

Victorian InterChurch Gambling Taskforce

Submission to Inquiry into the prevalence of Interactive and online gambling in Australia and gambling advertising

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The Victorian InterChurch Gambling Taskforce welcomes this opportunity to make a submission to the Joint Select Committee on Gambling Reform inquiry into the prevalence of Interactive and online gambling in Australia and gambling advertising. The Taskforce notes that these matters have been comprehensively assessed by the Australian Productivity Commission and Commonwealth Government through the The Allen Consulting Group, 'Review of current and future trends in interactive gambling activity and regulation', Literature Review, June 2009.

The Taskforce strongly supports the public positions of the Labor Government and the Coalition Opposition rejecting the recommendations of the Productivity Commission to liberalise online gambling in Australia, under regulation. Instead we welcome the approach to work with other countries, such as the US, to seek to protect Australians from being targeted by online casinos and gaming providers. Even the Productivity Commission admitted "Overall, it is probable that the prohibition on online gaming, and in particular the prohibition on advertising online gaming, has reduced the growth in demand below what it would have otherwise been."¹

The Taskforce also believes there is a need to address the marketing activities of online wagering providers, which are currently unregulated by the *Interactive Gambling Act 2001*. At a minimum online wagering providers should be prohibited from being able to offer free money in accounts to induce people to start gambling with the provider and offering payment to people for signing up others to gamble with the provider (both marketing techniques being used by providers such as Betstar).

The Taskforce also believes there should be an end to advertising by online wagering providers during sporting events, including display and broadcast of odds and promotion by commentators.

Victorian InterChurch Gambling Taskforce

The Victorian InterChurch Gambling Task Force was established in 1996 by the Heads of Churches in Victoria with the following objectives:

1. To increase awareness amongst the Churches about the broadening gambling industry and to potentially harmful effects on the common good.
2. To provide critical analysis and interpretation of research on gambling and the gambling industry, in particular the social and economic impacts and any other projects undertaken by the government, the Victorian Casino and Gaming Authority and the gambling industry.
3. At every level to communicate the alternatives to gambling as a solution to

¹ Productivity Commission 2009, *Gambling*, Draft Report, Canberra, October, p. 12.18

- a) individual personal problems
- b) socio-economic development.

4. To call Government to further account for its integration of the gambling industry into its economic management.

Policy Framework

The Taskforce believes:

- Public health and consumer policy frameworks provide the best basis for coherent gambling policies, emphasising the importance of policies that address the gambling environment as well as gamblers' behaviours.
- Even harm minimisation measures with modest efficacy may produce worthwhile net benefits so long as they do not also inadvertently generate excessive costs.
- There are pervasive uncertainties about which gambling policies can effectively reduce harm. Demanding a very high or potentially unachievable standard of proof about what works would risk policy paralysis in an area where there are demonstrably large costs from inaction.
- Policy needs to take account of both the costs of mistakenly introducing ineffective policies as well as the costs of failing to act when a policy option may in fact be effective.

Online Gambling

Currently a very small proportion of Australians access online gaming sites and there is a severe lack of knowledge about this population and the proportion of people gambling problems related to their use of this form of gambling.

Most surveys estimate that between 0.1 and 1% of Australian adults gamble at online casinos, but with this number being so small the uncertainty in the measure is great.² By comparison, in the UK *the British Gambling Prevalence Survey 2007* found that 4% of the adult population bet with an online bookmaker and 3% participated in other online gambling, representing 6% of gamblers.³ The UK has a liberalised online gambling market. For men, online gambling was the form of gambling for which the highest number of gamblers gambled two or more days a week, at 25% of gamblers participating in this form of gambling.⁴ For women it was the third highest in this category, at 11%, behind the National Lottery (17%) and bingo (14%).

In Canada in 2007 the adult participation rate in online gambling was 3%.⁵ However, average expenditure rates for internet gamblers were much higher than for non-internet gamblers, being US\$541 per month compared to US\$67 for non-internet gamblers.⁶

The 2009 *A Study of Gambling in Victoria – Problem Gambling from a Public Health Perspective* found that 0.32% of EGM gamblers used the internet to gamble, while 1.69% of casino-style games gambled online. The report found that 1.7% of online gamblers had gambling problems.

² Productivity Commission 2009, *Gambling*, Draft Report, Canberra, October, p. 12.15.

³ Wardle, H., et. al., *British Gambling Prevalence Survey 2007*, National Centre for Social Research, 2007, p.19.

