



AUSTRALIAN INTERNET BOOKMAKERS ASSOCIATION

**Productivity Commission  
Inquiry Into Gambling**

**Submission**

**by the**

**Australian Internet Bookmakers  
Association**

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## Contents

1.	Executive Summary	3
2.	Introduction	6
3.	Trends and Developments since 1999.	7
	Previous Commission Report	7
	Gambling Policy Principles	7
	What is Internet gambling?	8
	Trends and Developments since 1999	8
	Commercial Developments	8
	International Regulatory Overview	10
	Europe	10
	United States	12
4.	Internet Gambling, Responsible Gambling and Problem Gambling	15
	Definition of problem gambling	15
	The Prevalence Studies	16
	The internet and Responsible Gambling	26
	Access by Children	26
	Access to Betting History	26
	Problem gambling exclusions	27
	Problem gambling controls	27
	Codes of Conduct	27
	Exclusions by family members and others	28
	Proposed new measures	28
	Other Issues – Credit betting	29
	Credit cards	30
	Credit betting	32
	Free bets and inducements	33
5.	The Interactive Gambling Act	35
	Poker in Australia	37
	The IGA and other Interactive Gaming products	42
	In-Run betting	42
6.	Regulatory Structures and Taxation	45
	Racing product fees	45
	The problems with the legislation	46
	The Application of the Legislation	48
	“Tote Odds” products	53
	Sports Product Fees	56
7.	The Way Forward	57

## 1. Executive Summary

The Productivity Commission's 1999 Report engendered a profound cultural shift towards gambling in Australia. The adoption of its recommendations, especially the policy focus on problem gambling, has led to marked improvements in the way gambling is approached by the community, regulators and providers.

It is suggested that the basic principles remain valid, although there are several areas where the regulatory response urgently needs reform.

The term "Internet gambling" is very broad and encompasses all forms of gambling delivered by way of the internet (and similarly, other interactive technology). Accordingly, it is important to appreciate the use (and misuse) of "internet gambling" when assessing commentary.

As predicted by the Commission in its 1999 Report, internet gambling in Australia and overseas has continued to grow. However, the industry is today is markedly different to the industry of 1999. Then, the industry was still at an early stage of its development with high growth rates and any number of "start-ups" and new entrants joining the industry. It is more now mature.

The international developments in regulation show a transition from a debate between prohibition and regulation, to issues about the terms of regulation. This process is marked by disputes over access to markets. Different countries have taken different approaches.

Prevalence studies suggest there is a risk of problem gambling associated with internet gambling. The risk arises with both the nature of the activity and from the nature of the internet.

The Australian Internet gambling industry is subject to a range of stringent regulatory controls to ensure responsible gambling. The Internet platform offers a number of advantages in the delivery of responsible gambling strategies. This Association would recommend consideration be given to enhanced responsible gambling measures. These are:

- (1) *the establishment of a dedicated Australian online advice and counselling service.*

This would be a resource for all Australian gambling operators and not exclusively for the use of online operators. This site would represent world's best practice in terms of providing information and advice about detecting and recognising problem gambling. It would be mandatory for all Australian Internet gambling providers to provide a link to the site.

- (2) *The requirement for all online gambling providers to offer their clients with a facility to set pre-commitment levels of expenditure.*

This facility would provide players with the option of setting:-

- bet limits
- deposit limits; and/or
- loss limits

as they see appropriate. These limits could not be changed for certain specified period.

(3) *Nation-wide exclusions.*

Currently a person who feels they are developing a gambling problem may seek exclusion from a site. However this has to be done on a site-by-site basis, requiring applications to be made to all operators with whom the person has a gambling account. It is proposed consideration be given to a means of implementing a national exclusion process whereby exclusion for problem gambling from one site would see the exclusion extended to all.

The Australian Internet gambling industry has been the subject of criticism for allowing credit betting and for “free bet” offers. Although this Association supports the principle that all gambling providers should broadly be subject to similar responsible gambling controls, the use of credit cards shows that this principle must also be balanced with the realities of the particular gambling type.

In the case of Internet gambling and e-commerce, credit cards remain the principal form of payment. Any ban on credit card usage would impact disproportionately on the benefits to recreational gamblers who constitute by far the vast bulk of online gamblers.

While credit betting offered by bookmakers is an area that needs more research, it appears sensible to maintain the benefits to clients of credit betting but continue to set broad controls.

The Interactive Gambling Act (IGA) makes it an offence to provide certain interactive gambling services to customers physically located in Australia. The problem is that the Act is unenforceable, and so operators outside of Australia have ignored it. Practically, only local gambling companies are bound by it.

The experience with poker in Australia underlines the weakness of the IGA in preventing Australians accessing offshore gaming sites, and also the flaws in the current advertising restrictions. The Australian poker market is very large and growing. This Association is of the view that regulation is far preferable to prohibition in tackling problem gambling. It seems more sensible to allow Australian players to play on Australian sites under Australian control and offering Australian responsible gambling strategies.

This Association recommends that the *IGA* be amended to allow the provision of online poker services and other gaming products to Australians by Australian operators. A further reform that should be made is to amend the current restriction on Australians being offered “in the run” betting services online. This is an anomaly which should be corrected.

It is in the area of regulation and taxation where the deficiencies in the Australian response to Internet gambling are most apparent. Internet gambling allows for cross-border betting, and the States are struggling to develop State-based laws that would apply effectively to the national market for wagering products.

The High Court’s *Betfair* decision set out the basic principles against which legislation must be framed. Internet bookmakers contend these conditions have not been met and unfair and arguably illegal schemes are the result.

Excessively high fees are neither sensible nor sustainable. They invite legal challenges which are costly to all parties and counter-productive to the best

development of the Australian racing and wagering industries. They will lead to years of uncertainty.

Artificial arguments have been used to portray corporate bookmakers as a threat to racing funding so as to justify higher product fees for corporate bookmakers, and to restrict them from offering "tote odds" products. These concerns have no foundation and are part of a campaign to protect the TABs from competition

By contrast, the bookmakers and the major Australian sporting bodies have developed a simple *national* scheme, supported by Agreement and without the need for legislation. The key features of these agreements include:

- agreement on bet types;
- protocols regarding integrity and alerts about suspicious betting patterns. The sporting bodies are empowered to make further enquiries of the betting operator.
- a share of the revenue received from gambling on their sports.

It seems sensible that the national Australian wagering market should be regulated on a national basis. In other words there should be a national model for the payment of product fees to the racing industry.

The question is how to establish a process that can fairly takes account of the interests of all stakeholders, and avoids the kind of political trade-offs identified by the Commission in its 1999 report.

This Association believes that an objective and fair assessment of the facts of the industry would be particularly useful.

To this end, it is recommended that the Federal Government and the State and Territory Racing Ministers jointly issue a reference to either the Productivity Commission or the Australian Competition and Consumer Commission to examine the various issues around the product fees and the funding of the racing industry.

The reference would provide boundaries within which the stakeholders can resolve their differences and develop a national model for industry funding.

## 2. Introduction

This submission is made on behalf of the Australian Internet Bookmakers Association.

The Association represents many of the leading Australian internet bookmakers including the ASX-listed Centrebet and IASbet. With Members who were pioneers in internet gambling, several who have over ten years experience in the industry, and who have an international as well as Australian profile, it is able to offer factual and accurate commentary on the current trends in internet gambling.

Although this submission will touch on most issues and questions raised by the Commission, it will do so from an internet gambling perspective<sup>1</sup>.

This Association supports the basic principles and policy positions espoused in the Productivity Commission Report 1999.

Experience has shown the findings and recommendations of that Report to be sound. The Report engendered a profound cultural shift towards gambling in Australia. The adoption of its recommendations, especially the policy focus on problem gambling, has led to marked improvements in the way gambling is approached by the community, regulators and providers.

It is suggested that the basic principles remain valid, although there are several areas where the regulatory response urgently needs reform.

This submission will

- (1) outline the key trends and developments in the Internet gambling industry;
- (2) examine the risks for problem gambling posed by the internet and interactive technology;
- (3) propose enhancements for the delivery of responsible gambling strategies in the area of Internet gambling;
- (4) propose changes to the *Interactive Gambling Act* in order to better achieve the principal policy objective of combating problem gambling
- (5) outline difficulties emerging in the treatment of the national wagering market caused by state-by-state approaches to taxation and regulation. The High Court's *Betfair* decision has brought to the fore latent problems with a state-by-state approach.
- (6) propose a process for developing a National Model for the delivery of integrity protocols and the payment of product fees with respect to betting on sports and racing.

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<sup>1</sup> Detailed comment on specialist issues such as the adequacy of counselling services, the scope of research and the methodology used, are better the area for comment by those with specialist expertise.

### 3. Trends and Developments Since 1999

#### *Previous Commission Report*

Experience has shown the merit of the Commission's previous Report. Its findings have had an international as well as national impact, with the Report being regarded as one of the pre-eminent studies in this area.

It provides a benchmark against which to gauge the success of steps taken since its publication.

#### *Gambling Policy Principles*

It articulated certain principles that should continue to shape all gambling policy –

*Gambling is regulated differently than other industries to:*

- *Promote consumer protection;*
- *Minimise the potential for criminal and unethical activity; and*
- *Reduce risks and costs of problem gambling.*

and

*The overall policy for gambling needs to be directed at reducing costs of problem gambling and promoting harm minimisation and prevention, while retaining the benefits to recreational gamblers.*

It is suggested these statements remain valid today and should be the cornerstones for the assessment of past success and for future reform.

The other conclusion from 1999 that warrants mention is that, consistent with those principles, the approach for the regulation of internet gambling should be one of 'managed liberalisation'. The Commission found managed liberalisation would have harm minimisation and consumer protection as its chief goals. It would require the regulation of Australian sites and bans on offshore sites which do not meet minimum consumer protection standards.<sup>2</sup>

The Commission found

*A key advantage of managed liberalisation is that it allows the development of measures to counter the problems occasioned by gambling in a way that is consistent with other codes – and possibly, more successful.<sup>3</sup>*

...

*Regulation of online gambling under this 'managed liberalisation' model has mutual advantages for consumers and operators, and creates a market which drives the unscrupulous operators – the 'lemons' – out of the market.*

*Consumers know that regulated sites will guarantee payment, have secure databases, meet privacy concerns, have fair games and be managed by people of good character. They will also know that the site has been designed to increase their informed consent – with features such as self-imposed limits, records of transactions and self-exclusion. They face few incentives to seek to circumvent blocking to illegal offshore sites which may appear to be a little cheaper, but where the quality of the goods is suspect.*

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<sup>2</sup> Ibid. p. 18.57

<sup>3</sup> Ibid.

This conclusion is more compelling today and, as shall be discussed later in this submission, should be adopted as the appropriate policy position in this area of gambling.

### *What is Internet Gambling?*

The term “Internet gambling” is very broad and encompasses all forms of gambling delivered by way of the internet (and similarly, other interactive technology).

However, this term can be of limited use depending on the context in which it used, as it embraces all of the different forms of gambling that have different characteristics, appeal to different segments of the market, and, in the context of problem gambling, present different risk profiles.

For example, it picks up internet gaming – which includes simulated casino games, interactive poker and lotteries, but it also includes internet betting on sports, racing and other future events. Recognition that there is a different risk profile for each form of gambling was the basis for the exemptions granted to wagering and lotteries by the Commonwealth’s *Interactive Gambling Act*.

Finally, it should be noted that the *formal* “internet gambling industry” in Australia is – in theory at least – made up only of internet wagering (and the sale of lottery products online).

Accordingly, it is important to appreciate the use (and misuse) of “internet gambling” when assessing commentary.

### *Trends and Developments Since 1999*

The following comments are intended to give a broad overview of developments since 1999. For brevity, they are general (greater detail is available) and they focus on international trends, especially in the commercial and regulatory areas.

Developments in responsible gambling delivery will be considered in the following Chapter.

The aim of these comments is to give some perspective to the policy conversation about the Australian internet gambling experience. Internet gambling is a global phenomenon and Australia cannot act in isolation to the global market. Policy decisions must take account of how Australians currently interact and will, in the future, interact, with the global internet gambling industry.

#### *(1) Commercial Developments*

As predicted by the Commission in its 1999 Report, internet gambling in Australia and overseas has continued to grow.

Its principal driver for growth remains consumer demand. Internet gambling has been successful because it is able to deliver consumers better value and better service. It is innovative and offers a greater and variety of betting options.<sup>4</sup> (As will be seen,

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<sup>4</sup> Centrebet may offer up to 8,500 betting options a week.



market expectations is also leading to the adoption of new responsible gambling initiatives by operators.)

However, the industry is today is markedly different to the industry of 1999. Then, the industry was still at an early stage of its development with high growth rates and any number of “start-ups” and new entrants joining the industry.

Now, it is more mature and, some 10 years later, certain trends can be identified:-

- The industry is now mature and is undergoing consolidation. Smaller operators have either gone out of business or been acquired by larger operators;
- The global market is increasingly dominated by large overseas operators. There is greater importance on “brand recognition”;<sup>5</sup>
- The “one-stop shop” business model is now followed as the global standard. For an operator to be competitive, it is increasingly important to offer the full suite of gambling products – sports and race betting, casino games, and poker and, to a lesser extent, games such as bingo and “skill games”.
- The combination of the above factors means there are now significant barriers to entry for new entrants to the market;
- There have been technological improvements in the delivery of the gambling experience including enriched graphics and more interactive games. There is also the attraction of “information rich” sports betting sites, and the “streaming” of vision of the game or event is more widely offered;
- “Chat rooms” and other communication features are more common;
- There has been the emergence of various forms of “e-cash” and other payment methods designed for online transactions;
- Gambling products are now delivered by mobile phones -- many of which provide a mobile method of accessing the Internet -- along with interactive television;
- There is a greater choice of games as operators are able to exploit the flexibility of the technology to refresh old games and offer new ones;
- On the other side, technology has also worked to assist consumers by offering greater transparency on prices. “Odds comparison sites” enable consumer to compare the prices offered by bookmakers from around the world on a particular event. As well, competition means the Return-to-Player percentage of, say, simulated gaming machines, is higher than in a land-based venue. The internet offers a player an immediate comparative “snapshot” of the various gambling products;
- The above factors mean operators are working harder to remain competitive, in an environment where there is greater pressure on margins.<sup>6</sup>

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<sup>5</sup> In 2005 Prof Mark Griffiths and Andrew Barnes from the International Gambling Research Unit at the Nottingham Trent University gave a paper entitled “*Internet Gambling: An Online Empirical Study among Student Gamblers.*” This survey found most Internet gamblers (90%) preferred to gamble with “high-street bookmakers’ websites.

<sup>6</sup> “A cursory glance at the results recently posted by a number of the leading online betting companies, reveals a picture of intense competition; reflected in increased operating costs and marketing budgets, high customer acquisition costs; reduced yields per player and reduced revenues and profitability.” Niall O’Conner, “Analysis”, BettingMarket.com, 2009

In addition to these factors, internet gambling may be expected to increase as the proportion of the population comfortable with interactive technology increases.

If this is so then serious challenges are posed for Australia's current regulatory approach.

### *International Regulatory Overview*

The international developments in regulation show a transition from a debate between prohibition and regulation, to issues about the terms of regulation. This process is marked by disputes over access to markets.

Different countries have taken different approaches.

#### *Europe*

The argument in Europe has moved away from considering prohibition or licensing towards what type of licensing is acceptable under European Union law.

