

Appendix 6 Draft Regulatory Control Model for New Forms of Interactive Home Gambling

INTRODUCTION

Interactive Home Gambling is the term used to describe new forms of gambling made possible by advances in telecommunications and computer technologies.

The range of potential new products is limitless. Examples could include:

- internet casino gambling where players use their personal computer to remotely access a “virtual” casino and bet on simulated card, dice and gaming machine games (there are a number of these already in existence);
- networked computer games played competitively for money or prizes;
- interactive TV quiz and game shows where people at home bet on themselves or other contestants;
- any current gambling products offered on your TV or computer on a “click here” to enter basis;
- telephone gambling using handset number buttons to bet interactively with a remote computer;
- telephone raffles conducted using 0055 and 1900 where part of the cost of the phone call is put towards the cost of the prize.

State based gambling regulation has to date been successful in minimising the use of unlawful and unlicensed gambling products through three key factors:

- being able to intervene at some point in the transaction between the player and gambling service provider (apart from phone betting with TABs or bookmakers, a gambling service provider has previously required a physical location where money changed hands or players placed their bets);
- prohibiting the advertisement of unlicensed products in the mass media, such as television and newspapers; and
- the availability of marketable and well regulated licensed products.

These factors have also resulted in the vast majority of State Government gambling taxes being retained by the State in which the player is resident.

Developing telecommunications technology and the uptake of interactive broadband services will result in increasingly more players having free access to interstate and overseas gambling products in circumstances where there will not be any ability to intervene in transactions between a player and the gambling service provider.

It is impossible to accurately quantify the size or timing of the threats and opportunities created by new forms of interactive home gambling in respect of each State's and Territory's gambling based revenue. However, a report commissioned by the Federal Broadband Services Expert Group listed interactive home gambling as the second most important source of revenue generation for broadband service provision to the home. The report placed home gambling ahead of pay TV and video on demand.

The legislative framework currently in place in each State and Territory is not capable of addressing the challenges of future interactive home gambling products and any State or Territory acting alone will not be able to develop an effective regulatory system. On 3 May 1996, a meeting of all Gaming Ministers and Racing Ministers agreed on a set of principles for developing a draft National Regulatory Model for new forms of interactive home gambling products. Existing interactive products, such as telephone betting with TABs and bookmakers are excluded from the draft Model.

An officer level Working Party with representation from all States and Territories has developed, for consideration by Ministers, the draft Model contained in this document. The draft Model proposes a National approach delivered by regulatory bodies in each State and Territory. The approach seeks to minimise the impact of products provided from overseas or illegal sources by maintaining (and creating) obstacles to their advertising and marketing and by providing alternative products where the entitlements of players are protected.

Apart from the Territories Office the Federal level of government does not play an active part in the administration of the Model. Provided all States and Territories participate in the Model the assistance of Federal bodies is unnecessary to provide effective regulation of interactive home gambling products sourced from within Australia. The Model does not propose Federal action to attempt to block the entry of overseas products delivered over the internet or by foreign satellites.

The important assistance from the Federal Government is to ensure that Federal laws are not made that invalidate any State and Territory legislation that gives effect to the Model. There is potential for this to occur in all areas of telecommunications regulation and in particular communications content regulation.

The likelihood of an inadvertent action which results in State and Territory laws being invalidated increases where Federal regulatory bodies have subordinate powers to make bi-laws or enforceable industry codes of conduct. Recent Federal telecommunications legislation contains these powers but does not deal with content regulation. When Federal laws for communications content regulation are drafted during 1997 State and Territory gambling regulators must ensure they participate in the consultation process.

A cooperative approach by all State and Territory Governments is the only effective means of regulating interactive home gambling products at this level. A non

cooperative approach is likely to result in individual States and Territories maintaining barriers to interstate products. In the short term this will limit the ability of Australian based service providers to effectively market their products to a critical mass of consumers and provide advantages to overseas based providers. In the long term a non cooperative approach can only result in the ineffective regulation of interactive home gambling products and erosion of the gambling taxation revenue of all States and Territories.

Implementation of the Model involves, in part, each State and Territory enacting complimentary legislation. Part A provides a summary of the key elements of the proposed legislation followed by a more comprehensive description intended to provide sufficient detail to enable drafting instructions for legislation to be easily developed. Part B deals with non legislative matters.

PART A – LEGISLATION

SUMMARY OF KEY ELEMENTS OF PROPOSED LEGISLATION

The legislation will be based on utilizing existing administrative systems in each State and Territory.

The **objects of the legislation** include facilitating the offering of interactive home gambling products, protect the rights of players, enable free access to the National market and to promote competition and quality of services to players. The legislation will seek to ensure the integrity of industry participants, honest conduct of interactive home gambling, minimise the incidents of harm caused by problem gambling and allow for the proper accounting of taxes.