⁴ Wardle, H., et. al., *British Gambling Prevalence Survey 2007*, National Centre for Social Research, 2007, p. 23.

⁵ Wood, R.T. and Williams, R.J. 2008, *Internet Gambling: Prevalence, Patterns, Problems and Policy Options*. Final Report prepared for the Ontario Problem Gambling Research Centre, Guelph, Ontario, Canada, 5 January 2009, p. 7.

⁶ Wood, R.T. and Williams, R.J. 2008, *Internet Gambling: Prevalence, Patterns, Problems and Policy Options*. Final Report prepared for the Ontario Problem Gambling Research Centre, Guelph, Ontario, Canada, 5 January 2009, p. 9.

It appears most of the available research tends to show for the small proportion of gamblers who use internet gambling as one of the forms of gambling they engage with, a higher proportion of them have gambling problems compared to other gamblers. Wood and Williams (2008) stated that the prevalence of problem gambling is 3 to 4 times higher for internet compared to non-internet gamblers.⁷ They reported that in Canada, the rate of Canadian Problem Gambling Index (CPGI) moderate and severe problem gambling among internet gamblers was 17.1% compared to 4.1% for non-internet gamblers. While for a sample of international gamblers, 16.6% of internet gamblers had either moderate or severe gambling problems, versus a rate of 5.7% among land-based gamblers.⁸ However, their study concluded that internet gambling was only a contributing factor to a gambling problem for many of these gamblers and was not the main cause of the problem.

The draft Productivity Commission report referred to the 2008 report *Internet gambling: an online empirical study among student gamblers*, which found that “people who have ever gambled on the internet are more likely to be problem gamblers than those who never gambled online (5 per cent and 0.5 per cent respectively).”

In the UK the prevalence of problem gambling associated with online gambling was found to be much higher than for many other forms of gambling, including slot machines and horse racing. The prevalence of problem gambling associated with online betting was found to be 6% and with other forms of online gambling was 7.4%, using the DSM IV.⁹ Only spread betting, fixed odds terminals and betting exchanges had higher prevalence of problem gambling associated with them.

The report by Wood and Williams (2008) estimated that 41.3% of all reported gambling losses on internet gambling in Canada came from people with gambling problems, while internationally, 27% of the revenue of internet gambling providers comes from problem gamblers.¹⁰ With such a large proportion of internet gambling revenue coming from people who are vulnerable and suffer harm as a result, it is unethical for governments to seek to benefit from this activity.

Between 4 and 11% of internet gamblers reported that their gambling had disrupted either their sleeping or eating habits.¹¹

There is a growing variety of ways gamblers are being delivered to online gambling providers, including social networking, smart-phones and mobile apps, coupled with a growing number of people globally with broadband connections and wireless access. The Allen Consulting Group noted the most significant new platform through which individuals can participate in gambling has been, and will continue to be, smartphone technology (such

⁷ Wood, R.T. and Williams, R.J. 2008, *Internet Gambling: Prevalence, Patterns, Problems and Policy Options*. Final Report prepared for the Ontario Problem Gambling Research Centre, Guelph, Ontario, Canada, 5 January 2009, p. 10.

⁸ Wood, R.T. and Williams, R.J. 2008, *Internet Gambling: Prevalence, Patterns, Problems and Policy Options*. Final Report prepared for the Ontario Problem Gambling Research Centre, Guelph, Ontario, Canada, 5 January 2009, p. 10.

⁹ Wardle, H., et. al., *British Gambling Prevalence Survey 2007*, National Centre for Social Research, 2007, p. 95.

¹⁰ Wood, R.T. and Williams, R.J. 2008, *Internet Gambling: Prevalence, Patterns, Problems and Policy Options*. Final Report prepared for the Ontario Problem Gambling Research Centre, Guelph, Ontario, Canada, 5 January 2009, p. 10.

¹¹ Wood, R.T. and Williams, R.J. 2008, *Internet Gambling: Prevalence, Patterns, Problems and Policy Options*. Final Report prepared for the Ontario Problem Gambling Research Centre, Guelph, Ontario, Canada, 5 January 2009, p. 10.

as iphones, blackberries and the soon to be released google phones).¹² This is leading to industry sources predicting massive increases in gambling losses to online casinos, with one estimate predicting a growth from US\$4.7 billion in 2010 to US\$7.1 billion by 2014 a growth of 79% over 2009 losses.¹³

There is growing expansion in the types of interactive gambling products. The Victorian Commission for Gambling Regulation (VCGR) approved TABCORP being able to take bets from people through their televisions, if they have a telephone betting account and have Foxtel. The Commission argued that there is a safeguard in that people can set up a pin number, so children will not be able to access the system. Further, the Commission argued that there were only a couple of hundred people who would have both a telephone betting account and subscribe to Foxtel in Victoria.

