

The Parliament of the Commonwealth of Australia

Interactive Gambling Bill 2001

**Report of the Senate Environment, Communications,
Information Technology and the Arts Legislation Committee**

May 2001

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RECOMMENDATIONS

Recommendation 2.1

The Committee recommends that the Senate adopt the prohibition approach to internet regulation proposed by the Interactive Gambling Bill 2001.

Recommendation 3.1

The Committee recommends that the Interactive Gambling Bill 2001 be amended to exclude lotto and lotteries. Amendments should also exclude the unintended targets of the ban resulting from the use of internet technology for the administration of the service such as, but not necessarily limited to, telecommunications networks used by, for example, the Western Australian TAB, and television games as discussed in the report.

Recommendation 4.1

The Committee recommends that the Government take measures to clarify the requirements of 'due diligence' for the purposes of section 15, either by amending the Interactive Gambling Bill 2001 or detailing these requirements in associated regulations.

CHAPTER 1

INTRODUCTION

Referral and conduct of the inquiry

1.1 On 5 April 2001, the Senate referred the Interactive Gambling Bill 2001 (the bill) to the Environment, Communications, Information Technology and the Arts Legislation Committee for inquiry and report by 23 May 2001.

1.2 The Committee advertised the reference in *The Weekend Australian* newspaper on Saturday 14 April 2001, and wrote to a number of interested individuals and organisations inviting submissions. The Committee received in response 37 submissions, which are listed at Appendix 1, and held a public hearing in Canberra on Friday 4 May 2001. A list of witnesses appears at Appendix 2.

Background to the inquiry

1.3 The proposed ban of interactive net gambling has been the subject of considerable public debate over the past couple of years. This has been fuelled by the growing community concern over the extent of problem gambling in Australia, and its associated social costs, together with fears that the internet and emergent datacasting technology has the potential to significantly worsen the problem. As a result, the Productivity Commission conducted an investigation into gambling, which reported in December 1999. Their three volume report addressed the scope of economic and community impacts of gambling in Australia. This was followed in March 2000, by the report of the Senate Select Committee on Information Technologies, *Netbets – a review of online gambling in Australia*. Since then:

- In April 2000, the Ministerial Council on Gambling met for the first time. The Commonwealth government proposed a voluntary twelve month moratorium on interactive gambling services which was ultimately rejected by a majority of states and territories.
- On 17 August 2000, the government introduced the Interactive Gambling (Moratorium) Bill 2000, which imposed a 12 month moratorium on the development of the interactive gambling industry in Australia. The bill was referred to this Committee which tabled its report in September 2000, and recommended that the bill proceed. The legislation was passed by both Houses in December 2000, with the moratorium coming into effect on 19 May 2000 and ending twelve months later on 18 May 2001.
- On 17 October 2000, the Commonwealth government hosted an interactive gambling forum in Melbourne.
- On 3 November 2000, the Council of Australian Governments (COAG) agreed to the development of a strategic framework to deal with problem gambling: four central themes including prevention, early intervention and continuing support, the building of effective partnerships and research.¹

1 Western Australian government, Submission 17, p 5.

- In March of this year, the National Office for the Information Economy (NOIE), completed its report into the feasibility and consequences of banning interactive gambling, commissioned by Senator the Hon Richard Alston, Minister for Communications, Information Technology and the Arts. This report provides a comprehensive summary of the findings of the above reports, and the key issues.²

1.4 The Committee also notes that in relation to gambling, the Commonwealth government is able to base its actions on sections 51(v) postal, telegraphic, telephonic and other like services, and section 51(xx) corporations power of the Australian Constitution. Thus, the Commonwealth has clear constitutional authority to legislate with respect to both telecommunications and business corporations.

The bill

1.5 The purpose of the bill is to limit the availability of interactive gambling services to Australians. A wide definition of interactive gambling is used which includes gambling provided using the internet, a broadcasting service, or a datacasting service.

1.6 The framework in the bill has two main elements. Firstly it makes it an offence to provide an Australian-based interactive gambling service to customers in Australia. Secondly the bill establishes a complaints scheme which will enable Australians to make complaints about interactive gambling services on the internet which are available to Australians.³

1.7 According to the Explanatory Memorandum, the main elements of the proposed framework are:⁴

- an offence provision which makes it an offence for providers with a specified link to Australia to provide interactive gambling services to a person physically present in Australia;⁵
- an industry-based system for responding to complaints in relation to interactive gambling services where the relevant content is available for access on the internet by Australian customers;⁶
- a complaints mechanism will be established in which a person may complain to the Australian Broadcasting Authority (ABA) about prohibited internet gambling content;⁷
- in relation to internet content hosted in Australia, the ABA must refer the complaint to an Australian police force if the ABA considers that the complaint should be so referred eg. if it appears from the complaint that a person may be committing an offence of providing an Australian-based interactive gambling service to Australians;⁸

2 National Office for the Information Economy, *Report of the investigation into the feasibility and consequences of banning interactive gambling*, 27 March 2001, pp 10-14.

3 Explanatory Memorandum, p 1.

4 Explanatory Memorandum, pp 1-2.

5 Section 15.

6 Part 4 – Complaints system: industry code and industry standard.

7 Part 3 – Complaints system: prohibited Internet gambling content.

8 Section 20(3)

- in relation to internet content hosted outside Australia, the ABA must notify the content to the police if it considers that the content should be referred to the police. In addition the ABA will notify the content to internet service providers so that the providers can deal with the content in accordance with procedures specified in an industry code or standard. In the absence of an industry code or standard the ABA will be given powers to issue a notice to Internet service providers to take reasonable steps to prevent access to the internet content;⁹
- internet service providers will be protected from civil proceedings by customers affected by ABA notices;¹⁰
- a graduated scale of sanctions against internet service providers for breaching ABA notices or the bill will apply.¹¹

1.8 It should also be noted that the bill does not attempt to mandate any particular technological solutions to filtering overseas sourced material. The bill adopts a co-regulatory approach, with industry able to develop its own codes to comply with the requirements of the bill.¹² The Australian Broadcasting Authority (ABA) maintains the capacity to underpin these codes with binding standards addressing either entire codes or particular aspects of regulation.¹³

1.9 The nature of the obligations to be created by either the industry code or the ABA standards is not set out in the bill, although the intent appears to be the creation of a similar regime to that for the *Broadcasting Services Act 1992* regulating prohibited internet content. Thus the Explanatory Memorandum states:

The code provides appropriate community safeguards for the designated internet gambling matters. An example of what may be considered an appropriate community safeguard is that the code provides for appropriate regularly updated internet content filtering software.¹⁴

Structure of the report

1.10 In the next chapter, the report examines the fundamental question of whether internet gambling should be banned, and thus whether the bill is necessary and justified. Chapter 3 then focuses on the scope of the proposed ban, and in particular, whether wagering and lotteries should be included. Chapter 4 considers issues relating to the implementation of the bill, including the effectiveness of the proposed provisions and the extent to which the ban will protect Australian based gamblers on the internet.

9 Section 24

10 Sections 23 & 60

11 Sections 55-57.

12 Division 4 – Industry code

13 Division 5 – Industry standard

14 Explanatory Memorandum, p 51.

CHAPTER 2

THE NEED FOR A BAN ON INTERNET GAMBLING

Introduction

2.1 The problems associated with gambling are hardly new, and the debate over how to best deal with them has doubtless been argued out many times in Australia and elsewhere. This chapter considers how Australia should respond to the potential of the internet to greatly increase the scale of gambling in Australia and the associated damage caused by problem gamblers.

2.2 Fundamentally, there are always two basic choices: ban or regulate. The bill before the Senate chooses the former. This chapter looks at the arguments both for and against a ban on internet gambling, and then considers the alternatives available for adopting a regulatory approach. However, in doing so, the Committee notes that these issues have already been discussed in considerable detail in the reports and studies referred to in chapter 1. The Committee does not intend to revisit this detailed debate, so what follows is therefore intended to be a brief summary of its main aspects.

Arguments supporting a ban

2.3 The reasons for banning or limiting access to gambling on the internet are well stated by the Minister in the Second Reading Speech and in the Explanatory Memorandum to the bill. There are three key reasons why the internet poses such a significant threat.