The scope will include gambling products in which players participate using telecommunications but excluding telecommunications enabled products currently offered by TABs or bookmakers and authorised trade promotions.

Foundation provisions will provide that:

- licensed and approved products are declared legal
- all other products are declared illegal to offer, market or advertise or to assist in the offering, marketing or advertising
- each jurisdiction will licence and regulate service providers located or providing services from within that jurisdiction and the number of service providers that may be licensed will not be limited.

The legislation will provide for the **free flow of information** between the regulatory bodies in each State and Territory. A **secrecy provision** will protect private and commercially sensitive information from release to other persons but exempt the

release of information in Statutory reports and provide the ability to release statistical information. The secrecy provision will not override any Freedom of Information legislation.

A **licensing scheme** will provide a system to assess suitability for licensing against a set of standards based on tests currently applied to casino operators and gaming machine operators. A system of **mutual recognition** will apply to the results of any suitability tests conducted by another participating jurisdiction.

Those service providers who can not demonstrate a clear ability to pay major prizes from existing financial reserves will be required to lodge a guarantee from a third party with that capability (eg financial institution or parent company).

Operational controls over each product will be technology based using similar principles to those used to controls and regulate distributed gaming machine networks.

For each proposed product the service provider will be required to demonstrate that the system provides effective protection of player entitlements and can be easily audited.

Approvals granted for games, equipment, software and procedures will be able to be withdrawn or modified if the regulator forms the view that it is the public interest not to allow the approval to continue.

Audit and inspection powers will be developed from the generally standard approach throughout Australia for casino and gaming machine operations. Each regulatory body will act as an agent for receiving complaints about any product offered under the National Model and passing the complaint onto the relevant regulator.

Local prohibitions on the **advertising and marketing** of approved products offered interactively from other jurisdictions under the National scheme will be lifted.

Advertising and marketing of products will be governed by a **Code of Conduct** developed by industry, a breach of the Code of Conduct will be grounds for action against the service provider's licence.

It is **not** proposed to facilitate **alternative commercial gambling venues** and controls will ensure interactive terminals are not used by commercial sites (eg: hotels, clubs etc) to "get around" controls on gaming machines and casino gambling.

A ground for action against a service provider's licence will result if the service provider fails to maintain **privacy of player information**.

Taxation will be applied on the basis of the location of residence of the player and will be remitted to the player's jurisdiction. Where a player, who is not resident in a

participating jurisdiction, accesses the product tax will retained by the jurisdiction in which the service provider is located.

For most products **players will either hold an account with the service provider or be registered** by the service provider as a recognised eligible participant. In order to open an account or be registered, players will be required to provide proof of identity, age and place of residence.

Service providers will be required to institute identification of players at time bets are accepted such as personal identification number or password.

A general **prohibition on minors gambling** will be provided including the forfeiture of any prize if it is found that it the winner is a minor. Minors will not be able to obtain a service provider's licence.

Credit gambling will be **prohibited**. Players will be allowed to participate through direct a direct transfer of funds or by physically depositing funds with the service provider or agent. If a credit card transaction is used to make a deposit those funds will not be allowed to be used for gambling until either the money or a guarantee is received from the credit provider.

Provisions directed at **compulsive and problem gambling** will require service providers to offer players the ability for the player to set maximum bet levels or maximum total bets for a period. Persons will be allowed to self exclude themselves. A self exclusion will only be lifted on seven days notice (to provide a cooling off period). Service providers will be required to make available information on contact points for problem gambling services.

A standard **anti money laundering condition** will be placed on each service provider's licence. The condition will require the service provider to report to AUSTRAC defined transactions of interest to AUSTRAC.

COMPREHENSIVE DESCRIPTION OF PROPOSED LEGISLATION

Legislative Objectives

Facilitate the offering of interactive home gambling products.

Provide a regulatory framework to ensure the probity and operational ability of licensed interactive home gambling service providers and the probity of those who directly and indirectly benefit from the operations of the service provider.

Protect the rights and entitlements of players who participate in approved interactive home gambling products.

Implement consistent regulation and standards for interactive home gambling by giving effect to a National Regulatory Model.

Protect the interests of States and Territories by implementation of a cooperative approach to the regulation of interactive home gambling.

Provide for interactive home gambling service providers to have free access to the National market and access to the global market.

Promote competition to promote highest level of quality service to players.

Legislative Principles

Integrity of industry participants and those who benefit.

Ensuring interactive home gambling products are conducted honestly.

Minimise harm associated with interactive home gambling.

Ensure the applicable gambling tax applied, accounted for and where applicable remitted to the jurisdiction of residence of the player.