However, no broad public inquiry was conducted into this expansion in gambling opportunities and a thorough assessment as to its potential to increase problem gambling in the State does not appear to have been conducted. People who have worked in the gambling industry have indicated that there is substantial potential to increase gambling opportunities through interactive television.

The Taskforce is concerned that a regulated online gaming environment may result in a significant increase in those that gamble on online gaming sites. Once online gaming is legalised in Australia, it would be possible for such sites to advertise across a range of media to attract people to gamble on their sites and may be able to offer enticements to do so. Thus, even with regulated harm minimisation measures, any reduction in problem gambling due to the regulated environment may be offset by an increase in the number of gamblers. That is the total number of people with gambling problems related to online gaming may increase as a result of a increased number of people gambling on such sites, even if the proportion of such people with gambling problems decreases.

Wood and Williams (2008) concluded, in general, the prevalence of internet gambling and internet problem gambling in each country roughly parallels its legal availability/sanctioning.¹⁴

The Productivity Commission accepted that “given the legitimacy domestic supply would provide, it would also probably lead to a much larger group of people participating in online gaming.”¹⁵

Further, it will be impossible to regulate offshore online gaming sites. Thus, such sites will not have to offer the harm minimisation measures that might be required of sites based in Australia. It is not known if gamblers using online gaming sites within Australia, might not then migrate to use sites located offshore without the same consumer protection measures with an increased risk of developing a gambling problem as a result.

A decade ago, Lasseters Online Casino appeared to be in a strong position as the only Australian online casino. Gamblers could experience online casino gambling in a regulated

¹² The Allen Consulting Group, ‘Review of current and future trends in interactive gambling activity and regulation’, Literature Review, June 2009, p. viii.

¹³ ‘Online Gambling to Grow 80 percent’, <http://www.recentpoker.com/news/online-gambling-growth-8853.html>

¹⁴ Wood, R.T. and Williams, R.J. 2008, *Internet Gambling: Prevalence, Patterns, Problems and Policy Options*. Final Report prepared for the Ontario Problem Gambling Research Centre, Guelph, Ontario, Canada, 5 January 2009, p. 12.

¹⁵ Productivity Commission 2010, *Gambling*, Report no. 50, Canberra, p. 15.1.

environment by an Australian government. Yet Lasseters Online failed because Lasseters Online was not permitted the same inducements that were offered by online casinos in less regulated parts of the world. In particular, the competitors of Lasseters were offering free credit to gamble. Open an account with these casinos and they give you “free” money to get your gambling started.

The Productivity Commission made the arguments that online gamblers are more likely to be observed by their families, but we do not have accurate data on how many online gamblers are living in situations where this is likely to be the outcome. The Commission also made the assumption that gamblers who gamble online and get a record of their transactions would be more likely to remain in control of their gambling, but without any research that backed up this assumption.

Significantly greater research is required into who would gamble on online gaming sites and the likely prevalence of problem gambling amongst this population before it could be known with any confidence if a liberalised approach to online gaming would result in a net increase or reduction in online gambling related harm.

Money Laundering, Tax Avoidance and the Offshore World of Online Gambling

The Taskforce is deeply concerned that many off-shore online gambling providers are located in secrecy jurisdictions (more commonly called “tax havens”).¹⁶ For example, Pokerstars is located in the Isle of Man, ranked 24th in the Financial Secrecy Index (FSI).¹⁷ Daniel Meisel, who was subject to an indictment for engaging in an illegal online gambling business in the US, set up the operation in Costa Rica, ranked 34th on the FSI.¹⁸ A number of these secrecy jurisdictions allow for arrangements where the beneficial owners of the online gambling provider may be kept secret, undermining the ability to ensure probity standards. Further, the tax arrangements in these secrecy jurisdictions will allow providers in these jurisdictions a financial advantage over a provider based in Australia, and actively encourage tax avoidance. Liberalising online gambling may open Australia up to aggressive marketing by offshore providers that out-compete any Australian businesses. These providers may then leave in their wake substantial numbers of new people with gambling problems and the associated harms in Australia, while the revenue moves offshore almost tax free. This in turn will leave Australian Governments to pick up the costs of the harms caused without additional tax revenue from the gambling activity.

