Australian standards and are accountable to Australian law) provide some leverage against which a modest level of taxation could be applied. (As an aside, this raises a further issue as to what level of government would collect the additional revenue. There is scope for either the Commonwealth, or the State and Territory governments to tax online gaming. In the case of the latter a harmonised tax regime may need to be established, an issue discussed further in chapter 15.)
 - Commercial opportunities for Australian businesses — including in export markets — have been lost.

Of these, the loss of choice to recreational gamblers and, in particular, the loss of control over the harm minimisation features associated with the gambling services consumed by Australians, are the most serious defects of the IGA. From the point of view of consumers, the IGA completely deregulated the online gaming industry. In essence, the legislation attempts to dissuade people from gambling online by making it more dangerous.¹⁰ This will have the biggest deterrent effect on

¹⁰ For example, Senator Richard Alston described the legislation in the following terms: ‘I am aware of criticisms that the bill will force Australians to use offshore Internet gambling services... Australian customers will be cautious about using offshore services, in any case,

responsible gamblers who are more likely to react by avoiding online gaming altogether, thereby forfeiting the unique benefits of the medium. The IGA will be least effective on problem gamblers whose behaviour means they may not respond appropriately to the riskier online gaming environment the IGA facilitates.

It is noteworthy that while the literature on online gambling pays close attention to the higher rate of problem gambling, no academics working in this area find prohibition to be the appropriate policy response. Wood and Williams (2009) come the closest to advocating prohibition, but are equivocal in their findings and state that there is considerable merit in alternative approaches. The vast majority of other researchers in this field suggest that regulation of the industry, which incorporates strict harm minimisation principles, is preferable to prohibition (McMillen 2003, Nelson et al. 2008, Griffith et al. 2008, Broda et al. 2008, Cotte and Latour 2009).

This was also the view of a number of participants in this inquiry. Interestingly, while some potential competitors to online gaming providers advocated a continued ban (Lottery Agents Queensland and Lottery Agents Association of Victoria, sub. DR391), others support having a regulated industry:

ClubsAustralia believes it would be hypocritical to advocate a ban on any form of gambling, given its clear support for gaming as a legitimate form of entertainment. Far from banning online gambling, ClubsAustralia instead believes that it should face *identical regulation* to that placed upon gambling machines. (ClubsAustralia, sub. DR359, p. 92)

The potential harms of online gaming indicate that appropriate regulation of the industry is needed to protect consumers. However, the current prohibition perversely amounts to discriminatory deregulation, ensuring that the Australian online gaming market is exclusively catered to by offshore providers, who operate under a variety of regulatory regimes. This provides inadequate protection to both recreational online gamblers, as well as online gamblers who are at risk of developing a problem. This may not be a large problem today, while the numbers of players is small, but will grow with the greater uptake of online gambling. This then raises the question as to how the existing regulatory regime could be improved in order to deliver better longer-run outcomes for Australians.

15.4 Policy alternatives

There are two fundamentally different policy responses to the existing deficits in the IGA:

because these services are often unregulated and there is no guarantee of payouts being honoured' (Interactive Gambling Bill, Second Reading, 28 June 2001)

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1. the IGA could be strengthened such that it becomes more effective in dissuading Australians from online gaming
 2. the IGA could be amended to realise the benefits of online gaming, while minimising its potential harms.

Could the prohibition be made more effective?

At a minimum, strengthening the IGA would require the implementation of a technological barrier aimed at impeding access to off-shore gaming websites. As mentioned earlier, previous reviews have been unable to identify a viable means of accomplishing this (NOIE 2000). However, the Australian Government is currently developing a technology to filter the internet, at the provider level, in order to block websites known to contain illegal material. Online gaming does not appear to be targeted in the scheme, but it is included in a supplementary voluntary scheme that the Government is encouraging internet service providers to offer on a commercial basis.

Should online gaming be included amongst the websites that are mandatorily blocked under the internet filtering scheme, it may reduce, but would not eliminate, online gaming by Australians. The effectiveness of the proposed internet filtering scheme is undermined by the existence of a number of relatively straightforward methods of bypassing the system. These methods — such as using a proxy server — are obtainable on the same medium that online gambling takes place (the internet). For people familiar with these methods or motivated to play online, the filter would represent a relatively low obstacle to play. For others less familiar with the technology or less motivated to play, filtering is more likely to be effective.