2.4 First, as is well recognised, Australian's are among the world's heaviest gamblers, with Australians spending on average twice as much on gambling as people in North America and Europe. The associated problem gambling is significant, with the Productivity Commission finding that 2.1 per cent of the adult population, or 290,000 people, suffer from problem gambling. In practical terms, that amounts to an enormous social cost for both those who are addicted; their families, and society as a whole.¹

2.5 Second, there is a clear link between the extent of opportunities to gamble and the rate of gambling: experience has shown that the more opportunities people have to gamble, the more they do so. The principal example of this is the explosion in the availability and use of the Electronic Gaming Machines (EGMs) or 'pokies', which have been associated with much of the existing problem gambling in Australia. In contrast, it has been noted that Western Australia, which has always significantly limited the spread of EGMs has also been found to have the lowest incidence of problem gambling.²

2.6 The third is the rapid rise in the availability of the internet. The Explanatory Memorandum points to the fact that 35 percent of Australian households are expected to have access to the internet by November 2000.³ When it is considered that each household that

1 Explanatory Memorandum, pp 2-3.

2 Western Australia government, Submission 17, p 1.

3 Explanatory Memorandum, p 3.

has access to the internet, also has access to virtual casinos and poker machines, it becomes apparent that the internet provides, as the Minister notes, a ‘quantum leap in the accessibility to gambling’.⁴

2.7 Putting the three together suggests that the combination of rapidly expanding access to the internet; the addictive qualities of multi-media gaming sites, and Australians’ passion for gambling, combine to form a potentially explosive mix for problem gambling in Australia. As commentators have warned, it is likely the result will be a casino in every lounge room.

2.8 Both the Minister and submissions to the inquiry have also warned of the particular need to protect young people from becoming addicted to internet gambling. The Second Reading speech notes the likelihood that younger people, brought up with the internet and e-commerce, will be more likely than their parents generation to adopt internet gambling. Similarly, the Festival of Light submission quotes Adelaide gambling counsellor Mr Vin Glenn:

You can keep (children) out of the casino or the gaming room but you cannot keep them out of their front room. There’s no safeguard, and (there’s) a real potential to spend money they do not have.⁵

2.9 The Baptist Community Services of South Australia second this view and quote the social commentator Hugh Mackay:

Quite apart from the out-and-out technophobes, many of those who are embracing new technology with unrestrained vigour are quite unsure about the social impact and the true benefits, of what they are doing. And they are particularly nervous about the long-term effects of some of the technology now flooding into their children’s lives.⁶

2.10 Australian community concerns reflect these dangers, with research indicating considerable support for an outright ban on internet gambling rather than attempts to moderate its effects through regulation. The Minister points to a Department of Family and Community Services survey that found that more than two-thirds of those surveyed support a ban on internet gambling.⁷

2.11 Proponents of the ban also addressed the question of whether to adopt a regulatory approach in preference to a ban. In choosing the latter, several submissions pointed to the history of the introduction of poker machines, and the promises of strict controls and harm minimisation that in practice has done little to lessen the impact of gambling. Mrs Phillips, representing the Festival of Light in South Australia, stated:

We warned our government about 10 years ago about the likely effect of introducing poker machines – as did others – but the parliament narrowly decided to go ahead and assured us there would be lots of safeguards and we did not need to

4 Second Reading Speech, p 1.

5 Festival of Light, Submission 13, pp 5, 7.

6 Baptist Community Services, Submission 32, p 2, quoting Hugh Mackay.

7 Second Reading Speech, p 2.

worry. Time has shown that our warnings were correct and the safeguards did not really protect the people at all.⁸

2.12 For all these reasons, it is argued that it is important to act now, before internet gambling has become a problem. As Mr Madden, of the Baptist Community Services, put it:

My concern is not so much about halting what is ... but about not flinging the door wide open to new and added opportunities.⁹

2.13 A similar view was put by Mrs Phillips:

If you believe it is possible to regulate, which means you ban certain practices, then why not ban all of it? I do not see why the distinction should be made. There are lots of other opportunities for people in Australia to gamble in a way that is not so addictive and harmful, so why can't they enjoy those, without people being allowed to have particularly addictive forms that do much more damage?¹⁰

Arguments against a ban

2.14 Submissions have raised various objections to the prohibition option. The first is one of general principle: that in a democratic country, adults should be permitted freedom of choice even if those choices result in some negative consequences to themselves. As Ms Rotermund argued:

it is disgusting that the government or anyone in it believes that they can say what we can do with our time if it doesn't impose on the rights of others.

... As adults, we must take responsibility for our own lives.¹¹

2.15 A second issue points to the fact that, since the vast bulk of Australian gamblers are not problem gamblers, the legislation would have the effect of penalising the freedom of many to address the small number of Australians who have problems with their gambling. According to Centreracing:

The proposed ban is said to protect 100 per cent of 'consumers' when the number of problem gamblers is cited as being 2.1 per cent. The bill will deny the 98 per cent of recreational gamblers the benefits of using Australian sites but will not prevent the 2 per cent of problem gamblers from accessing unregulated overseas internet gambling sites.¹²

2.16 It is accordingly argued that it would be more appropriate to adopt an approach that specifically targets the minority who have an identified problem.

8 Mrs Phillips, *Proof Committee Hansard*, Canberra 4 May 2001, p 33. See also Mr Madden, *Proof Committee Hansard*, Canberra 4 May 2001, p 31.

9 Mr Madden, *Proof Committee Hansard*, Canberra 4 May 2001, p 31.

10 Mrs Phillips, *Proof Committee Hansard*, Canberra 4 May 2001, p 34.

11 Ms Rotermund, Submission 4, p 1.

12 Centreracing, Submission 19, p 3. See also Submission 22, NT government, Submission 19, p 3; and Mr Baxter, Submission 18, p 1.

2.17 The third point is that the proposed prohibition will have a range of commercial costs including a negative effect on the up-take of technology by both Australian businesses and individuals, and loss of jobs. The Northern Territory government argue:

The targeted ban will freeze Australian wagering and lottery providers in using old technology. In the short-term, this will make them unable to compete; in the longer term, they will be unable to survive. ...

Closure of Australian wagering providers will see the loss of several hundred Northern Territory jobs in the area of e-commerce. The development of sustainable e-commerce in regional Australia is difficult but is more so when an activity that is permissible by fax or phone is not able to be conducted using the very communications technology that overcomes the problems of distance.¹³

2.18 This comment by the Northern Territory government introduces the general objection that the proposed prohibition runs counter to the introduction and widespread use of the most efficient technology available, which is an objective of Australian government policy. As Mr Baxter argues in his submission:

The very nature of internet wagering – that is keyboard entry as opposed to an operator voice service – allows service providers to service their customers at a reduced cost. This is surely in line with the Government and Productivity Commission’s aim of reducing costs and improving productivity within Australia.¹⁴

2.19 Canbet detail some of the inherent advantages for both businesses and bettors of doing business on the internet:

- As a bookmaker Canbet is able to offer better odds over the internet since the cost of taking the bet on the internet is one tenth of taking it over the phone.
- The bettor can see on his/her screen the odds being offered on all the games and, by moving between bookmaker sites, can find the best odds on offer.
- Bettors can time their wager to get the best odds. Phone bets often involve a delay and maybe an unexpected change of the odds.
- Hearing or speech-impaired bettors may not be able to use the phone.¹⁵

2.20 It also seems likely that the legislation would result in the closure of some businesses. Both Canbet and International All Sports have indicated to the inquiry that they will transfer overseas if the bill, as drafted, becomes law.¹⁶

2.21 Fourth, prohibition as a regulatory approach carries with it several well known costs. Tattersalls point to the findings of the Productivity Commission report:

13 NT government, Submission 22, p 4. See also Tattersalls, Submission 21, p 6.

14 Mr Baxter, Submission 18, p 1.

15 Canbet, Submission 10, p 2.

16 International All Sports, Submission 23, p 4; Canbet, Submission 10, p 2.

It may have the negative impact of driving the activity underground, creating a criminal class out of people who are caught up in illicit consumption, creating large potential profits for illegal suppliers and a web of corruption;

If the activity were illegal, treatment would also be difficult. Information on problem gambling would also be poor, frustrating the development of appropriate care services;¹⁷

2.22 A fifth, and associated point is that by shutting down Australian internet gambling businesses, the bill will have the side-effect of removing the revenue stream to Australian governments, estimated at more than \$1 billion per year,¹⁸ which in turn deprives governments of funds to direct at problem gambling. This argument assumes particular significance if one were to accept the view that the bill will have little effect on problem gambling on the internet, since Australians will simply access overseas sites (this point is discussed in detail in Chapter 4).