The EU Member countries show the whole spectrum of possible responses to the challenges of Internet gambling.

The United Kingdom, for example, conducted a thorough policy review of its gambling industries, leading to the establishment of a new regulator, the UK Gambling Commission, and a new licensing regime for all forms of gambling. It has established an open market including allowing licensed operators from within the European Economic Area to advertise freely in the UK. This permission extends to jurisdictions outside of the EEA when they are "white-listed". Tasmania has been white-listed.

In contrast, other European countries such as Sweden and Germany have attempted to create barriers to competition in order to protect the local gambling monopolies. In Germany, legislation was passed (1) prohibiting games of chance on the Internet, including sports betting; (2) imposing advertising restrictions and (3) prohibiting financial institutions processing payments relating to unauthorised games of chance. Legal challenges to this regime have been made.

In France, enforcement action was taken with the arrest of executives from some gambling firms.

Norway (a member of EFTA) also moved to establish a payment transaction ban.

These differences in approach have led to disputes between European gambling operators and some countries, which have worked their way through the courts to the European Court of Justice.

The European Court of Justice articulated a set of principles in a series of cases brought before it.<sup>7</sup> The European States can derogate from their duties under the Treaty to allow freedom to provide services throughout the European market only for demonstrable overriding public interest considerations. Regulations were permissible to

- prevent crime and to ensure that gamblers would be treated honestly;

<sup>7</sup> See the ECJ decisions in *Lara*, *Zenatti*, *Schindler*, *Gambelli* and *Placanica*.

- to avoid stimulating demand in the gambling sector which has damaging social consequences when taken to excess. However it cannot prohibit access to its markets when it permits the provision and advertising of gambling services by its own operators. The response must be even-handed and proportionate;

Notably the protection of the revenue base for funding socially useful projects was not, on its own, an acceptable justification for a restriction. Likewise, the protection of consumers from fraud was an acceptable public interest objective, but only if the national court established that they were not sufficiently protected by the rules applicable to the foreign bookmakers. Any restriction imposed had to be proportional to the aim to be achieved and must not go beyond what is necessary to achieve that object.

In March 2007 the ECJ in *Placanica* ruled that a Member State “may not apply a criminal penalty for failure to complete an administrative formality where, in breach of Community law, such completion is refused or rendered impossible by that Member State.” In other words, the unavailability of local licenses did not preclude lawful access to the market.

In the light of this line of decisions the European Commission has sent official requests for information to 10 countries - Austria, Denmark, Finland, France, Germany, Greece, Hungary, Italy, Sweden and the Netherlands - seeking advice on compliance of aspects of their laws with their European free trade obligations. Consequently, several countries have liberalised or are in the process of liberalising their gambling markets.<sup>8</sup>

This is not to say that progress has been, or will be smooth.

In March 2009 the European Parliament adopted a report by its Internal Market Committee arguing that the rules governing online gambling should not be laid down by the European Union but by individual member states. The Report called on the European Council to seek a “potential political solution” to the problems of online gambling. The Report argued that online gambling is easier to access than traditional gambling, increases the risk of fraud, crime, gambling addiction, and poses dangers to children and the integrity of sporting events.

The report called for studies and proposals from the Commission to identify “common objectives” and a “common position” on cross-border betting to enable action to be taken to solve the social and public order problems such as gambling addiction and the misuse of personal data or credit cards. It also backed the development of standards regarding age limits, a ban on credit, and measures to inform or protect vulnerable gamblers. The Report recommended that governments take steps to ensure sports receive fair financial returns from gambling conducted on those events.

The report has been criticised on several levels.<sup>9</sup> On the one hand it has repeated many concerns that have already been addressed by regulation. It is also has put

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<sup>8</sup> See for example, Spain, Italy and France. In October 2007, Sweden's governing party voted at its annual conference in favour of the liberalisation of the Swedish betting market including the sale of the government owned operators Svenska Spel and ATG.

<sup>9</sup> The suggestion that online gambling increases the risk of fraud, crime and risks to the integrity of sports events has been challenged.

forward a confusing call for resolution. The Commission is being urged by some to define specific rules for gambling and online casinos, while some members contend existing agreements cover the topics.

The report reflects the diverse approaches of the various countries. Some observers suggest the issue has grown too large for a solution to come from the courts, and that a political agreement must be reached. Some members want individual States to be able to determine their own structure, while others say the Union exists to reach solidarity on such problems. The Report is a milestone in this debate.

Taxation will be a major issue. Under current conditions, countries such as the UK, which licenses operators, collect revenue, while countries providing the players see no revenue. France has moved to open its gambling market, but insists all licensed Internet gambling sites will pay French tax, regardless of base location.

European reform continues, albeit slowly.

### *The United States*

The US has taken a strong stance against internet gambling and its experience is a useful illustration of the effect of prohibition.

The US passed the Unlawful Internet Gambling Enforcement Act (UIGEA) in 2006. This Act would ban the processing of payments related to internet gambling.

At the same time, the US has adopted strong enforcement action. The arrests of certain gambling executives and investigations involving leading banks accountants and lawyers by the Department of Justice in relation to the activities of Internet gaming firms in America had a chilling effect.

The UIGEA was the subject of a deal of criticism as the details of how it was supposed to work in practice were not clear to the financial institutions (a problem found with such an approach around the world). Nevertheless, the Act did have an

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*“One of the biggest advantages (and drawbacks) of the internet is that it records everything, permanently. To register with an online gambling site, you will typically need to register the details of a credit or debit card, your name and address and proof of age. Gambling transactions are typically recorded by the operator, so that they can deal with any future queries from customers, and so they can police against any possible fraud – which in the end will cost them money. The European Parliament offers no explanation as to why credit card data held by online gambling sites presents an easier target to fraudsters as opposed to any other e-commerce site.*

*This electronic information trail makes any laundering of money impossible. However, bizarrely, the European Parliament proposes removing this electronic trail, presumably to reduce the amount of credit card data held by operators. It proposes obliging operators ‘to make use of pre-paid cards’, which would give money launderers the green light!*

*The premise that online gambling presents a threat to the integrity of sports events is plain wrong. In fact, the reverse is true. Online gambling has been associated with the fixing of sports events because it has helped to identify that such fraud is taking place, whereas previously it might have gone unnoticed.”*

A Brown, World Online Gambling Law Report, March 2009.

effect as key US organisations in the e-commerce sphere such as payment providers, advertisers and others withdraw from the global online gambling sector altogether, even though actions in other countries were not affected.

Did this prohibition work? Despite all of the efforts (and costs) a September 2008 study by PricewaterhouseCoopers (PwC) suggests it did not.

The study entitled, "Estimate of Federal Revenue Effect of Proposal to Regulate and Tax Online Gambling," was prepared for the UC Group, and is an update to one which PwC prepared in November 2007. It found that growth in the US market led to results that are approximately 22 percent greater than those from the original study.

This is consistent with other evidence such as the table below which shows that last November, online gambling was the ninth-fastest-growing category online in the US.<sup>10</sup>

**Top 10 Website Categories Among US Internet Users, Ranked by Growth in Unique Visitors, October & November 2008 (thousands and % change)**

	October 2008	November 2008	% change
1. Coupons	27,101	35,649	32%
2. Retail--jewelry/luxurygoods/accessories	15,362	19,210	25%
3. Retail--toys	25,195	31,296	24%
4. Retail--mall	30,742	37,002	20%
5. Retail--department stores	66,441	79,933	20%
6. Retail--consumer electronics	47,788	55,786	17%
7. Retail--home furnishings	39,852	44,965	13%
8. Retail--music	18,812	21,023	12%
9. Online gambling	14,588	16,132	11%
10. Retail--food	17,309	19,049	10%
<b>Total US Internet audience</b>	<b>190,616</b>	<b>190,775</b>	<b>0%</b>

Note: home, work and university locations

Source: comScore Media Metrix as cited in press release, December 16, 2008

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www.emarketer.com

Legislation remains before the US Congress to repeal the UIGEA. Rep. Barney Frank's Internet Gambling Regulation and Enforcement Act of 2007 (H.R. 2046) and Rep. Jim McDermott's companion bill (H.R. 5523)<sup>11</sup> would replace the current laws with a regulatory framework. Rep. Frank, who is the Chairman of the House Financial Services Committee, has reportedly stated the new Internet casino bill would be introduced to Congress in late April 2009.

The other notable occurrence involving the US was the World Trade Organisation action taken by Antigua in 2003.

Antigua had complained to the WTO that its Internet gambling companies were not able to properly access U.S. customers because US federal laws barred the placing

<sup>10</sup> Emarketer.com, 2009.

<sup>11</sup> H.R. 2046 is the basis for the potential acceptance of online gambling by the United States government, as it details the regulatory and licensing process for internet gaming. H.R. 5523 piggybacks on that, laying out how online gambling deposits would be taxed.

of bets across state lines by electronic means. It argued that the U.S. was renegeing on agreements undertaken with the WTO to make its markets more accessible to other countries.

In its Report of 2005, the WTO found that the United States was in breach of its free trade obligations and, importantly, that the United States could not rely on the "moral defence" exemption permitted under the Agreement. The United States was given until April 2006 to comply with the WTO ruling.

In 2007, the WTO released a Compliance Panel Report stating that US had not complied with the earlier decision, and that recent US Federal laws (the UIGEA) would also most likely infringe US WTO commitments due to their protectionist nature.

In March 2009, the European Commission issued a statement declaring that US laws on online gambling and the arrest of European executives were illegal and had obstructed legitimate commercial activity. The Commission said that though legal action under WTO rules might be justified, *"the issue should be addressed with the US administration, with a view to finding a negotiated solution"*.<sup>12</sup>

In summary, the international trend is for policy discussion to be around the terms of any regulation rather than any serious promotion of prohibition.

This is a highly politicised debate. There are those who tend to exaggerate the risks of problem gambling in order to promote an anti-gambling agenda, and those who attempt to minimise the risks for the opposite reason. There are some who are motivated by protectionism and defence of revenue, others who seek individual commercial advantage.

As shall be seen in the later discussion of developments in Australia, similar conflicts between good policy and short-term politics are evident. The challenge for the Commission is to identify the best policy positions.

Before discussing Australian developments, it is helpful to get a better understanding of the risk for problem gamblers posed by internet gambling. This is the subject of the next Chapter.

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<sup>12</sup> "Brussels intensifies transatlantic fight over online gambling", Financial Times, 27 March 2009

## 4. Internet Gambling, Problem Gambling and Responsible Gambling

The purpose of this Chapter is to identify and discuss the risks that arise with Internet gambling. It is concerned with the nature of the risks posed for problem gambling, and the related issue of how these are best addressed

### *Definition of Problem Gambling*

A common definition of problem gambling is elusive. For psychiatrists, it refers to a mental disorder<sup>13</sup>, psychologists see it as a form of addiction, while others interpret it in a public health context and incorporate social and other costs<sup>14</sup>.

Problem gambling is usually described by its costs, and the result is a very generic definition - "problem gambling" generally refers to a gambler's lack of control over their gambling behaviour or adverse personal, economic and social impacts that result from a gambler's actions (particularly the financial losses relative to the gambler's means).<sup>15</sup>

*"A review of the data surrounding gambling addiction leads to one simple conclusion - gambling addicts pay a high price for their addiction. And this high price cannot be absent from any debate or examination of the gambling issue."<sup>16</sup>*

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<sup>13</sup> In this context, problem gambling is understood to be a disorder characterized by a continuous or periodic loss of control over gambling, a preoccupation with gambling and with obtaining money with which to gamble, irrational thinking, and a continuation of the behaviour despite adverse consequences.

<sup>14</sup> In its 1999 Report, the Commission reported that the social costs of problem gambling arise as a result of the potential:

- personal and psychological effects—heightened incidences of ill-health, guilt, control problems, co-morbidities, anxiety, depression, and, in extreme cases, thoughts of suicide or attempted suicide
- interpersonal relations—adverse impacts on others (particularly partners and children) through heightened incidences of financial stress, mistrust, neglect of family, relationship breakdown, and domestic or other violence
- impacts on work and study—adverse impacts on work performance through heightened incidences of absenteeism, poor performance and job changes and losses
- impacts on finance—adverse impacts on asset and debt levels, creating financial hardship (due to the higher ratio of gambling expenditure to income among problem gamblers)
- legal problems—misappropriation of money, passing of bad cheques and criminal behaviour, which may result in court appearances and prison sentences
- other problems—financial burdens that spill over into family and friendship networks, businesses (through unrecoverable debts) and the non-profit sector.

Productivity Commission, *Australia's gambling industries*, Report no. 10, Ausinfo, Canberra, 26 November 1999, p.6.2.

<sup>15</sup> Ibid

<sup>16</sup> North Carolina Family Policy Council, "Gambling Addiction: High Stakes, High Costs and Real Victims". 2001. For the NCFPC, the costs to the few were decisive of the whole debate

In the Issues Paper for this Inquiry, the Commission stated that *“There can be no precise definition or measure of problem gambling, since it involves a continuum of difficulties experienced by consumers, with varying judgements about where on this continuum the difficulties are severe enough to be categorised as a problem.”*

This may be so, but it is important to acknowledge the consequences that follow:

- (1) *“Conceptualizing gambling behaviour on a simple continuum ranging from no gambling to pathological gambling may provide a useful model for developing a public health system of treatment, but it is insufficiently detailed to provide a scientific explanation of the emergence of pathological gambling.”<sup>17</sup>*
- (2) There are practical consequences for the implementation of responsible gambling strategies. For example, if the focus is on obsessive behaviour then attention must be given to the regular gambler who only gambles with small affordable amounts. If the focus is on economic loss, the question arises of how to deal with the recreational gamblers who betting large amounts that they can afford?

For problem gambling, the internet throws up an interesting categorisation. Griffiths and Barnes (2007) speculated that their data suggested a new type of problem gambler - one who wins more than they lose. Here, the negative detriments to the gamblers' lives are caused by the loss of time (e.g. gamblers playing online poker for 14 hours a day and having little time for anything else in their lives).

- (3) A difficulty in dealing with problem gambling within a “public health” paradigm is that it can prompt crude responses to a multi-faceted issue – even though problem gambling risks vary according to the person, the suggested response is industry-wide. An excellent example is the suggestion that a maximum loss limit should be set for everyone, regardless of their circumstances.

### *The Prevalence Studies*

Internet gambling has been the subject of study by gambling research units, addiction centres, universities and other specialist agencies. Numerous papers have been produced. As yet, none could be termed truly definitive. Although the Commission will be undertaking its own meta-study of the available research, it is suggested that valuable insights can be gained by reviewing the work undertaken by the gambling research bodies in other parts of the world.

Nevertheless, it is important that the limitations of the studies are properly understood. The papers vary according to context, methodology and field of expertise of the researcher. There are theoretical and practical boundaries.

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*“when compared to the proposed benefits it is clear that no one that no amount of so-called ‘recreation’ can balance or replace the broken lives and families that results”.*

<sup>17</sup> *Pathological Gambling: A Critical Review*” Commission on Behavioral and Social Sciences and Education (CBASSE) (1999), p 19



On the one hand, the United States' (then) Commission on Behavioral and Social Sciences and Education<sup>18</sup> described the difficulties involved in defining and measuring problem gambling using various assessment instruments.