Proposed Scope

All gambling products, including games of skill in which players participate using telecommunications (including telephone, broadcast or cable television, internet or other telecommunications network) but excluding:

- telecommunications enabled products currently offered by TABs under the relevant enabling legislation (where players place bets by telephone, internet or direct link to the TAB);
- betting products currently offered by bookmakers under the authority of their bookmaker's licence;
- authorised/permitted trade promotions offered for participation via telecommunications systems;
- any game run on a closed network of commercial sites, authorised under other legislation and not offered into the home (club keno and similar).

Notes:

It is intended that the Model will capture all interactive gambling products unless the product is currently offered by a TAB or bookmaker and the product is based upon the result of a "third party" outcome such as a sporting contest or election. If, in the future, a TAB or bookmaker was to offer casino games, lotteries, gaming machine games or new interactive gambling products it is intended that it would be done within the Model.

It is intended that the Model will capture any telecommunications enabled competition run for profit. It is not intended for the Model to capture the electronic equivalent of “friendly” home card games where there is no house edge (or commission) or where all players have equal chance of gaining an advantage over other players inherent in the game such as being banker in blackjack.

It is recognised that an increasing number of “trade promotions” are not designed to promote a product but are in fact profit making lotteries. This has been made possible through the telecommunications service provider paying rebates to the service provider calculated as a share of revenue from the charge made to the player for accessing the product through (for example) 0055 or 1800 numbers.

An Australian/New Zealand Working Party has been formed to examine issues related to the use of telephone entry of trade promotions. The issue of developing tests to ensure trade promotion permits are not given for gambling products will be examined by that Working Party.

Foundation Provisions

Approved products offered by a service provider holding a licence issued under the National Regulatory Scheme are declared legal.

All other products that fall within the proposed scope are declared illegal to offer, market or advertise or to assist in the offering, marketing or advertising. A fine of \$100,000 expressed as penalty units is proposed for providing the service and \$50,000 expressed as penalty units for the other offences.

Each jurisdiction will licence and regulate service providers located or providing services from within that jurisdiction. It is not proposed to limit the number of service providers that may be licensed.

Any liability arising from neglect in the manner in which a product is regulated will be attached to the regulatory body that licensed the relevant service provider and approved the product unless another regulatory body was directly negligent. Liability will be declared not to extend regulatory bodies in other States or Territories solely on the basis of participating in the Model. Individual States and Territories will determine the level of absolute protection from liability (if any) afforded to regulators in accordance with their individual drafting practices.

Information and Secrecy

The legislation will provide for the free flow of information between the regulatory bodies in each State and Territory where the information is related to the administration of legislation enacted to give effect to the National Regulatory Model.

A secrecy provision will protect private and commercially sensitive information from release to other persons where the regulatory body has come into possession of the

information through a licensing or approval process or administering the legislation. The provision will exempt the release of information in Statutory reports and provide the ability to release statistical information.

It is intended the secrecy provision not override any Freedom of Information legislation.

Licensing Scheme

Suitability for licensing to be assessed against a set of standards based on tests currently applied to casino operators and gaming machine operators. *Note: The most recent (and therefore most developed) examples are the New South Wales and Victorian casino operators and Victorian gaming and wagering operators. These models are generally similar to processes in other jurisdictions and provide a guide to the level of information required from persons and companies being assessed.*

The objective of the licensing scheme is to protect the public interest through ensuring high standards of honesty and operational ability of the gambling service provider and checks on any other party that are in a position to directly or indirectly benefit financially from the conduct of the gambling service.

Those service providers who can not demonstrate a clear ability to pay major prizes from existing financial reserves will be required to lodge a guarantee from a third party with that capability (eg financial institution or parent company). *Note: This provision recognises that many licensees for this gambling form may be small entrepreneurial organisations with little financial history or a joint venture company set up for the purpose of obtaining the licence. With an expanded number of licensees and no exclusivity it is important to ensure players are protected from incidents where a service provider is unable to meet unexpected or a statistically unlikely distribution of major prizes. An alternative approach would be a government sponsored emergency pool funded by an industry levy but this not supported due to the unattainable need to devise an equitable scheme across an infinite range of products.* In addition a heavy penalty will apply for unreasonably withholding winnings or money held in a player's account.

It is proposed each jurisdiction develop its own administration process for determining applications and appeals from decisions. This will allow each jurisdiction, if so desired, to merge interactive home gambling licensing into current administrative systems for other forms of gambling.

Each State's and Territory's licensing scheme must include:

1. Licensing of service providers only upon satisfactory assessment of the proposed licensee in terms of probity, financial history, capacity to pay major prizes, repute and operational ability.
2. Individual licensing of:

- directors, chief operating officers of the service provider, persons or companies that hold significant share holdings of five percent or more of voting stock of the service provider and persons with the ability to influence the service provider's decision making process
- persons that are integral to the proper operation of the gambling product offered, or
- persons or companies that are able to influence the outcome of the gambling products offered, or
- persons involved in the recording of the results of players participation, or
- persons involved in reporting of the financial aspects of the product to the regulatory body
- all employees and contractors of the service provider unless the licensing jurisdiction is satisfied that the person or company is not one of the above.

