

### PARLIAMENT OF AUSTRALIA • THE SENATE

# SENATOR BRIDGET McKENZIE

Senator for Victoria

23 October 2015

DEPARTMENT OF SOCIAL SERVICES
REVIEW INTO IMPACT OF ILLEGAL OFFSHORE WAGERING

Via Email: problemgambling@dss.gov.au

Dear Sir/Madam,

# SUBMISSION: REVIEW INTO THE IMPACT OF ILLEGAL OFFSHORE WAGERING

I enclose my submission to the DSS Impact of Illegal Offshore Wagering Review for your perusal. The summary below is an indication of the main problems with the current online wagering landscape.

There is a need for online wagering reform, to reclaim lost tax revenue and invest in Australia's infrastructure needs particularly in the regions.

A motion of this intent was supported by the National Party at its Federal Council. It states:

That this Federal Council supports consistency of tax laws, specifically taxation reform whereby online wagering is regulated by the Commonwealth and a proportion of the taxation gains are directed to regional growth projects, noting:

- a) The productivity commission's most recent report on gambling in 2010 estimated tax revenue from gambling to be between \$12.1 and \$15.8 billion in 2008-09.
- b) The AMA states interactive gambling is the fastest growing form of gambling.
- c) The prevalence and impacts of problem gambling are most pronounced among socially and economically disadvantaged individuals and communities, including people living in regions, justifying the call for such tax revenue to be diverted back to regional growth projects.

Regional communities welcome the Liberal-Nationals Coalition government's phased \$1 billion National Stronger Regions Fund and other initiatives however the poor fiscal management and political agenda of the former Labor government has meant we cannot fund all that we hoped. An example was the difficult decision to cut back projects under the

Regional Development Australia Fund. While necessary, the impact of unfunded projects adds to our infrastructure deficit and the socio-economic effects on regional communities.

According to the Regional Australia Institute's policy briefing in 2012, Australia's estimated infrastructure deficit was, at the time, between \$12 and \$15.3 billion. As well as constraining local and regional development, the deficit represents an ever growing liability that future generations, and governments, will bear. It is a fact that adequate infrastructure results in regional prosperity, benefiting communities and economies.

The impact of wagering is disproportionality felt in communities of low socio-economic status, many of them in the regions. Captured revenue through wagering reform should therefore be directed to the Stronger Regions Fund which also has mandate to assist these communities.

Given the social impact of gambling, I believe those who contribute to the problem must contribute to the solutions through funding support structures. It is being done at a state level with revenue - from licence fees, mandatory contribution, or direct taxes – invested in community infrastructure and services. However, at the same time, states compete to attract foreign gaming companies by lowering the tax rate, resulting in less revenue that could further benefit their communities.

A uniform approach to taxation paid by online wagering companies in different States and Territories is a start. In real dollar terms, taxation revenue from Australian gaming and wagering has not grown consistently with the overall growth of the industry.

The Joint Select Committee on Gambling Reform's report `Interactive and online gambling and gambling advertising Interactive Gambling and Broadcasting Amendment (Online Transactions and Other Measures) Bill 2011' reported that underlying growth in all online gambling is strong at around 12 per cent. Yet in 2013-14 alone, analysis by the Parliamentary Library economics branch found, based on the 12 per cent growth rate, there was a \$221 million loss in revenue, increasing to around \$348 million by 2017-18.

Efforts by G20 countries including Australia to crack down on tax evasion by multinationals is a start.

I am keen to discuss the infrastructure needs of sporting and regional bodies and how the above proposal can help meet their needs.

Yours Sincerely

Senator Bridget McKenzie



# SUBMISSION TO THE REVIEW ON THE IMPACT OF ILLEGAL OFFSHORE WAGERING

# **Wagering Reform Proposal**

# Nationals Senator, Bridget McKenzie

### 1. GENERAL SUBMISSION

The Review of the Impact of Illegal Offshore Wagering invites submissions on the economic impacts of illegal offshore wagering and what measures could be applied in the Australian context to overcome the negative social and financial impacts on consumers of such wagering

The Review seeks to make recommendations for the mitigation of illegal offshore wagering, including but not limited to improved government controls, industry codes and standards, and through the provision of information to customers to enhance self-responsibility.

