

Submission to the Productivity Commission's Inquiry into Australia's Gambling Industries

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Following my previous submissions and presentation at the Commission's public hearing (Sydney 17th September 1999) I wish to add the following comments for the Commission's consideration. I have focused only on a few selected issues that seem to warrant additional comment.

The variability of policy and gambling impacts:

The Commission's draft report has noted the considerable policy variability and fragmentation between Australian states and territories – eg with regard to the effect of 'caps' and gambling impacts. The Commission also notes that 'policy failure' has been common, a finding with which I agree. Yet the issue of 'market failure' receives scant attention in the Draft Report.

I submit that closer attention to the relationship between particular policy frameworks and issue of fair trading or market failure will begin to illuminate which policies 'work' and which ones do not. To illustrate the point:

- There is no simple explanation for the impacts of 'caps' on Australian communities, or an easy, uniform answer to the question of whether caps (i.e. venue caps, or global statewide caps) have a beneficial or negative effect. Each state is different – and the effect of caps varies widely, depending on policy and market conditions. I agree with the Commission that caps are a blunt policy instrument, although when coupled with other responsible policies, limiting the number and availability of gaming machines can be effective.
- For example, Northern Territory has both a 'global' cap (600 machines Territory-wide) and a venue cap for clubs and hotels. Machine gaming does not have a

prominent profile in the community, and although market competition is increasing, problem machine gambling is not high.

- Despite a uniform venue cap (40 machines for both clubs and hotels), growth of machine gambling in South Australia has favoured hotels above clubs. This trend also is reflected in the reported incidence of gambling problems;
- Queensland has a sliding cap on clubs and hotels that allows gradual increases over the next few years, but no global cap. Further comments on recent changes to Queensland's policy framework and market competition are below.
- NSW has a cap only on the number of gaming machines in hotels. However the growth of gaming in hotels has been accelerated by the 'auction' system for licences. This is generating the sale of hotels and development of hotel chains, with a significant increase in the price of strategically located hotels. Club gaming continues to grow, particularly in large clubs with the resources to expand their facilities or develop 'satellite' clubs. Canterbury-Bankstown club, for example has approval to construct a sub-club at Liverpool with 1,000 gaming machines. While many small clubs are struggling to compete with local hotels and large clubs, the gaming market overall is expanding rapidly, machines are highly accessible and problem gambling is significantly higher than other states;
- Victoria has both a global cap and uniform venue cap for hotels and clubs. As in South Australia, Victorian hotels have been the major recipients of gaming machines. There have been consistent criticisms that machines have been concentrated in low income and disadvantaged communities. This has been partially due to the nexus between gaming licences and liquor licences, and a history of 'dry belts' in more affluent areas.
- Moreover, the Victorian statewide cap on the number of machines has meant that many clubs and hotels have been excluded from the commercial benefits of gaming. There is a pronounced division in between the 'haves' (with EGMs, increased patronage and incomes and improved facilities) and 'have nots' (those venues without EGMs who now lack comparable resources to compete for patronage).

Victoria and NSW, with widely contrasting systems, have been the primary focus of public concern about market abuse and problem gambling. The Commission has received a number of Victorian submissions that the duopoly of Tabcorp and Tattersalls

allows these operators to impose comparative turnover criteria for tenure of machines. This in turn can encourage irresponsible market practices by venue managers to achieve their turnover targets. In the case of Victoria, the global cap has consolidated the power of the two gaming operators, in some instances resulting in 'market failure' at the expense of fair trading and consumer protection. In NSW different factors - the introduction of gaming machines to hotels and the development of large mega-clubs - have accelerated competitive market practices and market failure.

The common feature in these two states is the acutely competitive nature of the market, which has increased pressure on venue managers to drive up turnover. The core problem is not simply the number of gaming machines, or whether they are located in clubs or hotels, but whether the policy framework directly or indirectly promotes turnover growth and market competition, or alternatively ensures responsible industry practices.

Queensland is an instructive example that a cap on numbers of machines may be less important than rectifying other aspects of policy that encourage excessive competition and (possibly) market failure. After a period of carefully managed development in which the government distributed machines (1992-98), a 'market liberalisation' policy was introduced to Queensland in 1998. Under that policy, eight commercial Licensed Monitoring Operators (LMOs) were permitted to purchase and distribute machines to clubs and hotels. Although the new policy is still in the early stages of impacts, the number of gaming machines in Queensland has increased rapidly since its implementation. It is not widely recognised that there are now more gaming machines in Queensland (approximately 28,000) than in Victoria (27,500). The most dramatic increase has occurred in hotels; the number of Queensland hotels with gaming machines is now equal to the number of clubs.

It appears that commercial imperatives, both related to the activities of the LMOs and to increasing competition between clubs and hotels have been the critical factor in market expansion. It is not accidental that this trend has been accompanied by a marked rise in public concern about problem gambling. Given these early warning signs, it will be important to monitor the impacts of the new policy regime in Queensland to assess its social effects as well as its impacts on industry strategies and conduct.

Responsible gambling from a public health approach

The AIGR has submitted to the Commission a report on a Trial Responsible Gambling Program implemented in NSW clubs in 1998. That program was based on a specifically policy developed by the AIGR for the Registered Clubs Association of NSW, committing the clubs to principles of:

- Compliance and effectiveness
- Consumer protection
- Harm minimisation
- Accountability

The trial program implemented a comprehensive range of strategies to achieve the broad preventative objectives of the policy minimise gambling problems in clubs by improving management practices and patron care.