“Here it is important to note that comparing and interpreting prevalence findings is problematic when different studies use different screening and/or diagnostic instruments or criterion levels to measure differing levels of intemperate gambling and associated problems. Unfortunately, such differences are common in the research literature on pathological and problem gambling (Volberg, 1998b), which creates problems in estimating prevalence rates in the United States.

Another important limitation of the available prevalence research pertains to the different facets of the concept of prevalence.

A prevalence estimate requires specification of the population or geographical area represented and the time frame over which prevalence is defined (Walker and Dickerson, 1996). Most of the prevalence research on pathological and problem gambling is specific about the population or area represented, but the time frames within which gambling behavior is assessed vary widely. This variation is troublesome because the information of greatest policy relevance is generally the prevalence of current pathological or problem gambling, that is, estimates over a relatively recent but behaviorally representative time frame (e.g., the past year). The time frame most common in available research, however, is lifetime. Thus, many of those who are counted in prevalence research as being pathological or problem gamblers may have met screening or diagnostic criteria at some point during their lives, but did not manifest gambling problems at the time of the study.

Measuring pathological and problem gambling also requires distinguishing incidence from prevalence: incidence is the number of new cases arising in a given time period, and prevalence is the average total number of cases during a given time period, factoring in new cases and deleting cases representing cures. Incidence is especially pertinent to policy questions involving the effects of increased gambling opportunities and changes in technology, industry practices, and regulation. There is almost no research that examines the incidence of pathological or problem gambling cases over a representative, recent time.”<sup>19</sup>

The “uneven methodological characteristics” of the prevalence studies must also be taken into account. *“Response rates, for instance, varied (100% vs self-selected samples). Prevalence studies may also be inconsistent in their coverage of the gambling items. Some surveys asked all questions of all respondents, and others asked certain questions only of those who responded affirmatively to a prior question. (For example, if people had never had financial problems from gambling, they might*

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<sup>18</sup> Now the Division of Behavioral and Social Sciences and Education (DBASSE), one of six divisions within the National Academies of the United States.

<sup>19</sup> Pathological Gambling: A Critical Review” Commission on Behavioral and Social Sciences and Education (CBASSE) (1999), Chapter 2

*not be asked how much money they lost from gambling.) Finally, the data analysis in these studies consisted chiefly of frequency distributions and simple cross-tabulations.*<sup>20</sup>

A salient example of the risks of misinterpretation and misinformation of what was simply “*frequency distributions and simple cross-tabulations*” has been the recent press reports claiming Australia and New Zealand gamblers were the “world leaders in terms of online gambling” averaging over \$400 a month in terms of betting.<sup>21</sup> The article has been promoted by some sections of the Australian gambling industry as a justification for increasing controls over Internet gambling.

This claim was based on a study by Williams and Wood from the University of Lethbridge Alberta Canada. This was an on-line self-administered survey of 12,521 adults from 105 countries. However close analysis shows the claims in the Australian press to be grossly exaggerated – and the need for care in interpreting research papers.

Of the 12,500 respondents only 59 lived in Australia and New Zealand. Of that 59, only about a third or 19 Australian and New Zealand gamblers gambled online.

Professor Williams has subsequently advised that the large expenditure figure was due to a single individual with a very large expenditure. He also confirmed that “*the median expenditures reported in our study are the best way of comparing regions and they show Australia/New Zealand to have the lowest expenditures.*”<sup>22</sup>

In other words the press claims were exaggerated and not supported by the data.

Another study by Wood & Williams shows the same methodological limits. A 2007 Paper<sup>23</sup> used data collected from an internet-based survey. Confirming predictions of a relationship between internet gambling and problem gambling, it found that 42.7% of the internet gamblers in the sample could be classified as problem gamblers. However, the 2008 analysis by the International Gambling Research Unit (UK) showed that the study was based on a very small, self-selected sample drawn from persons in dental waiting rooms. The study is worthy of note, but is not a sound basis for extrapolation to the population as a whole.

While studies vary according to methodology, sample size, point of focus and relevance to gambling addiction, the amount of research that has been undertaken in the past 10 years allows greater confidence to be placed on the more general findings.

It is useful to review a representative sample of the major prevalence studies and other papers.

In a rough chronological order: -

- In Canada, a prevalence study of Internet gambling by Ialimiteanu and Adlaf (2001) showed that just over 5% had gambled on the Internet during the

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<sup>20</sup> Ibid, p 68.

<sup>21</sup> “Nation of Gamblers” Sunday Telegraph 22 March 2009.

<sup>22</sup> Email to ABC Media Watch, 2<sup>nd</sup> April 2009 (from “Gambling on the Stats”, Media Watch, 6 April 2009.)

<sup>23</sup> “Problem gambling on the internet: Implications for internet gambling policy in North America” (Wood & Williams 2007)

previous year. Women were slightly more likely than men to have gambled online but this was not statistically significant. Further analysis showed there were no differences in terms of age, region, education or income. The study did not examine any aspects of problem gambling.

- In the UK, Griffiths (2001) had suggested that women were more likely to try gambling on the Internet than other gambling environments such as casinos and bookmakers. Griffiths argued that the Internet was gender neutral and that females claimed they would feel less alienated and stigmatised gambling online. (This may be compared with the DCMS (2006) report which also reported that women were becoming increasingly important in the Internet gambling market. For instance in 2006 World Cup, it was estimated that about 30% of those visiting key UK-based betting websites were women.)<sup>24</sup>
- In 2002, a US survey by Ladd and Petry suggested that Internet gamblers had significantly higher scores than the non-Internet gamblers on the South Oaks Gambling Screen (7.8 compared to 1.8). The authors concluded that Internet gamblers were significantly more likely to be problem gamblers than non-Internet gamblers.<sup>25</sup>
- In 2005, the Responsible Gambling Council of Canada published a study of problem gambling in Ontario which found participation among 18 to 24 year-olds in online gambling increased from 1.4% in 2001 to 5.5% in 2005.

The study also found Internet gambling had among the highest rates of frequent participation with 25% reporting they gambled at least once a week and 50% gambling daily.

Poker was the most popular choice for online gamblers, the study reported.

- In a 2005 paper<sup>26</sup>, Prof Mark Griffiths and Andrew Barnes from the International Gambling Research Unit at the Nottingham Trent University examined the question of to what extent the technology facilitates excessive use.

They identified a number of factors that make online activities (like Internet gambling) potentially more addictive. These included:-

- \* Access;
- \* affordability;
- \* anonymity;
- \* convenience;
- \* dis-inhibition;

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<sup>24</sup> Para 2.3

<sup>25</sup> The Study also found that Internet gamblers were also more likely to be unmarried and younger than those who never used the internet for gambling. The Study is unusual in that it found internet gamblers tended to have lower education and income levels than non-Internet gamblers, which is surprising since access to the internet is traditionally associated with people that have higher income and education levels.

<sup>26</sup> Paper given to a Malmo Conference "*Internet gambling: an online empirical study among student gamblers*" Prof Mark Griffiths and Andrew Barnes. International Gambling Research Unit at the Nottingham Trent University, 2005.

- \* escape (disassociation);
- \* interactivity;
- \* frequency; and
- \* sociability.

In respect of internet gambling in particular, they identified other features such as:-

- sophisticated gaming software;
- integrated e-cash systems including multicurrency;
- multilingual sites;
- increased realism including real gaming via web cams and appealing avatars;
- live remote wagering for both gambling alone and gambling with others;
- improving customer care systems;
- inter-gambler competition.

According to Griffiths and Barnes, pathological gamblers were significantly more likely to have gambled on the Internet than not.

For Internet gamblers, the three most popular forms of Internet gambling were online sports betting, online casino gambling and online poker. Major factors that Internet gamblers reported as being influential in the decision to gamble online were ease of access (83.8%) flexibility (75.2%) and 24-hour gambling (65.7%). Of these influences Internet gamblers considered the ease of access and flexibility the most beneficial.

The majority of Internet gamblers considered the Internet a trustworthy medium of gambling (79%). However most Internet gamblers preferred to gamble with "high-street bookmakers' websites" (90%). The majority of Internet gamblers considered Internet gambling easier to conceal than non-Internet gambling (84.9%). Nearly a third of Internet gamblers (32%) hid their gambling from family members.

Internet gamblers were significantly more likely to gamble more often and spend significantly more money on gambling in a week compared to non-Internet gamblers.

The authors concluded the results suggest the structural and situational characteristics may be having an impact on Internet gambling. These include:

- \* increased number of gambling opportunities;
- \* convenience;
- \* 24-hour access flexibility;
- \* increased event frequency;
- \* smaller intervals between gambling;
- \* instant reinforcement of a win; and
- \* the ability to forget a large loss by gambling again immediately

Internet gamblers rated flexibility and ease of access and 24-hour gambling as large benefits to gambling on the Internet. However these benefits of Internet gambling can potentially lead to sustained periods of uncontrolled gambling which may lead to gambling problems. Other changes to the situational and structural characteristics such as the use of e-cash, anonymity and "cocooning" may facilitate excessiveness.

The authors noted however, that it is not possible from this study to suggest how much of an effect each change is having on the addictiveness of the activity. They posed a further question - Could it be that pathological gamblers are just using the Internet as a convenient medium to gamble on an activity they are already addicted to?

The authors also suggested that technology needs to be used in the prevention, and intervention and treatment of problem gambling. Technology could be used for health promotion. Internet gambling sites could feature links to relevant gambling awareness sites. Online tracking data could be used to identify problem gamblers. Finally, help in the form of online therapy may be an option for some problem gamblers.

- In 2006, AC Nielson conducted a prevalence study in New South Wales. "In terms of betting on horse/dog races by phone or the Internet, around 9 in 10 gamblers on the horse/dog races say they have not bet on all using these modes. However the "at risk" gamblers (moderate/problem) are somewhat more likely to bet by phone compared to average (1%) and this is driven solely by moderate risk gamblers (7%). Further to Internet betting, low risk gamblers (5%) and moderate risk gamblers (4%) are more likely to bet via the Internet than average (1%). *Results suggest the problem gamblers do not bet by phone or Internet at all however this is indicative only due to small sample sizes.*"<sup>27</sup>[emphasis added]
- In July 2008, it was reported that a study by the University of Western Ontario found online gamblers play more frequently and aggressively than others.

The study's authors<sup>28</sup> found Canadian gamblers are using websites run by offshore companies in "leaps and bounds".<sup>29</sup> They suggested that the integration of online gambling in the home can more easily turn gambling behaviour into a component of a consumer's everyday life. "*When online gambling becomes a routine daily behavior, it is easier for consumers to engage in mindless consumption of that activity, ultimately resulting in addiction and resultant financial losses.*"

Cotte and LaTour suggest that the following strategies could also be tied into online regulations, thereby helping reduce the incidences of problem gambling:

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<sup>27</sup> "Prevalence of Gambling and Problem Gambling in NSW", A C Nielsen (2006) page 96

<sup>28</sup> "Blackjack in the Kitchen: Understanding Online Versus Casino Gambling," will be published in the February 2009 issue of the Journal of Consumer Research. (LaTour and Cotte)

<sup>29</sup> As a consequence, they went on to recommend regulations to oversee Canadian gambling. Frequent gamblers would prefer to use a website they trusted and would likely choose to gamble through an operator they knew was reputable. The authors also concluded that online gambling was happening on such a massive scale that rather than try to shut it down, there are some very strong reasons as to why governments should recognize they should regulate online gaming including offering protections for vulnerable people.

It is suggested that Canada offers a parallel to Australia – a large number of people are gambling online despite the law and, as with Canada, a favoured activity is poker.

- Better use of age checks when signing up for an online account
- Cross-checking new users with lists of pathological gamblers
- Setting financial limits on gambling and having the site communicate to gamblers that they are spending long hours and a lot of money
- Making information available about problem gambling treatments via pop-ups on instant messages
- Having gambling counsellors available online
- Mandatory "cooling-off periods," which force online gamblers to stop gambling for a re-set amount of time before they are allowed to wager money from their accounts
- Making tabulations of wins and losses more central and larger on the screen

LaTour and Cotte also recommend online gambling casinos minimize use of flashing bold graphics to signal wins to lessen the emotional experience for gamblers.

- The director of the Harvard Medical School Addiction's Department, Dr Howard Shaffer, was recently reported as stating that despite the exponential increase in gambling in the US over the last 20 years, the rate of problem gambling among the general population has stayed the same<sup>30</sup>. Based on an extensive 2 year study that includes access to data from some 3,445 online poker players from the European online gambling group Bwin, he said "The very first thing we learned which we didn't expect was that the vast majority, the overwhelming majority, of gamblers online gamble in a very moderate and mild way." Where the expectation has been the increased gambling proliferation would lead to an increase in gambling disorders this has not been the case, with the incidence of problem gambling among the population slightly declining from the 1970s until today from .7% to .6%.

Dr Shaffer also said "Preventing people from gambling online is likely to be ineffective in reducing problem gambling rather education, public awareness campaigns and truth in advertising will be more successful in helping keeping gambling safer."<sup>31</sup>

While some of these papers offer disturbing figures, it is suggested that the most useful study, and one that offers a more accurate perspective on the work that gone before, is the UK "Internet Gambling: A Secondary Analysis of the Findings from the 2007 British Gambling Prevalence Survey" of October 2008<sup>32</sup>.

The United Kingdom offers a useful basis for comparison with Australia as it has many of the features of the Australian gambling market. Furthermore, it is suggested a greater confidence can be placed in the studies produced.

In the UK, gambling has been the subject of close analysis by the United Kingdom Gambling Commission and its predecessor, the DCMS. Using the expertise of the

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<sup>30</sup> "Harvard Expert says Online Gamblers More Disciplined" Online Casino Advisory, April 15, 2009 Tom Weston

<sup>31</sup> "New Research in favour of Online Gambling" Gaming Alerts, 21 April 2009.

<sup>32</sup> "Internet Gambling: A Secondary Analysis of findings from the 2007 British Gambling Prevalence Survey". Griffiths, Wardle, Orford, Sproston, Erens. October 2008.

International Gambling Research Unit at the University of Trent Nottingham, the UK Gambling Commission has produced in-depth prevalence studies.