2.23 Finally, it is argued that a prohibition on internet gambling takes regulation of problem gambling in the wrong direction, because it does not capitalise on the characteristics of the internet which enable harm minimisation measures to be more effective than is possible for physical gambling venues. As Mr Clark, representing the Northern Territory government, explained during hearings:

there is no gambling product in the world that has the kinds of harm minimisation features that AUS Model would provide. In fact, it is ironic that many of the features that COAG and the Ministerial Council on Gambling would like to see implemented in the physical world are inspired by or easily achievable on the internet technological platform. Even more ironic is that with many of those that we are currently looking at with a view to moving into the physical world we will struggle to replicate what is available on the internet. An excellent example of this is the capacity for a player to set bet limits. It is almost impossible, without a centralised system, for a player to self-impose a bet limit on a gaming machine by simply going to the next gaming machine and off we go again; whereas, with the internet we can put that limit Australia-wide.¹⁹

2.24 The basis for this regulatory advantage is that internet gambling, by reason of the identity checks and log-in procedures, cannot have the degree of anonymity of physical gambling venues. With internet gambling, there is always a significant record of the individual's gambling activity. This point was made by Mr Wilson of TAB Ltd:

Eighty per cent of our customers are anonymous through the pubs, clubs and agencies. If we are going to introduce harm minimisation systems, the only way you can do it is where you know your customer. The only way you know your customer is through their account. Therefore, your best methodology of harm minimisation is by knowing their name and address and being able to monitor their

17 Tattersalls, Submission 21, p 4. See also Mr G Wear, Submission 26, p 1.

18 Tattersalls, Submission 21, p 3.

19 Mr Clark, *Proof Committee Hansard*, Canberra 4 May 2001, p 48.

patterns, et cetera, and being able to promote directly to them harm minimisation strategies.²⁰

2.25 The implication of this argument is that the better approach would be to embrace the characteristics of the internet, and even encourage gambling on the internet in preference to other forms, as a way of addressing problem gambling.

Consideration of alternative strategies

2.26 As might be supposed by the above arguments, the principal alternative put forward by those opposed to a prohibition of internet gambling is the adoption of a thorough regulatory system that permits gambling over the internet but imposes a range of harm minimisation features.

2.27 Supporters of the regulatory approach point to the fact that both the Productivity Commission and the Senate Netbets reports recommended regulation in preference to prohibition. GoCorp has also told the inquiry that international practice has clearly moved towards regulation with more than 50 jurisdictions that have legislated to permit and regulate online gaming.²¹ Adoption of this approach also has the advantage that gambling sites on the internet are likely to be led by regulated best practice rather than unregulated 'lemons'.²²

2.28 Finally, as detailed above, there are various characteristics of the internet that are particularly suited to regulation, that can result in stronger safeguards than are possible for live venues and poker machines.²³

2.29 Such a strict regulatory approach may serve to not only protect players but can become a selling point for the Australian industry who can benefit from their reputation for being well run and professional. As International All Sports note:

The fact that the interactive wagering operations of IAS are subject to stringent rules and regulations within an environment of vigilant probity is a selling point to our clients. It is in the best interests of IAS to maintain its bookmaking and interactive activities under such a system of vigorous checks and balances. The rules we operate under in the Northern Territory are, in fact, our competitive edge.²⁴

2.30 The current focus for the regulatory approach is the Australian Uniform Standards for the Regulation of Interactive Gambling (known as the AUS Model), a draft of which was released on 5 April 2001.

2.31 According to the Australian Casino Association, this model will:

20 Mr Wilson, *Proof Committee Hansard*, Canberra 4 May 2001, p 21. A similar point is made by Mr Morgan, *Proof Committee Hansard*, Canberra 4 May 2001, p 5.

21 GoCorp, Submission 28, p 4.

22 IAS, Submission 23, p 8.

23 Tattersalls, Submission 21, p 3. See also ACT government, Submission 20, p 2; GoCorp, Submission 28, p 3.

24 IAS, Submission 23, p 5.

- set uniform standards for Australian operators;
- ensure that technical and other controls are in place to protect players;
- ensure the system integrity and game fairness of Australian online casino sites;
- promote harm minimisation and responsible gaming; and
- ensure the probity and integrity of industry participants.²⁵

2.32 Similarly, the Committee has received evidence from the wagering industry indicating progress in developing self-regulatory codes. According to Dr Sharman, of the Australian Registered Bookmakers' Advisory Council (ARBAC):

The code we are in the process of introducing has been in development for the last three months. The process of it was formally ratified at ARBAC's annual conference last December and it is being reviewed through our state bodies and through their bookmaking corporations. There are a couple which are outside the ambit of ARBAC and they have participated in this process.²⁶

2.33 Regulatory codes of practice, as are being developed and adopted by both the gaming and wagering industry, incorporate a range of harm minimisation and player protection measures. Lasseters Online provided a list of the types of measures that may be included:

- Players must be aged over 18 years and personal identification is required to authorise registration. Strict registration procedures are thereafter followed each time a player logs into the site.
- Credit gambling is prohibited. Players are unable to operate their account to a negative balance. Only approved funds and accumulated winnings can be used for wagers.
- Players are given the option to pre-set betting limits. Having set a limit, the players are unable to raise it themselves without providing Lasseters Online with seven days notice of their intention.
- Lasseters imposes an initial deposit limit of \$500 per month. The amount players can potentially lose is therefore controlled by this deposit limit.
- There is a minimum bet of one cent on many of the games.
- There is a full audit trail provided of all transactions through online account information.
- Players' winnings are issued by non-negotiable cheque and are posted to the registered gambling account holder's address. Credit card accounts are not used to receive automatic payment from winnings.

25 Australian Casino Association, Submission 12, p 2.

26 Mr Ryan, *Proof Committee Hansard*, Canberra 4 May 2001, p 14.

- Credit cards with unlimited lines of credit are not accepted such as American Express and Diners Club.
- A hotlink is provided to community counsellors, Amity House, who provides advice about gambling problems, information and assistance. Their site also includes a self-test questionnaire to assist players to identify if they are developing a problem. Amity House has also established Internet links to similar services in Canada, USA, Germany and Britain for the use of our international players.
- Through a self-exclusion button, players have the option to exclude themselves from playing for a 'cooling off period'. If they use this button three times they are considered to have a problem and are permanently excluded from registering again.
- Lasseters Online pioneered the use of real time credit card checks ensuring cards are not being used fraudulently for gaming purposes.²⁷

2.34 Tattersalls also gave examples of their player protection measures:

gamblers can set limits on the amount that they gamble, that credit gambling is prohibited, that players are given the option of selecting the duration of a session of play, that the option of having automatic breaks in play of at least five continuous minutes per hour must be available, that strict player verification controls apply, and that players can be excluded from gambling sites.²⁸

2.35 Dr Ashman commented on the content of the bookmakers' code:

We have a system of complaint resolution procedures in which we say that all participants will ensure that they support the code of practice in respect of handling of complaints and cooperate with the relevant authorities in the resolution process, maintain adequate procedures for receiving and responding to both oral and written complaints, respond promptly to all complaints and make every reasonable effort towards their resolution. With regard to harm minimisation we have the provision of customer identification systems to prevent access by minors, offering pre-committed loss limits to clients.²⁹

2.36 According to witnesses to the inquiry, these measures have reasonable success in preventing problem gambling. Since Lasseters Online went live several years ago, 300 players have exercised the option to permanently exclude themselves from the site.³⁰ Mr Farrell from the Federal Group, also points to the success of these types of harm minimisation measures:

I would suggest that in fact internet gambling, under the Australian regulated model, is a deterrent to problem gambling. In a properly regulated environment, problem gambling is controllable. Tasmania recently released a report which was the third study into the extent of problem gambling in Tasmania, from 1994 to the

27 Lasseters Online, Submission 5, p 5. See also GoCorp, Submission 28, pp 3-4.

28 Tattersalls, Submission 21, p 5.

29 Dr Ashman, *Proof Committee Hansard*, Canberra 4 May 2001, p 14.

30 Mrs Pafumi, *Proof Committee Hansard*, Canberra 4 May 2001, p 44.

year 2000. It demonstrated that the percentage of people who are considered to have problem gambling tendencies in Tasmania has not risen in six years. During the same six years, the extent of product that has been made available in that market has probably grown 400 or 500 per cent. We put that down to having a proper model in place for patron care policies and practices and responsible gaming practices.³¹

Smart cards and credit based approaches

2.37 The Committee also notes the submissions which argued for both a re-examination of credit based approaches and the adoption of smart card technology as part of the regulatory approach.

2.38 The Western Australian government and the Festival of Light submissions call for the inclusion of credit based controls to limit access to internet gaming:

... the Commonwealth should further explore avenues to restrict the flow of funds from Australian consumers to interactive gaming services. A key aspect would be the implementation of legislation making it difficult for the banking sector to recover credit card gambling debt. The issue of repudiation by customers of gambling debts would make granting of merchant status to interactive gaming service providers by the banking sector a high-risk undertaking. Without an effective funds transfer system in place international gambling service providers would soon cease to operate in Australia.³²

2.39 Although there are apparent advantages to this approach, the Committee notes that regulation of credit providers was considered in detail by NOIE and discounted on various practical grounds.³³

2.40 The closely linked Fujitsu and Regis Controls submissions³⁴ also drew the Committee's attention to the availability of smart card technology that may be utilised for the purposes of regulating access to internet gaming sites.

2.41 While the Committee appreciates the potential of these systems, a proper analysis of the technical merits of the proposal is beyond the scope of this inquiry, which is limited to an examination of the provisions of the bill referred.

