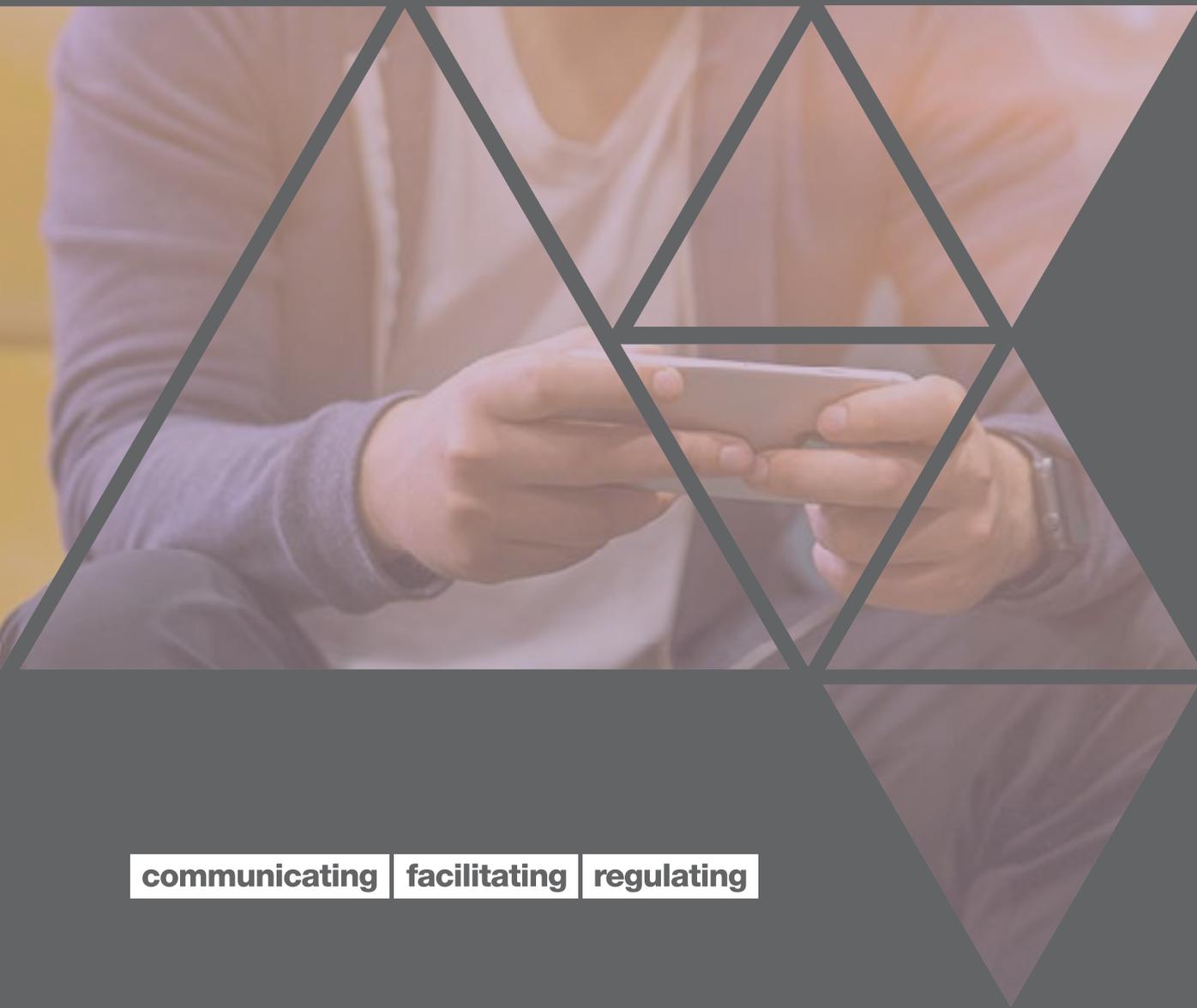


Disrupting illegal offshore gambling

12-month report into the ACMA's actions under
the *Interactive Gambling Act 2001*

OCTOBER 2018



communicating | facilitating | regulating

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Introduction

Illegal offshore gambling has a social and financial impact on Australian consumers, Australia's regulated gambling industry, race and sporting industries, and government.