In particular, this paper will outline the case for a corrective tax. One of the largest industries in Australia subject to 'corrective' taxes at a state level is the gaming and wagering sector.

A 'corrective tax' is one which seeks to modify externalities in order to promote social good. This is especially important given the significant loss of revenue that could have been collected for the benefit of the Australian community, but for illegal offshore gambling.

The complexity of the Australian Taxation system means that measures to promote better tax efficiency should be investigated. Secondly, by recognising the current complexity and inconsistency of the state and territorial laws currently regulating and taxing wagering (see below), there is a benefit to industry - and in turn our society - to create a single and consistent tax regime.

### 2. INDUSTRY OVERVIEW

We submit that the Australian Wagering industry is experiencing an ever-accelerating rate of growth. In turn, government revenue is also increasing in relation to wagering fees – but some fees are being lost due to current limitations on catchment. The situation requires Federal action to ensure that Australia's national economic and social interests are preserved. States and Territories do not have the necessary tools to account for illegal offshore wagering, nor to mitigate the costs and loss of revenue.

Foreign governments support their wagering operators to attract as many wagerers as possible. For example, the UK is introducing zero tax on foreign sourced betting from December 2014. UK operators have recently acquired Australian licences and large Australian customer databases, and can integrate their operations to the disadvantage of Australian interests.

As a "corrective" tax, steps can be taken to limit the risk of Australian customers being syphoned off to other markets. No action will likely result in a large decrease in Australian control over existing Australian betting and tax revenues; and the potential for Australian

tax revenue from foreign customers and revenue from foreign betting on Australian events likely reduced.

### 3. ISSUES TO ADDRESS

In addressing the taxation issues of the wagering sector, tax reform should identify the broad characteristics of the industry and those features which may give rise to unfairness, including:

- Other national governments and their operators are targeting Australian customers;
- Major foreign operators have acquired Australian operating licences; and
- Taxes and product fees are not strategically aligned;
- Australia first-class sporting product relies on taxes on wagering but is not calculated on a standardised basis.

In addition to these features, the market products and practices are altering, in various ways including:

- Wagering is trending away from TAB agencies and racecourses to the internet;
- The format of wagering is changing with increasing betting frequency;
- Sportsbetting is the fastest expanding market but is minimally taxed;
- Industry markets are distorted by a small number of professionals; and
- Customers are increasingly complaining about unfair operator practices.

These issues warrant a review of taxes on the wagering industry.

### 4. CURRENT SYSTEM

The current system is predicated on there being three main operators of betting activities – on-track bookmakers, off-track bookmakers (including the new corporate entrants, who operate mainly through online betting), and the totalisers. All three are subject to different licencing conditions and some are licenced by different bodies, and licence conditions change from state to state.

Most relevant, the taxes imposed on bookmakers are as follows:

- New South Wales imposes a 1.5% net turnover tax;
- Victoria has a 1.5% net winnings tax for thoroughbred racing and a 0.66% net winnings tax for harness racing;
- Western Australia imposes a tax at 1.5% of betting turnover;
- South Australia imposes a tax of 13% of gross revenue and 1% of net turnover;
- Queensland imposes a tax of the greater of 20% of gross revenue and 1% of net customer winnings;
- Tasmania has no turnover tax, but imposes a flat fee of \$256,000;
- the ACT imposes a tax of 1.5% of turnover; and
- the Northern Territory imposes a 0.33% tax on net turnover.

The rates also depend on the format of betting (Tote, Bet Exchange, Phone, Rails); betting types (Traditional, exotics etc), and the time of year.

### **Critique of the Current System**

### · Original activities have merged

While the current licensing system was based on there being three separate betting operations, the lines between the three are now becoming increasingly blurred by technology. Also, on and off track bookmakers take bets from each other, and generally lay off bets into the various TABs. However, there are separate licensing conditions for each.

### • State based origins now irrelevant

The current system was founded as a state based system. However, due to the increase in online gaming, this demarcation is becoming more and more irrelevant. Punters in NSW can place bets with a Tasmanian operator for a race in Victoria with NSW and Victoria powerless to require extra royalties or fees from that operator, as that would offend s 92 of the *Constitution* following the High Court's decision in *Betfair v Western Australia* (2008) 234 CLR 418.