An audit of compliance found that the majority of clubs in the trial program did achieve acceptable if minimal levels of responsible management. Some clubs made significant improvements to previous operations during the trial. But a small number of clubs were non-compliant, indicating the difficulties of achieving uniform acceptable standards and across such a diverse sector.

Based on the findings of that trial program, an improved statewide program is currently being developed by the AIGR and RCA for implementation this year. This revised program will include an industry Code of Practice, an Advertising Code, a procedures manual and a training manual for delivery to each club, and a training program for club directors, CEOs and managers. Among a range of management strategies, core component of this program are consumer education and close collaboration between the clubs and local community groups and service providers.

In June 1999 the AIGR was commissioned by TAB Ltd to develop a comparable program for TAB operations and outlets. This program will be designed to accommodate the specific and varied gambling products and modes of delivery offered by TAB Ltd (shop-front and on-course wagering, telephone betting, internet gambling,

sportsbetting). It also must take account of the TAB's interstate and overseas patrons. We understand this is the world's first such initiative by a wagering provider.

- At a more general level, the recent development of codes of practice is a positive initiative by some gambling sectors. However, there is little consistency between the codes at present – and apart from proposals by the RCA and TAB Ltd, no serious attempt at enforcement.
- In NSW these industry initiatives have been reinforced by the NSW Government's recent introduction of comprehensive legislation and regulations to achieve uniform responsible gambling practices across the 'whole of industry'.
- To achieve a more consistent national approach, I submit that the ACCC has the authority under the Trade Practices Act to monitor and enforce acceptable standards of consumer protection in the gambling industry. If compliance with voluntary codes of practice proves to be difficult to achieve, as it often does, a mandatory code of practice will be necessary to ensure that Australians are given a 'fair deal', regardless of their state of residence.
- No public health program can hope to be successful without a sustained and effective community education program. To achieve universal coverage this program also could be most effectively developed and implemented at a national level, while remaining sensitive to regional and cultural differences.

Aboriginal and ethnic gambling:

There has been scant research attention given to gambling activities involving Aboriginal peoples or other cultural groups in Australia. The AIGR has provided the Commission with report on a small study of gambling in several Asian communities in Perth and a study of gambling in the Northern Territory.

Most studies of these groups are disturbingly ethnocentric in their research methods and the focus and assumptions of their inquiries. Few studies have been sensitive to the meaning given to gambling by Aboriginal groups or to the strategies employed. Many have commented on Aboriginal gambling as a sign of moral turpitude or a waste of (potentially productive) time. Even those anthropologists who have worked extensively within Aboriginal communities, have commented patronisingly and with some

astonishment that gambling shows that Aboriginal people can make complex calculations and keep scores.

Significantly, researchers have assumed that gambling is ‘non-traditional’ in Aboriginal communities. This is based on comments by early colonists who found no examples of gambling *as they recognised it* – ie they looked for activities similar to western style games for money or material gain. Not surprisingly, there was no evidence of this, although colonists noted that Aboriginal people quickly embraced card games and other forms of introduced gambling. The questionable assumption that gambling was not part of Aboriginal culture has come to be accepted as ‘truth’ in most literature. More recent anthropological research in the Northern Territory has questioned this interpretation and suggests that at the time of white settlement Aboriginal people already engaged in forms of risk-taking and gambling similar to those in Indonesian and Timor communities.

Most researchers tend to argue that ‘natives’ who are interested in their own culture will not be interested in gambling and that gambling by Aboriginal groups leads to moral and social disintegration. Recent research by psychologists reinforces this view by seeing gambling as a ‘problem’ to be measured using SOGS indicators in surveys or focus group interviews.

Anthropological research has focused on card games which continue to be very popular in Aboriginal communities throughout Australia. However, with few exceptions there is little in the social science literature about Aboriginal participation in commercial gambling such as machine gambling, TAB, bingo or lotteries. The limited research into casino gambling by Aboriginal people has methodological flaws and does not satisfy basic standards of reliability and validity.

Preliminary research by the AIGR in the Northern Territory (AIGR 1998) and Queensland (Department of Family Services, Aboriginal and Torres Strait Islander Affairs 1996) has shown that Aboriginal people do gamble on these forms of gambling when it is available to them – but the extent of that participation, the types of gambling preferred by Aboriginal people, and the nature of commercial gambling impacts on Aboriginal communities have yet to be investigated systematically in any state.

Of particular concern is the extent to which commercial gambling (TAB betting, gaming machines) impact on Aboriginal communities, including the impacts on 'traditional' community based gambling (such as card games). The association between gambling and drinking also merits research attention.