The licensing process of individuals will include finger printing, financial and criminal history assessment, evaluation of ability to perform role and a examination of the suitability of associates of the intended licensee. Finger printing of persons permanently resident overseas and not directly involved in the offering of gambling products within Australia will not be mandatory provided that the licensing body is satisfied that no useful purpose would be gained by obtaining finger prints and it would not be against the public interest. Fingerprints will be destroyed once the licensee ceases to be licensed or an applicant is refused a licence.

3. The ability to impose conditions on licences and to vary or revoke the conditions. A breach of a condition may give rise to a prosecution or action against the licence.
4. Probity assessment of associates of the service provider and individual licence holders for suitability to be so associated but not including fingerprinting or detailed financial history disclosure. Associate status is to include a relative of a licensee, directors and chief operating officers of companies holding significant share holdings of five percent or more of voting stock of a licensee company, other persons or companies with the ability to influence the significant shareholders decision making process and directors and chief operating officers and significant shareholders of those companies. *Example: Company X holds a service providers licence and company Y holds 10% of company X - The Directors of company X each require an individual licence as does company Y - the Directors of company Y do not require an individual licence but will have their suitability assessed as associates.*
5. An offence to do anything requiring a licence without first obtaining the licence.

6. A provisional licensing scheme to enable flexibility where the time taken to complete the full assessment of an application would adversely affect an individuals livelihood.
7. An ability to inquire into, including requiring licensee to provide updated information, and reassess the suitability of licence holders and associates on an ongoing and as needed basis.
8. A requirement for licensees to advise of material changes in circumstances that could affect the assessment of the licensee as suitable including monitoring of shareholders and reporting of any new party that becomes a significant shareholder.
9. An ability to take punitive action to fine the licensee, suspend or cancel the licence as a result of defined circumstances, such as legislative breaches, operational deficiencies or continuing to associate with an unsuitable associate.
10. A power to give directions to a licensee to cease an association with an unsuitable associate.
11. A discretionary power to review contracts entered into by a service provider to require the service provider to not enter into or discontinue a contract if (a) the other party has not been tested and passed probity or (b) the terms of the contract give reasonable grounds to believe the contract is designed to thwart the purpose of the other provisions of the licensing scheme.
12. A requirement for service providers not to enter into any profit sharing arrangement or distribution related to the amount of money bet or won on a gambling product unless the arrangement is approved. Approval of any such arrangement will only be allowed if it is determined to be in the public interest.
13. A means to allow service providers to sell their business to another acceptable party through a scheme of licence transfer.
14. An ability for an appointed receiver or liquidator to temporarily continue a service provider's operations until the licence is transferred or cancelled.

The fee structure and licence term will be set by each jurisdiction. It is anticipated that application fees will be on a cost recovery basis for processing the application. *Note: This reflects the vastly different effort involved assessing applicants of varying degrees of complexity and would generally be through having a nominal application fee combined with a cost recovery payment prior to an application determination being advised to the applicant.*

In some jurisdictions the adoption of the Model will result in their interactive home gambling service providers being subject to greater disclosure and probity tests than that applying to existing commercial gambling operations within their jurisdiction, for example finger printing and financial history. Whilst it is contended that the difference can be justified on the basis that the interactive products will have free access to a

National market it may cause problems if one of the existing operations applies for a licence to sell its products interactively and fails to meet the higher level tests.

Mutual Recognition

In the event that an individual or corporation applies for a licence or is required to be assessed as an associate of a licensee in more than one jurisdiction mutual recognition will apply to the results of any suitability tests conducted by another participating jurisdiction. This will extend to tests conducted for other gambling regulatory purposes where the regulators have agreed to share information and the tests are not materially different.

Operational Controls

It is proposed that control over operational aspects of each product be primarily technology based using similar principles as used by regulators in establishing controls for distributed gaming machine networks. These networks are in place in all jurisdictions that have introduced machine gaming in the 1990s and include Queensland, Victoria, South Australia, the Northern Territory and Tasmania.

It is not proposed to develop a prescriptive National Standard for the technical aspects of the equipment and systems. Due to the infinite range of potential products it is impossible for regulators to prescribe in advance a means of providing the required levels of security for all potential products. Where a product is an adaptation of a current gambling form such as a simulated gaming machine then the relevant parts of established standards can be applied. Attempting to mandate the technical aspects of providing security and audit implementations would also tend to have the undesirable effect of stifling innovation and reducing international competitiveness in the longer term.

For each proposed product the service provider will be required to demonstrate to the regulator (and the regulator's technical testing laboratory) that the system provides effective protection of player entitlements and can be easily audited by the regulator to confirm that all parties, including the participating States and Territories, are receiving their correct distribution from the product.