In 2009 it was estimated that gamblers in China lost almost \$3.8 billion to online gambling providers, without the Chinese Government gaining any tax from the losses. China has therefore attempted to ban online casino and card games.¹⁹

The Taskforce notes that in August 2010, the US Government seized \$13.3 million from two online gaming payment processing companies believed to be involved in money laundering.²⁰

The Taskforce therefore believes the significant number of offshore online gambling providers in secrecy jurisdictions provides even stronger reason for the Commonwealth Government to do all it can to resist the access of these gambling providers to the Australian

¹⁶ For a list of secrecy jurisdictions globally see the Financial Secrecy Index at <http://www.financialsecrecyindex.com/>

¹⁷ Kevin Kingsbury, “Defendants Agree to Forfeit \$13.3M in Online Gambling Case”, Dow Jones Newswires, <http://www.nasdaq.com>, 17 August 2010.

¹⁸ Linda Bentley, “Nine indicted in multi-million Internet gambling ring”, Sonoran News, http://www.sonoranews.com/archives/2010/100811/frontpg_gambling.html, 11 August 2010.

¹⁹ “New Chinese internet law to ban online gambling”, <http://www.casinotimes.co.uk>, 12 August 2010.

²⁰ B. Solomon, “Online Poker Processor Ahmad Khawaja Forfeits \$13.3 million seized by FBI”.

community. We would urge the Commonwealth Government reject any temptation to respond by allowing Australian online gambling providers to be set up with low taxes, which seek to target gamblers in other countries with the aim of extracting profit from those places. In effect Australia would then be seeking to export gambling problems and harms to other parts of the world, while seeking the profits to be brought onshore to Australia.

The US Experience

The US has attempted to prevent online casinos that are located overseas being able to target its citizens. The US has prohibited online gambling through the federal *Wire Act* and the *Unlawful Internet Gambling Enforcement Act (UIGEA)*, which came into effect in 2006. The UIGEA prevents US banks and credit card companies from processing transactions for any internet gambling sites. However, the way this has been done has opened the US to action within the World Trade Organisation.

The WTO ruled on action taken by Antigua and Barbuda against the US in December 2007. Antigua and Barbuda won, but the compensation was far lower than the Caribbean nation had been seeking. The WTO panel said Antigua was entitled to compensation of US\$21 million a year from the US for being shut out of the US online gambling market. The award fell far short of what Antigua had demanded – US\$3.44 billion in “cross-retaliation”, allowing it to seek damages outside the original services sector. The US had argued that Antigua was entitled to only US\$500,000 in compensation. However, the WTO arbitration panel granted Antigua’s request to levy trade sanctions on US intellectual property, for instance by lifting copyright on films and music to sell it themselves.

The dispute started in 2003, when Antigua complained that a US law allowing only domestic companies to provide online horse-race gambling services discriminated against foreign companies. The WTO found in favour of Antigua. The US, instead of bringing its laws in line with the WTO rules, announced in May 2007 that it would withdraw gambling from the services it opened up under a 1994 world trade deal. Under WTO rules it then had to offer comparable access in other sectors to interested countries.

In December 2007 the EU reached an agreement with the US over access to the US postal and courier, research and development and storage and warehouse sectors in compensation for EU online gambling providers not having access to the US market.

However, the WTO has laid the ground work for allowing countries to take action to protect their citizens from online casinos and electronic gaming machines. In an April 2005 WTO appeal body ruled that the US was allowed to use “public order and public morals clauses to exclude” internet gambling, provided that it did so in a non-discriminatory manner. Antigua argued that the US had failed to show what they were doing was not discriminatory.

Actions by other Governments

There are growing efforts by an increasing number of countries to try to combat offshore online gambling providers from targeting their citizens.

Korea has made internet gambling illegal in response to a number of cases involving deaths by exhaustion, murder and child neglect as a result of problem gambling related to online gambling.²¹

Norway is reported to made legislative moves to block financial transactions with offshore gambling sites in July 2010.²²

²¹ Kim Tong-hyung, “Online gambling increasing social problem”, <http://www.koreatimes.co.kr>, 13 August 2010.