Conclusions and recommendations

2.42 The Committee has carefully considered both sides of this complex debate. Both sides have provided valuable perspectives and there is no perfect solution. As Skycity remark:

31 Mr Farrell, *Proof Committee Hansard*, Canberra 4 May 2001, p 38.

32 Western Australian government, Submission 9, p 2; Festival of Light, Submission 9, p 6.

33 NOIE, *Report of the investigation into the feasibility and consequences of banning interactive gambling*, p 34.

34 Regis Controls, Submission 15 and Fujitsu, Submission 27.

The emergence of e-commerce has created a range of extremely complex and difficult policy issues and has introduced entirely new paradigms to traditional policy frameworks and solutions.³⁵

2.43 The Committee recognises that there are disadvantages to adopting a prohibition approach. At the same time, the social costs associated with problem gambling, and the extent of community concern require the Government to take some active measures to prevent the internet delivering the same addictive gambling services as poker machines.

2.44 On balance, the Committee believes that prevention is the best form of cure. The prohibition proposed by the ban will send a clear message to Australians about the dangers of gambling on the internet. Ultimately therefore, the legislation seeks to learn from the lessons of the past and pre-empt an emerging problem with internet gambling, and so avoid a situation in which gambling on the internet becomes as much as, if not more of, a problem than poker machines.

Recommendation 2.1

The Committee recommends that the Senate adopt the prohibition approach to internet regulation proposed by the Interactive Gambling Bill 2001.

35 Sky City, Submission 9, p 5.

CHAPTER 3

SCOPE OF THE BILL

Introduction

3.1 In the context of the conclusion that the Government should implement a ban on internet gambling, this chapter considers whether the coverage of the ban as proposed by the bill is appropriate. Submissions to this inquiry have argued that the bill should not ban wagering and lottery services provided on the internet, and that the broad definition adopted by the bill may have unintended impacts on various existing activities.

3.2 These submissions accordingly seek a narrowing of the definition of interactive gambling.

Inclusion of wagering

3.3 The Committee received a significant number of submissions that argued for the exclusion of wagering from the bill.¹ This is based on four points:

- there are significant differences between wagering and gaming;
- wagering via the internet does not involve any new gaming product;
- banning wagering on the internet may have significant adverse impacts on the racing industry; and
- wagering is already adequately regulated.

Differences between wagering and gaming

3.4 First, submissions argue that wagering is fundamentally different in character to gaming and lacks the addictive characteristics of gaming. Interactive wagering relates to a gambling event that takes place on a physical race track or playing field, and includes betting on a sporting event such as horseraces, football or greyhounds. According to Centreracing:

Wagering, whether it be through the internet or not, can not be considered interactive. Events are conducted and controlled by regulated authorities, upon which people wishing to place a bet make their selections with a third party supplier. These selections are not spur of the moment betting, but researched via newspapers, radio, television and internet information.²

3.5 Dr Ashman, representing the Australian Registered Bookmakers' Advisory Council (ARBAC), gave this explanation of the differences:

1 In addition to those specified below, submissions include: ACT government, Submission 20, p 1; NT government, Submission 22, p 8; FACTS, Submission 35, p 11; IAS, Submission 23, p 4.

2 Submission 19, Centreracing, Submission 23, p 1. See also ARBAC, Submission 1, pp 5-6; ARB, Submission 2, p 7; WA government, Submission 17, p 2; Mr A Baxter, Submission 18, pp 2-3.

Wagering is about skill and judgment. It provides for a heightened level of excitement when watching a horse race or sporting contest or some other event where the punter has a real expectation of winning. Interactive gaming does not involve skill. It is a high frequency activity and is randomly based. I am also appalled by the suggestion by some commentators that wagering is in some way less regulated than gaming. This is a fallacy. Bookmaking and totalisator operations are subject to stringent controls and regulations at various levels, including state government departments, racing industry control bodies and self-regulation.³

3.6 In contrast, interactive gaming is entirely technology dependent, and lacks any of the skill or research components of wagering, being purely based on a random event at certain odds. According to the Senate Information Technologies Committee report, *Netbets*:

‘Online gaming’ is where the gambling event is based on a computer program and the outcome is determined by a random number generator. These activities involve no element of skill and include games such as black-jack, poker lotteries and electronic gaming machines.⁴

3.7 This view is supported by Canbet:

Gaming involves gambling with the certainty that participants will in the end lose a set proportion of their bet.⁵

3.8 It is argued that elements of gaming make it inherently more addictive than wagering:

These games can be played at high rapidity 24 hours a day, and do not rely on an actual event or occurrence for their determination.⁶

3.9 Because of these differences, a number of submissions argued that wagering is not likely to cause problem gambling. Centrebet states:

We believe we are an organisation that has a lot of experience in this area. Our experience has been that there have been virtually no examples of problem gambling arising from sports betting, either online or offline, in the time that we have been operating.

We think there are three reasons for that. The reasons are: firstly, there is a long gap between the time a bet is actually placed and resulted; secondly, it requires some skill, rather than chance, to determine winners consistently; thirdly, events occur reasonably infrequently. In fact, if you placed a bet at 8 o'clock this morning the first opportunity you would have the result of the bet would not be until after

3 Dr Ashman, *Proof Committee Hansard*, Canberra 4 May 2001, p 9.

4 Senate Select Committee on Information Technologies Report, *Netbets: A review of online gambling in Australia*, March 2000, p 2.

5 Canbet, Submission 10, p 1.

6 TAB NSW, Submission 7, p 3.

lunch today and there would not be another opportunity until 5 o'clock tonight. There are quite large gaps between those occasions.⁷

3.10 Instead, studies have found that the bulk of problem gambling is associated with the increased accessibility of gaming products, and in particular 'pokies' or Electronic Gaming Machines.⁸ The Productivity Commission said:

The grounds for bans are strongest for gaming technologies (casino-type games such as roulette and virtual gaming machines). The case for banning internet wagering (sports betting and racing) or traditional lotteries are weaker, reflecting likely lower risks and the fact that other mediums for making these gambles, such as phone-betting, are close substitutes for the internet.⁹

3.11 In supporting their claim that wagering is not responsible for current problems in problem gambling, evidence to the inquiry pointed out that in the past decade, national wagering turnover has dropped 10.8 per cent to \$11.717 billion while gaming turnover has grown 900 per cent to \$90.722 billion. Over the same period, real wagering expenditure (that which is lost by punters) has risen by only 21.3 per cent to \$1.704 billion whereas real gaming expenditure has risen 600 per cent to \$10.705 billion.¹⁰ TAB Ltd argues that this negative growth trend:

has continued during the last 10 years despite the introduction of computer based interactive wagering services. These figures show that real per capita annual racing expenditure has dropped from \$171 in 1975 to \$118 last year, a fall of approximately 30 per cent. During the last 10 years the decline in racing expenditure has averaged 17 per cent. We think it is worth noting that the real per capita growth in gaming during the same 25 year period has been approximately 300 per cent, with the last 10 years representing a growth of approximately 150 per cent. From a fairly even comparison 25 years ago, expenditure on gaming now outstrips wagering by a factor of some seven to one.¹¹

3.12 Evidence on behalf of the wagering industry argued instead that for online wagering, the key issue is micro-event wagering. Mr Ryan, representing ARBAC, explained that micro-event wagering is:

will the next ball be hit for a two or a three, or how many runs will be scored off the next ball? Will the next serve be an ace? It is those types of events. In itself, that event before it occurs is not critical to the outcome of the overall competition. The next ball served by Patrick Rafter is not going to be critical as to whether he wins the game or not. It is chance based.¹²

7 Mr Morgan, *Proof Committee Hansard*, Canberra 4 May 2001, p 1. See also Centrebet, Submission 33, p 3.

8 ARBAC, Submission 1, p 2.

9 Productivity Commission, 'Inquiry Report into Australia's Gambling Industries', November 1999, para 18.54. Quoted in Submission 17, WA government, p 1.

10 ARBAC, Submission 1, p 8. See also Canbet, Submission 10, p 1; WA government, Submission 17, p 3.

11 Mr Wilson, *Proof Committee Hansard*, Canberra 4 May 2001, p 17. See also Mr Ryan, *Proof Committee Hansard*, Canberra 4 May 2001, p 13.