As for the licensing scheme the administration of the approval process of proposed products will be determined by each State and Territory determining the entity which grants product approvals and any appeal process. Costs of testing and approval of products and equipment will also be on the basis of cost recovery from the applicant.

The legislation will provide that:

1. The premises from which the service providers conducts the gambling must be approved.
2. Only approved games may be offered.

3. The game approval is specific to the service provider and issued by the jurisdiction that licensed the service provider.
4. A game must not be approved unless the regulatory body is satisfied that:
 - the game is not designed to give the player a false expectation by misrepresenting any event
 - the rules of the game are not unfair or misleading
 - the rules of the game are available to the player and the game operates and interacts with the player strictly in accordance with the rules
 - the game has a statistical return to the player of at least an advertised minimum unless either (a) the game rules allow players to make a reasonable calculation of the player return or (b) the game rules make the house advantage clear to the player *Examples: Simulated spinning reel gaming machine type games will be required to have a player return minimum declared to the player such as 85 or 87% as the player is not given enough information from rules to even roughly estimate the house advantage. A simulated casino table game such as roulette will not be required to declare minimum player return provided the house advantage can be calculated from the rules available to the player. An electronic raffle such as a dial in phone competition that does not have a set number of entries for each draw would also be required to declare a minimum player return.*
 - the game is clearly defined in terms of specific computer hardware and software
 - all equipment and software integral to the security of the product is approved and located at the service provider's approved premises
 - as far as practicable risks to player entitlements and taxation calculation are minimised by building controls into the approved hardware and software
 - adequate transaction logging occurs to ensure dispute resolution is transparent
 - risks to player entitlements and taxation calculation that are unable to be totally managed by inbuilt hardware and software controls are identified and approved effective alternative controls are in place
 - the service providers operational procedures and system of internal controls (as relate to protection of player entitlement and taxation calculation) are documented and approved. Details of the records to be maintained to fully record and explain the operation of the gambling products will form part of the approved internal controls.
5. The critical components of the equipment and software must not be approved by the regulator unless:

- it is tested and found satisfactory by a technically competent laboratory after being subjected to a similar level of testing to what is now conducted on gaming machine systems including detailed review of the software source code to ensure that secret fraudulent programming is not present
 - processes are in place to ensure the software used in operation is compiled from the reviewed source code
 - the regulator has the capacity to check on a regular and ad hoc basis that only approved hardware and software are in use, including maintaining a reference copy of approved software for this purpose
 - the service provider has disaster recovery capability sufficient to ensure player entitlements and audibility up to the point of the disaster are protected
 - the service provider has a system in place to ensure the regulator is provided with electronically formatted game play data from a secure part of the service provider's computer system. The data must be of sufficient detail and completeness to allow automated verification of player entitlements, Government revenue, trend analysis and anomaly identification.
6. Approvals granted for games, equipment, software and procedures will be able to be withdrawn or modified if the regulator forms the view that it is the public interest not to allow the approval to continue.
 7. Bone-fide malfunction of equipment will result in the voiding of game and the return of effected bets.
 8. Service providers commit an offence to knowingly allow defective or malfunctioning equipment of software to be used.
 9. Regulators will have power to give enforceable directions to service providers to ensure games are conducted in the manner intended when the approval was granted.
 10. Service providers will be required to keep records for seven years unless the regulator allows earlier destruction of the material.

Audit and Inspection

The regulatory powers for audit and inspection will be developed from the generally standard approach throughout Australia for casino and gaming machine operations. The powers will include the right of entry into licensed premises and other places where records and equipment relating to service provider's gambling product are kept.

It is imperative that each regulator has the capacity to properly assess not only the gaming equipment and software but also verifying the effectiveness of security measures that service providers have in place to protect the integrity of their computer systems.

The provisions will include the ability for regulators to test, evaluate and audit systems and procedures at the service provider's premises by inspecting records, examining equipment and software in use and observing and questioning licensed persons. Regulators will also be empowered to test the service provider's operational probity by registering transactions remotely and then gaining access to the service provider's data base to ensure each transaction is properly recorded. Auditors and inspectors will have the power to seize equipment for evidentiary purposes and a general power to investigate complaints.

Audit and inspection powers relating to licensed service providers will rest with the staff of the regulatory body. Police assisting an auditor or inspector will have the same power for the purpose of providing that assistance.

Regulators in each State and Territory will be empowered to test all service providers compliance with ensuring that the jurisdiction of residence of the player is not misrepresented by going through the process of player registration or account establishment as a player. All regulators will have the ability to commence an action against any service provider not effectively testing the validity of player's jurisdiction of residence. Other actions will be only commenced by the regulator that issued the service provider's licence.

The legislation will empower regulators to assist each other by exercising powers in their own jurisdiction to assist another regulator in carrying out an inspection or investigation related to a service provider licensed by the other jurisdiction and by exercising powers and gaining evidence to investigate the activities of an unlicensed service provider or person assisting the unlicensed service provider.