These studies have the benefit of being able to be compared with earlier results looking at the same subject area, and so allow a more precise assessment of the impact of recent changes to the gambling industry

The 2008 Analysis noted that

- Online gambling had more than doubled in the UK since the first study. The DCMS (2006) report claimed there were approximately 1 million regular online gamblers in Britain making up nearly one third of Europe's 3.3 million regular online gamblers. The DCMS report also stated that Europe's regular online gamblers staked approximately £3.5 billion a year at around an average of £1000 each. A more recent survey by the Gambling Commission (2008) reported that 8.8% of the 8000 adults surveyed said they had participated in at least one form of remote gambling in the previous month with no change in the participation rate from the previous year's survey. Those participating in remote gambling were more likely to be male than female, and were more likely to be aged 18 to 34 years.<sup>33</sup>
- The largest survey of Internet gamblers was carried out by the International Gaming Research Unit in 2007. Respondents from 96 countries participated and a broad range of occupations were represented. Problem gambling was not assessed.
  - It was reported that the typical Internet casino player was likely to: be female (54.8%), be aged 46 to 55 years (29.5%), play 2 to 3 times per week (37%), have played forward to 2 to 3 years (22.4%), play for between 1 to 2 hours per session (26.5%), and wager between \$30-\$60 (18.1%) per session.
  - It was also reported that the typical Internet poker player was likely to: be male (73.8%), be aged 26 to 35 years (26.9%), play 2 to 3 times per week (26.8%), have played for 2 to 3 years (23.6%), and played for between 1 to 2 hours per session (33.3%). Despite the size of the survey it should be noted that the sample was not representative as it comprised people who filled out the online questionnaire (i.e. it was a self selected sample).
- *“There is no conclusive evidence that Internet gambling is more likely to cause problem gambling although recent studies using self selected samples suggest that the prevalence of problem gambling among student Internet gamblers is relatively high for students to gamble on the Internet in general and for those who engage in online poker.”<sup>34</sup>*

Further examination of the 2007 UK Prevalence Study showed that

- Internet gamblers were significantly more likely to be male. There were no gender differences for non-Internet gamblers.<sup>35</sup>

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<sup>33</sup> Para 2.2

<sup>34</sup> Para 2.9

<sup>35</sup> Para 4.1

- Internet gamblers were more likely to be people aged 34 years and younger (55%). Only one in five Internet gamblers (21%) was aged over 45 years. The prevalence of Internet gambling decreased with advancing age. This was a different pattern to that observed among those who gamble off-line, as prevalence was highest among those aged 45 to 64 years.
- The relationship between gambling and education was somewhat variable. However analysis showed that the level of educational qualifications was significantly associated with Internet gambling and was highest among those who have A-levels and a degree, and lowest among those with no qualifications.<sup>36</sup>
- Results showed that almost half of all Internet gamblers came from managerial and professional households<sup>37</sup>.
- Internet gambling prevalence was also examined by gambling activity. Spread bettors were the most likely to have gambled on the Internet (64%) followed by those who used FOBTs (47%). The remaining results were gambling or betting on: casino games (38%) football pools (27%) greyhounds (24%) slot machines (20%) horses (17%) scratchcards (13%) bingo (12%) and the national lottery draw (8%).
- The findings show that as the number of gambling activities participated in the last year increases, the percentage of Internet gamblers also increases (i.e. of those the gambled on just two activities, 3% were Internet gamblers whereas of those who gambled on eight or more activities, 75% were Internet gamblers).<sup>38</sup>
- Overall problem gambling prevalence among Internet gamblers using the DSM-IV was 5%. The base sizes were too small to analyse by age and gender but analysis by age showed the problem gambling prevalence rates peaked at 5.7% in the 35 to 54 year age group.
- It was also noted that some items on the DSM-IV were more heavily endorsed by Internet gamblers compared to non-Internet gamblers. Most notably this included preoccupation and gambling to escape.

The Study goes on to offer a useful and sound synthesis of the data. In summary:

- When compared to non-Internet gamblers Internet gamblers were more likely to be male, relatively young adults, single, well-educated, and in professional managerial employment. Problem gambling (as measured by the DSM-IV) was also significantly more likely among Internet gamblers when compared to non-Internet gamblers.<sup>39</sup>
- *“the finding that Internet gamblers are more likely to be below the age of 35 years is unsurprising and most likely reflects Internet usage in the general population”*;<sup>40</sup>
- The finding that Internet gamblers are more likely to be single is most likely to be explained by age. Given the finding that Internet gamblers are likely to be younger (for the reasons outlined above) it also less likely they are to be in an established relationship. In addition to this, single people are likely to spend more time on a range of leisure activities (including gambling) as they are likely to have a greater amount of free time as they are not in an established relationship and/or have children.

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<sup>36</sup> Para 4.5

<sup>37</sup> Para 4.6

<sup>38</sup> Para 4.12

<sup>39</sup> Para 5.1

<sup>40</sup> Para 5.3



- There were also many socio-demographic indicators that are likely to be connected to each other. Internet gamblers were more likely than non-Internet gamblers to be well educated. Computer literacy may be a consequence of being well educated and therefore those who are more computer literate may be more likely to engage in computer-based activities.
- Another consequence of being well educated is that it increases the likelihood of getting a good job. Therefore the finding that Internet gamblers are more likely to work in managerial or professional employment is perhaps unsurprising given its relationship to education. A further consequence of having a good job is being able to afford computer equipment and broadband access at home. Therefore having a computer at home is likely to increase the likelihood of engaging in convenience gambling at home.
- In relation to co-morbidity, the findings indicate that behaviours such as gambling “do not exist in a vacuum and that there are certain lifestyle behaviours that often co-occur and cluster”<sup>41</sup>. Internet gamblers were significantly more likely to smoke cigarettes than non-Internet gamblers but this result is perhaps to be expected as gamblers are currently unable to smoke in gambling environments and therefore smokers may prefer to gamble at home (as they can smoke freely) rather than in gambling environments (where they cannot).
- The results also showed that people who had participated in particular forms of gambling such as spread betting, FOBTs and casino games were the most likely to have also used the Internet to gamble. These types of gambling are very closely associated with dedicated gambling environments. In essence individuals engaged in these types of gambling activity are people who seek out a particular gambling experience. “It is perhaps there for no surprise that it is these individuals who are also more likely to gamble on the Internet as they are looking for value and convenience.”<sup>42</sup>
- The finding that Internet gamblers were more likely to be problem gamblers should be put into the context of the data set because of the cross sectional nature of the study, no definitive conclusions can be drawn in relation to causality. Causality could only be confirmed through further research and preferably through a longitudinal study.

The authors suggested

*“Given these findings and the potential concerns that arise from them it is clear that gaming companies need to acknowledge they will need to provide even better social responsibility infrastructures online and off-line. Furthermore there is also the issue of how Internet problem gamblers can be helped.*

*Recent research suggests that online problem gamblers appear to prefer to seek help online therefore online help guidance and treatment may be a potential way forward to help those who may feel to stigmatise to seek traditional face-to-face help for their gambling problems.*

*The rise and challenges of Internet gambling cannot be seen in isolation particularly as there is ever increasing multimedia integration between the Internet and mobile phones and interactive television. Furthermore young people appear to be very proficient in using and accessing these media and*

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<sup>41</sup> Para 5.8

<sup>42</sup> Para 5.11

*are likely to be increasingly exposed to remote gambling opportunities. These young people will therefore require targeted education and guidance to enable them to cope with the challenges of convenience gambling in all its guises.*<sup>43</sup>

In summary, there is a recognised risk of problem gambling associated with internet gambling. The risk arises with both the nature of the activity and from the nature of the internet. What can be done to mitigate the risks?

### *The Internet and Responsible Gambling*

The Internet platform offers a number of advantages in the delivery of responsible gambling strategies.<sup>44</sup>

The Australian Internet gambling industry is subject to a range of stringent regulatory controls to ensure responsible gambling. The following briefly explains how some of these controls operate.

#### *Access by children*

A concern that is regularly raised with internet gambling is access by children, especially given their take-up of new technology. This concern is misplaced<sup>45</sup>.

Online gambling can only be conducted by an accountholder. All Australian Internet gambling agencies are obliged to obtain and verify the identity of the account holder. Previously, this obligation was imposed by way of licence conditions set by the relevant State or Territory. No payments could be made from a betting account unless copies of identity documents (e.g. driver's licence, passport etc) were sighted. Furthermore, payments were back to the designated bank account.

These State-based obligations have been overtaken by the requirements of the new Federal *Anti-Money Laundering Counter Terrorist Financing Act 2006*<sup>46</sup>. Under the new laws Internet gambling providers are required to verify a player's ID within 90 days of the account being opened or must freeze the account (again, payments to the player may not be made unless evidence of ID has been obtained.)

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<sup>43</sup> Para 5.14 and following.

<sup>44</sup> What typifies the dilemma in this area is the same feature may be both a strength and a weakness. For example, Chat Rooms were seen as a form of customer care service that, in combination with other factors, added to the risks, but that same feature has been promoted by others (eg, the Senate's *NetBets* Report) as a tool to mitigate the risks.

<sup>45</sup> This issue was dealt with in the Review of the *Interactive Gambling Act* conducted in 2004. The Report found *"minors have little motivation to engage in regular, unsupervised Internet gambling because they cannot make any financial gain (unless a parent endorses the gambling) and because parents can easily detect gambling by a minor. Further, methods are available to exclude minors from participating in interactive gambling that are not available to onsite gambling, such as age verification software."* Report, page 34.

<sup>46</sup> For more information about Austrac and the rules made under the new Act please see the Austrac website. [www.austrac.gov.au](http://www.austrac.gov.au)

Consequently, should an underage person seek to gamble (for example, using an adult's credit card) they will not receive anything until their name address and date of birth has been verified, and that attempt will be detected.

This obligation is in place regardless of whether the punter is betting \$5 or \$5000. This may be compared with the situation for clubs and pubs, casinos and racecourses, where anonymous gambling is the norm.

### *Access to betting history*

One of the dangers with poker machines is that gamblers can lose track of the extent of their gambling. Unlike poker machine play, clients betting with Australian online providers are able to immediately access their betting history online.

At the press of a button, they can see all of the bets they have placed over the last, say six months or longer. (This also reduces the likelihood of children accessing their parents' accounts as the parent will be able to regularly check his or her account history.)

### *Problem gambling exclusions*

Internet providers offer effective temporary or permanent exclusion to clients who feel they may be developing a problem.

This is effective and enforceable. Internet gambling providers are able to block access to the players' accounts. Without an account the player cannot bet at all. The technology allows internet gambling providers to offer almost total compliance with this requirement.

This is contrasted with the difficulties that are evident in poker machine venues. Clubs and pubs must identify a person from a photograph or similar, before barring the problem gambler. This results in relatively poor compliance rates.

### *Problem gambling controls*

The Internet allows for the inclusion of additional responsible gambling strategies. For example all Australian sites provide bettors with access online checklists to help determine if they are developing a problem. The sites also provide links to counselling websites to further assist. These are features that are strikingly absent from gaming machines in clubs and pubs.

Recently, Clubs Australia has been critical of the Australian internet gambling industry claiming it offers low standards of protection against problem gambling.<sup>47</sup> One of the complaints was that the counselling links were to Gamblers Anonymous in the US. This is a concern without substance.

Several Australian sites provide a link to Gamblers Anonymous International which has branches and local groups throughout the world. The GA page dedicated to Australia has contact names, local group meeting schedules and addresses, contact numbers and emails for all states in Australia. On the one hand, it underlines that Australian online providers have customers from around the world. On the other, it

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<sup>47</sup> See for example "Push to Stop Online Punters Using Credit" SMH, January 13 2009

reminds that there is no “Australian”/ national program for gambling help in Australia (G-Line for example is a NSW specific service).

### *Codes of Conduct*

Compliance with Codes of Conduct is mandatory<sup>48</sup>. The Codes apply to all gambling providers and deal with such things as the requirement for appropriate staff training and skills development, advertising and promotions, as well as exclusions and counselling.

### *Exclusions by Family Members and Others*

Recently, there has been a call for a facility to allow family members and others to seek exclusion of problem gamblers from venues.<sup>49</sup> There is merit in the proposal but it appropriate to note that the Northern Territory already provides for such an approach.<sup>50</sup>

This Association supports the proposal to streamline such a process and to expand the grounds upon which relief may be sought.

### *Proposed New Measures*

Whereas Australia was previously at the forefront of policy development in this area, that process stopped with the passage of the Interactive Gambling Act.

It is now necessary to look to Europe for developments, for example to the United Kingdom and Malta.

Taking account of consumer expectations, Australian sites are now moving towards meeting the emerging European standards. To this end, this Association would recommend consideration be given to enhanced responsible gambling measures.

These are:

- (4) *the establishment of a dedicated Australian online advice and counselling service.*

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<sup>48</sup> For the NT Code of Conduct, please see [http://www.nt.gov.au/justice/licenreg/sports\\_betting.shtml](http://www.nt.gov.au/justice/licenreg/sports_betting.shtml). This Code is mandated by way of licence conditions.

<sup>49</sup> See “Clubs Australia Proposal for Gambling Bans”, Daily Telegraph, October 22, 2008.

<sup>50</sup> See section 86 of the *Racing and Betting Act*, which provides:

#### **86 Orders forbidding impoverished persons to bet**

(1) Upon complaint in writing made to a Court that a person, by excessive betting, has impoverished or is likely to impoverish himself to such a degree as to expose to want, or endanger the welfare of, himself or his family, the Court shall issue a summons calling on that person to appear at a time and place in the summons, and to show cause why an order should not be made forbidding that person to bet with a bookmaker.

This would be a resource for all Australian gambling operators and not exclusively for the use of online operators. This site would represent world's best practice in terms of providing information and advice about detecting and recognising problem gambling.

Consistent with the findings of the prevalence studies mentioned above, it is proposed that online counsellors be available to further assist and case-manage any persons who feel they are at risk of developing a problem.

It would be mandatory for all Australian Internet gambling providers to provide a link to the site.

*(5) The requirement for all online gambling providers to offer their clients with a facility to set pre-commitment levels of expenditure.*

This facility would provide players with the option of setting:-

- bet limits
- deposit limits; and/or
- loss limits

as they see appropriate. These limits could not be changed for certain specified period.

Although this facility is currently more a feature of Internet gaming sites (for example Internet casinos), it would appear to be readily transferable to other forms of Internet gambling such as wagering.

All major Australian Internet operators are in the process of moving towards the adoption of this facility, but it would appear sensible for this to be mandated in order to ensure all Australian Internet operators this are meeting this standard.

*(6) Nation-wide exclusions.*

Currently a person who feels they are developing a gambling problem may seek exclusion from a site. However this has to be done on a site-by-site basis, requiring applications to be made to all operators with whom the person has a gambling account.

It is proposed consideration be given to a means of implementing a national exclusion process whereby exclusion for problem gambling from one site would see the exclusion extended to all. Apart from the need to craft a mechanism that complies with privacy obligations, it is necessary to be mindful that exclusion would not extend to international sites and that a problem gambler could readily avoid exclusion by gambling offshore.

It may be that this is a strategy best managed in consultation with the gambling counsellor and the online gambling counselling service that would be established under recommendation one.

*Other Issues - Credit Betting*

The Australian Internet gambling industry has been the subject of criticism for allowing credit betting and for “free bet” offers.<sup>51</sup> This criticism is largely misplaced and misinformed.

There is a need to distinguish between credit betting and the funding of a betting account by means of a credit card

### *Credit Cards*

A consistent theme of gambling regulation has been to prohibit the use of credit cards for gambling. Community and counselling bodies have regularly argued against its use<sup>52</sup>. Improper credit card use is a major problem in its own right, with some 27% of bankruptcies over the past 11 years being ascribed to people accumulating huge credit card and personal loan debts.<sup>53</sup>

In the case of online gambling, the concern is that the dangers of credit card misuse coupled with online gambling could exacerbate both problems.

Although this Association supports the principle that all gambling providers should broadly be subject to similar responsible gambling controls, the use of credit cards shows that this principle must also be balanced with the realities of the particular gambling type.

In the case of Internet gambling and e-commerce, credit cards remain the principal form of payment. Almost every commercial site on the Internet allows for credit card payments either online or by telephone. The almost 2000 Internet gambling sites allow for the funding of the account through a credit card.

In the light of this, a proposition to ban only Australian providers from accepting funds from credit cards is futile and dangerous. It seems counterintuitive to promote the ban in the name of problem gambling when its sole effect is to drive Internet gamblers to offshore sites.

Any ban on credit card usage would impact disproportionately on the benefits to recreational gamblers who constitute by far the vast bulk of online gamblers.