12 Mr Ryan, *Proof Committee Hansard*, Canberra 4 May 2001, p 13.

3.13 By reason of the high rapidity of the events, and their chance based nature, this form of gambling is likely to be inherently more addictive than other forms of wagering. However, as ARBAC point out, micro-event wagering has already been controlled by means of a self-imposed industry moratorium.¹³

No new gaming product

3.14 The wagering industry also points out that because wagering is based on physical events in contrast to a computer generated game, the use of the internet to place bets simply a new way of placing a bet, and not any new gaming product. The Australian Racing Board argues:

Since virtually the inception of Australian TABs in the 1960s, significant proportions of turnover have been attributable to off-course punters placing bets with TABs against pre-established account funds via the telephone (telephone betting currently accounts for some 25 per cent of total TAB turnover). Additionally, since the early to mid-1990s larger-scale punters in all jurisdictions have had access to official bookmakers' telephone betting services.¹⁴

... This, combined with the existence of a racing channel on pay TV means that, in terms of enabling 'remote' gambling, internet wagering facilities as such add little to what has already been available over the telephone for several decades.¹⁵

3.15 The Australian Racing Board comment:

The huge increase in Australian internet connectivity points clearly to the conclusion that wagering by this medium will increasingly replace betting with TABs either in person or by telephone.¹⁶

3.16 Accordingly, the Western Australian government argue there is:

little difference between the now acceptable purchasing of products, including shares, in an 'e-commerce' environment, and buying a lottery ticket or placing a bet with the TAB through the internet.¹⁷

3.17 The wagering industry concludes that the increasing use of the internet in their gambling operations does not reflect a growth in wagering but the transfer of existing customers away from telephone betting, and betting on-site, to the internet.¹⁸

3.18 As was discussed in Chapter 2,¹⁹ there are also arguments stressing the importance of not impeding the adoption of new technologies. With reference to the wagering industry,

13 ARBAC, Submission 1, p 3.

14 ARB, Submission 2, p 8.

15 ARB, Submission 2, p 8. See also TABCORP, Submission 24, p 8.

16 ARB, Submission 2, p 14.

17 WA Govt, Submission 17, p 2. See also TAB NSW, Submission 7, p 3.

18 Mr Charles, *Proof Committee Hansard*, Canberra 4 May 2001, p 16. For details of the extent of the transfer of customers from phone betting to internet, see Canbet, Submission 10(a), p 1.

19 See paragraphs 2.18 – 2.20.

there are significant cost advantages in using the internet as the communications medium, as Mr Charles from TABCORP explains:

We win on the cost side, because it costs \$10 for you to phone through to the TAB. So if you phone through and have a \$2 bet we have just lost money; whereas if someone puts a bet on the internet it is a matter of cents. It costs less than a dollar to transmit that bet.²⁰

Effects of a ban on wagering

3.19 A third issue relates to the effects of a ban on internet wagering on the racing industry and the implications of this for regional Australia. The Australian Racing Board submission explained that:

... racing and wagering are inextricably linked. Racing is heavily reliant upon large and consistent revenue flows from wagering turnover, to the extent that at present some 70 per cent of the racing industry's total revenue is derived from TAB payments. Without this revenue there would be a severe reduction in the income flows to race clubs, breeders, owners and industry workers.²¹

3.20 The scale of the annual revenues derived from wagering was detailed by TAB Ltd:

\$173 million distributed to the New South Wales racing industry; \$189 million distributed to the New South Wales government in wagering taxes; and \$51 million retained by TAB and paid to our shareholders in after-tax profits from our wagering business. The \$173 million paid to the New South Wales racing industry represents over 70 per cent of that industry's total revenues.²²

3.21 The Committee also heard evidence of both the scale of the Australian racing industry, and its importance to regional Australia:

The racing industry, defined according to the nine main activities of administration, breeding, owning, training, riding, veterinary, farriers, clubs and race gambling made up about ½ of one per cent of Australia's Gross Domestic Product (GDP) amounting to some \$2.4 billion. Direct employment in the racing industry involves some 132,000 people and amounted to 40,000 full-time equivalents (FTE).²³

3.22 Importantly, over three quarters of the 22,000 races held around Australia each year take place in the bush or in regional areas of Australia,²⁴ and roughly 40 per cent of the industry's contribution to production and employment levels is generated in regional Australia.²⁵

20 Mr Charles, *Proof Committee Hansard*, Canberra 4 May 2001, p 16. See also Mr Ryan, *Proof Committee Hansard*, Canberra 4 May 2001, p 12; TAB NSW, Submission 7, p 3; and TABCORP, Submission 24, p 8.

21 ARB, Submission 2, p 6.

22 Mr Wilson, *Proof Committee Hansard*, Canberra 4 May 2001, p 17.

23 ARB, Submission 2, p 4. Quoting the ACIL Australia report.

24 Mr Charley, *Proof Committee Hansard*, Canberra 4 May 2001, p 8.

25 ARB, Submission 2, p 4.

3.23 The Committee has also heard evidence that by reason of the Australian racing industry's reliance on gaming funds, it is particularly vulnerable to the diversion of Australian betting funds to overseas internet wagering companies who do not return any of their revenue to the industry:

A fundamental distinguishing feature of racing is that, unlike most other industries, it is possible for an outside party to garner revenues from the industry without contributing to its costs.²⁶

3.24 Mr Charley, Chairman of the Australian Racing Board, explained that this threat is already significant:

Already in the form of bookmakers based in the no-tax haven of Vanuatu, taking bets from Australian citizens on Australian racing is a real problem. Recently, the UK company SportsBet.com, the seventh largest bookmaker in Europe, acquired the operation in Vanuatu which was previously owned by Australian interests. The turnover that was listed in the report to the London Stock Exchange was that that operation is turning over \$500 million a year – greater than the total turnover of bookmakers operating legally in Victoria. That \$500 million is currently costing the Australian racing industry \$20 million a year in revenue and the state government somewhere between \$15 million and \$20 million a year.²⁷

3.25 The argument is therefore that in the context of a general transfer of wagering activity to the internet, banning Australian wagering businesses from supplying internet services will reduce the funding to this important regional business sector, with adverse implications for the existence of the industry and employment.

3.26 The Committee further notes the particular effect that the ban would have on the access to existing betting services of regional Australians who are often a long way from the city infrastructure of TABs and agencies. These concerns were noted by the Western Australian government:

The internet provides an important platform through which Western Australians access wagering services within the State. The Western Australian TAB internet service provides not only a readily accessible wagering service but also information and live audio to many Western Australians who would not normally have access to these services.

Western Australia, with an area of over a million square kilometres provides service operators such as the Western Australian TAB with vastly different problems to that experienced by TAB's in locations such as the ACT or Victoria. The TAB internet wagering and information platform provides a much needed and efficient service to many Western Australians interested in racing.²⁸

26 ARB, Submission 2, p 12. See also p 14, and TAB NSW, Submission 7, p 6.

27 Mr Charley, *Proof Committee Hansard*, Canberra 4 May 2001, p 9.

28 Western Australian Government, Submission 17, p 3.

Wagering is already strictly regulated

3.27 Finally, it is argued that the wagering and racing industries are already heavily regulated, principally by state and territory legislation, and that the imposition of the proposed Federal legislation is unnecessary and duplicative.²⁹ Also forming part of the regulatory structure is a national regulatory model approved the Australian racing ministers,³⁰ and the bookmakers' self-regulatory mechanism.³¹

3.28 Professor McMillen, however argues that while racing is regulated, Australian Institute of Gambling Research shows that in many cases, Australian sportbetting and wagering providers have not introduced player protection measures to equal those of the interactive gaming providers.³²

3.29 This is echoed by Mrs Pafumi representing Lasseters:

if wagering is to be exempted, this industry must be subject to the exact same standards of regulation set by the online casino industry, including spending limits. Only then could the government be assured that problem gambling will not result from this exempted industry.³³

Sportsbetting

3.30 A further issue raised by the evidence is the extent to which sportsbetting, as a sub-category of wagering, ought to be covered by the bill. Professor McMillen from the Australian Institute for Gambling Research pointed out that, according to Tasmanian Gaming Commission statistics for 1999-2000, whilst gaming machine turnover increased by 12.27 per cent in that year; sportsbetting increased by 42.13 per cent:

If the aim of the legislation is to address problem gambling, the TAB's proposal that wagering should be exempted from the bill is unacceptable. As the TGC figures above indicate, sportsbetting is the most rapidly growing gambling market in Australia.³⁴

3.31 TAB Ltd rejected this evidence, basing their response on the same Tasmanian government statistics:

Sports betting last year represented total real per capital expenditure of \$2.89 per adult versus total gambling expenditure of \$931.64 – clearly, less than 0.3 of one per cent of the total gambling expenditure in Australia.³⁵

29 ARBAC, Submission 1, p 2. See also TAB NSW, Submission 7, p 4-5; Dr Ashman, *Proof Committee Hansard*, Canberra 4 May 2001, p 9.

30 ARBAC, Submission 1, p 5-6. See also ARB, Submission 2, p 7. WA Govt, Submission 17, p 2. Mr Andrew Baxter, Submission 18.