Each regulatory body will act as a agent for receiving complaints about any product offered under the National Model and passing the complaint onto the relevant regulator.

Police and inspectors will be empowered to enter other premises to enforce provisions prohibiting unlicensed providers subject to obtaining a warrant. Both police and the regulatory body will be empowered to commence prosecution of offences for unlicensed providers.

Advertising/Marketing

Under the National Regulatory Model "local" prohibitions would be lifted on the advertising and marketing of approved products offered interactively from other jurisdictions by service providers licensed under the National scheme. This will extend to removing any obstacles to a service provider using local agents to perform tasks such as opening accounts, making player registrations, accepting deposits or paying winnings. As indicated in the Foundation Provisions the advertising and marketing or assisting the advertising and marketing of unlicensed products will be illegal in all jurisdictions.

Two fundamental differences separate interactive home gambling from location based products:

- the lack of a need to make a conscious decision to enter a gambling dedicated environment, such as a casino, gaming machine venue or TAB, in order to participate, and
- the advertisement of a product and the entry experience of the player will be closely related or immediate (eg an advertisement on television promoting a competition which allows participation by simply clicking a screen icon displayed during the advertisement).

As such, in addition to ensuring accuracy and truthfulness of advertising, special consideration needs to be given to the appropriate level of impulse directed marketing.

It is proposed that advertising and marketing of products offered by a service provider licensed under the national scheme be governed by a Code of Conduct developed by industry and endorsed as part of the National Regulatory Model. The legislation will provide that a breach of the Code of Conduct is grounds for action against the service provider's licence.

Location Products Can Be Offered

The National Regulatory Model is not directed at facilitating a new form of commercial location based gambling and recognises that in most jurisdictions exclusivity arrangements are in place over most forms of location based gambling. In particular it is not proposed to facilitate alternative commercial venues for simulated casino or machine gaming as would occur if for example groups of interactive home gambling terminals were to be offered at a club, hotel, restaurant or bingo hall.

Unless the individual jurisdiction's legislation provides a mechanism for licensing of commercial sites, terminals for offering the products at commercial sites within that jurisdiction will be illegal unless (a) the terminals primary purpose is for other use (eg internet cafe terminal) and (b) the proprietor of the venue where the terminal is located can clearly demonstrate no benefit is received by any person associated with the venue as a result of the terminal being used for accessing gambling products.

Privacy

The legislation will provide that a ground for action against a service provider's licence will result if the service provider fails to maintain privacy of player information. It is proposed that the standard of protection required be the "Information Privacy Principles" under section 14 of the Federal Privacy Act and the "OECD Guidelines on the Protection of Privacy and Transborder Data Flow of Personal Data".

Where privacy principles require consent of a person for use of that person's data for purposes not directly related to the offering of a gambling product (eg. for inclusion in a mailing list), a further requirement will be that withholding of consent by a person will not in itself be a ground for the service provider refusing to conduct business with the person.

Taxation and supervision costs

Taxation will be applied on the basis of the location of residence of the player and will be set by the Government of the jurisdiction of the player's residence. The taxation paid by the service provider will be remitted to the player's jurisdiction. The jurisdiction where the service provider is located will be responsible for collecting, auditing and verifying that the service provider has remitted the appropriate amount of tax in respect of each jurisdiction. Jurisdictions will remit taxes periodically on a net differential basis.

Unless there is an alternative agreement by Treasuries, if a player, who is not resident in a participating jurisdiction, accesses the product the tax applied will be set and retained by the jurisdiction in which the service provider is located.

Some motivation exists for Treasuries to agree on a taxation sharing arrangements or at least minimum tax rates for overseas sourced bets such as no lower than that applying within the jurisdiction. In the absence of any agreement jurisdictions may determine to set lower tax rates for overseas sourced bets than those applying within that jurisdiction in order to attract a greater share of that market segment. This would most likely over time be matched by all other jurisdictions creating a situation where Australian residents are disadvantaged and they or their service provider are encouraged to route transactions through an overseas intermediary resulting in a general erosion in revenue.

To a lesser extent this could occur with the different tax rates in each jurisdictions proposed under the Model and a severe penalties must apply to service providers who encourage or allow the true origin of bets to be hidden. Tests for establishing accounts for overseas based players need to be no less stringent than for Australian residents otherwise this will provide avenues for tax evasion by service providers and players and gambling by Australian resident minors.

The rate of tax to be applied to a product offered into a jurisdiction (from another jurisdiction) will be declared by the "receiving" jurisdiction as part of the process of entering into the National Regulatory Model. In declaring a tax rate, the receiving jurisdiction will be bound not to declare a rate greater than that applying to similar products offered within that jurisdiction. By setting tax rates by this method tax rates will not be able to be used as a barrier to market entry.