In 2017, the *Interactive Gambling Act 2001* (IGA) was amended to combat illegal offshore gambling through stronger enforcement and disruption measures.

The amendments gave the Australian Communications and Media Authority (ACMA):

- > expanded responsibilities and new powers to enforce prohibitions on providing or advertising illegal interactive gambling services
- > new deterrent and disruption tools
- > a role in raising awareness of Australian gambling laws to help minimise the supply and use of illegal interactive gambling services.¹

In the first 12 months of operation, we have moved decisively to crack down on illegal operators in the Australian interactive gambling market.

We established an Interactive Gambling Taskforce, which has targeted education, engagement and enforcement action to disrupt and deter prohibited and unlicensed offshore gambling services.

We have engaged with influential players in the offshore gambling market to raise awareness of the changes to Australian interactive gambling laws, and our role in actively enforcing them.

We have established key relationships with international gambling regulators, who have actively engaged with operators licensed in their jurisdiction on our behalf. We have also worked to establish cooperative relationships with other regulatory agencies in Australia that have a role in regulating the online gambling market.

Our investigations and enforcement activity has been targeted to have the greatest impact in disrupting offshore gambling.

This strategic approach has proven effective in driving compliance, reflected in the:

- > withdrawal of prominent offshore gambling sites from the Australian market
- > downward trend in offshore gambling expenditure.

Keep reading to learn more about the approaches we've used to disrupt the provision of illegal offshore gambling services to Australians and the impact on the market.



**Key
engagement**



**Targeted
investigations**



**Regulatory
cooperation**



**Third-party
support**



**Consumer
awareness**



**Impact on
the market**



Key engagement

A key strategy was to raise awareness of the changes to Australian gambling laws with the international gambling community. We worked to change the perception of Australia as a ‘grey’ or ambiguous market to one where laws are clear and actively enforced and in doing so, encourage gambling operators to comply with the IGA.

Our approach

We targeted influential players in the offshore gambling market, including overseas regulators, software providers, payment processors, affiliate organisations, trade groups and the domestic gambling industry. We also sought assistance from regulators in major online gambling licensing jurisdictions to inform their licensees of the change, to reach as many offshore providers as possible.

Our intention was to ensure all players in the gambling community were aware of the key changes to Australia’s gambling laws, which made it clear that:

- > certain online gambling services are prohibited (such as online casinos, online slot machines and ‘in-play’ betting services) and cannot be provided or advertised in Australia
- > it is illegal to provide online gambling services to Australians unless the person or company holds a licence under the law of an Australian state or territory
- > other persons, such as directors, agents or affiliates, may also be subject to civil penalties (of up to AUD\$7.9 million per day applying to corporations) if they are found to be knowingly concerned in, or party to, a contravention of the IGA.

We also made it clear that Australia is serious about enforcing its laws.

Our work in action—amplifying our message through regulators

We created an information hub on our website and produced a video for an international audience, outlining Australian interactive gambling laws, which we promoted at international conferences and meetings with regulators. Through our engagement we’ve received valuable support from overseas gambling regulators advising their licensees about the changed regulatory landscape in Australia. In total, the regulators we contacted license over 4,000 online gambling websites.

One of these, the Gambling Commission of Great Britain, licenses over 1,100 remote gambling entities.² The Commission communicated changes to Australian laws to its licensees, which then effectively distributed information to their remote gambling licensees.



Targeted investigations

Coupled with our education and engagement activity has been a campaign of targeted investigations and enforcement.

Our approach

We have focused our investigation and enforcement activities to have the greatest impact on the supply of illegal gambling services to Australians. In addition to responding to complaints, we initiated investigations into prominent offshore wagering services that we identified before the IGA amendments came into force.

In the 12-month period to 13 September 2018³, we dealt with:



The ACMA's investigation and enforcement statistics for the period 13 September 2017 to 13 September 2018 is provided in Appendix A.

Our work in action—engaging and escalating our activities to achieve compliance with the IGA

The ACMA's first-year enforcement activities have achieved compliance by 68 per cent of offshore providers and third parties that have been found in breach of the IGA.