The AIGR submits there are important considerations for any study of gambling by Aboriginal people. Similar research principles apply to the study of gambling in other cultural communities:

- Aboriginal people (and Asians, etc) are not a singular homogeneous group but diverse. 'Aboriginal' implies a uniformity of culture and history that is essentially misleading. Any study of Aboriginal people and gambling should pay detailed consideration to locale and local history.
- To facilitate understanding of this diversity, there is a need for comparative studies (between states, urban and rural communities, welfare dependent and economically self-sufficient, women and men, older and younger people).
- Gambling should be investigated sociologically as a social and cultural institution – not in a narrow sense as an economic transaction, as a behavioural 'disorder' or problem. Gambling is a social activity in which people invest meaning. Those meanings can be both positive and negative for that community. The research aim is to discover those meanings for particular groups.
- It is important, for example, that researchers are open to positive meanings of gambling for Aboriginal groups and not assume that frequent and time-consuming play is necessarily a problem.
- Any study of Aboriginal people and gambling should at least attempt an Aboriginal 'reading' of gambling grounded in ethnography – i.e. it should not be just a study about Aboriginal people and gambling. It should aim to be a study with Aboriginal people. Research should begin with their experiences and work from there – with community participation in every stage of research. This is an important methodological issue. Ethnography relies on the researcher having adequate knowledge of the community before he/she commences research. The first steps would be to ensure that the research team has an adequate understanding of aboriginal culture, social practices and traditions, then to obtain more specific

information from the community about its particular social composition, traditions, activities, etc. It also is essential to negotiate a research protocol with the community. Only then should detailed ethnographic research begin.

- Any communication with Aboriginal people (interviews, focus groups, field work) should be sensitive to the cultural language practices of that community (Steane, McMillen and Togni 1998).
- Policies related to gambling in Aboriginal communities should be developed with full collaboration and input of the community itself. Fundamental principles of self-determination and autonomy should apply. The Northern Territory's *Living with Alcohol* program is a model that has much to recommend it and may be adapted to gambling issues.
- Community education on gambling should be culturally appropriate for each particular Aboriginal group.

Online gambling

I support and welcome the Commission's assessment of the issues related to internet gambling (s17 of the Draft Report). I endorse the Commission's finding that 'managed liberalisation' is the most appropriate response for Australia, and strongly support the finding that a coordinated national approach is required.

However I note that the Commission has been concerned primarily with internet gambling and has given limited attention to interactive digital television or to sportsbetting.

- ◆ I submit that internet gaming is likely to remain a relatively small part of the gambling market. The greatest potential for commercial development and increased gambling participation is with interactive digital television. This already operates in the United Kingdom and is anticipated in Australia by early 2001. The capacity for this medium to develop and promote interactive sportsbetting will result in a rapid expansion of this form of gambling in Australia and other nations.
- ◆ If legalised, I predict that interactive television sportsbetting rapidly will become as popular as gaming machines are now. Under these circumstances, I submit that the Commission has understated the regulatory difficulties and underestimated the potential social impacts that will occur. Underage gambling, problem gambling,

privacy and security issues, and broader social and economic impacts in the community will escalate as the market grows.

- ◆ I must stress that my concerns do not reflect a preference for prohibition. While there may be very powerful ethical and moral arguments for this approach, realistically it is not a practical option. But there is an urgent need for concerted action to identify and address the issues. Delay will be very costly, both in economic and social terms.
- ◆ Before legalisation efforts must be made to develop comprehensive and proactive responsible gambling strategies appropriate for the new medium and gambling products before legalisation. We should learn from the lessons of the past and not wait until the problems become acute before reacting and ‘muddling through’.
- ◆ I refer the Commission to a recent ABC Radio program on sportsbetting (*Background Briefing* – Stan Correy, September 1999). For the Commission’s consideration I have attached two papers in which I briefly canvass the emerging issues; you will note I have raised more questions than answers.
- ◆ I also gave evidence to the Senate Select Committee inquiry into Online Gambling where I recommended application of Commonwealth legislation wherever appropriate (eg the *Trade Practices Act*, *Broadcasting Services Act*, *Privacy Act*). Recent reforms to these legislations have made them more relevant to the new technologies and e-commerce transactions. The involvement of existing Commonwealth agencies such as the ACCC and National Standards Council also is essential to strengthen coordinated regulation and uniform standards.
- ◆ I submit that a national working party (a task force) should be established without delay to identify the issues related to online gambling and to develop a national approach to address those issues. This working party should be comprised of representatives from state and Commonwealth governments (including gambling regulators, police and enforcement agencies, telecommunications and financial specialists), industry (both gaming and wagering), technical experts in online technology, security and digital broadcasting, and community groups (e.g. Australian Consumers Association, ACOSS, etc).
- ◆ The objective of the working party (and its sub-groups) should be to achieve:
 - a national regulatory framework

- national standards for consumer protection
- a mandatory industry code of conduct supported by a code administration body and a complaints resolution mechanism
- initiatives to achieve international cooperation.
- Cooperation by all relevant agencies is vital at both the national and international levels to allow for the sharing of regulatory strategies, enforcement techniques, cooperation in investigatory, operating and enforcement action, and a united approach to the development of consumer protection strategies and standards.
- In previous submissions I have recommended the establishment of similar national processes and a national standards authority for all forms of gambling. While I consider that issues related to online gambling have a particular urgency that require prompt action, initiatives and consultations on that specific issue should provide the basis for cooperative arrangements with a broader agenda.

