**Introductory Remarks**

This office welcomes the opportunity to submit comments to the Australian Government Department of Social Services review of offshore wagering (remote gambling). We believe it is important for the citizens and governments of all States, but especially those of the significance and sophistication as Australia, to have suitable and ‘fit for purpose’ licensing and regulatory regimes in this area of economic activity.

I should first point out that jurisdictions such as Gibraltar may take issue with the framing of the review. It is a moot point whether the use of remote gambling facilities located outside Australian territories by residents of Australia is “illegal offshore wagering”. Gibraltar requires it licence holders to obtain licences in those jurisdictions where the use of externally located remote gambling services by resident consumers is illegal, and there is a weight of legal opinion from Australian lawyers stating that such actions are not ‘illegal’.

Additionally, jurisdictions such as Gibraltar place great importance on having very high licensing and regulatory standards to ensure that gambling offers are fair and transparent, the controllers and beneficiaries are of good character, and that customer funds and rights are properly protected.

We accept that this is may not be the case for all suppliers supposedly ‘licensed’ in all other jurisdictions, but a distinction has to be made between the properly and diligently licensed and regulated offshore suppliers, and therefore trustworthy and reliable services available in Gibraltar, and the ‘light touch’, de facto insignificant licensing and regulation offered in some other places.

Gibraltar licensees have obtained licences across the world, including Australia, and the world’s leading remote gambling suppliers are located and licensed in Gibraltar.

In sum, in some regards, the legal situation in Gibraltar is not dissimilar to that in Australia where, in a ‘reverse scenario’, also permitted Australian companies providing remote gambling services to accept deposits and bets from the residents of other jurisdictions, notwithstanding some of those other jurisdictions may have deemed such activities as ‘illegal’.

**Questions – Responses:**

1. While any analysis of ‘wagering’ should be divided into the separate businesses of sports betting and casino style gaming, the motivations of those consumers with an interest in wagering of either type are similar – that of the value and the nature of the offer. In stark terms, if a domestic operator is offering 4/1 on and event and an international operator is offering 5/1, the marginally informed customer will take the better odds. Likewise, if the domestic operator is not offering bets in-play and the international operator is, then the motivated customer will place bets outside Australian licensing.

Clearly, this model will not simply apply to all customers. Those customers who are likely to have gambling control issues or otherwise wish to conceal their gambling will be even more motivated to gamble outside the supervision of the state than those who are more casual or less engaged in the activity. Perversely, this means that those customers who the state most needs to protect are those who are least likely to be protected. Inadequate domestic services creates both a febrile supply side and a high volume demand side, making the ‘policing’ of such offers and transactions burdensome and impractical, facilitating the ability of consumers to use the services. By improving the domestic offer the scale of external supply and its consumption become more manageable by the state in terms of blocking and other interventions.

1. There is little doubt that there is a significant negative economic impact on the potential financial beneficiaries of Australian remote gambling activities due to the availability and attractiveness of external remote gambling services. This dis-benefit massively outweighs any benefit arising from the ‘reverse scenario’ described above.

Unfortunately such effects are frequently miscalculated, if not exaggerated, due to the particular interests of the potential beneficiaries, as are the necessary or justified arrangements that need accompany any transition. Hence, sports bodies lay the blame for sports corruption at the door of ‘illegal offshore bookies’ and demand a line of revenue when the weight of evidence shows such corruption of some sports is both historic and endemic absent remote gambling. Calling for ‘betting rights’ and other commercial demands, these will, cumulatively, mean the resulting wagering offers are poor value and/or unattractive, and the underlying challenge of building a locally licensed, commercially attractive market is unresolved. This is the character of a number of European state regimes where the grey and black markets proliferate while the licensed market is loss making, leaving licensed providers vulnerable to loss of market share and vulnerable to corporate takeover by the ‘grey’ providers.

With regard to consumers, they are faced with an array of external suppliers of mixed provenance. While some are as reliable, and possibly more reliable than domestically licensed providers (see for example the number of failed licensees/lost consumer funds in the UK market), others are unreliable. A viable licensed market will not remove the non-licensed market but it will make it less attractive and facilitate it being marginalised and eroded by the state.

A long term viable licensed market cannot exist and support potential beneficiaries, contribute to governments or service consumers unless the industry itself has a viable commercial footing in terms of the cumulative operating costs it is required to meet.

1. From our knowledge of the Australian remote and non-remote gambling markets, which is limited, it is the structure and application of the IGA at territory level which is producing the relatively inefficient remote gambling market. Only a commercially attractive industry infrastructure will ‘out-compete’ the external unlicensed providers, and it will never achieve this completely. A properly functioning market should be coupled with proportionate internet and financial services intervention powers to mitigate breaches of the law.

While none of the European jurisdictions have a model we could commend *in toto* to Australia, elements of the Danish, Spanish and Italian models have some effect in providing a controlled market. However, all suffer the dis-benefits of aggressive tax (or other cost) regimes which counteract the benefits of the licensed model. Hence, Spain has aggregated the powers of the autonomous regions and applied a national remote licensing regime but then limited the range of products and applied a very uncompetitive tax regime. Italy uses internet interventions and financial supervisory powers but also has very high taxes and restrictions on products. Denmark is reporting a growing grey market notwithstanding a relatively comprehensive regime, but it is burdened by very high taxes. It seems states opt for high taxes that are never reduced rather than lower taxes which may be increased.

1. As above. None of these measures are a panacea. Internet interventions can, at best, alert or inform potential users of the risks of gambling on non-licensed sites, but they are easily circumvented by moderately experienced internet users (and see below, fall into disrepute). However, the operators providing such ‘blocked’ services are inconvenienced and must deliberately set out to facilitate the disapproved access. Financial interventions are even more problematic. Norway has used such measures but is close to or has abandoned them due to the disproportionate cost and inconvenience to the finance sector and non-gambling customers. The experience of the US and Alderney/Isle of Man poker providers (up to ‘Black Friday’ 2011)illustrates how ‘illegal’ remote gambling suppliers can criminally manipulate/corrupt local financial services in order to circumvent even the more powerful control mechanisms.
2. Mainstream bona fide remote gambling service providers such as those licensed and regulated in Gibraltar would welcome an open and competitive, proportionately licensed, regulated and taxed operating regime in Australia. The question assumes such a market can be achieved by distorting the arrangements to protect domestic suppliers. This simply takes us full circle to the risks of creating an inefficient domestic market unable to compete with a lower cost international market: the ‘protected’ end up with a bigger percentage of a smaller market, with high volumes and values of customers far outside their commercial reach and the state’s protection.
3. It is not clear to me what the particular risks are “associated with offshore gambling operators”. There are very many studies which confirm that the most addictive, exploitative and problematic form of gambling is slot machines followed by shop and track betting. Remote gambling falls well down this risk hierarchy, in part because it requires, within regulation, full accounting for the customer behaviour, which is then accessible to the regulatory authorities. Customers using offshore gambling quickly establish whether the site is trustworthy in terms of offers and funds. Depicting a product as high risk when the experience of consumers is the opposite is likely to be counter productive. It will always be possible for unlicensed operators to make available internet gambling outside a local licensed and regulated scheme, the challenge is to minimise the interest in and take up of such offers while seeking to police them out of the jurisdiction.
4. The current review and climate for change in Australia provide an opportunity for re-establishing a coherent legal and fiscal framework for all internet gambling which reflects the reality of consumer behaviour and the global cross border nature of internet services. The supply and use of such services will grow as communications technology becomes more embedded in consumers’ living and spending arrangements.