We're continuing to escalate our enforcement activities against offshore entities that are not fully compliant, which may include notifying directors to Australia's border protection agency for inclusion on the Movement Alert List, or applying to the Federal Court for civil penalty orders.



Regulatory cooperation

The global nature of online gambling brings challenges for enforcing cross-border laws. During our first year of activities, we reached out to overseas gambling regulators and received valuable support in raising awareness of, and enforcing, Australian law.

Our approach

The ACMA has established collaborative relationships with gambling regulators around the world, particularly in key jurisdictions where many offshore gambling operators are licensed. These overseas gambling regulators assisted in passing on information about the changed regulatory landscape in Australia to operators licensed in their jurisdiction.

We notify regulators when we find a provider licensed in their jurisdiction has breached Australian laws and, in many cases, they have lent their regulatory 'weight' to our enforcement action. This has been very effective in getting offending operators to withdraw from our market. We are continuing to explore opportunities for further collaboration with overseas gambling regulators to combat illegal offshore gambling, which is a common issue in many jurisdictions.

We have also worked to establish cooperative relationships with other regulatory agencies in Australia that have a role in regulating the online gambling market, as well as broader issues of sports integrity, money laundering, taxation and combating the black economy. These have included state and territory regulators, key sporting and racing bodies and other federal government regulators.



We contacted gambling regulators, including from the United Kingdom, the United States; and popular offshore licensing hubs such as Malta, Gibraltar, Isle of Man, Alderney, Kahnawake and Curaçao, to inform them of changes in Australian laws.



These regulators license over **4,000** online gambling websites.⁴



We sent **15** notifications to overseas gambling regulators.

Our work in action—international awareness about compliance with Australian law

In response to our initial engagement, we have received significant support from overseas gambling regulators in our compliance, enforcement and disruption activities. An example is the Division of Gaming Enforcement in New Jersey, which put in place requirements for their operators and suppliers of services to their operators (such as software providers) to certify to the Division how they intend to comply with Australian law. The deterrent effect of such action by a fellow regulator cannot be understated.



Support from third parties

Many online gambling services rely on third parties for essential services, such as providing the games available on the website or processing payments. These third parties can be involved with hundreds or thousands of gambling websites and can influence or directly impact access to their services by Australians.

Following the amendments to the IGA, the prohibitions and penalties now extend to any person who is a party to a contravention of the IGA. This has led us to engage with third parties, explaining the ancillary liability they may face if they facilitate the provision of offshore gambling services.

Our approach

We reached out to influential industry stakeholders to assist us to achieve compliance with the IGA. Software providers—who can supply individual games or entire platforms for operators to provide services on, and payment processors—who facilitate the transfer of funds to offshore gambling websites.



We contacted **33** software providers during the year, including the top 10 software suppliers to the industry, each supplying around **600** to **1,800** offshore gambling websites with software. We monitor compliance by software providers through investigations.



We contacted **10** payment services companies during the year, including five of the most commonly-used payment services for making online gambling deposits, available on between around **2,100** to **3,600** offshore gambling websites.⁵

Our work in action—taking alternative routes to positive compliance outcomes

Many software providers are ensuring their gambling games are inaccessible for players based in Australia, while some payment service providers have stopped processing Australian gambling-related payments for offshore gambling websites.

This has assisted our enforcement activity. In one case, after finding two websites in contravention of the IGA and receiving no response from the provider, we reached out to the software supplier to the websites. Within days, the websites were made inaccessible to Australian-based customers.

This assistance is disrupting and diminishing the supply of offshore online gambling, even in circumstances where an offshore gambling website may wish to provide services to players in Australia illegally.



Consumer awareness

Many illegal offshore gambling websites target Australians by using Australian themes and images, such as the Australian flag and native animals. This can lead to Australian consumers inadvertently using prohibited or unlicensed online gambling providers, unaware they are not covered by important harm minimisation measures and consumer protections required by Australian-licensed services.

We've taken steps to help consumers identify which online gambling services are legally provided to Australians.

Our approach

Research indicates⁶ that offshore gamblers are less knowledgeable about what online gambling services can be legally provided to Australians, with offshore gamblers also less knowledgeable about which country provides the licence for the gambling websites they use.