Future research

The Commission's inquiry has brought into sharp relief the significant lack of reliable research in the field and the need for additional studies into various aspects of Australian gambling. I have previously expressed my strong preference for multidisciplinary team research, and the advantages of collaborative and comparative studies. To supplement the Commission's own suggested areas for future research, I submit a preliminary (but far from exhaustive) list of suggested issues for investigation includes:

- development of a consistent national data framework for all aspects gambling;
- establishment and maintenance of a national database – eg to compile profiles of people reporting for assistance with gambling problems, the efficacy of client support services and treatment programs, social and economic trends and impacts, etc;
- establishment of consistent data categories at regional, state and national levels to enable comparative analysis;

- while the Productivity Commission's report concentrates on problem gambling as an important social cost, other social benefits and costs should be identified and examined;
- historical studies of all forms of gambling to provide an understanding of their social and cultural origins, including regional histories. A report on the history of Australian gambling recently completed by the AIGR for the VCGA has identified numerous gaps in our historical understanding of Australian gambling;
- a comparison of different policy scenarios to assess their effects on gambling markets, industry practices and social impacts;
- comparative regional studies, utilising controls where possible to dilute the effect of externalities and other influences. The lack of regional impacts studies prevents an adequate understanding of the actual impacts of gambling on Australian communities;
- impact studies which assess the actual costs and benefits of gambling (rather than relying on estimates);
- a detailed profile and comparison of the various sectors of the gambling industries;
- development of reliable multipliers for measuring economic impacts;
- application and comparison of various economic models to allow assessment of their relevance and accuracy;
- a comparative and assessment of gambling tax systems in each state to examine issues of fairness, equity, efficiency etc. and to trace the allocation of gambling revenues by state governments;
- community studies, family studies;
- comparative ethnographic studies of different cultural groups;
- research collaboration with various stakeholders, including local government associations, welfare and community support groups, ethnic communities, other states;
- multidisciplinary and multi-method research which encourages triangulation of method, cross-checking and validation of data;

- development of an interdisciplinary framework which integrates the social and economic;
- layered research (eg modelled on Geographical Information Systems). For example, integrated analysis of data on social demographics (to identify “at risk” communities), density and distribution of gambling (numbers, type of gambling product), availability of community support services.
- the development of an integrated, multidimensional research framework that will be sensitive to the complexity and dynamics of this industry and its social impacts.

OnlineGambling: a Public Interest Perspective
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The current state of play

- ◆ While the current debate has centred on internet gambling, the main potential for future market growth is with interactive online gambling and sportsbetting through digital television. Most commentators have missed this important point – as did the Productivity Commission in its Draft Report (July 1999).
- ◆ Australia & overseas trends:
 - Several states/territories have recognised market potential & support market liberalisation (NT, Qld, ACT, Vic, Tas, Norfolk Is)
 - The current US approach recommends prohibition (National Commission & Kyl Bill). However, I predict that it is only a matter of time before commercial and political pressure will achieve legalisation in the USA. In the meantime, US legal authorities and commercial interests could make the situation very difficult for Australia. There have been several recent decisions in US courts that assert the right to prosecute overseas operators who accept online wagers from US citizens.
 - Europe is ambivalent and lacks unity on the issue. The Gaming Board of Gt Britain is opposed to online gambling; other European Union nations (eg Finland) have established online lotteries but have restricted participation to their own citizens.
- ◆ The policy options include:
 - restriction and/or prohibition
 - accept that it can't be controlled, and leave development to market forces
 - legalisation and attempted regulation (the most common Australian approach).

What are the issues?

- ◆ Online gambling is different from other forms of gambling
 - not site specific. Although it allows a local market, it is aimed primarily at cross-border gambling.
 - low capital outlay (cf. racing, casinos, pub and club gaming)
- ◆ This form of gambling signals the convergence of gambling, global telecommunications and global sport. While internet gambling will appeal to a limited and select market in the foreseeable future, interactive gambling via digital TV will have wide appeal and be accessible to all income groups and all nationalities.
- ◆ Technology & commerce are the driving force.
- ◆ Policy lag - governments are reacting to commercial developments, leaving the initiative to industry. State governments also appear to lack the technical expertise to take the lead in resolution of regulatory problems. The general trend is for regulatory

agencies to focus on controlling the gaming, not the medium – both are essential to an effective regulatory system (Tonneguzzo).

- ◆ Public concerns about social impacts can no longer be ignored by the industry (Productivity Commission 1999)
- ◆ Given the heightened political sensitivity on gambling issues since the Productivity Commission Draft Report, it is likely there will be a political backlash if the policy and regulatory frameworks do not meet community expectations
- ◆ Interstate competition, regulatory and policy failure (the Netbet scandal in Queensland) already are evident and likely to continue.
- ◆ Intergovernmental disputes seem inevitable (between states; between Australia and other countries - eg USA)

Policy Issues

Market opportunities and threats. Estimates of potential market size are little more than guesses. But experts confidently predict extraordinary and rapid market growth. Online gambling is being aggressively supply-driven, but it is important to recognise that this type of gambling, particularly sportsbetting, is landing on highly fertile ground. Australia is a sports-mad nation; when this is mixed with Australians' enthusiasm for gambling, rapid market growth seems assured. Indications are that Australians will embrace online gambling with enthusiasm, whether it is legalised in their own state or not.