31 Mr Ryan, *Proof Committee Hansard*, Canberra 4 May 2001, p 15.

32 AIGR, Submission 34, p 2.

33 Mrs Pafumi, *Proof Committee Hansard*, Canberra 4 May 2001, p 41.

34 AIGR, Submission 34, p 2.

35 Mr Fletcher, *Proof Committee Hansard*, Canberra 4 May 2001, p 22.

Conclusion

3.32 Notwithstanding this evidence, the Committee notes the fundamental purpose of the bill is to limit the opportunities for Australians to gamble and that, as the Productivity Commission identified, wagering remains a significant source of problem gambling.³⁶ In this context, the Committee is also concerned at the evidence that suggests that the wagering industry does not seem to be as advanced as the gaming industry in the development of harm minimisation measures.

3.33 For this reason the Committee does not support a general exemption of wagering from the ban.

Inclusion of lotteries

3.34 Similar arguments are put forward in relation to the sale of lottery tickets over the internet. According to these submissions, lotteries should be exempted from the ban, since they do not have the addictive characteristics of the gaming targeted by the bill, since they include a considerable interval between placing each stake and the determination of the winners.³⁷ According to Tattersalls:

In no way can it be suggested that buying a weekly lottery ticket, as Australians have regularly done for more than a century, contributes to problem gambling levels in this country.³⁸

3.35 At the same time, Golden Casket argue that the social demographic of lottery players is broad ranging and generally representative, and is not associated with poor and more vulnerable parts of society.³⁹ Conversely, disadvantaged segments of the community, including the elderly, disabled and those living in remote areas are particularly reliant on internet access for certain services, and are therefore likely to be particularly inconvenienced by the proposed ban.⁴⁰

3.36 The Western Australian government also point to the net social benefit of lotteries:

Lotteries in fact provide a net community benefit. At page 11.1 of its report, the Productivity Commission, in gauging the net impacts of the gambling industries, concludes as a *Key Message* that its *quantitative estimates for lotteries suggest that they provide a clear benefit and, in the process, general few social costs*. In Western Australia this year, the Lotteries Commission will turnover \$453 million and return \$130 million to the community.⁴¹

36 See also Mr Wilson, *Proof Committee Hansard*, Canberra 4 May 2001, p 21.

37 Golden Casket, Submission 30, p 7. See also Boystown Lotteries, Submission 6, p 1; State Retailers Association, Submission 29, p 1, and ACT Govt, Submission 20, p 2; Mr Thorburn, *Proof Committee Hansard*, Canberra 4 May 2001, p 24. Mr Mortimore, *Proof Committee Hansard*, Canberra 4 May 2001, p 26.

38 Tattersalls, Submission 21, p 3.

39 Golden Casket, Submission 30, p 8. Reference in particular the diagrams of player statistics.

40 Golden Casket, Submission 30, p 11. Tattersalls, Submission 21, p 3.

41 WA Govt, Submission 17, p 4. See also the Productivity Commission findings that net community benefit of between \$1.1 billion and \$1.5 billion. (11.7-8) Quoted in Golden Casket, Submission 30, p 7.

3.37 Linked to this is the economic importance of the lotteries industry. An independent study commissioned by the Australian Lotteries Industry in late 1997, entitled *Economic Significance of the Lotteries Industry in Australia*, estimated that the industry made a direct contribution of over \$1.2 billion to the Australian economy, and a direct employment impact of 8,185 jobs with a further indirect impact of 17,421 jobs,⁴² including thousands of small businesses throughout Australia that sell lottery tickets.⁴³

3.38 As with wagering, overseas providers of lotteries are increasingly making use of the internet for promotions and ticket sales, and any prevention of Australian lotteries following suit is most likely to result in Australians using overseas lotteries with an associated fall in the revenue derived from Australian based games and the numbers of Australians employed in the industry.

Conclusions

3.39 The Committee agrees with these submissions, and considers that many Australians would not necessarily even consider lotteries as falling within the definition of gambling. The Committee also notes that no evidence has been submitted to this inquiry to implicate lotteries in problem gambling. At the same time, the Committee appreciates that many Australians make use of the internet to purchase tickets, particularly those who are disabled or live in remote areas.

3.40 Accordingly, the Committee concludes that lotteries should be exempt from the provisions of the bill.

Scope of the proposed ban – ‘unintended consequences’

3.41 A matter of considerable concern is the extent to which the ban would have an impact wider than that envisaged by the Explanatory Memorandum. According to several submissions, the broad definitions used to create the ban would have ‘unintended consequences’ effecting existing uses of telecommunications facilities, telephones and television broadcasting.

Telecommunications networks

3.42 Various organisations have submitted that if the bill were passed, it would have the effect of banning any gambling that uses telecommunications technology as part of the process of receiving and processing bets, even where the bettor has no ‘interactive role’. According to Tattersalls:

The bill includes within the ambit of its primary offence provision (Clause 15) any gambling body (such as a State Lottery) that uses a WAN or other carriage service within Australia to conduct its business, whether or not the actual betting by the customer takes place on-line.

Therefore, in its current state, the bill would effectively ban many existing forms of gambling that are not associated in any way with the internet – all that would be necessary to bring a gambling operation within the scope of the legislation is that it

42 Golden Casket, Submission 30, p 4.

43 Mr Thorburn, *Proof Committee Hansard*, Canberra 4 May 2001, p 23.

uses a listed carriage service (i.e. a network connecting two or more points in Australia) to provide a gambling service to its customers.⁴⁴

3.43 According to the TAB, the existing NetTAB, Betstream, and all TAB wagering operations, including on-course, agencies, PubTAB, ClubTAB, and the TAB state-wide linked poker machine jackpot system would all be covered by the ban.⁴⁵ Similarly, Jupiters notes the effects of the ban on their relationships with a range of small business agents connected by means of Wide Area Networks:

[N]ewsagencies receive bets (lottery tickets like Gold Lotto and Power Ball) on behalf of lottery operators and clubs and hotels receive keno entries on behalf of keno operators. The newsagencies, clubs and hotels use a listed carriage service (currently most commonly a WAN, although there is no doubt new and alternative technologies will be used in the future to provide the same service) to transmit the betting information to the lottery or keno operator. These services will be prohibited under the bill because they are provided to customers using a listed carriage service.⁴⁶

3.44 It is argued that these are existing services relating to the provision of gambling in traditional gambling venues, which are already regulated under state and territory laws, and should not be included in the proposed ban. As Mr Hines, representing Jupiters, stated, the intention of the bill:

is to limit the spread of internet gaming. I did not think it was intended to cut back on land based gaming. If it is, I think it has very serious ramifications. It means that you cannot buy a lotto ticket in a newsagent, you cannot buy a keno ticket in public and you will not be able to play poker machines that are linked to jackpots. If that is the intention, we need to have that debate. I think the community view on that would be quite different from the community view on the banning of internet gaming.⁴⁷

The telephone exemption

3.45 Section 5(3)(a) of the bill provides that a telephone betting service is not an Australian-based interactive gambling service for the purposes of the ban. Several submissions have queried the effect of this provision, arguing that:

the intended exemption for telephone betting services provided for in the bill is so narrow as to be largely irrelevant. In this respect the exemption may only apply when all dealings with customers in relation to a gambling service are wholly by way of voice calls (including synthetic voice etc.) using a standard phone service. In a totalizator the 'gambling service' would be the taking of bets in relation to the totalizator pool – this being achieved through a variety of mechanisms such as TAB agencies. As such, it is the solicitors' view that only 'stand alone' telephone betting operations would be exempt. TAB's, which offer telephone betting as only

44 Tattersalls, Submission 21, p 6.

45 TAB NSW, Submission 7, p 8. Also TABCORP, Submission 24, pp 6 & 10.

46 Jupiters, Submission 31, p 2-3.

47 Mr Hines, *Proof Committee Hansard*, Canberra 4 May 2001, p 5.

one of many channels into a single totalizator pool, arguably could not therefore claim the intended telephone betting exemption.⁴⁸

3.46 This concern mirrors those raised in relation to the use of telecommunications networks discussed above, and the conclusions set out below relate to both.