To stop consumers using offshore websites inadvertently, the IGA requires a *Register of licensed interactive wagering services* to be established and made available to the general public. The Register⁷, which is provided on the ACMA's website, is a key resource for consumers and lists interactive wagering service providers that are licensed by an Australian state or territory regulator. The Register contains over 130 entities, including TABs, corporate bookmakers, betting exchanges and on-course bookmakers. It allows consumers to check that the interactive gambling services they use operate legally in Australia.

We have promoted the Register and raised awareness of illegal offshore gambling services more broadly through a series of social media campaigns run in conjunction with major sporting events.

Our work in action—promoting the *Register of licensed interactive wagering services*

During the first year of its operation, we promoted the Register on social media to coincide with major sporting events, including the Spring Racing Carnival and the 2018 FIFA World Cup. During the FIFA World Cup for instance, our social media campaign saw over 7,600 page visits to the Register and over 5,700 page visits to our interactive gambling complaints form, with an average time spent viewing the pages of over six minutes.⁸



Impact on the market

Our approach of targeted engagement, education and enforcement action has proved effective in reducing illegal offshore gambling.

Over the 12-month period:



33 of the most popular offshore wagering sites and **33** of the most popular gaming sites withdrew from Australia.



The ACMA investigated **138** websites, of which **58%** were not providing services into Australia, rising to **83%** after ACMA compliance action.



Statistics from Global Betting and Gaming Consultants (GBGC) indicate that offshore gambling expenditure will fall by over **50%** between 2017 and 2018.

H2 Gambling Capital (H2GC) also forecasts a reduction in offshore gambling expenditure of **7%** between 2017 and 2018. The proportion of offshore gambling by Australian interactive players will fall from **52.2%** to **40.3%** between 2016 and 2018.

Appendix 2 contains graphs relevant to Australian offshore gambling based on GBGC¹⁰ and H2GC¹¹ datasets.

The size and scope of the offshore gambling market is difficult to quantify, given the thousands of sites, operators and jurisdictions that must be considered. Estimates provided by GBGC and H2GC have been used as a measure of gambling activity as they are recognised sources used in the Review of Illegal Offshore Wagering conducted by the Hon Barry O'Farrell. While there are differences between the two sources, the downward trend in Australian offshore gambling expenditure is reflected in both.

This trend in gambling activity—the withdrawal of prominent services and the rate of compliance—reflects a noticeable change in the attitudes of offshore perception of Australia's online gambling market. What once might have been a grey or ambiguous market, is now a market with clear laws, an active regulator and strong enforcement—which has changed the behaviour of many offshore operators.

We conducted a market scan of offshore gambling websites before the IGA changes came into force, which reported a sample of websites from across several online gambling licensing jurisdictions. Revisiting these websites shows that many offshore gambling providers have taken steps to restrict their services into Australia by changing their business practices. These include:

- > not permitting consumers in Australia to sign up to services by removing Australia as a country to sign up from, and removing the option to play in Australian dollars
- > including Australia in prohibited or restricted territory lists in a website's terms and conditions
- > restricting access from Australia to the website based on geo-location/IP address detection
- > changing from real money gambling to social gaming services (where a user purchases virtual credits and cannot cash out).

Looking ahead

We are continuing to implement our strategy of targeted engagement, education and enforcement, with an emphasis on activities that cause the greatest disruption in the offshore gambling market.

Over the next 12 months, we will focus on:

- > escalating enforcement activities against non-compliant services. This may include notifying directors or principals of offshore gambling services to Australia's border protection agency for inclusion on the Movement Alert List, or commencing litigation in the Federal Court of Australia to apply civil penalty orders against non-compliant services and/or individuals knowingly concerned in their operation.
- > deepening our engagement with overseas regulators. We have received valuable support from our international counterparts and will actively explore opportunities for information sharing and coordinated action against the provision of illegal offshore gambling, a common issue faced by many jurisdictions.
- > exploring avenues to facilitate greater information sharing with Australian law enforcement and other domestic regulatory agencies.
- > disrupting advertising and promotional activities by illegal offshore gambling services. We will engage with and, where necessary, launch compliance action against third parties such as affiliate websites, which illegally market offshore gambling services.
- > monitoring the Australian wagering industry to ensure compliance with a credit betting ban that we have been administering since 17 February 2018.