In horseracing, the track owners have now imposed turnover fees (1% - 1.5%) and this adds to inefficiencies. The system itself encourages inefficiency, as there are effectively eight authorities regulating a national activity that occurs within the boundaries of their jurisdiction. This is not only burdensome on the bookmakers, who must hold licences in each jurisdiction in which they offer business, but also on the state authorities, who spend tax money on regulating the same thing.

Also, the enforcement regime for social polices (ie promotion of gaming to minors) has become less effective.

### Mispricing due to different regulatory environments and licence conditions

The current system allows and encourages states to compete with each other for investment by the new corporate entrants. With the corporate entities able to pick and choose where they set up their business, and still offer nationwide betting coverage due to the internet, the states become rivals for investment. The various gaming companies will choose the state with the most favourable terms to them, and so states are forced to lower the amount of tax and offer other favourable conditions, such as capping taxes to entice incorporation in their jurisdiction.

### 5. **OBJECTIVES**

In the context of a review of the tax system, and the impact of complexity, the Review should have regard to the fact that the regulation and taxation of wagering is incredibly complex.

State government policy has traditionally focused on the objectives of revenue generation and social safeguards. The Review should therefore consider a system which simplifies the taxation of wagering and which allows better control of the social consequences (i.e. as a "corrective" tax).

It is submitted that the Review should endorse a new system of regulation which meets the following objectives:

- Australians should only wager with Australian regulated operators
- Betting on Australian events should contribute to the operation and compliance environment of sporting events
- Australian wagering operators should pay fair taxes, on equal terms across all States and Territories, and be internationally competitive
- Australian problem-gambling services should be well resourced

Three should be no disadvantages financially to any State or Territory from a change in the system.

In addition to these broad objectives, we submit that the following be considered:

### **Banking controls**

Banking and other tools should be used to prohibit Australians wagering on foreign operators - the USA has used such tools

### **Licence conditions**

Licence conditions on operators carrying on business in Australia should be uniform and should require that their affiliates adhere to Australian requirements, where designed to protect consumers

# **Face-to-Face Wagering**

- Australian totaliser agency operations should be substantially maintained maintaining employment and the tax and product support base for racing
- Traditional on-course bookmakers should be supported to maintain a presence at racecourses, by removing all unfair competitive advantages for corporate bookmakers

### **Internet Wagering**

- Australians should bet with Australian licenced operators, to ensure consumer protection
- All operators should pay Australian product taxes for wagering on Australian events
- Sportsbetting operators should pay reasonable taxes, in order to ensure a level playing field

#### 6. **MODEL**

We submit that the Review should recommend a new model to tax wagering based on a tax and product levy to be applied on Turnover for Racing and Revenue (Gross Win).

We submit that the new model should defend existing revenues, stem leakages and provide a fair tax and levy scheme to enhance the viability of operators licensed in Australia.

We believe that a new model will produce an increase in wagering taxes and levies over the 2012 level, of more than \$350m per year.

In designing a new model for the taxation of wagering, we offer the following suggestions:

### Tax

- A standard tax rate of 0.05% of Turnover is proposed;
- This tax should be collected by licensed operators on all transactions in or concerning Australia or Australian based events;
- The aggregate proceeds of taxes should be largely distributed between the states and territories to compensate them for forgone state revenue.

### **Velocity and Transaction Tax**

- It is assumed the velocity of betting will increase meaning customers will bet with a higher frequency - often on the same event (a horse race or soccer match);
- This model assumes a method is needed that does not discourage most customers from betting with a higher frequency but introduces a mechanism to curtail abuse by high frequency professional gamblers or robots.

### **Australian Sports Product**

A product levy could be applied uniformly across all sports;

- The levy could be distributed to the relevant sport once appropriate agreements have been reached between the government and the sporting body similar to the racing industry and until then the levy shall be applied to a general sporting fund;
- A condition of an Australian wagering operating licence will be that any licensee has to ensure that their affiliates pay Australia the product levy on betting by all customers on all Australian sports;
- In any co-operation agreement with any other country Australia should seek enforcement that all operators in that country pay the Australian product levy on betting by all customers on all Australian sports.