To meaningfully reduce online gaming, the internet filtering system would need to be complimented with amendments to the IGA that made it an offence for Australian citizens to access online gaming products. Further, resources would need be allocated to the detection and prosecution of Australian online gamblers who breach these provisions. Combined, these measures would significantly curtail online gaming by Australians.

However, there are a number of drawbacks to this approach:

- censorship and criminalisation of online gaming would probably be seen as a draconian response to a practise that is widely accepted in a physical setting. Such severe responses are usually reserved for acts that are widely considered by the community to be highly unethical. This is not the case for gambling (although some may regard it as unwise or harmful)

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- censorship of the internet in general evokes considerable community concern about government controlling the flow of information in an open democratic society and encroaching on its citizens' personal liberties
 - the welfare lost by non-problem online gamblers would obviously be far higher under an effective prohibition than it is under the current IGA.

The magnitude of these costs is such that the level of harm associated with online gaming would need to be very high, and unavoidable through alternative regulatory responses, in order for a net benefit to arise from bolstering the IGA. In the parallel physical gambling world, the Commission does not consider that a ban on EGMs is warranted despite evidence of considerable harm. Rather, the Commission has argued for continued legal supply, but with more stringent consumer safety requirements.

Could regulation reduce the harms associated with online gaming?

While the internet has the potential to increase the risks of gambling, it also has the capacity to deliver harm minimisation technologies much more easily and effectively than most forms of venue-based gambling. As the internet is a rich and immediate source of information, online gamblers are in constant contact with a medium that can deliver instantaneous access to a wide variety of problem gambling information and assistance. In contrast, information on the risks of gambling in clubs and casinos and effective ways of managing those risks may be difficult to find, involve the potential for embarrassment, or may not be suited to individual needs.

Beyond this, the internet allows online gambling companies to actively and cheaply provide a range of preventative and rehabilitative support to people at risk of developing a gambling problem. Similarly, the internet can be used to extend current treatment and counselling services for those seeking help. Were online gaming to be liberalised, regulations could require the industry to offer any number of the features discussed below.

Automated monitoring of players' behaviour and targeted interventions

In the normal course of commercial operations, online gambling providers automatically gather detailed information about the spending activity of their clients. This information could be used to detect emerging gambling problems in several ways:

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- sudden changes in historical betting patterns. In particular, escalation of wagers following large losses
 - aberrant gambling behaviour — such as excessive session length, or excessive losses. Benchmarks could be set against existing research and updated as new evidence emerges.

Once behaviour that signifies a high risk of problem gambling is detected, a number of types of interventions are possible. Examples of possible interventions include:

- pop up messages with information on time played and amount lost in current session, or over the last month
- pop up messages warning about indicators of problem gambling as well as positive steps that can be taken to rectify gambling behaviour
- links to problem gambling tests or other counselling services
- forced breaks in play
- exclusion from the website.

Whilst even well-trained staff at land based venues may not have sufficient information to effectively intervene in instances of problem gambling, the rich electronically recorded information about player behaviour allows online gambling providers to offer graduated responses, which can be tailored to the severity of the gambling behaviour. Sweden has successfully trialled such a technology — named ‘Spelkoll’ — which has proved to be popular and is now being extended to include a budget pre-commitment option (Svenske Spel 2009). In addition, web-based interventions of the above kind do not involve the same risks to venue staff of interventions in physical venues, and probably do not entail the same level of embarrassment to patrons. Indeed, many of the above interventions could be automated, so that it is the *technology*, not the online staff, that intervenes.

People who already have a severe gambling problem may respond to such interventions by simply changing websites. However, the system is likely to be a significant improvement over venue-based harm minimisation measures in its capacity to intervene early, before serious problems emerge, and educate people about problem gambling and the risks involved in gambling.

Effective self-exclusion

As discussed in chapter 9, self-exclusion is currently difficult to enforce in physical gambling venues (though the pre-commitment options discussed earlier in this report should address these). However, as online gaming is account based,

identification is a prerequisite for play. At any given website, exclusion can be (almost) complete and final. Companies may also enter collaborative agreements whereby if a player self-excludes from a certain gambling website, they are simultaneously excluded himself from all partnered websites as well.