Television: quiz and gameshows

3.47 The Federation of Commercial Television Stations (FACTS) point to similar unintended effects on a wide range of current broadcasting which involve interactive elements and prizes, such as ‘Big Brother’, ‘the Weakest Link’ and ‘Wheel of Fortune’:

The Bill has the potential to detrimentally affect free to air broadcasting services when its purpose was to protect Australians from new interactive Internet gambling technology. This unintended effect will only be to the detriment of the Australian public.⁴⁹

3.48 FACTS point out that as these types of program are not mentioned in the Explanatory Memorandum, the ban is not intended to have such broad effect.⁵⁰ FACTS also argue that the ban should not extend to these programs since there is no evidence that digital broadcast television programs are in any way associated with problem gambling and that television licences are already regulated by state governments. Consequently:

Many viewers would find this an unacceptable intrusion into what they see as their right to long established and harmless forms of entertainment which they consider enhances the television viewing experience.⁵¹

3.49 Accordingly, FACTS seeks two outcomes from the legislation:

One is that we can continue to do what we are allowed under state law to do, so that we are not precluded from our current activities. The second is to ensure that there is no discrimination in terms of technology. ... it is possible with digital to interact in more than one way. In other words, with digital coming along you can interact with the TV program through the television receiver as an alternative to interacting through the telephone – that there not be discrimination against new technology.⁵²

Conclusions and recommendation

3.50 The Committee has heard the evidence presented during the inquiry that suggests the provisions of the bill may have a broader effect than was envisaged by the Explanatory Memorandum. That these effects were unintended was confirmed in large part by Mr Dale, of the National Office of the Information Economy (NOIE), the government agency responsible for carriage of the legislation:

48 TAB NSW, Submission 7, p 8. Also WA Govt, Submission 17, p 4.

49 FACTS, Submission 35, p 1.

50 FACTS, Submission 35, p 4.

51 FACTS, Submission 35, p 11. See also Ms Flynn, *Proof Committee Hansard*, Canberra 4 May 2001, pp 23-24.

52 Ms Oddie, *Proof Committee Hansard*, Canberra 4 May 2001, p 25

The first set of issues concerns terrestrial based gambling services, particularly poker machines, which are linked by telecommunications services, TAB network operations and back-office operations and the very specific issue of sale of lottery tickets in newsagent's premises using, again, telecommunications services. In all of those cases it is not the intention of the legislation to prohibit those types of services.⁵³

As far as the at-home interactive TV games that they gave as examples are concerned, there has been no intention on the part of the government to include those in the prohibition.⁵⁴

3.51 The Committee therefore believes that on the basis of NOIE's evidence, the bulk of the concerns raised in relation to these issues will be resolved by amendments currently being drafted.

3.52 However, the Committee does endorse the caveat of Mr Dale with respect to television broadcasting, and the future potential for these services to deliver gambling services:

the qualification is that some of the examples that I understood the broadcasting representatives to be giving about what might be possible in the future – such as changing the basis of the joining fee from a 1900 number to something else and the example given of UK digital TV at the moment, where it is possible to use the television set to place bets on sporting events as they are being played – are two examples that we want to talk to them about as well. It seems to us that those sorts of services are getting fairly close to the sorts of things the government has concerns about, whether they are delivered via TV free-to-air, digital or otherwise, or whatever means. ... Maybe some of those services the government would wish to see limited or prohibited.⁵⁵

3.53 On this point, the Committee also notes the comments of Mr Clark, of the Northern Territory government, in relation to the emerging power of broadcasted gaming:

the television is by far the most accessible and perhaps invasive form of technology we have at the moment. I can switch it off and I can change channels, but the reality is that I take what I am given – unlike the internet, where I actually go and choose what sites I am going to go and visit and what I am going to do when I go to those sites.⁵⁶

3.54 The Committee considers that the emerging broadcasting technology has the potential to exacerbate Australian's gambling problems in a way that is even more direct than the internet. It will therefore be important for the Government to monitor the nature and content of the emerging broadcasting technology, and assess the extent to which it may impact on problem gambling.

53 Mr Dale, *Proof Committee Hansard*, Canberra 4 May 2001, p 59.

54 Mr Dale, *Proof Committee Hansard*, Canberra 4 May 2001, p 60.

55 Mr Dale, *Proof Committee Hansard*, Canberra 4 May 2001, p 61. Mr Dale is referring to the evidence of Ms Flynn of FACTS, *Proof Committee Hansard*, Canberra 4 May 2001, p 26-28, and FACTS, Submission 35.

56 Mr Clark, *Proof Committee Hansard*, Canberra 4 May 2001, p 49.

Recommendation 3.1

The Committee recommends that the Interactive Gambling Bill 2001 be amended to exclude lotto and lotteries. Amendments should also exclude the unintended targets of the ban resulting from the use of internet technology for the administration of the service such as, but not necessarily limited to, telecommunications networks used by, for example, the Western Australian TAB, and television games as discussed in the report.

CHAPTER 4

OPERATION OF THE BILL

Introduction

4.1 This chapter examines the operation of proposed legislation. During the inquiry, three key issues have emerged in relation to how the bill would achieve its stated objectives:

- the appropriateness of banning a technology rather than an activity;
- whether the bill would achieve its objective of limiting problem gambling in Australia; and
- and the definition of ‘reasonable diligence’ in determining whether companies will be prosecuted under the bill.

4.2 The chapter also whether Australian companies should be permitted to deliver internet gambling services to people outside Australia, then concludes with a consideration of several other administrative issues raised by submissions.

Technological inconsistencies

4.3 A criticism made by many submissions is that the bill focuses on the means of transmission rather than the legality of the act itself. It is argued that this has illogical results:

An artificial distinction is drawn between accessing gambling services over the telephone and accessing the same service using other delivery methods, particularly when a ‘voice call’ includes a call that involves a recorded or synthetic voice. It is illogical to suggest that making a voice call to make a bet is legal, while at the same time prohibiting a person from sending a fax to make the same bet.

If a gambling service can be provided using a telephone, it should be able to be provided using any Delivery Method.¹

4.4 It is also argued that this approach runs contrary to the Government’s wider policy of encouraging e-commerce:

[T]he Government’s own *Electronic Transactions Act 1999* was enacted to give standing and effect to transactions that occur online. The simplified object of the Act is defined as ‘for the purposes of a law of the Commonwealth, a transaction is not invalid because it took place by means of one or more electronic communications’. In other words the mode of transaction should not determine its legal status and an online transaction has the same legal standing as an offline transaction.²

1 Jupiters, Submission 31, p 4. See also Mr Hines, *Proof Committee Hansard*, Canberra 4 May 2001, p 2; NT government, Submission 22, p 9; IAS, Submission 23, p 5; ARBAC, Submission 1, p 3.

2 MegaSports, Submission 14, p 4.

4.5 Jupiters explain that this involves the two principles of functional equivalence and technology neutrality:

‘functional equivalence means that transactions conducted using paper documents and transactions conducted using electronic communications should be treated equally by the law and not given an advantage or disadvantage against each other’; and

‘technology neutrality means that the law should not discriminate between different forms of technology - for example, by specifying technical requirements for the use of electronic communications that are based upon an understanding of the operation of a particular form of electronic communication technology’.³

Conclusions and recommendations

4.6 The Committee has two findings in relation to this matter. First, the Committee endorses the concept of technological neutrality, and the Government’s overall policy of encouraging the adoption of e-commerce by Australian business and society. However, this principle would be complied with if the findings and recommendations of Chapter 3 – covering the exclusion of wagering and lotteries, and the narrowing of the definition to remove the unintended consequences – were adopted. The effect of the law would be to allow the use of the internet as a tool for conducting business transactions.

4.7 This leaves the issue of gaming on the internet, which would still come within the scope of the bill. For all the reasons detailed in Chapter 2, the Committee considers that it is appropriate to take measures to limit the use of the internet for gaming activities, and that the principle of technological neutrality does imply a blanket acceptance of every new internet product. There are circumstances in which the Government can and should take action to limit the emergence of new products that are judged to cause harm. Similarly, the fact that gaming is acceptable in one context, such as physical casinos, does not preclude limits to that same activity in other contexts. Racing motor vehicles provides an analogy: what is legal on the race track is not legal on public roads.

4.8 The Committee therefore concludes that the provisions of the bill do not contradict existing Government policies that seek the acceptance of e-commerce through the principles of technology neutrality.

Effectiveness of the proposed regime

4.9 A criticism made of the bill is that, notwithstanding the merits of banning internet gambling, the measures provided for will not in fact achieve the stated objective of the bill. This view is summarised by Mr Clark of the Northern Territory government:

the bill aims to achieve two things: firstly, it attempts to draw a symbolic line in the sand, as it were, to start changing the Australian gambling culture; and, secondly, it would seek to combat problem gambling. The Northern Territory fully supports both of these objectives. We want to change a gambling culture that encourages excessive and detrimental gambling. We are also committed to fighting problem gambling. However, this bill fails to achieve both of those objectives. Indeed, in respect of fighting problem gambling – to the extent that this bill would preclude

3 Jupiters, Submission 31, p 4. See also Centrebet, Submission 33, p 6.

operators using the Internet technological platform – this bill could actually be described as worse than useless.⁴

4.10 There are three main elements to this argument.

Migration to overseas sites

4.11 First, it is argued that the bills will in fact have little effect since Australian gamblers will still be free to access any of the large number of overseas sites. According to Mr Clark:

There is nothing potential about the access; the access is achieved now.⁵

... having access to the Internet means you have access to internet gambling. That is a fact of life. In terms of the notion of access, access is here – access has been overtaken by the fact of the internet. We now turn to the other question of exacerbating problem gaming, the so-called virtual poker machine in every lounge room. It is significant to note that the bill will not prevent Australians accessing offshore sites – 99.9 per cent of the sites are offshore sites. So the bill will do nothing to prevent Australians accessing almost all of the internet gaming sites that are available now.⁶

4.12 The Federal Group make a similar point:

The industry has already taken off; the horse has bolted. Many comments have already been made today about the size of the industry. In fact, in Senator Alston's own second reading speech the industry was noted as having increased by some 100 per cent in the last 12 months, to some 1,400 sites worldwide.⁷

4.13 In this context, it is also relevant to note the evidence by Lasseters Online, which states that 70 percent of online players register with four or more gaming operators.⁸ The implication is therefore that all the Australians currently accessing Australian gaming sites are probably already playing on a number of overseas sites.