### **Result of New Tax**

Data on the level of Turnover in the Australian wagering sector is limited. However, some data is set out in the Appendix, which is extracted from "Australian Gambling Statistics, 29th edition, Government Statistician, Queensland Treasury and Trade", ("AGS") released February 2014, <a href="https://www.oesr.qld.gov.au">www.oesr.qld.gov.au</a>.

In assessing the impact of a new Turnover tax, one needs to adjust the AGS data to compensate for "leakage", where bookmakers and online operators currently do not account for all turnover because of the manner in which the states exercise their jurisdiction and define their tax base.

We submit that the new taxation model will result in increased tax revenue assuming consistent taxation rates and anti-leakage measures.

### 7. REGRESSIVE LOCATION-BASED REGULATION

Wagering in Australia is no longer governed by geographical boundaries. Modern technology has allowed for anyone around the world, with certain Government regulation, to enter the Australian market to offer gaming services. Wagers can be made on activities right across this country.

In this environment, it is arguable that the state-based regulatory and taxation system currently in place are a regressive and unnecessarily complex regulatory environment. Allowing States to compete against each other by offering lower costs for gaming operators would appear only to benefit the operator at the cost of the community. Having a single regulatory environment with a common charge system would not only reduce red tape and complexity, it would allow for the highest benefit to the community through the implementation of "corrective" tax programmes.

### 8. "CORRECTIVE" TAX PROGRAMMES

The use of "corrective" taxes is a policy decision of Government to allow for the betterment of social outcomes for the wider community. Harm minimisation, preventative programs or other such community-building initiatives can be funded from a percentage of revenue taken from an activity.

### **HYPOTHECATION**

There are a number of examples of "corrective" taxes implemented both within Australia and overseas to promote social good. Any reform of the Australian wagering industry could see "hypothecation" – the allocation of revenue raised by a tax for a specific purpose – to achieve a greater benefit for the Australian Community.

### **Community Support Fund**

The Community Support Fund is operated by Victorian Government. This trust fund receives revenue generated from electronic gaming machines in Victorian Hotels. Less an

amount directed to consolidated revenue, these funds are then allocated to Victorian Government Departments to provide grants to a wide range of community-based organisations and councils, supporting them to build strong and sustainable communities.

### **Gambling Community Benefit Fund**

The Gambling Community Benefit Fund operates in Queensland to distribute revenue from gaming taxes to various not-for-profit community groups. Through an application and assessment process, approximately \$52 million per year is allocated to not-for-profit community groups to enhance their capacity to provide services, leisure activities and opportunities for Queensland communities. This distribution meets the objective of ensuring that the State and the community as a whole derives a benefit from gaming machine gambling.

### **Big Lottery Fund**

The United Kingdom operates the Big Lottery Fund. Established in 2004 following the merger of two previous entities, it is responsible for distributing the funds raised by the National Lottery to 'good causes'. Since 2004, over £6.2 billion have been allocated to more than 130,000 projects to improve communities throughout the United Kingdom.

### REGIONALGROWTH PROJECTS

Revenue raised by the hypothecation of a wagering industry tax could be allocated to fund programs including:

Option 1 - Regional Development Australia Fund (RDAF). The RDAF supports the infrastructure needs and economic growth of Australia's regions through the construction or upgrading of sporting, cultural, arts and community facilities, roads and airports. Four rounds have seen grants of between \$50,000 and \$25 million allocated to over 200 projects across Australia.

Option 2 – National Stronger Region Fund (NSRF). The NSRF will provide funding of \$1 billion over five years, commencing 2015-16 to support priority infrastructure projects in regional communities. Capital grants of between \$20,000 and \$10 million allow for the construction of new infrastructure or the upgrade of existing infrastructure in disadvantaged regions or areas of disadvantage within a region. A condition of this funding is that grants must be matched with local funding and the project must deliver economic benefit to the region beyond the period of construction.

Option 3 – Community Development Grants Program. The Community Development Grants Program was established to support needed infrastructure that promotes stable, secure and viable local and regional economies. More than \$300 million is available under the Community Development Grants Program for single year or multiple years projects. Funding for projects range in value from \$2,000 to \$13 million. Funding commenced in the 2013-14 financial year and will cease on 30 June 2017. Multi-year projects must be scheduled for completion and final payment made on or before 30 June 2017.

## **NATIONALS POLICY**

The concepts outlined in this submission; to implement a uniform taxation on the gaming industry for distribution across the states, and to allocate additional revenue raised to assist regional growth projects, has been debated and approved by The Nationals.