The problem with such agreements is that, while it would be feasible to have a system to enforce exclusions from all Australian online gambling providers, parallel arrangements could not readily be put in place for all overseas online providers. It is possible that some international standards could be adopted that allowed overseas suppliers to also participate in enforcing self-exclusion orders from third party countries. However, realistically, such cooperation could not be mandatory or complete. Accordingly, problem gamblers excluded from certain websites would be able to access at least some overseas sites.

There may be other options for global self-exclusion arrangements.

Limits on overseas credit-card use?

Users could potentially broaden the international scope of a decision to self-exclude through disabling off-shore purchases on their credit card. This may cause considerable inconvenience (restricting purchases of other goods as well as international travel), but could serve as a useful ‘stop-gap’ measure while they seek treatment for problem gambling.

The major drawback to this approach is that it could not prevent the use of financial intermediaries, such as a PayPal and ClickandBuy, which are commonly accepted by online gaming sites. In the absence of international agreements that would bind such multinational corporations, the prospects for using financial institutions to broaden the scope of self-exclusion features are limited.

User-specific exclusion software?

There are significant difficulties (and costs) in universally filtering the internet. However, there are many software options for filtering on individual machines, which could be a well-targeted approach for those gamblers wishing to self-exclude from all gambling sites.

It may be possible to develop a software solution based on keywords or some other method that bars access to gambling-related sites, with the software being automatically installed and activated (with consent) at the time the gambler agrees to self-exclusion.

All such solutions can be circumscribed by knowledgeable users or have other limitations (such as slowing internet browsing), but such an approach may still be effective for a significant number of problem gamblers. Furthermore, while it may not be sufficiently effective now, improved broadband infrastructure, and better hardware and software, may make it feasible over the longer run. This is why it is important to periodically re-explore options for effective harm minimisation as technologies develop.

The Commission is not recommending either of the above two possibilities at this stage given their unknown technical challenges and the potential for significant costs. Nevertheless, there are grounds over the longer run for the Australian Government to consider these and other measures that might make self-exclusion from online gaming more universally enforceable.

Pre-commitment

Pre-commitment has many attractive features for harm minimisation (chapter 9). As with the capacity for self-exclusion discussed above, the account-based nature of online gaming means that it is straightforward to identify gamblers and to enforce any pre-commitment options they may choose. Pre-commitment could apply to both spending or time, which would be set to a default value when an account is opened. In theory, pre-commitment could apply across all Australian sites if the gambler wished that to be the case, though the feasibility and cost-effectiveness of this is unknown. Such a networked approach would partly address the risk that a gambler exceeding a pre-commitment limit with one provider would then be able to continue gambling on another site.

Even if pre-commitment is specific to individual online providers, it would be likely to serve several useful functions:

- it would be a useful tool for people who are not experiencing any significant problems, but wish to contain their gambling expenditure or time. It may prevent any progression to major problems
- the mere act of breaching a limit conveys information to a gambler about their behaviour, which could be supplemented with the kind of targeted interventions described above.

Beyond this, gamblers' preferences for one particular website may cause them to mediate their behaviour so they are not forced to switch to an inferior one.

There are some indications that pre-commitment can be a useful tool for online gamblers. Nelson et al. (2008) examined the betting transaction of gamblers who

made use of a voluntary pre-commitment feature at an online gambling website. Players were able to set both a monthly and a daily maximum loss, which could be adjusted (in any direction) on a monthly basis. While only around 1 per cent of customers used the feature, those that did reported positive results:

- most did not change their limits once set, and of those that did, most decreased their limits
- most people continued to bet at the website
- compared with the period preceding pre-commitment, most players placed fewer bets for less money.

Restricted use of credit cards

As discussed above, the use of credit cards has the potential to exacerbate the harms of problem gambling. Some participants have suggested that a managed liberalisation of the industry should include a ban on the use of credit cards. For example, the Australian Hotels Association propose that online gambling operators should be subject to standards that include:

Legislation exist in all state preventing credit cards from being used on EGMs or at casinos... Clubs Australia remains of the strong view that legislation relating to credit cards and online gambling should be brought into line with that which exists for EGMs and casino games. (sub. DR359, p. 93)

This approach would appear to treat online and venue-based gambling in a (superficially) consistent manner. While it is argued in chapter 12 that modest net benefits arise from prohibiting credit card use in physical venues, this result is dependent on the existence of a cheap alternative means of payment — namely cash. In an online environment, substitutes for credit cards (such as electronic fund transfers) are much less convenient, which increases the cost of prohibiting their use.