Appendix 1 – ACMA investigation and enforcement data

13 September 2017 – 13 September 2018¹²

PUBLIC CONTACTS RECEIVED	
Complaints received	126
Enquiries received	111
Total number of public contacts received	237
INVESTIGATIONS*	
Investigations commenced	
Own motion	36
Complaints-based	41
Total number of investigations commenced	77
Investigations currently underway	15
Investigations concluded	
Investigations with breach findings	38
Investigations with no breach findings	23
Investigations with no finding	1
Total number of investigations concluded	62
Distinct websites assessed in concluded investigations	
Compliant (not providing services into Australia)	80
In breach	58
Total number of websites assessed	138
CONTRAVENTIONS	
Providing a prohibited interactive gambling service to customers in Australia	54
Providing an unlicensed regulated interactive gambling service to customers in Australia	20
Advertising prohibited or unlicensed regulated interactive gambling services	16
Total number of contraventions	90
ENFORCEMENT ACTIONS	
Formal warnings issued	19
Notifications sent to international licensing authorities	15
Websites reported to family-friendly filter providers	18
Total number of enforcement actions	52

COMPLIANCE ACTION** OUTCOMES: PROVIDERS AND THIRD PARTIES	
Offshore providers	
Number of investigations involving offshore providers, which became compliant after ACMA action	23
Number of investigations involving offshore providers, which remain non-compliant	11
Total number of investigations involving enforcement action against offshore providers	34
Third parties (for ancillary breaches or third-party advertising breaches)	
Number of investigations involving third parties, which became compliant after ACMA action	3
Number of investigations involving third parties, which remain non-compliant	1
Total number of investigations involving enforcement action against third parties	4
COMPLIANCE ACTION OUTCOMES: WEBSITES	
Number of websites that became compliant after ACMA action	35
Number of websites that are non-compliant or not fully compliant	23
Total number of websites involved in breaches	58
ONGOING ENFORCEMENT ACTION	
Number of investigations where enforcement action is continuing against non-compliant providers	11
Number of investigations where enforcement action is continuing against non-compliant third parties	1
Total number of investigations where enforcement action is continuing	12

* An investigation may look at a number of websites and may also result in findings on a number of matters. In a single investigation for example, we might consider if a service is a prohibited interactive gambling service and also whether an advertisement for the service was published in Australia.

** ACMA compliance action begins with initial correspondence with providers and third parties, notifying them of the ACMA's preliminary view regarding their compliance with the IGA, escalating to formal enforcement. The ACMA has a range of enforcement options—more information about these are contained in the FAQ in Appendix 3.

Appendix 2 – GBGC and H2GC datasets: graphs

Figure 1: Australian offshore gambling – GBGC dataset (gross gambling yield US\$m)

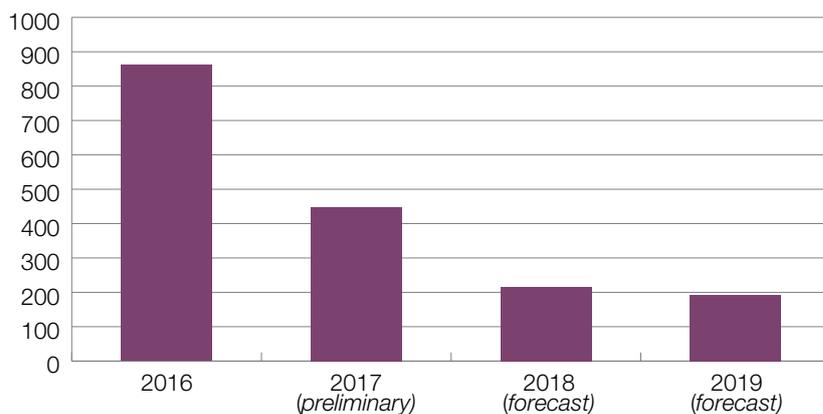


Figure 2: Australian offshore gambling – H2GC dataset (gross win in A\$m)