It is also way too late for such a proposition to have any effect.

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<sup>51</sup> It appears Clubs Australia is trying to target internet gambling providers as the principal source of problem gambling. See “Net Betting worse than pokies: Clubs” SMH 11 April 2009, “Clubs Australia Proposal for Gambling Bans” The Daily Telegraph, October 22, 2008 and “Push to stop online punters using credit” SMH, January 13, 2009.

Regrettably, the concerns raised are either exaggerated (see assertions that problem gamblers amount to 40% of Internet gamblers (or 20% depending on which article is cited), factually wrong (for example the suggestion that internet gambling staff are not provided with responsible gambling training) or look at Australia in isolation to the rest of the world (see later discussion on free bets and bonus offers).

<sup>52</sup> See California Council on Problem Gambling, where 54% of problem gamblers reported they financed their (all forms of ) gambling through credit cards and 39% said the cards were “maxed-out”.

<sup>53</sup> “Maxed-out credit cards and Nowhere to Run”, SMH March 25, 2009.

A review of any major gambling sites will show that credit cards are but one of a number of forms of deposits that are accepted. Importantly Internet gambling and e-commerce generally is now serviced by specialist online payment systems and online payment mechanisms such as PayPal (well-known to users of Ebay), Neteller<sup>54</sup> or Moneybookers<sup>55</sup>. These facilities enable consumers to create an account funded by a credit card, which may be used in any of the thousands of sites that except that form of e-currency.

Accordingly, a ban on the direct deposit by way of a credit card could be easily circumvented by the two-step process of funding the E-wallet by means of a credit card and then depositing funds with the gambling provider by means of on the e-wallet.

The simple fact is that technology<sup>56</sup> has overtaken the capacity to restrict the use of credit cards even if that was desirable.

It must also be remembered that while credit cards pose an acknowledged risk for problem gamblers, they also provide important fraud, anti-money-laundering and other controls.<sup>57</sup>

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<sup>54</sup> See [www.neteller.com](http://www.neteller.com).

<sup>55</sup> See [www.moneybookers.com](http://www.moneybookers.com). It boasts 7 million members and services some 35,000 sites around the world.

<sup>56</sup> The above discussion also applies to “smart cards”, Stored Value cards and other payment methods that facilitate e-commerce.

<sup>57</sup> Online gambling is sometimes perceived as being especially attractive and susceptible to money laundering. The concerns arise because the perceived anonymity of both the gambling transactions and the payment methods. But on examination, regulated online gambling sites are not especially attractive or susceptible to money laundering.

Australian sites are highly regulated. The account holders’ identities are known, the financial transactions between the bettors and providers are recorded in electronic format, and all of the betting is recorded. This information, combined with IP address records and other data, provides an exceptional audit trail. These records are available to Australian and international regulatory authorities.

These controls make online gambling less attractive to money laundering than the anonymous, cash transactions that may be made with other gambling providers.

With respect to concerns about credit cards, it is useful to note two comments by the United States General Accounting Office:

*“Bank regulators, credit card industry representatives and law enforcement officials we interviewed generally agreed that credit cards accounts were not likely to be used in the initial stage of money laundering when illicit cash is first placed into the financial system, because the industry generally restricts such payments. Bank regulators and credit card industry representatives we interviewed acknowledged that credit card accounts might be used in layering or integration stages of money laundering. For example, by using illicit funds already placed in a bank account to pay a credit card bill for goods purchased, a money launderer has integrated his illicit funds into the financial system....”* United States General Accounting Office, “Money Laundering: Extent of Money Laundering through Credit Cards is Unknown” GAO – 02 – 670 (22 July 2002)

### *Credit Betting*

Credit betting is more problematic.

Credit betting with bookmakers has a very long history and is provided for in the legislation of several States.<sup>58</sup>

The genesis of credit betting is betting on a racecourse. To avoid the inconvenience and risks associated with handling large amounts of cash on course, bookmakers would allow certain clients to “bet on the nod”, or on credit, on the understanding that they would settle up at a later time.

The facility is also used by larger professional gamblers who seek to arbitrage differences in prices between various operators. In this case, the punter will outlay large sums for a more probable small win. Although the profile varies from company to company, credit betting is a facility offered to larger clients and professional gamblers. It is only offered to a select number of clients.

The practice of credit betting is limited to wagering,<sup>59</sup> and the extent and terms of any “trading account” that an operator allows a client to use, is agreed between the two of them. Any commercial default is borne by the operator.

To what extent is credit betting associated with, or exacerbating problem gambling? Community groups have had a long-standing position that people placing bets should not be obtaining credit from the person they are betting with. They suggest there is a

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*“Banking and gaming regulatory officials did not view internet gambling as being particularly susceptible to money laundering, especially when credit cards, which create a transaction records and are subject to relatively low transaction limits, are used for payment. Likewise, credit card industry officials did not believe that internet gambling was any more or less susceptible to money laundering than any other types of electronic commerce and pointed out that, in their view, the financial industry, which is responsible for the payments system, is better suited to monitoring for suspicious activity...” United States Accounting Office, “Internet Gambling: An Overview of the Issues” GAO- 03-89 (2 December 2002)*

<sup>58</sup> See for example, Section 76ZZAA of the *Tasmanian Gaming Control Act 1993*, which deals with “Trading accounts”.

A wagering provider (wagering or sports, and betting exchanges) “*may operate a trading account in respect of a player or other person if the provider –*  
 (a) *is the holder of an authority to operate trading accounts; and*  
 (b) *considers that –*  
     (i) *the player or other person is suitable to have access to a trading account; and*  
     (ii) *it is otherwise appropriate to operate the trading account; and*  
 (c) *operates the trading account in accordance with the conditions to which the authority to operate trading accounts is subject.”*

See also Rules made under the *Race and Sports Bookmaking Act 2001* of the ACT which revised Rules first developed under the *Bookmakers Act*.

<sup>59</sup> I.e. Bookmakers and Betting Exchanges, although the TABs have either undertaken the practice (eg NSW TAB) or are expressly being allowed to do so (see Sale Terms for Tasmanian Tote).



fundamental conflict of interest in a credit provider having a commercial interest in both the lending and the gambling services purchased.

Previous reviews of rules regarding credit betting by bookmakers have recognised that credit betting is limited to a select group of punters, with good practice seeing the bookmakers verifying the clients' creditworthiness, and the application of the Consumer Credit Code to bookmakers' credit arrangements. Although there have been instances of bankruptcies where the outstanding debts included debts owed to bookmakers, there is no available evidence to show that the rate of problem gambling increases with credit betting.

In the absence of such evidence it is suggested that no case is made for changing the current arrangements.

While this is an area that needs more research, it appears sensible to maintain the benefits to clients of credit betting but continue to set broad controls.

### *Free bets and Inducements*

Recently, some Australian operators have been criticised for offering modest "signup bonuses" to those who open new accounts - the "\$100 free bet" offer. This has been labelled an improper inducement to gamble.

It is important that offers such as this are seen in perspective.

"Cash-back" offers and giveaways are a standard (and unremarkable) feature of the marketing of all businesses. In the case of gambling sites, the "free bet" or other "bonus" offers are a practical way of appealing to the market.

Again, this is not a new concept, with "free bets" and bonuses having become so prevalent in the global internet gambling industry, they are now the subject of specialist websites and services that compare the bonuses on offer.<sup>60</sup>

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<sup>60</sup> "Betting sites regularly offer bonuses to both new and existing customers. In this section, we'll show you the special offers and promotions offered by the bookmakers in our selection. Only the very best, most reputable and financially sound bookmakers figure in our selection." See [www.sportytrader.co.uk/betting-bonus.htm](http://www.sportytrader.co.uk/betting-bonus.htm)

"Bookmaker Bonuses - In order to attract you to their service most bookmakers offer bonuses when you open a new account with them. These betting bonuses can be a straightforward free bet, a specific bet on an event, or can be dependent on how much you deposit in your betting account." See [www.racing100.co.uk/bookmaker\\_free\\_bets.htm](http://www.racing100.co.uk/bookmaker_free_bets.htm)

See also [www.bettingexpert.com/bookmaker\\_bonus.php](http://www.bettingexpert.com/bookmaker_bonus.php), or <http://www.bookmakerbonuses.com/>

For Australian see <http://www.freebookiebets.com.au/>

"Free Bookie Bets brings you the best [Free Bets](#) and [Sign up Bonuses](#) offered online by Australian Bookmakers that allows you the punter to have a bet for FREE. Click 'About Free Bookie Bets' on the left menu to find out how easy it is to get your Aussie bookies free bets."

See also <http://www.freebetsandbonuses.com.au/>, [www.horseracingaustralia.info/bookmakers.htm](http://www.horseracingaustralia.info/bookmakers.htm), or <http://www.ifreebets.com.au/>

As this is global practice, with various forms of bonuses being offered by all major operators, a ban on Australian operators matching these modest offers would have the effect of making the Australian industry less competitive in the global market but at the same time make overseas operators more attractive to Australian punters.

It also important the \$100 free bet offer should be seen in comparison to the promotions offered by other gambling establishments. For example one Australian casino conducted a promotion offering the chance to win \$50,000 a year for the next 20 years. This offer was heavily promoted in the media including radio and television, without adverse comment. In the light of this, a \$100 free bet offer seems very modest.

Overall, this seems to be a controversy with more heat than light, and appears to be part of a campaign to unfairly characterise internet gambling as irresponsible. (As one commentator colourfully described it, the Australian club industry has decided to “push the Internet gambling providers under a bus”.) Regrettably, internet gambling is often the subject of uninformed and factually incorrect comments as the controls applied to it are not widely known or understood.

## 5. The Interactive Gambling Act

The stated objective of the *Interactive Gambling Act* (IGA) was to address community concerns about the availability and accessibility of interactive gambling in Australia. Its aim was to ensure new interactive gambling services did not exacerbate the level of problem gambling in Australia.

The IGA<sup>61</sup> makes it an offence to provide certain interactive gambling services to customers physically located in Australia. These prohibited services typically include online casino-style gaming such as roulette, poker, craps, online poker machines and blackjack. The IGA also makes it an offence to advertise interactive gambling services in Australia.

The question is whether the prohibition in the IGA has worked and more importantly whether it will work in the future. What is its real impact on problem gambling?

The central issue with internet gambling is the question of access. In 1999, the Productivity Commission expressed concern regarding the accessibility of gambling services and the prevalence of problem gambling in the Australian community. The IGA was intended to block access by making it an offence for gambling providers, national and international, to provide prohibited services (internet gaming).

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<sup>61</sup> Under the IGA, it is an offence to provide certain interactive gambling services to customers physically located in Australia. This offence, which carries a maximum penalty of \$220,000 per day for individuals and \$1.1 million per day for corporations, applies to all interactive gambling service providers, whether based in Australia or offshore, whether Australian or foreign owned. The IGA also makes it an offence to advertise interactive gambling services in Australia. These services typically involve the Internet to play games of chance, or games of mixed chance and skill.

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

- a telephone betting service;
- excluded wagering services including betting on a horse race, harness race, greyhound race or sporting event, or any other event, series of events or contingency, where the bet is placed prior to the event commencing;
- excluded lottery services; which include most forms of lottery service, except for online instant and scratch lotteries;
- excluded gaming services that are provided to customers in a public place;
- services that have a designated broadcasting or datacasting link, including:
  - a program or series of programs broadcast on a broadcasting service;
  - programs or content transmitted on a datacasting service;
- certain contracts (including options and futures contracts) that are exempt from gaming or wagering laws under the *Corporations Act 2001*; and
- any service declared exempt by the Minister.

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

The problem is that the Act is unenforceable, and so operators outside of Australia have ignored it. Registration is open and encouraged from Australians by almost all offshore providers. From the perspective of the Australian punter, he or she may gamble on the internet with any of the major global gambling providers.

Practically, only local gambling companies are bound by it.

In the Review of the IGA conducted in 2004<sup>62</sup>, it was argued the Act should be amended because it had been ineffective in preventing access to potentially harmful interactive gambling services<sup>63</sup>. DCITA dismissed these calls. It did so for two reasons.

Its review found “*no substantive evidence to support the claims that the IGA should be amended or repealed on the basis that the legislative framework has been ineffective in preventing access*”. Rather, the review found that the introduction of the IGA has “*had the effect of, and been associated with (respectively), the closure of all but one interactive gaming operator licensed in Australia and the minimal use of offshore gaming services by Australian consumers.*”

Both of these conclusions were debatable then, and are even more so now.

Firstly, the dampening effect of the IGA on the development of a licensed Australia gaming industry had only a short-term impact on the Australian appetite for interactive gaming. Because it offered no alternative providers, and was ineffective in restricting access to foreign sites, the growing demand of Australians for online gaming – especially poker - was directed offshore. The Report found “the IGA has had a substantial effect in curtailing the provision of gambling services *from Australia.*” [emphasis added]. That is correct as far as it goes, but it has had no impact on curtailing the provision of gambling services *from anywhere else.*

This trend will increase should the IGA remain in its present form.

The more contentious and the important conclusion was “*the minimal use of offshore gaming services by Australian consumers.*”

This conclusion was based on a survey conducted by Allens Consulting Group. ACG found that relatively few Australians are engaging in Internet gaming activities prohibited under the IGA. ACG found that only 0.12 per cent, or approximately 18,000 Australian adults, used the Internet to gamble for money on gaming services in the 12 months to April 2003.

This estimate compared with the Productivity Commission’s assessment that in the 12 months to April 1999, more than 58 000 Australian adults had played casino games—or about 0.41 per cent of Australian adults.<sup>64</sup>

While survey data indicated some growth in the overall consumption of Internet gambling services by Australians in the four years since the Productivity Commission report, the majority of the growth had been in legal sports wagering services.

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<sup>62</sup> “*Review of the Interactive Gambling Act 2001*” Department of Communications, Information Technology and the Arts, 2004.

<sup>63</sup> Report, Page 41

<sup>64</sup> Productivity Commission, *Australia’s gambling industries*, Report no. 10, Ausinfo, Canberra, 26 November 1999, p.18.9.

Hence, “*there is no evidence to suggest an equivalent level of growth in the use of Internet gaming services that are prohibited under the IGA.*”

This was a surprising result. (May there be a correlation between the high level of awareness of the provisions of the IGA among internet gamblers and the low reported usage of online gaming?) There is little utility in revisiting the 2004 conclusion and the more relevant question is what is the extent of current demand? What will it be in the future?

Because this market is underground (offshore) and there are no hard statistics available, it is not possible for anyone to speak with certainty as to the size of the Australian market.

However, it is possible to point to other forms of evidence and draw appropriate inferences. It is useful to focus on one activity – online poker – as a pointer to the size of the Australian online gambling market.

### *Poker in Australia*

When discussing poker in Australia, it is important to distinguish between the three forms of the game:-

- the first is the poker schools, poker clubs and poker tournaments that have become prevalent in venues around the country;
- the second is free play online poker. In this situation the player plays only for points and token prizes. This activity is lawful and may be advertised. (These sites are often designated as “.net” or “.org” sites.)
- The third is online poker played for money. These sites offer prohibited services and are, in theory, not permitted to advertise. (These sites are designated “.com” sites.)

The experience with poker in Australia underlines the weakness of the IGA in preventing Australians accessing offshore gaming sites, and also the flaws in the current advertising restrictions.

How large is the Australian poker market? One the evidence, it is very large and growing.