Clubs Australia suggest that debit cards represent a promising alternative due to their functional equivalence to credit cards and their growing acceptance by consumers (sub. DR359, p. 93). However, as discussed above, banning the use of credit cards for internet gambling is difficult because payment is often facilitated by a financial intermediary (such as PayPal). This means that compliant gaming providers may not know whether their customers are paying with a credit card or not. As such, banning credit card use would also necessarily involve banning the use of these financial intermediaries. Some gambling providers may agree to such a ban in order to secure an Australian licence but, in doing so, the security benefits of using a financial intermediary are lost to both providers and consumers.

Also, as online gamblers can instantaneously transfer funds from their credit accounts into their debit accounts, it is questionable whether a ban on credit would meaningfully impede problem gamblers' access to credit.

Finally, banning credit cards undermines the provision of a various other harm minimisation measures. This is because:

- the costlier it is for businesses to comply with the ban, the less likely they are to seek licensing in Australia (and therefore be required to provide the type of harm minimisation measures discussed above)
- the more inconvenient it is for consumers to use websites without credit card facilities, the more likely they are to gamble with unregulated offshore providers.

For these reasons, the Commission does not see net benefits in, and is not recommending, a ban on the use of credit cards for internet gambling (both online gaming and online wagering). This does not represent a precedent for other forms of gambling, however, as the costs and effectiveness of such a ban are different in a venue-based setting. Further, whilst the use of credit cards for online gaming may be permitted, it reinforces the need for the adoption and adherence to the other harm minimisation measures outlined.

Online counselling

In recent years, the potential for counselling to be offered over the internet has attracted increasing attention. For example, from September 2009, the Australian non-government organisation Turning Point expanded its online drug and alcohol counselling service to include problem gambling. There are several practical advantages to the use of the internet in this area.

- online service can be provided more cheaply than phone or physically based services
- online provision might act as a useful referral mechanism, helping people to decide what form of face-to-face counselling or other forms of assistance (such as financial counselling) they might like to receive
- the anonymity of the internet may encourage people to get help if they feel intimidated or stigmatised by face-to-face encounters
- online counselling may be particularly attractive to online gamblers who are comfortable with the medium
- it can allow the use of software-based help systems or more dynamic self-help approaches to resolving problems. For instance, a user's responses to a series of

prompts can be used to direct them to detailed information that addresses their specific issues.

Early indications of the usefulness of online counselling are largely positive (see chapter 7). For example, a recent evaluation (Wood and Griffiths 2007b) found that Gam-Aid, an online real time provider of counselling services:

- provided a useful service (86 per cent)
- helped the participant decide what to do next (71 per cent)
- made the participant feel more positive about the future (61 per cent).

In addition to the provision of online counselling, the internet may also be a useful medium for problem gambling forums. Wood and Wood (2009) found that a large majority of users reported that online forums:

- made them feel less alone (98 per cent agree or strongly agree)
- provided new ideas on how to cope (91 per cent agree or strongly agree)
- helped them gain better control over their gambling behaviour (72 per cent agree or strongly agree).

Whilst these views from participants about online counselling and forums are generally favourable, they do not provide evidence of how effective the services have been in reducing gambling problems, compared to other available services. (That problem, however, is not isolated to virtual counselling — chapter 7.)

15.5 Weighing up the regulatory options

Online gambling offers people new products, greater convenience and better prices. Normally, this would suggest there should be no regulatory barriers to accessing this new medium for providing gambling. However, there are clear risks from online gambling and, while the literature is uncertain, there is enough evidence about potentially adverse effects on gamblers to be cautious.

The IGA has represented one such cautious approach. However, while it is likely to have partly stemmed the uptake of online gambling, it :

- has failed to prevent considerable growth in the consumption of online gaming by Australians (albeit from a small base)
- is likely to discourage the recreational gamblers who would have benefited most from online gaming

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- is least likely to discourage problem gamblers, for whom the regulation of the industry could have offered better protection and support.

Its prospects for long-run effectiveness of stemming online gaming look weak, unless accompanied by additional heavy-handed regulation.