- ◆ Similarly, the globalisation of sport and real-time telecommunications broadcasts of sports events throughout Europe, America, Asia, the sub-continent and Middle East suggest that the market is limitless. Australia is well positioned to achieve comparative advantage in this market, capitalising on Australia's international reputation for effective gambling regulation.
- ◆ The driving force is market supply, not consumer demand. As the Productivity Commission has noted, the push for recent gambling developments (eg EGMs) has been primarily supply driven.
- ◆ Threats arise from illegitimate operators who could discredit the whole industry, scandals associated with regulatory failure or unfair trading, cross-border disputes and litigation, and interstate rivalry.
- ◆ Policy fragmentation is a serious threat.
- ◆ Regulatory issues
 - I have argued consistently that the states are limited in their capacity to control this form of gambling
 - A coordinated national approach and Federal involvement is essential.
- ◆ Social issues
 - To date Australian governments are not losing large amounts of money in cross-border gaming but the potential domestic market is large, and inevitably states which do not legalise will lose revenue to those that do.
 - Moreover, if Australia does not legalise online gambling, Australian citizens inevitably will bet with overseas operators. This would result in Australia bearing the social costs of expanded online gambling without the capacity to control/regulate development or generate the revenues to address the problems that occur

- Export earnings from overseas markets and the associated tax revenue would bring economic community benefits.
- However by promoting online gambling to overseas nations Australia would be exporting the subsequent social problems. This raises ethical issues which most governments and operators seem reluctant to confront (eg to initiate tax sharing arrangements with 'host' nations)
- The major winners are likely to be the successful online gambling operators; the losers will be the residential communities of their clients.
- While Australia stands to achieve a comparative advantage in this lucrative global market, a crucial issue for policymakers is to assess the potential community benefit against the social costs.
- The Productivity Commission has recognised that many Australians are concerned at the recent proliferation of gambling opportunities with minimal community benefit. Sections of the community are asking if it is time to draw the line.

Regulation: Can we control this industry?

(for more detail, see Discussion Paper attached).

- ◆ Product integrity & consumer protection
 - state regulators are concentrating on regulating gaming, rather than regulating the telecommunications technology. Both are essential.
 - lessons from e-commerce re credit fraud, piracy etc.
 - who sets the standards? are they enforceable?
- ◆ Financial transactions
 - cross-jurisdictional financial transactions
- ◆ Taxation - uniform or competitive regimes?
- ◆ Controlling illegal operations
 - deterrence, detection, prosecution are beyond the powers of any state police service
- ◆ Impacts on other forms of gambling
 - cannibalisation, substitution or complementarity?
 - potential impacts on existing licence holders with exclusive monopolies should be assessed (TAB, casinos, lotteries, etc).
 - previous experience suggests that there will be a temporary substitution effect, but that expenditure on gambling will increase overall with new gamblers being attracted to the new forms.
- ◆ Legitimacy and consumer confidence
- ◆ Liability and privacy issues have not yet been adequately resolved.
- ◆ Advertising and community education. To date there is no adequate advertising code for Australian gambling operators. Cross border gambling via telecommunications media poses a raft of new issues that have not been addressed. Lasseter's Online Casino's self-imposed restraint on interstate advertising is merely a temporary measure in the current climate of uncertainty. Community education has not been addressed either by governments or industry.
- ◆ Social impacts: underage gambling, problem gambling, provision of necessary social services

- ◆ The issues will not be similar for all types of online gambling. Sportsbetting via interactive television, for example, raises different and in many respects more complex issues than does internet gaming.
- ◆ Prohibition is not a realistic option. While many would argue it is desirable on moral or social grounds, I am not convinced that it is possible.

A uniform national approach: what chance of success?

- ◆ Varied responses to the National Regulatory model for interactive gaming
 - a nation divided & competitive.
 - ◆ There are currently four Australian responses to online gaming (several states already have online TAB wagering and licensed sportsbetting):
 - NT: legalisation, not yet committed to the National Model. Voluntarily has agreed to accept bets from Australian citizens only within Lasseters' region of exclusivity (southern region of NT). Accepts bets from USA.
 - Tasmania: proposes legalisation, not committed to National Model. Will not accept bets from Tasmanian residents.
 - Qld, ACT, Victoria, Norfolk Island: legalisation, nominally committed to National Model.
 - SA, NSW: no formal announcement about legalisation.
 - WA: Premier is opposed to legalisation of online gaming. Whereas WA has been able to resist EGMs for various reasons, the state will not be able to avoid cross-border leakage to online gambling in other jurisdictions. The only available options are to control advertising within WA and prohibit operations in public places. But government has no control over gambling in people's homes.
- ◆ Constitutional and political constraints hinder effective state regulation.
 - limited state power over telecommunications, banking, transnational issues. These are Commonwealth constitutional powers, and are essential to regulating this form of gambling.
 - limitations of national sovereignty. Online gambling crosses borders and thus requires collaboration between jurisdictions for consistency and adequate coverage.
- ◆ The political environment
 - 'predatory federalism'; interstate rivalry and competition for larger shares of the gambling market. Reliance on gambling tax revenues undermines the capacity of state/territory governments to negotiate for the maximum tax return or effective regulation.
 - a coordinated national approach with Commonwealth involvement is required for consistency and the most effective regulatory system possible.
 - Commonwealth involvement has potential to become a 'states rights' issue. For example, resistance to Commonwealth actions and legislation by state/territory governments could proceed to the High Court.
- ◆ This form of gambling exacerbates the difficulty of balancing social costs with economic benefits.
- ◆ The Productivity Commission provides a concise summary of the issues and makes some important findings that could shape the future policy direction in Australia.