There has been an explosion of interest in poker games, especially Texas Hold ‘Em, across Australia. Australia is part of a worldwide poker phenomenon prompted in part by the televising of games of poker.<sup>65</sup> Poker tournaments are now a regular feature of pubs and clubs around the country. In 2007<sup>66</sup> it was reported that close to 400,000 Australians had joined organised poker leagues in less than 18 months<sup>67</sup>.

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<sup>65</sup> Joker Poker screened in 2006 on the 10 Network and reportedly drew over 200,000 viewers to its midnight timeslot. Poker is also now a media fixture on Australian television with regular weekly programming by cable and free-to-air TV.

<sup>66</sup> “*Cheats set to sour poker fun.*” Sydney Morning Herald, July 7, 2007

<sup>67</sup> In 2007, the Australian Poker League was reported to control games in 760 pubs and clubs. The league has divided Australia into 112 poker area franchises. The franchisees receive a share of profits from the \$500 hiring fee paid by each venue. “*High Stakes in the Suburban Poker Boom*” SMH, July 7 2007

There is a concern that Australian poker players are introduced to online poker in several ways.

The first is direct access to the player database. Although there is no direct evidence of this occurring<sup>68</sup> it remains a possibility.

The second is brand recognition. Sponsorship arrangements with poker clubs provide the opportunity for major operators to sell their “name” to potential players. For example, the arrangement between APL and FullTiltPoker allowed FullTiltPoker access to Australian amateur players on the pub circuit, branding of events and on the member's website, and inclusion in marketing campaigns.

On the assumption there is a direct link between marketing expenditure and market penetration, then the current “advertising spend” points to an enormous market. The following table sets out the advertising spend in the first two months of this year by online entities. It will be noted that a poker site outspent every online operator in the country (including the TABs).

**Advertising Spend by Australian Online Providers  
January – February 2009**

Sports Bookmaker #1	\$132,000
Sports Bookmaker #2	\$230,000
Sports Bookmaker #3	\$233,000
Sports Bookmaker #4	\$335,000
Sports Bookmaker #5	\$451,000
Sports Bookmaker #6	\$689,000
Sports Bookmaker #7	\$1,030,000
Sports Bookmaker #8	\$1,118,000
Sports Bookmaker #9	\$1,484,000
Sports Bookmaker #10	\$1,636,000
<b>PokerStars</b>	<b>\$2,536,000</b>

Advertisements are carried in all media - full-page advertisements in metropolitan newspapers, major radio stations, and television. Billboard advertising has been posted in train stations in the major cities. The promotion of the (legal) “free play” (play for points) sites is everywhere.

Often, a “free play” site will carry a link to the “real money” site. The home pages of both sites are often virtually identical.

The United Kingdom offers a useful illustration of how the advertising of “.net” sites has been regarded elsewhere. The UK Advertising Standards Authority on 25 May 2005 delivered its adjudication on a complaint that the advertising of party poker.net infringed advertising restrictions. The ASA said

<sup>68</sup> In 2007 the Sydney Morning Herald reported a major investment in the Australian Poker League by the US online gambling company FullTiltPoker. APL denied provided FullTiltPoker with its membership database, or that it was a portal to the US gaming website.

*"We believed the advertising for www.partypoker.net indirectly publicised www.partypoker.com primarily because of the similarity in the website names. It is easy to overlook the suffix when looking at the website address and viewers may decide to search online to find it. If so, viewers searching for the poker school website using the word partypoker on a search engine could easily be directed to the online gaming site; indeed when we entered "party poker" into the popular search engines Yahoo and Google we found that the gaming website www.partypoker.com was listed prominently and repeatedly but the poker school website www.partypoker.net was not listed in the first 30 results on Yahoo and was number 20 on the list for Google.*

*... we believed there was likely to be a general level of awareness among viewers of the [TV] channel that www.partypoker.com was an online gaming website. Both websites had almost identical website names and logos were very similar so it was likely that viewers would connect the two.*

*We therefore believe that a significant effect of the television advertisements for the poker school website was to publicise the unacceptable gaming website."*

The ASA went on to observe that *"it is unlikely that any advertisement for the poker school website would be acceptable if the name is the same as a gaming company."*<sup>69</sup>

This sensible conclusion of the UK ASA is starkly different to the approach taken in Australia.

Another method of converting players from "points" to "real money" is by means of a "conversion email" sent to the registered players of the ".net" site. The following is an actual example of such an email.

**A seat in a REAL MONEY USD20,000 tournament...**

Sign up today with PartyP0KER using bonus code SEATFREE,

become a real money player, and take a chance at a USD20,000 freeroll tournament!\*\*

USD20,000 Freeroll details:

Date: Sunday, March 2

Time: 16:00 ET (21:00 GMT)

Game: NL Texas Hold'em

Prize pool: USD20,000

**Buy in: FREE**

Just go to www.partypoker.com, download, sign up using bonus code SEATFREE, and become a real money player.

Then go to our "Special" tournament section find the "USD20,000 Sunday special Freeroll" and click on 'Register Now'.

<sup>69</sup> Advertising Standards Authority, Broadcast Advertising Adjudications, 25 May 2005, page 12-13

**And that's not all!**

Register before February 25 and get an EXTRA USD50 to play at our Casino!  
 Sign up NOW and get your SEAT!  
 Good luck and see you at the tables. Sincerely, The PartyPOKER Team

=====  
 \*This offer is valid till February 29 23:59 GMT.

\*\*All players MUST use bonus code SEATFREE in order to claim the above offers.

Terms and conditions apply

<https://secure.partyaccount.com/events/seatopen/terms.htm>

How many players are converted?

An officer of the National Poker League which claims a membership of 200,000 Australians, said in April this year that “our research shows that 50 per cent of them also play poker online for cash”<sup>70</sup> It has been claimed “Hundreds of thousands” regularly play poker on overseas sites.<sup>71</sup>

This is supported by anecdotal evidence from within the industry that some 1200 “for money” Australian poker players *per week* have been reportedly signed up by overseas gaming sites. One (smaller) operator was reputed to be making revenues of \$2 million a week from Australia.

Anecdotal industry evidence is that Australia makes up between three and 5% of one major operator’s revenue.

Website analysis shows that traffic percentage from Australia to 4 of the major operators (May 2008) was 1.4% of their total traffic, 2.4%, 2.1% and 3.5% respectively. This is not insignificant given the size of their networks.

Indeed, online operator, 888.com, has flagged its entry into the Australian market in its recent Annual Report - *“in Australia 888 launched the 888 poker brand through a heavyweight outdoor campaign in Sydney on bus and train networks supported by national press and magazines.”* It is noted that this site was a “real money” site, had an Australian sports star on the home page promoting a competition only an Australian could win, and had an Australian toll-free support number. This is an example of the site specifically targeting Australia with dedicated advertising supporting it. It is not the only example.

In September 2007 GamedayPoker.com released a press release announcing a multi-year partnership with an Australian V8 Supercar championship team. The deal would see the V8 Supercars carry the GamedayPoker.com logo. The CEO of the Gameday Group announced that this was part of a strategy as *“we begin to focus our marketing attention on the Australian and New Zealand markets”*. He went on to say that throughout the V8 Supercar Championship GamedayPoker.com would be offering incentives and signup bonuses to V8 Supercar fans.<sup>72</sup>

<sup>70</sup> “Red Hot Poker”, Sydney Morning Herald, 4 April 2009.

<sup>71</sup> “Online Punters Rushing to Play”, SMH, 4 April 2009

<sup>72</sup> GamedayPoker Press Release, London 10 September 2007, *“GamedayPoker.com races in Australian V8 Supercars”*.



As said earlier, it is not possible to quantify precisely the extent of the Australian market but it is appropriate to draw inferences from the above evidence. Given the enormous popularity of poker in other countries especially say Canada or the United Kingdom, it may be assumed a similar take-up has occurred in Australia. Having regard to its popularity in venues, the advertising spend, and the anecdotal evidence from within and outside the industry, the local market is very large.

Even if the estimation of “half converting” to real money play is exaggerated, it is still probable that the Australian market is measured in the hundreds of thousands of players spending millions of dollars.

The inescapable conclusion is that – as predicted – the online poker market in Australia, though illegal, is enormous. The “line in the sand” set by the IGA has been well and truly crossed. The Act is becoming more ineffective with every new advertisement that is placed.

It is ironic that one of the arguments raised in support of the IGA was that it would not allow Australian operators to stimulate demand for online gambling that otherwise would not be there. Instead, the demand has been stimulated by operators from offshore. Overall, it is difficult to see many positive outcomes in the way the IGA deals with the social impacts of interactive gambling.

If there was little confidence in the rigour of the DCITA review of the IGA in 2004, then there can be less so now. This review provides a timely opportunity to accurately define the aim of the Act and to objectively weigh up the costs and benefits of the current approach. This Association suggests that the “line in the sand” is badly placed. It is not possible to resist the advance of new technology.

When concern about problem gambling is the principal rationale for the IGA, the conclusion must be that the IGA offers the poorest possible response for achieving this objective. Once the player decides to ignore the ban<sup>73</sup>, the Act becomes totally ineffective and offers no alternative forms of support for problem gambling. It leaves Australian online gamblers to their fate. Australian governments and its citizens will bear the social costs of this activity.

This Association is of the view that regulation is far preferable to prohibition in tackling problem gambling. It seems more sensible to allow Australian players to play on Australian sites under Australian control and offering Australian responsible gambling strategies. If access is the main “negative” of Internet gambling and little can effectively be done to restrict access to Internet gambling, then it is time to exploit the “positives” offered by the new technology.

In discussing access it is appropriate to note the Federal government's current trial of Internet filtering. It is difficult to offer precise comment on this mechanism as no policy statement has been issued as to the categories of sites to be included in the mandatory ban. There is also the question of whether the trial will be technically successful and the proposal will go ahead.

However, even if filtering was a possible technical option, this Association does not support the mandatory blocking of offshore gambling sites as a matter of principle.

The United States experience with the World Trade Organisation and the similar disputes that are occurring within the European Union recognise that artificial

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<sup>73</sup> The ban is on the operator from providing, not the player from accessing.

restrictions on competition are contrary to the international free trade principles Australia espouses.

This Association recommends that the *Interactive Gambling Act* be amended to allow the provision of online poker services to Australians by Australian operators.

### *The IGA and Other Interactive Gaming Products.*

It may be expected that the Australian take-up of online casino games has also increased.

As mentioned earlier in this submission, the emerging business model for online gambling is for each site to offer a full suite of products to its registered players. Accordingly a person registering to play with an online poker site may be expected to be “cross sold” casino and other gaming products by the same provider or by a related affiliate provider.

For the same reasons that reforms are needed with respect to poker, similar reforms must also be made for other forms of gaming. It is difficult to see the merit in a legislative scheme that is unenforceable to the extent that Australians may gamble freely offshore on sites offering a lesser level of player protection and control than our own.

It is therefore recommended that the IGA be amended to permit the provision of online gaming products to Australians by Australian operators.

### *In run betting*

The final reform that should be made to the IGA is to amend the current restriction on Australians being offered in the run betting services online.

When the IGA was passed, it was amended to exclude interactive *wagering* (betting on racing, sports and similar events) but preserved a prohibition on interactive *gaming* (casino games, simulated gaming machines etc.)

However, the Act did not allow a complete exclusion for interactive wagering. “Betting in the run” by way of interactive technology was also banned. This response poorly distinguishes between “betting in the run” and “micro-event wagering”.

“Betting in the run” refers to betting on approved bet types (eg, who will win) after the event has commenced. “Micro-event wagering” is the much publicised notion of whether the next ball bowled in a cricket match will be a Googly, or whether a tennis player will serve an ace on the next point.

Although the restrictions were imposed in the light of concerns with “micro-event wagering”, “betting in the run” was caught up in the process. The amendment allowed “betting in the run” by Australians with Australian betting providers only when it was undertaken by means of the telephone. The internet could not be used.

It is proposed this anomaly be corrected. It is helpful to examine this issue from several perspectives.

#### *(1) Approved Bet Types*

It is important to distinguish between the bet type and the communication channel. This amendment would cure an anomaly in the *method* of placing a bet, and not change the *kind* of bet that can be made.

Australian wagering operators are only permitted to offer bet types that have been approved by the State or Territory gambling regulator. It should be noted from the outset that the “micro-event wagering” bet types are not, and would not be approved, by State and Territory gambling regulators. This may be independently verified with them.

In addition, it is a term of integrity agreements entered into between racing or sports authorities and Australian wagering providers that the particular sport or racing code must also approve the bet type offered. These requirements for separate and independent approval of bet types provide an adequate check on the probity of “betting in the run”.

That being said, the IGA itself *permits* the bet type (which is where any concerns should arise) but only restricts the *method* of placing a bet.

### (2) *Technology*

The present exemption allows the bet type but restricts the technology able to be used to deliver it. An Australian punter is able to bet “in the run” with an Australian betting provider if he or she uses 19<sup>th</sup> Century technology – the telephone - but is able to bet with anyone else in the world using 21<sup>st</sup> Century technology – the internet.

This is an anomalous result and appears to have little basis in policy. As was found in the 1999 Report, the internet is simply a communication channel.

Restricting “in the run” betting on a technological basis is not sound. The artificiality is becoming more apparent as new generations of telephones blur the distinction between “telephones” and other forms of interactive communication.

Australian providers compete in a global market. They offer “in the run” betting by way of the internet to all clients other than Australians; Australian punters are required to telephone their bets. This leads to added costs and a loss of business efficiency for Australian providers.

### (3) *foreign competition*

From the perspective of the Australian punter, he or she may “bet in the run” by means of the internet (or any other interactive technology) with any of the major global betting providers, except local providers. Australian providers are at an obvious disadvantage.

As a practical illustration of international competition, the reputable UK bookmaker, Ladbrokes, notes on its website that it is known “*for its innovative online live betting products...*”. A review of its website and those of other bookmakers such as William Hill and Victor Chandler, will show the breadth of “live betting” options that are offered.

The anomaly therefore encourages local punters to bet with offshore providers, which serves no sensible policy purpose.

*(4) responsible gambling*

The Act was prompted by concerns about problem gambling. As noted above, it is suggested misplaced concerns about “micro-event betting” influenced the legislative response. The Act recognises that the bet type is permissible, but artificially restricts the method of delivery.

Removing the anomaly would not exacerbate the risk of problem gambling as Australian consumers already have access to these services, either by telephone (Australia) or by the internet (all other global operators).

It is recommended that the anomaly be removed.

## 6. Regulatory Structures and Taxation

It is in the area of regulation and taxation where the deficiencies in the Australian response to Internet gambling are most apparent.

Internet gambling allows for cross-border betting, and the States are struggling to develop State-based laws that would apply effectively to the national market for wagering products.

This chapter will briefly describe developments since the 1999 Report and the problems that are emerging. It will then recommend a process for resolving these problems and for developing a national scheme for the regulation and taxation of Internet gambling.

### *Racing Product Fees*

In its 1999 report, the Commission pithily observed that many of the regulatory structures were unnecessarily restrictive or anti-competitive. *“Many current restrictions are designed with the interests of the current participants – governments, TABs, the racing clubs and so on - in mind and should be subject to broad public interest tests.”*<sup>74</sup>

It appears the comment could also be made about many of the new race fields schemes.