An alternative is ‘managed liberalisation’, in which suppliers would be licensed to provide online gaming to Australians, subject to strict conditions about probity and harm prevention and minimisation. Managed liberalisation of online gaming would better protect Australians from the risks of online problem gambling, whilst still allowing recreational gamblers the freedom to choose an enjoyable medium. It would also resolve the apparent paradox that the Government allows Australian based firms to sell a product overseas that it deems too dangerous for Australians themselves to consume.

Liberalisation of online gaming would effectively represent the regulation of a currently ‘deregulated’ industry (from the point of view of Australian consumers accessing offshore game sites). Australia already has a large number of established online wagering companies well placed to expand into the online gaming market. Following the international trend of the ‘one-stop-shop’ provision of multiple gambling products being offered at single websites (Australian Internet Bookmakers Association, sub 221, p. 9) it is highly likely that Australian online wagering companies would also offer online gaming products. Moreover, venue-based gaming providers may also use their expertise to expand into the online realm. As these companies are known to Australians, and known to be subject to Australian laws and standards, they should enjoy considerable advantages over international gaming companies. It is probable then, that a large portion of online gaming by Australians would, in time, be provided by Australian companies. These companies could be subject to regulations containing the type of harm minimisation measure discussed in section 15.4.

The question remains about the scope of managed liberalisation. The option of managed liberalisation for *all* forms of online gaming — canvassed in the draft report has much to attract it, but also poses some risks (box 15.4 highlights the concerns of some participants about managed liberalisation).

Box 15.4 Participants concern about the managed liberalisation of online gaming

Notwithstanding the argument that Australian citizens are already exposed to risk through online gambling provided by largely unregulated offshore providers, we believe that removing the current ban on Internet gambling in Australia will lead to a greater accessibility of online gambling opportunities, much greater promotion and, consequently, increased levels of problem gambling which will be particularly difficult to detect due to the 'at home' nature of online gambling. (UnitingCare Australia, sub. DR387, p. 20)

The Gaming Commission continues to have some concerns with online gaming, particularly its attraction to young men, but acknowledges that the current system offers few protections and is basically a failure. The Gaming Commission believes a very strong regulatory framework would need to be put in place to accompany any repeal of the Interactive Gaming Act. (Tasmanian Gaming Commission, sub. DR311, p. 4)

Online Gambling is causing concern to the sector due to the ease of access that this form of gambling ... Governments' need to recognise that technology is moving at such speed that the need to 'keep up' with regulation and legislation to protect consumers will be vital. (Council of Social Service, sub. DR369, p. 11)

Even though the regulated online gaming services may lead to somewhat less problem gambling than unregulated offshore online gaming services, it is unclear how the existence of regulated Australian gaming services will necessarily attract problem gamblers in particular away from offshore unregulated online gaming services. (Family Voice Australia, sub. DR287, p. 3)

Similar arguments were put for the legalisation of gaming within a regulated environment yet many years, if not decades, later the harms resulting from legalisation are still to be effectively addressed. (Council of Gamblers Help Services Incorporated, sub. DR326, p. 30)

Given the legitimacy domestic supply would provide, it would also probably recruit a much larger group of people to online gaming. If these players developed difficulties controlling their gambling in the domestic market, there is a risk that they would continue to play abroad on unsafe sites when confronted with the harm minimisation features of Australian licensed sites (for example when they reach their pre-committed maximum gambling loss). Moreover, regulators have much to learn about:

- the effectiveness of harm minimisation and probity policies
- the behaviour of online gamblers, including those who start to develop problems
- the characteristics and vulnerabilities of those people attracted to online gambling in a less regulated world.

The experiences of rapid liberalisation of gaming machines in the 1990s provides a lesson about too rapid a change in the gambling environment. A more tempered

approach — involving the staged release of less intense gaming machines would have acted as the ‘canary in the cage’, warning of the wider potential risks.

Given that lesson, a precautionary approach to managed liberalisation would also be advisable. Of the most commonly used forms of online gaming (table games, simulated electronic gaming machines and poker card games), poker games appear to involve the least risks:

- It is a game of skill without the speed of play or continuous nature of the other games.
- It is unlikely to elicit the ‘trance-like’ states commonly seen among players of EGMs or EGM-like games.
- It is a social game (played potentially at home alone, but with others globally in a virtual social setting).
- It is often played in tournament setting with an upfront entry fee. This provides long ‘play’ times at a known, fixed cost to players, limiting their losses.
- There is evidence to suggest that the typical spend of frequent online poker players is relatively small (LaPlante et al. 2009, LaBrie et al. 2008).