There are however some contradictions and inconsistencies in the Productivity Commission draft report:

- ◆ The PC acknowledges that gambling is 'different' from other industries; yet online gambling is seen to be like e-commerce. The potentially exploitative nature of gambling is magnified with the home accessibility and ease of online interactive gambling.
- ◆ The PC concentrates on internet gambling; this is currently a relatively small market and is likely to remain so. The PC fails to grapple with the potential and imminent arrival of online interactive television (or mobile phone) gambling – eg interactive sportsbetting.
- ◆ The PC's comment 'to mimic the principles applying to other gambling forms' underestimates the importance of an effective regulatory regime specific to the medium. Online gambling is fundamentally different – regulation 'along the lines of regulations applying to other gambling forms' will be inadequate. I am not as confident as the Commission that regulatory arrangements currently being proposed give adequate attention to enforcement strategies and resources. From a public interest perspective, it would be dangerous and costly to underestimate the importance of regulating the technology and global financial transactions in achieving consumer confidence and protection of existing licensees.
- ◆ The PC's comment that there will not be 'significant tax losses' fails to acknowledge the potential cross-border leakage from states that do not legalise this form of gambling (eg WA). Nor does it address the tax inconsistencies which already have emerged in various states with online gambling (eg proposals of 50% in Victoria and Qld, 8% in NT; 4 % in Norfolk Island). An interstate 'tax war' which deprives Australian communities of these revenues will primarily benefit the commercial investors.
- ◆ Suggestions that the problem gambling and access by young people are 'not significant' and are relatively easily managed are inconsistent with the PC's own findings or with the future reality. It can be conceded that some critics of online gambling may have exaggerated and inflated claims. But access and availability to low income groups have been identified as important factors in the increase in problem gambling. And while internet gambling may have little appeal for youth (ACOSS 1997), the introduction of gambling (especially sportsbetting) through digital TV will be highly attractive to both young people and low income groups. Hence a concerted effort should be made to develop and strengthen appropriate proactive responsible gambling strategies before online operations begin.

The way forward

- ◆ Community consultation: the absence of community consultation and input to the policy process is of grave concern.
 - public acceptance is essential to legitimacy and consumer confidence.
 - Consumer education is essential and urgent to inform the public about their rights, how to differentiate legitimate operators from unlicensed online sites, etc.
- ◆ The essential role of the Commonwealth Government:
 - collaborative federalism rather than imposition of Commonwealth authority
 - a national approach using all the nation's policy resources

- ◆ establish national standards (technical standards, responsible gambling, consumer education) – an industry council plus ACCC oversight.
 - ◆ a mandatory industry code of practice that is enforceable through the ACCC
 - ◆ privacy provisions under the Commonwealth's amended Privacy Act to ensure that the Australian industry conforms with the highest international standards
 - ◆ a national standards review agency to receive and resolve consumer complaints
 - ◆ effective enforcement strategies which utilise national and state police, technical expertise, etc.
 - ◆ initiate international agreements to prevent disputes with other countries. This issue must be addressed at a global level. Australia should take the lead in international forums to achieve international agreements and protocols.
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- ◆ Australia has one chance to get it right.
 - ◆ While the US debates its policy options, Australia has a comparative market advantage. But the social and political risks of hasty and inadequate action by one state/territory could jeopardise the reputation and legitimacy of the whole Australian industry.
 - ◆ State/territory governments should put aside their short-term parochial pursuit of competitive advantage to collaborate in the national interest;
 - ◆ Social issues must be given equal priority with economic imperatives. Online gambling presents opportunities for innovative responsible gambling initiatives, but it also presents a greater potential for harm than site specific gambling.
 - ◆ Global technology requires a national response supported and guided by the Commonwealth Government. In the climate following the Productivity Commission draft report, Australians will be looking to the Commonwealth Government for moral and policy leadership in the national interest.

**SPIRT grant: sportsbetting and Internet gambling.
Preliminary research issues for discussion**

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To provide an initial focus for discussion, this paper highlights some of the research and policy issues which arise for governments, operators and the community out of interactive and Internet gambling. It raises questions about the implications of new technology and gambling for each of the following factors:

- The history of sportsbetting and internet gambling
- the current understanding of the new gambling technologies, their potential and problems
- cross-border gambling issues
- integrity of gambling services and products
- taxation
- financial transactions
- controlling illegal operations
- the impacts on existing gaming licensees
- legitimacy and consumer confidence
- liability and privacy issues
- advertising, consumer education
- social impacts: the potential for underage gambling, problem gambling and support services
- the political environment
- intergovernmental relations, interstate competition, the advantages and disadvantages of a uniform regulatory approach.

1. The history of sportsbetting and Internet gambling

- What is distinctive about this form of gambling? why has sportsbetting been illegal in Australia, yet maintained its popularity?
- case studies of illegal activities in Australia, cheating & corruption, regulatory issues & policy responses (state by state).
- sportsbetting in other countries
- recent trends and events, the emergence of internet gambling (NT licensed operators, off-course bookmakers, casino 'sportsbooks')
- the merger of gaming and betting, telecommunications and gambling - eg the use of new media and technologies in gambling, the privatisation of betting operators (TABs) and their move into gaming

2. The current understanding of the new gambling technologies, their potential and problems:

- Several governments have devoted attention to the issues of interactive and Internet gambling (*The NZ Department of Internal Affairs Review of Gaming series 5; the NZ Casino Control Authority; the NT Select Committee on Interactive Television Gaming; Parliament of South Australia Social Development Committee;*

¹ THIS PAPER IS CONFIDENTIAL – NOT FOR PUBLICATION

Australian Regulators Working Party). Their published reports and papers provide a summary of the current understanding of the issues among regulators.