The following motion was approved at the Nationals Federal Council 2014:

- **12.** That this Federal Council support consistency of tax laws, specifically taxation reform whereby online wagering is regulated by the Commonwealth and a proportion of the taxation gains be directed to regional growth projects, noting:
- a) The Productivity Commission's most recent report on gambling in 2010 estimated tax revenue from gambling to be between \$12.1 and \$15.8 billion in 2008-09.
- b) The AMA States interactive gambling is the fastest growing form of gambling.
- c) The prevalence and impacts of problem gambling are most pronounced among socially and economically disadvantaged individuals and communities, including people living in regions, justifying the call for such tax revenue to be diverted back to regional growth projects.

**CARRIED** 

For further information visit:

http://www.nationals.org.au/Portals/0/2014/Federal%20Council%20Decisions 2014.pdf

### CONCLUSION

Currently there is no national approach to taxing international wagering, and Federal action is needed to ensure that Australia's national, economic and social interests are preserved.

The allocation of taxation revenue raised via a uniform taxation on the gaming industry would result in multiple benefits, including:

- a simplified regulatory regime
- greater support of the regional areas, reducing the burden on consolidated government revenue to fund the programme on an ongoing basis, and
- ongoing support to regional infrastructure development and growth.

Contact:

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### APPENDIX - SUMMARY OF AGGREGATE TURNOVER AND REVENUE

### **DATA SOURCE AND DEFINITIONS**

Appendix data is extracted from "Australian Gambling Statistics, 29th edition, Government Statistician, Queensland Treasury and Trade", ("AGS") released February 2014, <a href="www.oesr.qld.gov.au">www.oesr.qld.gov.au</a>

"Wagering Industry" means operations involving betting on all codes of racing and sports (and in some cases betting on elections and other contingencies are called sports for this purpose).

"Betting format" means the format under which the operations are conducted – for the wagering industry this includes traditional bookmaking, totaliser and bet exchange.

"Turnover" means the face value of bets taken by a betting operator, sometimes referred to as the "stake". Detailed definitions are required when considering bet exchange operations and "laying-off" between betting operators.

"Revenue" or "Expenditure" or "Gross Win" means the gross revenue of the betting operator, equal to Turnover less the amount paid out on winning bets. Detailed definitions are required when considering bad debts, rebates, transaction fees etc.

"Tax" means the revenue government receives from betting operators as an impost on operating a betting operation – separate to all other forms of State and Federal taxes. Detailed definitions are required when considering licence application fees, product fees etc.

"Product Levy" include charges such as the "Racefields Fee" recently introduced and detailed definitions are required when accessing data in the AGS.

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NSW	8	497	262	4,021	4,788	85		806	5 16	907	6,358	65,790	1	1,282	1.	73,429	79,124	38,149	110,914	14
Australia	234	5,077	816	13,076	19,203	1,594	- 1	2,256	5 29	3,879	28,260	124,707	1	4,817	57	129,581	180,924	163,244	315,908	80
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9 Better Tax, Wagering Reform Proposal, Submission by Nationals Senator, Bridget McKenzie, 1 June 2015