The Israeli Police, Tax Authority and State Prosecutor's Office have attempted to combat online gambling through the use of injunctions on ISPs to block ready access to online gambling sites.²³

It is reported that Italy, Estonia and France have all attempted ISP filtering to disrupt access to internet gambling operators.²⁴ In August 2010, the French Tribunal de Grande Instance de Paris ordered ISPs to block ready access to unlicensed online gambling sites or face a daily fine of €10,000.²⁵

Improving the *Interactive Gambling Act*

Currently the Commonwealth Government has placed little effort into enforcing the *Interactive Gambling Act* (IGA). The main enforcement mechanism has been for the Australian Communications and Media Authority (ACMA) to investigate complaints about interactive gambling services hosted outside Australia. Sites that host content prohibited by the Act are placed on a "black list" maintained by approved vendors of internet filter software. The installation and use of internet filters is voluntary so this measure is only effective in cases where users install and regularly update their software. ACMA has no power to compel internet service providers to block content.

In the 2008-2009 financial year, ACMA only investigated 11 complaints relating to prohibited internet gambling content and in three cases notified providers of internet filter software to add these sites to the blocked list.

The Taskforce believes that enforcement of the IGA could be improved by requiring Australian financial institutions from blocking the payment of credit card transactions with known internet gaming and casino sites. This would curtail Australians doing business with such sites and reduce the incentive of off-shore based providers to market to Australian customers. The Allen Consulting Group noted in the US, the introduction of regulation prohibiting financial transactions related to internet gambling has already had an impact on the actions of large internet gambling providers, with several removing access to their services by US patrons.²⁶

The Allen Consulting Group conducted a preliminary investigation of accessibility that found large sites do use geo-location technology to block Australian-based access to Internet gaming and continuous play Internet wagering, both of which are prohibited from being provided to individuals physically located in Australia. However, this was not the case for all sites.²⁷

A greater pro-active efforts need to be made to deter off-shore internet gaming and casino providers from actively marketing to Australian customers. For example, the "Australian Marketing Team" of an internet gaming and casino provider has sent letters to Australian citizens at their home addresses offering up to \$3,500 in free credits to induce Australians to

²² Joan Peppin, "Online Gambling Problems in Scandinavia", <http://www.casinoadvisor.com/>, 21 February 2011.

²³ Eitay Har Or, "police bar access to online gambling sites", <http://www.ynetnews.com/articles/0,7340,L-3938596,00.html>, 21 August 2010.

²⁴ Joan Peppin, "Online Gambling Problems in Scandinavia", <http://www.casinoadvisor.com/>, 21 February 2011.

²⁵ Jared Moya, "French Court: ISPs Must Block Unlicensed Gambling Sites", <http://www.zeropaid.com/> 16 August 2010.

²⁶ The Allen Consulting Group, 'Review of current and future trends in interactive gambling activity and regulation', Literature Review, June 2009, p. vii.

²⁷ The Allen Consulting Group, 'Review of current and future trends in interactive gambling activity and regulation', Literature Review, June 2009, p. vii.

gamble at their sites. The Australian Marketing Team even has been able to register a 1800 number in Australia that allows Australians to get in touch with a call centre in South Africa to facilitate getting Australians to gamble on their sites. A CD ROM was provided with the letter, which allows access to the on-line casino and gambling sites. In the case of the person who reported this marketing activity, they were not aware of consenting to being directly marketed to by online gambling providers. The Taskforce believes that at the very least the IGA should be amended to allow the Australian phone numbers of internet gaming and casino providers to be disconnected and to require telecommunication providers to do so.

The Taskforce made complaint about the marketing activities of the provider to the Cyber-safety and Trade Branch, Department of Broadband, Communications, and the Digital Economy. In their investigation, ACMA concluded that although the website provides links to other sites that offer internet gambling services, the access to games were not provided directly by the site itself. ACMA states they it was not possible to deposit money on the website and therefore the website is not a gambling service as defined under section 4 of the IGA, and as such it is not prohibited internet gambling service as defined under section 6 of the IGA. Further, as this website is not a prohibited internet gambling service, the unsolicited letter does not constitute a prohibited internet gambling service advertisement under Part 7A of the IGA.²⁸

This conclusion would appear to point to inadequacy of the IGA. Based on the above case, if you wish to be able to market an online casino under the IGA, all you need to be is set up a website to which the online casino is linked to. Thus you can legally market the website with the link to the online casino and get your potential customers to then click through to the online casino site.

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²⁸ E-mail from Seaton Cairns, Online Content and Research Section, Cyber-Safety and Trade Branch, Department of Broadband, Communications and the Digital Economy, 31 March 2010.