- A useful background document for this SPIRT application is the *Draft Regulatory Control Model for New Forms of Interactive Home Gambling*, produced by the Australian Regulators Working Party (16-5-97).
- Industry has demonstrated the commercial potential of the emerging technology for gambling development. The technological aspects of this new form of gambling appear are well in advance of the policy framework.
- Basic questions to start discussion are: what are Internet and interactive gambling? How do they differ from conventional site-specific (terrestrial) gambling?
- To what extent are these forms of gambling available now? What are the current impacts on regulation? What is the market potential?
- Commercial growth, product development

3. Cross-border gaming issues

- What are the issues of cross-border gambling for Australian states? ie. the implications of legislation in other nations (the Kyl Bill, EU policies); the impacts of Internet gambling providers located overseas, or in other states. Australia considers Internet gambling as part of E-commerce; the US does not, and the Kyl Bill proposes prohibition.
- Are the issues similar for all types of gambling? (e.g. lotteries, casino gaming, sports betting)
- To what extent are existing legislation and regulations effective and relevant? What are their limitations?
- What is the most appropriate (and effective) policy response:
 - * to ensure that comparable gaming activities are available within the home jurisdiction and thus hope to minimise cross-border leakage (eg Finland)?
 - * to attempt to restrict or ban cross-border gambling? (the Kyl Bill)
 - * to attempt to restrict participation by local residents but provide access for non-residents (the Tasmanian approach)?
 - * or to achieve intergovernmental agreements which ensure common agreement over the forms of gambling and the return to the country/state from which the wager originates? (the National Control Model)
- Are there lessons to be learned from other policy areas?

4. Integrity of gambling services and products

- What are the critical areas of regulation to ensure product integrity, consumer protection, security, privacy, etc?
 - * Integrity of the game/sport. Examination of policies established to ensure the integrity of the events (models of state regulation, self-regulation).
 - * Comparison of regulatory models - eg. racing would be an example where a regulatory system has been established to ensure the integrity of the sport. Other sports associations? (ACB, etc)
 - * The possibility of bans imposed by other governments and/or sporting bodies (eg IOC, NRL participants)
 - * Regulation of off-shore events
- Integrity of the Internet operator - licensing criteria and processes. Are they adequate? How do they differ from the requirements of conventional gambling licences?

- Where is the contract placed?
- What are the implications for the validity of current exclusive licences (eg. casino games, Keno, TAB licences).
- Cross-media ownership issues: (eg. X owns a media network, operates a sportsbook, & owns a sports team).
- Integrity of the Internet transactions - technological issues, monitoring, identity issues, financial safeguards, credit policies, security
- What mechanisms are currently available to achieve these regulatory goals with cross-border gambling? Are they effective? ie. is it possible to simply adapt existing regulatory regimes, or are new methods and procedures required? (eg. for software/product testing).
- Who sets the standards? and are they enforceable? And should common standards apply to all forms of gambling?
- Should there be a set a national set of technical standards? The Draft Regulatory Model recommends a Uniform Enforcement Code for the states - but to what extent are such codes an effective regulatory strategy?

5. Financial transactions

- How are cross-jurisdictional financial transactions conducted and regulated? How do Australian banking procedures affect Internet gambling transactions? What are the implications of credit card transactions?
- What safeguards are in place to protect the gambler, and the licensed provider? Are Internet commercial transactions secure?
- What identity checks are in place? Are they adequate?
- How are default payments resolved? Is there a role for Federal authorities in regulation of international financial transactions and banking arrangements. Licensed service providers would expect governments to provide adequate procedures and safeguards so they can operate their business with confidence and certainty.
- What auditing trails are in place? Are they adequate?

6. Taxation

- To what extent are Australian state governments losing revenue through cross-border gambling? Is this potentially a major problem?
- What is the most effective way to tax interactive and Internet gambling?
- Who should be the source of taxation - provider or user? What are the advantages and disadvantages of each approach?
- The tax arrangements proposed in the Draft Regulatory Model enable state governments to provide tax advantages to attract service providers to their state. Is this in the national interest? Or can (should) a common agreement about tax rates be achieved? Currently Australian jurisdictions have widely varying tax rates, and without a national approach it is likely that tax inconsistencies and concessions for competitive advantage will prevail. What will be the effects on fiscal policy and social welfare?
- What procedures are required to prevent/discourage tax evasion and money laundering via interactive and Internet gambling?
- Is there a need for international agreements on auditing and tax issues? If so, how can they be achieved?

7. Controlling illegal operations

- How can illegal operators be identified? Who should be responsible for enforcement of licensing requirements and prosecution of offenders?
- What enforcement procedures are in place to detect and prosecute illegal operators? Illegal operators pose an obvious threat to legitimate operators and the tax system, in much the same way as SP bookmakers have done in the past.
- Are deterrents and surveillance likely to be as effective as with site-specific gaming?
- Is technology (eg. encryption, digital signatures) an asset or a potential problem in this area?
- Are the policing and legal systems equipped to deal with the new gambling technologies? How can they be improved?