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- u				10 53%	10 58%		8 17%	16 90%	8 17%			40.02%	· ~	314 59%	37 33%	2.50%	
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SA	2.88%			17.15%	16.09%	7.25%	15.24%		15.01%	71.59%	9.38%	36.49%			11.85%	7.50%	
WA		5.00% 1	18.05%	16.29%	16.06%	2.00%	9.20%	25.26%	9.35%	21.26%		43.86%	% 43.00%		22.36%	2.50%	
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VIC	5.18%	5.18% 1	17.20%	17.38%	15.85%		12.32%	5 23.53%	12.42%	13.93%	9.74%	40.02%	%	11.80%	12.18%	2.50%	5.75%
NSW				20.35%	18.58%	5.50%	12.39%	5 25.00%	11.97%	15.00%	8.08%	39.11%	<b>%</b>	9.22%	9.82%	2.50%	7.00%
Australia	4.90%		1	17.36%	14.68%	7.35%	12.07%		10.23%	14.44%	800.6	40.86%	% 43.00%		11.33%	2.50%	6.49%
TABLE B5						Gov	Government Rev / Turnover	Rev / Tu	rnover						2011-12		
		2	RACING			SP	SPORTSBETTING	NG				GAMING		10 TO			
\$ Million	Bookmaker B s Off Course	Bookmaker Bookmaker On-Course s Off s On Totalisator Course Course	On-Course Totalisator	TAB	Total Racing	Bookmaker Bookmaker (And Other) (And Other) Fixed Odds Pool Betting	cer Tab Fixec er) Odds ing	Tab Fixed Tab Tote Odds Odds	Total Sports	Casino <sub>N</sub> Gaming	Gaming Inter Machines & Gar Keno	Interactive Pools Gaming Lotto	DESCRIPTION OF THE	Minor Total Gaming Gaming	All Gambling	Adusted Casino	Adjusted All Gambling
뉟		0.06%	5.12%	5.12%	0.22%					1.00%	2.53%	31.45%	%	2.39%	0.69%	0.26%	0.49%
ACT				0.88%	0.84%					2.19%	1.61%	26.31%	%	2.20%	2.09%	0.27%	1.67%
TAS									2.93%			30.08%	<b>%</b>	89.60%	7.93%	0.55%	
SA				0.10%	0.10%		0.91%	. ~	0.89%	4.37%	3.59%	31.67%	%	4.66%	4.26%	0.40%	
WA				2.04%	1.89%	0.28%	0.99%	5.83%	1.04%	3.57%		33.69%	% 1.23%	9.57%	6.84%	0.42%	1.42%
QLD				1.73%	1.73%		1.39%	5 2.74%	1.41%	1.37%	3.16%	22.32%	%	3.49%	3.35%	0.36%	2.12%
VIC			3.29%	3.32%	2.91%		1.34%	4.49%	1.37%	1.78%	3.67%	30.91%	%	3.97%	3.81%	0.32%	1.80%
NSW				3.46%	2.90%		1.35%	6 4.78%	1.29%	2.10%	1.77%	25.92%	%	2.22%	2.25%	0.35%	1.61%
Australia		0.05%	1.77%	2.49%	1.78%	0.02%	1.29%	6 4.57%	0.80%	2.05%	2.56%	28.13%	% 1.23%	3.51%	3.04%	0.36%	1.74%
TABLE B6						Gove	Government Rev / Expenditure	ev / Exp	enditure						2011-12		
		2	RACING			SP	SPORTSBETTING	NG				GAMING					
\$ Million	Bookmaker Bookmaker s Off s On Course Course	Sookmaker Or s On To Course	On-Course Totalisator	TAB	Total Racing	Bookmaker Bookmaker (And Other) (And Other) Fixed Odds Pool Betting	ker Tab Fixed ier) Odds	d Tab Tote Odds	Total Sports	Casino Gaming	Gaming Inter Machines & Ga Keno	Interactive Lotteries & Gaming Lotto	and the second	Minor Total Gaming All Gambling Gambling	All Gambling		
Þ		0.66% 32.00%		32.00%	2.48%					10.58%	22.23%	78.60%	%	21.77%	7.67%		
ACT				5.54%	5.44%					10.96%	19.56%	86.92%	%	23.37%	21.57%		
TAS									35.88%	22.19%	21.30%	75.17%	%	28.48%	21.25%		
SA				0.60%	0.59%		5.99%		2.90%	15.83%	38.32%	86.80%	%	40.69%	35.94%		
WA				12.50%	11.78%	2.56%	10.79%	6 23.09%	11.11%	16.77%		76.82%	% 2.85%	36.66%	30.58%		
QLD				10.91%	10.91%		10.91%	% 10.95%	10.91%	14.46%	31.24%	51.55%	%	31.05%	28.87%		
VIC		П	19.11%	19.11%	18.34%		10.91%	% 19.10%	11.05%	12.78%	37.70%	77.23%	%	33.63%	31.31%		
NSW				16.99%	15.63%		10.91%	6 19.13%	10.74%	13.98%	21.94%	66.27%	%	24.10%	22.94%		
Australia		0 59% 10 79%	- 1	14 33%	12.14%	0.34%	10.70%	4.18.61%	7.78%	14.21%	28.48%	- 68.85%	% 2.85%	26.32%	26.84%		