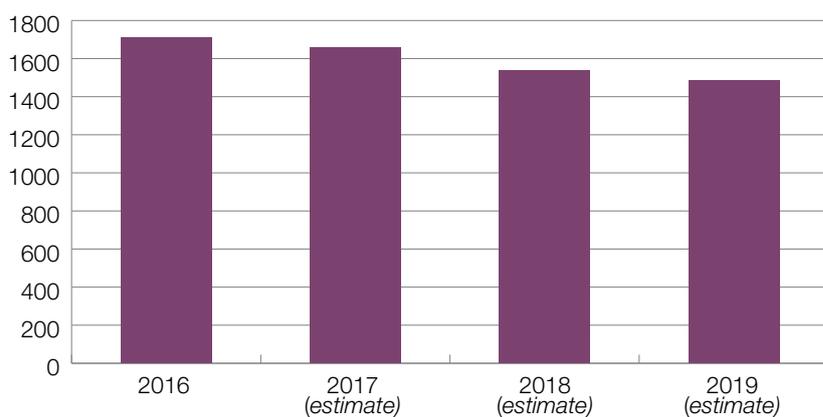
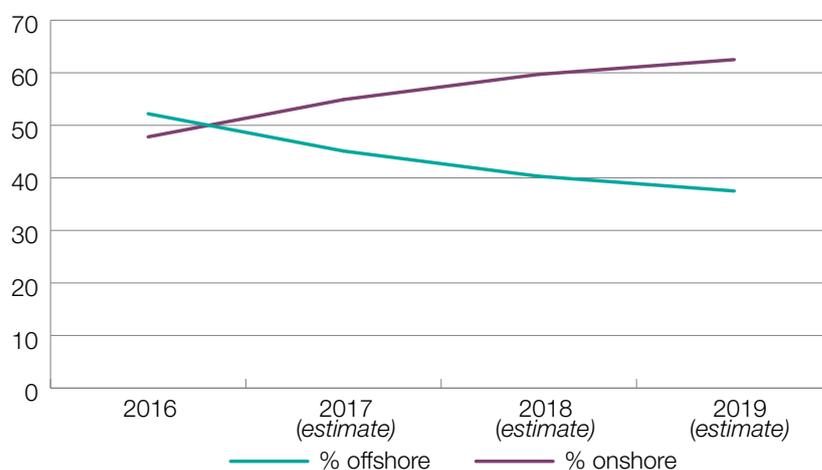


Figure 3: Australian offshore gambling: H2GC dataset (Australian interactive players %)



Note: H2GC report on % onshore. The % offshore was obtained by inverting the % onshore.

Appendix 3—Interactive Gambling Act 2001: FAQ

What does the IGA prohibit?

The IGA prohibits five activities:

- > providing prohibited interactive gambling services to customers in Australia
- > providing an Australian-based interactive gambling service to customers in designated countries (to date, no countries have been designated by the minister)
- > providing an unlicensed regulated interactive gambling service to customers in Australia
- > broadcasting or publishing advertisements for these prohibited interactive gambling services or unlicensed regulated interactive gambling services in Australia
- > providing or facilitating the provision of credit to customers by certain wagering service providers.

When can the ACMA investigate a matter?

The ACMA may, on our own initiative, or in response to a complaint¹³, investigate whether a person has contravened a provision of the IGA. A complaint may be made to the ACMA under section 16 of the IGA.

What are ‘prohibited interactive gambling services’?

A ‘prohibited interactive gambling service’ is defined in section 5 of the IGA as a gambling service where:

1. the service is provided in the course of carrying on a business; and
2. the service is provided to customers using any of the following:
 - (i) an internet carriage service
 - (ii) any other listed carriage service
 - (iii) a broadcasting service
 - (iv) any other content service
 - (v) a datacasting service.

Examples of prohibited interactive gambling services include online casino-style games, online slot machines and online wagering services that accept in-play bets on sports events.

What are ‘regulated interactive gambling services’?

‘Regulated interactive gambling service’ is defined in section 8E of the IGA. Essentially, it includes those services that are excluded from the definition of a prohibited interactive gambling service, and includes telephone betting services and online wagering services (other than those offering in-play betting).

These services cannot be provided to customers in Australia without a licence granted by an Australian state or territory licensing authority.

What are the penalties for breaches of the IGA?

The IGA contains criminal offence and civil penalty provisions.