8. The impacts on existing forms of gambling

- What effects will interactive gambling have on established forms of gambling? Will it further expand the market or cannibalise from other forms of gambling? Who is likely to benefit and who will lose?
- To what extent will the new technologies erode the value of existing site-specific gambling licences? How are licensed operators likely to respond? eg. alliances are already being formed which suggest product diversification and a drive for export markets by the most powerful commercial groups.
- Commercial alliances could alter the power balance between regulators and operators - with what potential effects?

9. Legitimacy and consumer confidence

- The public does not yet appear to fully trust commercial transactions on the Internet. Gambling has always been sensitive to public perceptions of potential fraud and crime. Legitimacy and public acceptance have been achieved only when assured that stringent regulations are in place (long-standing opposition to pokies and casinos illustrate the point).
- Are there particular issues related to sportsbetting and Internet/interactive gambling which require specific regulations to ensure public confidence in the system?
- What steps have been taken in consumer protection and consumer education

10. Liability and privacy issues

- The Draft Regulatory Model places the onus on service providers to validate the *bona fides* of cross-border clients, with provision for penalties if they fail to do so. This seems to be intended to prevent operators from accepting bets from jurisdictions where gambling is illegal. How will this be enforced and monitored? And in an increasingly competitive environment, will service providers be tempted to sidestep this requirement?
- Who is liable for technological failures - eg. software problems? The regulator who licensed the service provider, or the operator? And how will the rights of international clients be safeguarded?

11. Advertising, consumer education

- The problems with cross-jurisdictional restrictions on advertising already have created tensions between Australian governments. What are the regulatory and constitutional issues? and can they be resolved?
- How can consumers differentiate legitimate operators with high standards from others? What is being done to caution consumers, educate them about their rights and options?

1. Social and economic impacts

- What are the impacts of sportsbetting, internet/interactive gambling on:
 - * crime
 - * employment
 - * leisure patterns
 - * household spending
 - * socially disadvantaged groups
 - * retail
 - * government revenues
 - * health and welfare

2. The potential for underage gambling, problem gambling and support services

- Community groups predict that interactive and Internet gambling will increase problem gambling and encourage underage gambling. The Draft Regulatory Model recommends a number of procedures: prohibition of credit betting, provision for self-exclusion, proof of identity and reference to problem gambling support services. Are these adequate? and how will compliance be achieved?
- What responsible gambling policies and practices have been implemented? - consumer education, consumer protection, underage betting, problem gambling issues & policies
- As recommended by the ABA for television, classification schemes and community education could assist consumers & parents to make informed judgements and control access. Are such strategies effective? Will they satisfy community standards? Is there need for a national standards review body to receive public complaints?
- Or is censorship or prohibition necessary on some issues? is it feasible?

14. The political environment

- Inevitably, regulation of cross-border gambling in Australia will be seen as a states rights issue, just as it has been in the United States. Other commentators have argued that some key issues are beyond the power of state governments to control. For example, authority over international financial transactions, banking and telecommunications remains the constitutional power of the Commonwealth. To what extent is there Federal involvement in sportsbetting/Internet gambling? What steps have been taken to achieve a collaborative regulatory regime?

15. Regulatory models and options

- The fundamental question is whether Internet and interactive gambling can be controlled. Most Australian regulators seem to agree that it can never be completely controlled. However, the SA Select Committee and Independent PM

Nick Xenophon, Senator Grant Chapman & the WA Premier have called for prohibition. Certainly the degree of control which has been achieved over site-specific gambling is not possible with cross-border gambling. But can it be controlled? to what degree?

- The basic principle underlying the Draft Model is one of intergovernmental cooperation and agreement between Australian state governments. But are state governments likely to adhere to the agreed policies, standards and procedures over time? Or will interstate rivalry, pressures from local service providers and competition for market advantage persuade one (or more) government to break ranks? The history of intergovernmental relations and industry policy in Australia suggests that this is very probable, sooner rather than later.
- The Model involves a blend of government regulation (via legislated standards, licensing and auditing) and self-regulation by service providers and their clients. Is self-regulation feasible? - ie. development of standards and procedures which are nationally and internationally agreed, which allow operators and citizens to make choices and regulate their own behaviour. Such procedures and mechanisms could include Codes of Practice, protective protocols, etc similar to the ACCC's recommendations for commercial activity on the Internet. Are these strategies likely to be effective with sportsbetting/Internet gambling?
- Is the approach proposed in the Draft Regulatory Model that which is most likely to be effective? Or the Northern Territory and Tasmanian models?
- What are the alternative models? Given the current political-legal climate are these likely to be acceptable to governments or regulators?
- And will the proposed Model ensure common standards when dealing with international processes and agencies?
- What steps have been taken to achieve international agreement on these issues?
- What are the implications for national sovereignty?

Methodology

Yet to be developed, and will depend on the specific research issues which the project will address.

However, to examine consumer behaviour and attitudes, social impacts, etc. the methodology should include:

1. Surveys (Qld and NSW, urban and rural samples) to measure and assess:
 - Consumer participation in sportsbetting/Internet gambling (types, expenditures, frequency, etc.)
 - Customer requirements, attitudes
 - Levels of consumer confidence (of E-commerce in general, sportsbetting/Internet gambling in particular)
 - Levels of consumer understanding, knowledge of the 'odds'/takeout, deduction rates, etc. How do these affect betting preferences?
2. Focus groups to elicit more detailed qualitative data.

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