In 1999 the Commission noted that cross-border betting was causing market failure in the funding of the racing industry. This was because under the (then) prevailing funding arrangements, cross-border betting did not return funds to the racing industry that was providing the product for gambling, but instead saw fees and taxes paid to the State or Territory that licensed the betting provider.

The Commission, and subsequently a National Working Party formed by the State and Territory Racing Ministers, recommended the introduction of “product fees” whereby fees would be payable to the particular racing industry by those gambling operators that offered bets on their product.

Subsequently almost all of the States and Territories have passed legislation that requires the payment of a fee for the use of their particular Racefields – the “product fee” legislation.

It must be stressed from the outset that this Association has always supported the payment of a fair fee to the racing industry. Many members of this Association have been involved in the racing industry all their working lives, are passionate about it and its future, and recognise the need for adequate funding structures to be put in place to ensure its viability.

Despite this goodwill, the path to a fair and workable scheme is proving difficult with some racing authorities. Bookmakers have tried to work within the schemes as

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<sup>74</sup> Productivity Commission, 1999 Report, para 14.17.

proposed<sup>75</sup> but they object to a scheme or a fee that is designed to penalise them or discriminate against them.

The problems with the race fields legislation arise under two broad headings:

- (1) the legislation itself; and
- (2) the way the legislation is being implemented by some racing authorities.

*The problems with the legislation*

The fundamental problem with the race fields legislation is that it is State-based legislation that is designed to protect State interests, but that is trying to regulate a national market. Each State is looking at itself and its racing industry as a separate “economic unit” to the rest of the country. This protectionist motive inevitably leads to legal difficulties.

The High Court’s *Betfair* decision<sup>76</sup> set out the basic principles against which legislation must be framed. As will be described below, internet bookmakers contend these conditions have not been met and unfair and arguably illegal schemes are the result.

The *Betfair* decision puts beyond doubt the fact there is national market for internet betting.<sup>77</sup>

It makes it plain that the aim of protecting the revenue to the racing industry does not permit discriminatory measures.<sup>78</sup> This requires fees that are “*neutral as between traders within [the State] and traders outside it.*”<sup>79</sup>

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<sup>75</sup> At the request of the Australian Racing Ministers, negotiations initially commenced with the Australian Racing Board in 2003. After some months of negotiation and discussion it appeared the Board did not have the power or authority to bind the States to a single national scheme and to enter into an agreement.

At this time Betfair was seeking an Australian licence and, following Tasmania's decision to license big exchanges, Victoria passed legislation to provide for the payment of fees based on the publication of the Victorian race fields. Discussions commenced with Racing Victoria Ltd (RVL).

After some negotiation, a workable scheme was arrived at. Importantly the fee payable to RVL took account of both taxes payable to the State or Territory where the bookmaker was licensed, and also regulatory restrictions on interstate operations in Victoria, for example, the (then) advertising restrictions.

Subsequently the other States and Territories have followed Victoria's lead in passing race fields legislation.

<sup>76</sup> *Betfair Pty Limited v Western Australia* [2008] HCA 11 (27 March 2008)

<sup>77</sup> “The evidence shows that there is a developed market throughout Australia for the provision by means of the telephone and the internet of wagering services on racing and sporting events. Indeed, the evidence shows that such a market may be international. Within the Commonwealth the events may take place in one State, the customer be in another and the licensed bookmaker or TAB be in a third.” Para 114

<sup>78</sup> “In its submissions Western Australia also contended that any practical effect of the impugned legislation in protecting the turnover of in-State operators from diminution as a result of competition from Betfair, with consequent prejudice to the returns to the racing industry and in-State revenue provided by it, could not be protectionist in nature. But a

Protectionist aims “could not be saved by granting a discretion to create exemptions, for the “discretion [was] simply a smokescreen for a prohibition”.

Further, the economic consequences of the operation of a law come within the purview of s 92.<sup>80</sup>

Finally, and which is most pertinent to the need for a national model is the observation that “To focus upon the geographic dimension given by State boundaries, when considering competition in a market in internet commerce, presents practical and conceptual difficulties. Yet, Western Australia and supporting State interveners emphasised that s 92 permanently mandates that each State retain its own “economic centre”. That proposition, as will appear from what is said later in these reasons, is overbroad.”<sup>81</sup> Yet it seems this proposition is at the core of the State-based legislation or the way it is applied.

The above principles set out the constitutional boundaries for a lawful and fair scheme. Further boundaries are set with Trade Practices principles and the need to treat participants in a market fairly<sup>82</sup>, and basic requirements to procedural fairness (for example, due consultation on the rate of a fee.)<sup>83</sup>

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*proposition which asserts that an object of revenue protection of this kind may justify a law which discriminates against interstate trade is contrary to authority[100]. And it is contrary to principle, for such a justification, if allowable, would support the re-introduction of customs duties at State borders.” Para 108*

<sup>79</sup> Heydon J Para 146

<sup>80</sup> The Majority cited with approval the comments of Barwick CJ in *Samuels v Readers' Digest Association Pty Ltd*:

*"No doubt the legislature of a State desiring to protect its traders from competition from traders in another State might well think that it would be of advantage to its traders to ban the kind of discount which its traders either did not wish to give or which its traders could not afford to give. But that protection is, to my mind, demonstrably one of the kinds of interference with freedom of trade and commerce which cannot be sustained. As Fullagar J observed in *McCarter v Brodie*[9]:*

*'The protection of the industries of one State against those of another State was, of course, one of the primary things which s 92 was designed to prevent.'*

*Or it may be that a State, according to the current philosophy of its government, may disapprove some trading practice and accordingly without any idea of protecting the trader ban it. But the economic consequence of a law cannot be disregarded and such a law is in no different case to a law designed to limit competition."*

<sup>81</sup> Para 15

<sup>82</sup> It is only recently that there has been recognition that all racing authorities must treat all betting providers as subject to the schemes. There is no longer any room for improper exemptions, and so all schemes must include all TABs and on-course bookmakers.

<sup>83</sup> Unsatisfactory process is also found in the legislation of Victoria and NSW. The law allows a right to appeal to the Minister about the grant or refusal of approval to publish the racefields,

The key point is that, rather than implement schemes in compliance with these principles, there has been resistance to any change. With some States, consultation on the rate of the fee has been peremptory or non-existent. Legal reform has only come after court challenges. The recent removal of advertising restrictions in Victoria and NSW (and, by implication, across the rest of the country) has only come after litigation. Bookmakers have had no choice but to take legal action to obtain a fair (and legal) outcome.

This being said, bookmakers have been prepared to work within the State legislation regardless of the defects<sup>84</sup>, provided the arrangement that was reached was fair.

However, in some cases, internet bookmakers are not satisfied that the process for settling the fee was fair or unbiased, and are concerned that irrelevant or incorrect material has been taken into account. The issue has not received a fair hearing.

This becomes apparent in the application of the legislation by some racing authorities. The “product fee” has been used not an neutral or objective way in order to normalise the market distortions caused by cross-border betting, but in manner to constrict the market share of interstate bookmakers. Indeed, so focussed have they been on corporate bookmakers and bet exchanges, that the decisions risk damage to their own industry.

#### *The Application of the Legislation*

What is occurring is a fundamental shift from the taxation of providers *at the place of licensing* to taxation of providers *by source of product*. One fee is being replaced with another. However, because this is not occurring in a nationally co-ordinated manner, there are no transitional provisions in place for this shift to occur smoothly.

This had led to unbalanced outcomes. Some NSW racing authorities, for example, have imposed a fee of 1.5% of turnover *on top of* existing taxes and charges payable by interstate bookmakers.

At the other end of the scale, South Australia has done away with betting taxes at the same time as its new scheme came into effect. The SA scheme is clearly fairer, recognising the paradigm shift in the taxing model.<sup>85</sup>

The more important issue is the rate of the fee. The new marketplace has encouraged the emergence of new business models, especially corporate bookmakers and bet exchanges. Both operate on a high turnover/ low margin

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but not in relation to any condition to do with the setting of the fee.

<sup>84</sup> The current schemes are characterised by excessive costs and bureaucracy. In some cases, each racing authority in a particular State has developed its own scheme. Instead of recognising licensing undertaken in another Australian jurisdiction, many schemes have taken the form of a *de facto* licensing system in order to supposedly address integrity issues. This is unnecessary given the licensing regulation under which they operate.

Different requirements for reporting lead to unnecessary costs for both racing authorities and betting providers in the administration of the schemes.

<sup>85</sup> It is suggested that those States and Territories retaining betting taxes on bookmakers should abolish them in recognition of the fee now payable directly to the racing industry.



business model. A new fee of 1.5% against a bookmaker's theoretical margin of 5% is, in our view, excessive. This is a new fee of 25% of the gross revenue.

This leads to a key threshold question of how to best accommodate these providers into the funding model. A stark division is emerging between those jurisdictions and racing authorities that want to bring corporate bookmakers and bet exchanges within the funding structure – for example, RVL, Greyhound Racing NSW and South Australia – and those who appear to want to impose an excessive fee such as Racing NSW and Queensland Racing.

This is either because they:

- believe bookmaking companies are able to afford a very high rate. This may reflect a misapprehension of the actual economics of the bookmaking companies and their capacity to pay the Fee; or
- seek a higher Fee as a control or fetter on corporate bookmakers in order to limit their growth, as they see any perceived relaxation of current controls over bookmaking companies will have an adverse impact on TAB turnover and therefore negatively impact on racing revenue.

There is a deal of public statements by racing officials to suggest that the latter is the motivating factor. One of the principal objections of certain parts of the racing industry to corporate bookmakers and bet exchanges is the supposed threat to the revenue the racing industry derives from totalisators.<sup>86</sup> Our concern is that schemes like that of NSW Racing appears less designed to normalise the effects of cross-border betting, than to restrict the capacity of bookmakers to do business, presumably in favour of the TABs.

The CEO of Racing NSW has described the position as follows:

*"NSW punters' money is being attracted by corporate bookies and betting exchanges in other states and territories," V'landys said. "Before race fields legislation the NSW racing industry was receiving nothing from these operators for putting on the show. This piece of legislation has compelled these wagering operators to pay \$1.50 in every \$100 bet on NSW races...."*

*"The corporate bookies and Betfair have unilaterally developed a business model that simply forgot the need to pay the supplier. No other business can do that."<sup>87</sup>*

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<sup>86</sup> This was explicit in the Betting Exchange Task Force Report which concluded "that betting exchanges on Australian racing would pose a serious threat to current betting turnover levels of the three categories of licensed wagering operator in Australia - TABs, traditional bookmakers and corporate bookmakers."

Or "*Betfair No Threat to Racing: Tuttle*" Racingandsports.com, 30 October 2007 quoting the CEO as saying, "From our point of view, in running thoroughbred racing in Queensland we must protect the significant revenue streams that flow into the industry as a result of wagering through Unitab.

"It is our view that growth in wagering with betting exchanges must come at some cost to wagering through our TABs. The rate they want to pay is the key point. The money flowing into the NSW racing industry from a betting exchange is likely to be far less than from their TABs.

<sup>87</sup> "Racing boss defiant over fee", Daily Telegraph, April 3 2009.

This is the heart of the problem. On the one hand, corporate bookmakers and bet exchanges are criticised for “unilaterally” developing an internet business model that operates on low margins and has been adopted around the world, but on the other, Racing NSW adopts a fee formula that takes no account of internet betting and that seems would “unilaterally” try to take NSW racing back to before the emergence of the internet.

To other observers, the real aims of the legislation are apparent.

*“Some background. NSW introduced legislation last year that allowed the three racing codes to charge a product fee from wagering concerns who wanted to operate on their fields. Fair enough, too. The head thoroughbred body, Racing NSW, decided that that fee would be 1.5 per cent of turnover.*

*It meant that turnover, as defined by Racing NSW, would see betting agency Betfair hand over 60 per cent of its gross revenue. But the formula determined by Racing NSW meant that the TAB had to pay just 10 per cent of its gross revenue. Given that it was an equation with such uneven outcomes it seemed certain to send Betfair and corporate bookmakers to the wall. ...*

*However, Betfair is now legal, having proved its right to exist in the courts. Corporate bookmakers have been on the nose, too, because the racing industry felt they did not pay their way. All take, no give. It is now a fact of racing life, that both betting exchanges and corporate bookmakers are legal and have a right to earn a quid. That is why Betfair and Sportsbet are deep into court proceedings against Racing NSW. ...”<sup>88</sup>*

The widespread concern that this fee is counter-intuitive to the interests of the industry itself has been echoed by *Credit Suisse’s* financial analysis. In an Equity Research Report of 11 September this year, it was observed that

*“By influencing the regulatory regime to drive up corporate bookmaker costs, the “fair share” that Tabcorp and the NSW Racing Industry thinks would flow to their coffers will actually disappear, in our view.*

*We do believe that bookmakers should be required to contribute to State and racing industry funding and they are already. However, we think the NSW race field legislation pricing is too high to sustain an important segment of the industry.”*

And also

*“Our conclusion is that corporate bookmakers are actually tapping into a market that only exists at the low take-out rates of 4-6% and would not exist at >16% take-out pricing of totalisators. Therefore, Tabcorp’s strategy of promoting legislation that increases bookmakers’ costs will actually shrink market volume dramatically. Volume will not migrate to Tabcorp’s totalisator pools, in our view”*

While this Association supports and understand NSW Racing’s desire to maximise their returns from wagering on NSW product, internet bookmakers feel this fee is excessive and will harm the industry. NSW Racing’s aim of sharing the “upside” of

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<sup>88</sup> “V’landysman wants the money” *The Australian* March 19 2009. See also “Racing NSW Out of Control”, [www.virtualformguide.com](http://www.virtualformguide.com), 20 March 2009

any high margin is better served by way of profit-sharing, than by setting high turnover rates that simply drive providers out of the market.<sup>89</sup>

Another objection to the NSW Racing fee is one of relativity. This has two aspects to it – one is maintaining a fair relativity between betting providers, and the second is fair relativity between the States and Territories.

Historically, the tax treatment of totalisators and bookmakers has been different. The TABs offer a “no lose” product from a provider’s point of view. Regardless of the result, they receive their commission. By contrast, bookmakers can (and do) lose on races, depending on the result. On this basis it has been seen as only appropriate that TABs are taxed on a higher basis. A parallel in the gaming industry is to compare lotteries (taxed at some 30%+) and casinos (taxed at some 8% of profit.).

In broad terms the difference in the taxation treatment between TABs and bookmakers properly reflects the different business models. Therefore, simply applying the same turnover fee to totalisators and bookmakers as has occurred in NSW is unfair.

As noted by Jamie Nettleton of Addisons Lawyers, *“Historically, a different tax or levy rate has been set for totalisators compared to fixed odds betting, reflecting the different risk profiles of a no risk betting operation, such as a totalisator, compared to*

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<sup>89</sup> This Association has consistently argued for a profits-based scheme as this is the most appropriate funding approach, but the more important issue is the *rate of the fee*. The request is for a fair fee.

There is growing support for a revenue-based fee with Tasmania, South Australia and racing authorities such as RVL and GRNSW moving to this formula. The revenue-based model is the way of the future and it would appear sensible take the opportunity to put it in place now, for all bookmakers throughout the country.

There are a number of sound economic reasons why a profit-based Fee is a better approach, including:

- (1) Basic Economic Theory (the basis of the GST)
- (2) Fairness to consumers and bookmakers.
- (3) Preparing for international competition.
- (4) Equity and fairness with the industry, and
- (5) Equivalence of treatment with TABs.