For products that have no current equivalent and for which a "receiving" jurisdiction has not declared a tax rate, the rate applied will be the same as that applied within the

jurisdiction in which the service provider is located. Tax levied will still be returned to the jurisdiction of residence of the player.

Specific arrangements will apply for determining the equivalent of a tax rate for products that are currently supplied by State owned enterprises such as lottery corporations. In these situations the State owned service provider usually does not remit tax on each product but declares a profit at the end of each financial year. Products offered in these circumstances will have their “effective” tax rate calculated taking into account the profit declared for the product, as a percentage of turnover or non-player return, adjusted to remove any distortions caused by being offered by a Government owned enterprise such as exemptions from sales tax or access to finance at below market interest rates.

Each service provider will be required to pay the jurisdiction in which it is located a supervision fee to cover the regulatory costs of supervising the service provider and products offered under the National Regulatory Model. The supervision fee will be separate to any tax.

Player Participation

For most products players will either hold an account with the service provider or be registered by the service provider as a recognised eligible participant. In order to open an account or be registered, players will be required to provide proof of identity, age and place of residence.

Service providers will be required to institute identification of players at time bets are accepted such as a personal identification number or password.

Some products will be unsuitable for pre-registration or accounts and will be sold on a direct cash transfer basis or billed through a third party. Examples include charitable raffles with small entry price and “0055” type telephone competitions where the player’s entry fee is part of the price of the phone call. A special category of product will be provided to allow these types of gambling to be offered. However, to qualify for this category, products will have to be recognised as “soft” and either (a) meet a published set of selection criteria; or (b) receive special approval under the National Regulatory Model. The legislation will provide for approval of these “soft” products only after the regulator is satisfied it meets these requirements. It is not intended to restrict the flexible development of the criteria by being included in legislation as this is another area where product development is likely to exceed the ability of legislators to plan adequately in advance.

Persons under Eighteen Years of Age

Apart from the “soft” products mentioned above a general prohibition on minors gambling will be provided including the forfeiture of any prize if it is found that it the

winner is a minor. The jurisdiction licensing the service provider will determine the disposal of the prize such as consolidated revenue or a dedicated fund.

Service providers will be required to preclude minors when registering players or establishing player accounts (along with authenticating the player's identification and jurisdiction of residence).

Minors will not be able to obtain a service provider's licence.

Prohibition On Credit Gambling

Service providers who operate player accounts will be prohibited from allowing the accounts to have a negative balance. Players will be allowed to deposit into their account by a direct transfer of funds for example an eftpos transfer from a bank account or debit from a stored value or smart card.

The legislation will provide a general prohibition on service providers providing credit for gambling. This will preclude situations where a gambling service provider attempts to thwart credit gambling controls by becoming a financial institution as well as a gambling service provider.

In situations where the funds are not directly transferred but paid periodically to the service provider (e.g. end of month) by a credit provider, as is the case of credit card sales, restrictions will apply. Direct sales of the product will be prohibited unless the funds are transferred immediately.

If a credit card transaction is used to make a deposit into an account held with the service provider that portion of the account will not be allowed to be used for gambling until either (a) the funds are received by the service provider from the credit provider or (b) the credit provider issues an authority to the service provider indicating the funds are guaranteed.

An alternate approach would be to ban any transaction involving a credit card. It is expected that over time such a provision will become impossible to enforce as the gambling service provider will not be able to differentiate if funds received from a third party are provided on credit or debited against funds in an account held with the third party.

Compulsive and Problem Gambling

For products that are sold using an account held with the service provider or using player eligibility registration, service providers will be required to offer players the ability for each player to set maximum bets levels or maximum total bets for a period. If a player elects to impose either of these limits the service provider will be responsible for not accepting a bet that would breach the limit. Once established by a player the limit may only be increased by the player on seven days notice.

Persons will be allowed to self exclude themselves from being registered as a player or from setting up an account with a service provider. This will be achieved by the person giving notice to the regulatory body in the State or Territory where the person is resident. Proof of identity will be required but no fee payable. That regulatory body will circulate the notice to all other regulators which in turn will give notice to the service providers it has licensed. The service provider must close any account and deactivate any registration of the person. A person will be allowed to withdraw the exclusion on seven days notice. Proof of identity will be required along with a fee calculated to reimburse costs of all regulatory bodies for both imposing and removing the exclusion.

Service providers will be required to make available information on contact points for problem gambling services.

Anti-Money Laundering

In addition to reporting requirements under the Financial Transactions Reporting Act the legislation will require the regulator to impose a standard anti money laundering condition on each service provider's licence. The condition will require the service provider to report to AUSTRAC other defined transactions of interest to AUSTRAC. The parameters for determining which transactions are reportable will be established in consultation with AUSTRAC and industry.

General Provisions

Licensed persons will be prohibited from gambling on products with which they have some relationship.