If a person is found guilty of an offence under the IGA, the penalty is 5,000 penalty units per day the offence continues (up to \$1,050,000) or up to five times that for a body corporate (up to \$5,250,000).

The civil penalty for a contravention of the IGA is up to 7,500 penalty units per day the offence continues (up to \$1,575,000) or up to five times that for a body corporate (nearly \$7,900,000).

The ACMA can apply to the Federal Court or Federal Circuit Court for a civil penalty order.

The penalties relating to the broadcast or publication of an advertisement for a prohibited or unlicensed regulated interactive gambling service are:

- > criminal: 120 penalty units (up to \$25,200)
- > civil: 180 penalty units (up to \$37,800) or \$190,000 for a body corporate.

The penalty is over \$500,000 a day for certain wagering operators that provide or offer credit to persons physically in Australia. For individuals, this figure is over \$100,000 a day.

What are the enforcement options available to the ACMA?

We have a range of powers to deal effectively with breaches of the IGA, including the power to:

- > issue formal warnings (sections 58 and 64A of the IGA)
- > issue infringement notices for contraventions of the IGA (section 64C of the IGA)
- > apply to the Federal Court or Federal Circuit Court for civil penalty orders for contraventions of the IGA, and/or injunctions (sections 64B and 64D of the IGA)
- > refer a matter to the Australian Federal Police for investigation, or to the Commonwealth Director of Public Prosecutions, in connection with criminal offence provisions
- > notify licensing authorities in overseas jurisdictions about licensees who are breaching the provisions of the IGA (section 59D of the *Australian Communications and Media Authority Act 2005* (ACMA Act))
- > provide information to Australia's border protection agency, including the names of directors or principals of offending gambling services (section 59D of the ACMA Act), so they may be placed on the Movement Alert List, which may disrupt travel to Australia.

Endnotes

1. Further information about interactive gambling and the ACMA's role is available on our website at: www.acma.gov.au/interactivegambling.
2. Gambling Commission of Great Britain remote licensee data was obtained from the Gambling Commission's licensee register during October 2018. The figure of over 1,100 remote gambling entities refers to active licences only
3. All investigation and enforcement information is based on statistical analysis of ACMA investigation and enforcement data contained in Appendix 1.
4. The figure of over 4,000 online gambling websites licensed by regulators that the ACMA contacted was sourced from industry information portal Online Casino City, an information source cited in the Department of Broadband, Communications and Digital Economy's *Review of the Interactive Gambling Act 2001* (Final Report 2012).
5. The figure of websites supplied by software providers and payment companies was also sourced from Online Casino City during October 2018.
6. Gainsbury, S., Abarbanel, B., & Blaszczynski, A. (2018). Factors influencing Internet gamblers' use of offshore online gambling sites: Policy implications. *Policy & Internet*. <https://doi.org/10.1002/poi3.182>.
7. The Register of licensed interactive wagering services is available at: www.acma.gov.au/theACMA/register-of-licensed-interactive-wagering-services.
8. Social media statistics are based on ACMA website traffic data.
9. The ACMA's benchmarking analysis of offshore providers active on the Australian market prior to the IGA amendments coming into effect and the availability of these providers after the IGA amendments came into effect, was based on research gathered from industry information portal Online Casino City (in March 2017 and a review in October 2018), sampling of websites licensed by well-known offshore gambling jurisdictions available to Australians before (February 2017) and their availability after the IGA reforms (in October 2018). Information provided by the Australian wagering and racing industry further informed the ACMA's monitoring and benchmarking of the offshore wagering market.
10. Global Betting and Gaming Consultants (GBGC) statistics and estimates were sourced from GBGC's *Interactive Gambling Report*, published 10 October 2018. Note: 2017–19 figures are estimates.
11. H2 Gambling Capital (H2GC) statistics and estimates were sourced from H2GC's Australian Dataset, last updated 11 September 2018. Note: 2017–19 figures are estimates.
12. Interactive gambling statistical quarterly reports are available at: www.acma.gov.au/theACMA/ACMAi/Investigation-reports/Statistics/interactive-gambling-facts-and-figures.
13. The interactive gambling complaint form is available at: www.acma.gov.au/Industry/Internet/Internet-content/Interactive-gambling/gambling-complaint-form.