In addition to these risk mitigating factors, there is a clear demand for online poker products, suggesting its regulation could deliver considerable consumer benefits (box 15.5, provides some participants’ specific views on online poker).

Consequently, a gradual approach to managed liberalisation that commenced with the likely safest form of online gambling — poker card games — would seem to be an affective way forward. The effects of this partial liberalisation could then be evaluated, as could the harm minimisation measures in place, before any further liberalisation was considered.

A gradual and partial approach would also allow a regulatory agency (discussed below) to build capacity and fine tune its operating procedures over time. Lessons from the liberalisation of the relatively safe online gaming products could be usefully applied when dealing with gambling products thought to be ‘riskier’. In the interim, online poker card games providers would also need to be required to remove any web links to online gaming products that remain prohibited. They would also be restricted to recognised, skill based variations of poker (not virtual EGMs or instant lotteries designed to resemble poker in some way).

Managed liberalisation, even in this form, is not without risk. But it would be easier to withdraw licences for online poker than all online gaming forms if, in fact, the harms appear to be too great. (That would, however, still leave the problem of how to effectively curtail online gambling abroad).

Box 15.5 Participants views on online poker

Poker players perceive poker as a game of skill, rather than chance, and this has been upheld by courts overseas... poker can be seen to be a much more pleasant, socially interacting and entertaining pursuit... these attributes occur only in one other casino game, blackjack, and then only as possibility, not as an essential component. (John Beagle, sub. 249, pp.1-2)

It is our view that online poker requires greater levels of skill than betting on a random outcome of a sporting event or other contingency. As such the IGA imposes an unfair and unexplainable distinction between the two forms online gambling (wagering and poker) and as a consequence, provides markedly different legislative rules ... In some jurisdictions in the US a 'pre-dominance' test is applied that rules a game to be a game of skill, if skills predominate over chance. In some jurisdictions such as Colorado and Pennsylvania, courts have ruled that poker is predominately a game of skill. Poker is also differentiated from other forms of gambling in that it is played peer-to-peer with the dealer taking a cut, as opposed to playing against the house. (Interactive Gaming Council, sub. 255, pp.21-22)

...the poker operator (whether terrestrial or online) has no stake in the final outcome. As such, poker truly constitutes an activity wherein the individual participants match wits and their skills against one another. This is part of the reason for the significant growth of poker as an entertainment activity. It allows an environment to be created where players can meet and participate in a game whose outcome is dependent on their skill. In this respect, it is no different from other skilful games like bridge and chess... In addition to being a recreational activity, the player to player format of online poker means there a social aspect to the game. The game of poker is a special case and should be regulated as such, irrespective of how other online casino games are treated. It is submitted that, at the very least the IG Act should provide for an exemption to permit online poker games in a player to player format. (Ibus Media, sub. 178, pp. 19-20)

An international perspective?

At a minimum, regulation of online gambling needs to be national in scope. However, as Australian online gambling companies participate in global markets (and some Australians will prefer to gamble on offshore sites), Australia has an interest in consistency with international online gambling regimes. (The fact that liberalisation would initially involve only poker games would not be an obstacle to achieving consistent consumer protection regulations.) Where possible, regulation should be aligned with that of similarly liberalised countries such as the UK, as well as non-government organisations that promote international standards (such as eCOGRA). It is likely that multilateral government and commercial action could secure a much better set of consumer protection standards for each country. Like all commercial activities, some countries/providers may not wish to adopt the global standard, but that very fact could be expected to make consumers cautious of using their facilities, given the risks of fraud and poor service.

While there would always be some unscrupulous offshore operators who would seek to flout Australian standards, there is scope to give major international operators the incentive to comply. One possibility is by making the right to offer the product and to advertise in Australia conditional on meeting Australian standards for harm minimisation (as in the UK). In any event, relative to the current arrangements, a managed liberalisation of online (poker) gaming cannot *increase* the already unfettered access to both safe and unsafe international websites that Australians currently have.

Who should oversee regulation of the online gaming industry?

The current operating framework for providers of online gambling services is the IGA which is administered by the Australian Communications and Media Authority (ACMA). As such ACMA, could feasibly serve as a broader regulatory body for the online gaming industry. Equally, it may be that a specially constituted body with a specific expertise in online gambling may be preferable. In either case, the regulatory body would oversee the provision of the harm minimisation measures discussed above, and could potentially examine probity measures as well.