Employees and executives of regulatory bodies will be prohibited from possessing any shares or holding any employment or have any arrangement that might give rise to a conflict of interest in relation to their role in industry regulation.

Key individuals in regulatory bodies will be prohibited from accepting employment with a service provider licensed by the regulatory body for a period specified in the legislation such as one or four years.

An offence provision will be provided for bribing or offering to bribe a regulatory official unless the State or Territory already has in place adequate offence provisions under other applicable legislation.

Service providers will be required to pay any unclaimed prizes over one year old to the unclaimed moneys authority of the State or Territory that licensed the service provider. Player accounts that are dormant for in excess of a specified period will be similarly dealt with if the player can not be located. No time limit will apply to the collection of moneys from the unclaimed moneys authority.

Offences will be provided for cheating and attempted cheating.

Directors and managers of a corporation that knowingly allow the corporation to commit an offence will be taken to have also committed the offence.

PART B - NON LEGISLATIVE MATTERS

Existing Exclusivity Arrangements

Each jurisdiction will be solely responsible for addressing issues related to any conflict between products introduced under the National Model and products covered by any exclusivity agreement previously entered into by that jurisdiction with current gambling service providers within that jurisdiction.

Each jurisdiction needs to assess their obligations under existing exclusivity arrangements to determine if limitations apply to:

- licensing of interactive home gambling service providers that wish to locate within their jurisdiction
- permitting interstate service providers to advertise their products and appoint agents to open betting accounts within their jurisdiction
- accepting the tax remitted from interstate providers for bets made by the jurisdictions residents.

Uniform Enforcement Code

Products will be offered nationally by a variety of service providers in different jurisdictions. Service providers will be subject to National Standards but it is equally important that the public and industry have a transparent means of ensuring that these standards are consistently applied by the regulators in different jurisdictions.

To this end, it is proposed that regulators will be subject to a Uniform Enforcement Code will be developed and endorsed as part of the National Regulatory Model. The code will be a public document except for those aspects of the code for which publication would place player entitlement or game audibility at risk.

Each jurisdiction will be required to vigorously enforce the prohibitions against unlicensed providers of interactive gambling products and prohibitions on marketing or advertising (and assisting in the offering, marketing or advertising) of unapproved products.

Each participating jurisdiction will be required to have an audit performed each year on the regulators compliance with the Model and the Uniform Enforcement Code. The auditor must be independent of the regulatory body.

Oversight of Model

A standing committee of Gaming Ministers will be formed to consider standards documents, enforcement codes, conduct codes, any proposed changes to the Model or documents and codes along with reports on the effectiveness of operation of the Model and resolving any incidents of the different application of aspects of the Model by individual jurisdictions. The standing committee will be supported by the existing body of gambling regulators known as the Casino and Gaming Chief Executives Forum which currently meets twice yearly.

Federal Government Involvement

In early discussions with Federal officers it had been mooted that the Federal Government would be considering, for censorship reasons, imposing a requirement on Australian internet connection providers to preclude their clients from accessing any site included on a list of undesirable internet addresses. It was intended that the list would include pornography down load sites, bulletin boards providing information on undesirable practices (such as, home bomb-making), and paedophilia network contact points. The list could have been expanded to include unlicensed and foreign internet gambling providers.

It is now clear that the Federal Government recognises that internet connection providers have only a limited ability to control what sites their clients access and controls that they could be put in place are easily beaten. On that basis, it will not support the imposition of criminal sanctions against internet connection providers who permit their clients to access unsuitable material - **provided** the internet connection provider is only acting as a link in a telecommunications chain.

Given that there will be no system of prohibited access for internet content, even for censorship purposes, foreign gambling services will be accessible by Australians on the internet. In the longer term it is still possible that a compelling public interest argument will be put for requiring internet connection providers to “filter” the content that their clients access. Should this occur, then unlicensed gambling products could be included in the content to be filtered out.

In any event over time foreign satellites will increasingly be able to offer services to Australian homes. Whilst the uptake of these services will probably be marginal at best it further highlights the futility of attempting to block foreign products from Australian homes.

The second area where Federal involvement was foreshadowed was to impose conditions on broadcasting licenses for both free to air and pay TV providers, to ensure only licensed gambling products are allowed to be offered or advertised.

Whilst such a scheme is still an option the States and Territories have the capacity to make laws on publishing and broadcasting content sourced from within their

jurisdiction. If consistent laws were to be put in place by all States and Territories, as would be the case under the National Regulatory Model, the effect of licence conditions imposed at the Federal level would be somewhat cosmetic. This is subject to the Federal Government not making contrary laws that invalidate the uniform State and Territory laws.

Accordingly, at a Federal level, the most important contribution to the National Regulatory Model is to ensure that Federal laws are not made that invalidate the State and Territory laws giving effect to the National Regulatory Model.