These reasons have led to the adoption of a profits-based tax in various jurisdictions including Singapore, the UK and Hong Kong. In the 2003 review of the changes made in the United Kingdom, the Report noted that *“Since the implementation of the new system, the UK racing and betting industries have benefited from growth in the market, punters are enjoying more choice and better value than ever before, and bookmakers are continuing to make an effective contribution to Exchequer receipts....”*

*“The benefits predicted by academic and analysts of moving to a gross profits tax have now been proven in practice. The new regime is demonstrably more efficient, fair, and sustainable than the previous regime. We now have solid foundation on which to build....”*

Though we feel the weight of argument supports our position, the key factor is equivalence with the TABs. As the market leader is levied on a profit basis on the same fixed-odds betting products, we note the legal expectations that similar market conditions will apply to “like” competitors in “like” markets.

*bookmakers who can lose in respect of betting transactions relating to a race. It could be argued that such an approach which imposes the same fee, of up to 1.5%, for all categories of betting providers is inherently discriminatory as it reflects a relative discount for totalisators.”<sup>90</sup>*

Hence, the fee should reflect the historical relativity between totalisator betting and fixed-odds betting with bookmakers.

Furthermore, the fee does not seem to be based on the true value of the State’s racing industry. For example, although Racing NSW has levied the highest rate of a fee in the country, the actual margins for betting on NSW thoroughbred racing are amongst the lowest in the country due to, among other things, smaller fields and a more competitive Sydney Betting Ring. What this amounts to is NSW Racing “free riding” on the value of the interstate racing product, as it justifies its fee against a bookmaker’s margin achieved across all forms of racing.

As stated earlier, the expectation is for a fair fee. It is unrealistic to expect bookmakers to agree to a rate that would render them unviable. However, differences based on realistic commercial expectations are able to be worked through.

The final basis of concern, and why bookmakers seek a fair hearing on the rate of the fee, is that the high rates seem to be based on an apparent (and continued) misapprehension on the part of sections of the racing industry about the economic contribution bookmakers make to racing by comparison to totalisators.

Despite the correct data being available for some time, the press (and some racing officials) continue to claim that totalisators contribute 5 times the amount of bookmakers. (“the Tab... is required to put nearly 5 cents in every dollar back... bookmakers return less than 1 cent in every dollar” or “racing gets \$5 from every \$100 bet, and only \$1 from bookmakers.”)<sup>91</sup>

These statements are as unhelpful as they are incorrect. The Australian Racing Board’s own “Analysis of Bookmaking in Australia” (May 1999) observed that these statements took no account of betting dynamics.

*“[As] the national retention rate for bookmakers averages 5.5%, it becomes apparent that punters betting with bookmakers generate more turnover before disposing of their original bank than their totalisator counterparts whose investments are reduced by an average 16% each time an investment is made.”* (p. 39) With a bank of \$100, and against retention rates of 16% and 5%, the potential betting turnover was calculated as \$625 for the totalisator bettor and \$1,818 for the bookmaker’s client. Hence, betting turnover through bookmakers equated to almost three times the turnover generated through totalisator betting. The conclusion was drawn that *“the financial value of the bookmaking industry is considerably more than often assessed, when comparisons are made between totalisator returns and turnover tax paid by bookmakers.”*

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<sup>90</sup> Addisons Focus Papers “Race Fields Legislation” July 2008.

<sup>91</sup> For a more recent and telling example, please see the Racing NSW website, [www.racingnsw.com.au](http://www.racingnsw.com.au), “The Facts about Racefields”

*“In fairness, what must be debunked is the notion that a \$1 spend with the TAB produces 5 cents for the industry, whereas the same with a bookmaker would produce 1 cent or less – this is not correct.”*

This was later confirmed by the Centre for International Economics in its Report “Efficient Wagering: An Analysis of the Economic Contribution of Bookmaking in Australia” (October 2002) *“Simplistic interpretations of those figures suggest that every dollar spent with TABs gives a return to the racing clubs and hence to the wider industry more than 4 times greater than a dollar spent with bookmakers. This overlooks the fact that on average bookmakers only retain 5.5% per cent of bets whilst the TAB equivalent is 16%. This means the “velocity of circulation” of a punter’s bet is much higher with bookmakers. A punter prepared to spend \$500 on race wagering will on average have many more bets in spending that money with a bookmaker than in spending the same amount at a TAB. As a consequence, the direct financial contributions of bookmakers and TABs are much closer than commonly supposed.”*<sup>92</sup>

Excessively high fees are neither sensible nor sustainable. They invite legal challenges which are costly to all parties and counter-productive to the best development of the Australian racing and wagering industries. They will lead to years of uncertainty.

This false statement about economic returns has been used to support a fear campaign by the TABs about the threats to racing funding – how the Melbourne Cup “may never be the same again” because of the “growing influence of corporate bookmakers”, so there should be higher product fees for corporate bookmakers, and the protection from them offering “tote odds” products.

This is part of a campaign to protect the TABs from competition. Another manifestation of this is the argument over “tote odds” products offered by bookmakers.

#### *“Tote Odds Products”*

The TABs and various sections of the racing industry have been critical of bookmakers offering “tote odds” products, implying this is a means of conducting a *de facto* tote. In each case, this concern is about maintaining revenues.

This criticism reflects a fundamental misunderstanding of the issues at hand. The “price” of a bet should not be confused with the product.

The TAB product is a “no risk” totalisator product, as the pool (after deductions) is divided amongst winners. The deductions include taxation and the TAB revenue. Because the TAB is ensured of a return from each bet, it is a “no risk” transaction from Tabcorp’s perspective.

By contrast, the fixed-odds offering of a bookmaker means that bookmakers can, and do, lose on particular events even when offering *prices* based on TAB-dividends.

The bet describes a *price*, in a price sensitive market. A review of the bookmakers’ websites will show that it is part of a suite of products that offer punters some

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<sup>92</sup> Centre for International Economics, “Efficient Wagering: An Analysis of the Economic Contribution of Bookmaking in Australia” (October 2002), p. ix

competitive and innovative bet options based on price, including Best Fluctuation, Best Bookies Price, SuperPrice and so on. In other words, the bet is traditional fixed-odds bookmaking.

There are no grounds for treating fixed-odds products based on TAB-dividends any differently to any other fixed-odds bets taken by a bookmaker. What the TABs are seeking is protection from competition on price. No provider – be they in the betting industry or any other commercial enterprise - “owns” a price. This is akin to saying that the first bookmaker to post “\$3.50 for a win” owns the price and this precludes any other betting provider from matching that price. This is clearly nonsense.

A bookmaker should be free to offer the same odds as a TAB or any other competitor. If a bookmaker chooses to offer better odds than a TAB or any other competitor, he or she should be free to do so. If he or she chooses to offer inferior odds to another competitor, the bookmaker should be free to do so. The TABs assert that no-one should be able to match or better their odds. This is outrageous, and it would be gross disservice to punters if this argument was accepted. It would be no different to, say, Woolworths offering an item for \$2.00, and then seeking the Government’s assistance to stop Coles matching or bettering it. Competition on price is a simple concept.

It is also sometimes asserted that the growth in bookmaker turnover since 2001 can be ascribed, in large part, to the “tote odds” product. This is wildly inaccurate and ignores even the most obvious explanations for growth. To point to but one reason, the Northern Territory licensed *five* new bookmakers in the 2007, some of these being major bookmakers from Victoria and New South Wales.

Still further reasons have been put forward for corporate bookmakers offering tote odds products. *“Corporate bookmakers can profitably for this product due to the lower cost structure. The main drivers are:  
A lower tax liability due to being based in lower tax jurisdictions such as the NT;  
No requirement to pay the same level of distributions to racing industry bodies that is required by the TAB...;  
Their ability to offer TAB odds based betting without the need for expensive systems and infrastructure or the need to calculate and offer odds.”*<sup>93</sup>

All of these points are incorrect. In terms of cost structures, the Internet bookmaker has high staff numbers, the demands and costs of sophisticated technology, and higher marketing costs. The Internet bookmaker must find and keep its clients and there is a high “client acquisition” cost.

It is sometimes suggested that this is a product unique to the Northern Territory (and so is some sort of “renegade” product) and it is possible to offer only because it is offered from a low tax jurisdiction. Neither position is correct as is evidenced by Victorian bookmakers being able to offer the same product. The tax issue is as irrelevant as it is incorrect.

It has been argued that that corporate bookmakers “free ride” on the TABs as they do not incur the “cost of infrastructure”, implying that this product offers less risk to corporate bookmakers because of the opportunity to “bet back” into the TAB pool, or that by “betting back” with the TAB they are acting as a “de facto totalisator”.

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<sup>93</sup> Issues Paper, New South Wales Review (Cameron review) Page 33

The tote dividend is a price. It is irrelevant to bookmakers how this price was arrived at - whether by means of mathematical processes or simply a "best guess". It is simply one of a number of prices in the market.

In terms of the risk, it is important not to confuse the bet type with a mechanism. The tote odds product is a fixed odds price and bookmakers can - and do - lose the race. All it is, is a price. Even when offering tote odds products, bookmakers cannot act in a "no risk" fashion and deduct 16% from every bet, or operate as a de facto code.

This is the same for betting back into a TAB. Taking the most extreme example, if a bookmaker bets back say 100% of total bets the bookmaker will - on a betting exposure basis - remain square (x bets received and x bets placed with the TAB) - but will be paying tax on the bets and incurring operational costs. Hence the bookmaker will be operating at a loss.

Further objections against the odds betting have tried to be made on the basis of "integrity" concerns. One is that a bookmaker is able to bet back into the tote pool thereby "crushing the dividend" and reducing the exposure. A corollary to this is that, because the bets are placed late, other punters suffer because the projected tote prices, which attracted them to bet, did not reflect the true market.

It is helpful to dismiss the latter point straight away. If for the sake of argument, it is assumed that if the big punters are unable to obtain tote odds bets from bookmakers they will instead bet with the TAB (unlikely as noted by Credit Suisse and as described below), this would have precisely the same effect on the dividend. The big money comes in late and shifts the market. It is the nature of totalisator betting.

The more important point is the opportunity for bookmakers to bet back into the pools. While some betting back will occur if the bookmaker is overexposed, there are commercial limits on how much may be bet back because, for the same reason that large punters will not bet large amounts into small pool, bookmakers are not about to "buy back their own money".

Bookmakers service a different section of the market. The major attraction of the tote odds product is that large punters can avoid "crushing the pool" - in effect driving down their net dividend with their own money. The extent of this effect depends on the size of the pool (and bet). This is not just a neutral factor to the large punter - it is an active disincentive to bet with the TABs.

If bookmakers cannot service this part of the market the business will be lost. The punters either will not bet (they will not buy back their own money) or they will go to offshore providers that offer these types of products, including bet exchanges. The local bookmakers lose the business (as does the TAB of any bet backs) and so the local racing industry loses the financial return from the bet.

Finally it is helpful to address the other theoretical integrity concern which is pool manipulation by either a bookmaker or the punter. With respect to possible pool manipulation by a punter this has been readily addressed by appropriate Terms and Conditions.

With respect to possible pool manipulation by a bookmaker, all of the bookmakers betting records are to be provided to the particular racing authority as part of compliance with product fee conditions. This is a transparent process with the racing authorities being able to satisfy themselves as to whether a bookmaker is making

legitimate bet backs or whether they were attempting to manipulate the pool. Therefore these risks are able to be more than satisfactorily dealt with.

Calls from the TABs and sections of the racing industry for gambling to be regulated on a national basis may be supported in principle, but not when the aim is to distort the market in favour of one provider.

To call for the Federal Government to intervene in an area where it has no expertise is mischievous. This appears to be a transparent attempt by the TABs to try to influence the States and Territories to act in their commercial defence. This shall be discussed as the process for resolving these problems and developing a national model is outlined.

Before this is done it is helpful to compare the development of product fees for racing with the development of product fees for sports.

### *Sports Product Fees*

The possibility of establishing effective agreements between betting providers and product providers has been demonstrated by the formation of integrity agreements with the major Australian sporting bodies. This shows what can be achieved by negotiation and goodwill on both sides.

Major Australian sporting groups including Cricket Australia, the PGA, the NRL, AFL and others lobbied Victoria for government regulation.

Victoria passed legislation but it was limited in its reach to only Victorian events. It was also cumbersome and administratively costly especially for smaller sports.

Instead, the internet bookmakers offered negotiations with the major sports, and discussions commenced on a simple *national* scheme.

As a result betting providers and the major sports have entered into, or are in the process of finalising, Integrity and Fee Agreements. The key features of these agreements include:

- agreement on bet types;
- protocols regarding integrity and alerts about suspicious betting patterns. The sporting bodies are empowered to make further enquiries of the betting operator.
- a share of the revenue received from gambling on their sports.

The Sports Agreements are characterised by a sense of partnership and goodwill on the part of both betting providers and sporting bodies. There is a shared confidence in their future dealings together. In addition, Australian bookmakers are also part of global integrity networks, for example, those established to monitor betting on the World Cup, those that have arrangements with the International Cricket Council, and so on. These are international arrangements entered into voluntarily by Australian betting providers.

It should be noted that betting providers are as concerned with the integrity of sporting events as any other stakeholder. Match fixing or other corrupt dealing may have a short-term impact on the reputation of sport but for betting providers there is a direct financial cost from “rigged” events.



## 7. The Way Forward

The issue is how to resolve the current problem with Racefields. The State-by-State, racing authority-by-racing authority approach seems headed towards costly disputes. Litigation is expensive, undesirable and leads to years of uncertainty. It is better the racing industry shape its own future than the courts.

It seems sensible that the national Australian wagering market should be regulated on a national basis. In other words there should be a national model for the payment of product fees to the racing industry.

The shift towards a true open national market should occur in a coordinated and structured way, so as to minimise the adverse impacts on Governments, betting providers and the racing industry.

The difficulties with calls for a national model is that it sometimes appears to be prompted by a party who is dissatisfied with the outcome already received, and sees a national model as a way of avoiding the outcome. Likewise resistance to a national model may also be prompted by a desire to maintain an unfair commercial advantage.

A national model could be achieved through complimentary legislation by the States and Territories. Alternatively it could be the subject of Federal government legislation.

It is suggested that calls for Federal regulation should be put to one side. The Federal government has neither the expertise nor the infrastructure to administer such a scheme. It seems more appropriate that the States and Territories should continue to be the responsible regulatory jurisdictions.

The question is how to establish a process that can fairly takes account of the interests of all stakeholders, and avoids the kind of political trade-offs identified by the Commission in its 1999 report.

Bookmakers have always indicated that they are simply after a fair process that leads to a fair outcome. They have been willing to discuss any item of concern and have endeavoured to be as transparent as possible. Their principal concern is that they have not received a fair hearing or that their arguments have been fairly addressed. Instead, it appears that incorrect assumptions have been used as the basis for the calculation of the fee.

The bookmakers believe that an objective and fair assessment of the facts of the industry would be particularly useful. This would allow all stakeholders to ignore misinformation and able to focus more on the relevant facts.

To this end, it is recommended that the Federal Government and the State and Territory Racing Ministers jointly issue a reference to either the Productivity Commission or the Australian Competition and Consumer Commission to examine the various issues around the product fees and the funding of the racing industry.

The reference would provide boundaries within which the stakeholders can resolve their differences and develop a national model for industry funding.