The regulatory body should be national in scope and supported by federal legislation. That means that wherever there is conflict between the national framework and any state legislation, the Commonwealth would take precedence (as is the case in many other areas). That said, states would retain autonomy in areas not covered by the national regulatory body and, in particular, would retain the ability to ban certain types of online gambling, so long as they met the principles of competitive neutrality. For example, if a state elects to totally prohibit the provision of a particular gambling service (both online and in physical venues) on the grounds that it is associated with excessive risk of harm, it should still be permitted to do so.

Generally speaking, the presence of a well functioning national regulatory regime diminishes the necessity of state and territory regulatory counterparts. In particular, a ‘dual licensing’ system (i.e. requiring wagering providers to obtain both a federal and a state licence) is not advisable, as this regulatory barrier may discourage offshore providers from seeking an Australian licence at all.

While the bulk of this chapter has focused on online gaming, the arrangements discussed here would be equally beneficial to all other types of online gambling, including online wagering on racing and sports betting. (As such, the issue of harm minimisation is not discussed in the following chapter on the racing industry). For this reason, the national regulatory regime should also be applied to all remote gambling, including gambling via mobile phone and television. A federal online

gambling regulator would be well placed to investigate and regulate practices such as inducements and credit betting, which are common amongst online wagering providers.

In order to appropriately respond to the wide variety of online gambling products and practices, the regulating agency should have the capacity to conduct ongoing research into the online gambling industry and the impact it has on Australian consumers. Granting access to the industry data required for this kind of research should be a licensing condition for providers of online gambling products.

The success of the national regulatory regime suggested here would depend crucially on the ability of the national regulator to ensure compliance. For online gambling providers who obtain an Australian licence, oversight could be underpinned with a set of graduated penalties associated with breaches. However, unlicensed offshore companies who flout Australian regulations could easily evade such penalties. In these cases there are some blunter instruments that could potentially be applied.

As noted, one possibility is making the right to advertise in Australia conditional on holding a licence and meeting the standards for harm minimisation and probity set by the national regulator (as occurs in the UK). Beyond this, non-compliant online gaming providers could have their URLs blocked using the internet filtering scheme currently being developed by government. Given the coexistence of easily accessed (compliant) online gaming websites, the inconvenience associated with bypassing the filter is likely to be sufficient to put non-complying online gaming providers at a significant competitive disadvantage. In this way, the internet filtering scheme may better serve as a compliment to managed liberalisation, rather than as a substitute. However, the usefulness of internet filtering to ensure regulatory compliance would still need to be weighed against the reservations that many in the community hold about government censorship of the internet.

The managed liberalisation of online gaming inevitably entails some risks — as is the case when attempting to regulate any new industry or novel product. As such, the effectiveness of the harm minimisation features required by the national regulatory regime would need to be evaluated on an ongoing basis, as would the performance of the regulatory body itself.

RECOMMENDATION 15.1

In consultation with state and territory governments, the Australian Government should amend the Interactive Gambling Act to permit the supply of online poker card games.

Online poker, along with other gambling forms currently exempted from the Interactive Gambling Act, should be subject to a regulatory regime that mandates:

- *strict probity standards*
- *high standards of harm minimisation, including:*
 - *prominently displayed information on account activity, as well as information on problem gambling and links to problem gambling support*
 - *automated warnings of potentially harmful patterns of play*
 - *the ability to pre-commit to a certain level of gambling expenditure, with default settings applied to new accounts, and the ability for gamblers to set no limit on their spending as one of the system options (with periodic checking that this remains their preference)*
 - *the ability to self-exclude.*

The Australian Government should monitor the effectiveness of these harm minimisation measures, as well as the performance of the regulator overseeing the national regulatory regime. The Australian Government should also evaluate whether:

- *the provision of online poker card games should continue to be permitted*
- *liberalisation should be extended to other online gaming forms.*

RECOMMENDATION 15.2

The Australian Government should assess the feasibility and cost effectiveness of:

- *Australia-wide self-exclusion and pre-commitment options for equivalent online providers*
- *the capacity for extending self-exclusion through the payments system or through software solutions selected by problem gamblers*
- *the scope for agreement on international standards on harm minimisation and their enforcement through self-regulatory or other arrangements.*