Filtering systems will not be effective

4.14 The second and related aspect to this argument is that the filtering systems envisaged by the bill will have little real effect. As Fujitsu note in their submission:

It is readily evident that a simple ban in internet gambling will be circumvented by existing technology; specifically the anonymous proxy servers commonly used by hackers.⁹

4 Mr Clark, *Proof Committee Hansard*, Canberra 4 May 2001, p 47. See also NT Government, Submission 22, p 1; MegaSports, Submission 14, p 1.

5 Mr Clark, *Proof Committee Hansard*, Canberra 4 May 2001, p 47.

6 Mr Clark, *Proof Committee Hansard*, Canberra 4 May 2001, p 47.

7 Mr Farrell, *Proof Committee Hansard*, Canberra 4 May 2001, p 37.

8 Mrs Pafumi, *Proof Committee Hansard*, Canberra 4 May 2001, p 45.

9 Fujitsu, Submission 27, p 1.

4.15 The Northern Territory government add that the filtering provisions are no advance on current practice. Such software is already available commercially for those who wish to limit access on their machines, and since 1999 the Northern Territory has required by law that an internet gaming operator provides access to the same filtering software.¹⁰ MegaSports picked up this theme:

The optional content filtering provisions in the bill will strongly appeal to those in the community who oppose gambling. It is right that they have the freedom of choice to install such filtering technology to prevent themselves or their children from accessing online gambling products and services. However, those individuals who wish to gamble online (including the number who may have a tendency to gamble beyond their means) will be extremely unlikely to choose to install such filtering technology.¹¹

4.16 Electronic Frontiers Australia also point to the technical difficulties associated with the use of the filtering software:

such techniques are highly inaccurate, their reliability being estimated at around 70 per cent in the case of France. Quite simply, the addressing methods used to direct internet data packets are not structured on a geographical basis, and no improvements in technology are going to alter this fact. Furthermore, just as attempts at censorship are easily circumvented, there are anonymising and relay techniques that can readily defeat attempts to determine location.

It is therefore totally inappropriate to imply that technological solutions are available to support this legislation.¹²

Forcing Australian gamblers offshore with no protection

4.17 The third issue, as alluded to by Mr Clark quoted above, is that the bill may actually be counter-productive. By prohibiting access to well regulated Australian sites that incorporate best practice harm minimisation, Australian gamblers will end up on overseas sites with no protection at all. To quote Mr Clark further:

the bill will not stop Australians accessing almost every internet gaming site in the world. So it makes no change in access. All it does is stop Australians accessing the best regulated internet gaming sites in the world – our own. It is likely to exacerbate problem gambling rather than reduce it because you are blocking players from accessing the kinds of harm minimisation features of which I have just spoken.¹³

4.18 The Federal Group makes a similar point, reflected by many submissions:¹⁴

10 NT Govt, Submission 22, p 5.

11 MegaSports, Submission 14, p 3.

12 EFA, Submission 16, p 3. See also Centrebet, Submission 33, p 4.

13 Mr Clark, *Proof Committee Hansard*, Canberra 4 May 2001, p 49. See also Mr Coroneas, *Proof Committee Hansard*, Canberra 4 May 2001, p 57.

14 Canbet, Submission 10, p 1; Sky City, Submission 9, p 4; Australian Casino Association, Submission 12, p 3; Centreracing, Submission 19, p 3; Megasports, Submission 14, p 2; ACT Government, Submission 20, p 2.

As Australian gambling operators will have access to a world market, excluding Australia, they will be providing the other citizens of the world leading player protection and harm minimisation measures whilst Australian residents, who will have access only to non-Australian operators, will not have anywhere near the same standard of player protection and harm minimisation measures. As a result of this there is a real likelihood that the scope for problem gambling in this country will be expanded, not limited ...¹⁵

4.19 At the same time Australia loses the opportunity to create a properly regulated local industry with appropriate harm minimisation measures, as well as losing a revenue stream that can be used to fund harm minimisation measures.¹⁶

Conclusions and recommendations

4.20 The Committee recognises that there are real limitations on the capacity of the Australian Commonwealth Government to prevent Australians accessing gaming sites on the internet. However, it is important to remember that the bill does not pretend to stop Australians from such gaming. As NOIE points out:

the Government is not asserting that these measures will completely eliminate access to overseas gambling sites. What the Government is endeavouring to do is to limit and to discourage.¹⁷

4.21 Addressing the effectiveness of the complaints mechanism, NOIE went on to explain:

In the case of a complaint about an overseas gambling site that is making gambling services available to Australians the intention is to provide for either an industry code of practice or ABA determined standards, which would essentially have the same effect as the online content regime, and that is to provide for the referral of complained about gambling sites to filtering software manufacturers and to have filtering software made available by internet service providers, and others if necessary, to their customers but on a voluntary basis.¹⁸

4.22 The Committee also notes that:

A FaCS [Department of Family and Community Services] survey has found that very few people currently gamble online and if it were banned, almost all would respect that ban. The survey also identified strong public support for a ban on gambling.¹⁹

4.23 The bill is therefore about setting a standard, and sending a message to Australians about the dangers of problem gambling and the internet.

15 Federal Group, Submission 3, p 2. See also Mr Farrell, *Proof Committee Hansard*, Canberra 4 May 2001, p 37

16 Noted at Submission 22, NT Govt, p 5.

17 Mr Besgrove, *Proof Committee Hansard*, Canberra 4 May 2001, p 63.

18 Mr Dale, *Proof Committee Hansard*, Canberra 4 May 2001, p 63.

19 NOIE Report, p 63.

4.24 Overall therefore, the Committee does not consider that the limitations of the bill mean that it is not worth proceeding with. As Mrs Phillips, representing the Festival of Light in South Australian commented:

I believe anything that is attempting to address the problem is a step forward. I would not reject the legislation simply because it did not go far enough. ...

I still think the bill is better than nothing. By having no legislation at all, the impression given to the public is that there is nothing wrong with this kind of gambling.²⁰

4.25 For these reasons, the Committee considers that the bill will provide a disincentive to Australians seeking to gamble on the internet, and as such, should be proceeded with. However, the Committee suggests the Government consider the adoption of two additional measures to strengthen the effectiveness of the proposed legislation. First, the creation of an advertising prohibition in Australia of overseas based internet gambling services; and second, the introduction of legislation similar to the US Wire Act,²¹ providing for the prosecution of foreign based operators of internet gambling services being accessed from Australia, should those operators come to Australia.

Meaning of ‘reasonable diligence’

4.26 Industry submissions have raised concerns in relation to the obligations imposed by the offence provisions of section 15 of the bill. Under section 15, it is an offence to provide an Australian-based interactive service to customers in Australia, however section 15(3)(b) provides a defence if it can be established that the person ‘could not, with reasonable diligence, have ascertained that the service had an Australian customer link’.

4.27 Submissions consider this requirement to be too onerous and uncertain, particularly in view of the heavy penalties, and argue for greater clarity by means of guidelines or regulation, to establish what operator safeguards would amount to ‘reasonable diligence’.²² According to Jupiters:

It is unacceptable that Australian companies should be subjected to the uncertainty surrounding the drafting of the reasonable diligence defence, particularly when the Government has made it clear in the Explanatory Memorandum that its intention is to allow consideration to be given to the technical and commercial viability associated with implementing compliance systems.²³

4.28 The central problem is that companies are uncertain of what they will be required to do to meet the ‘reasonable diligence’ test under the proposed regime. They fear that they will take various precautions which, while generally effective, may still allow some Australian customers to slip through, exposing them to prosecution and the high penalties provided for

20 Mrs Phillips, *Proof Committee Hansard*, Canberra 4 May 2001, p 34.

21 For a detailed discussion of the US Wire Act 1961, see the Senate Select Committee on Information Technologies, *Netbets – A review of online gambling in Australia*, p 96-100.

22 Canbet, Submission 10, p 2. See also Skycity, Submission 14, Megasport, p 6; Submission 22, NT Govt, p 8.

23 Jupiters, Submission 31, p 5.

under the bill. The accuracy and reliability of geo-location software were described above and in this context, the Committee notes the example given by Mr Farmer of Canbet:

... we are aware of – and it is very much in our mind – the case of one Australian company called MegaSports which is owned by a company in Nevada. They gave an undertaking to the Nevada Gaming Board that they would not take bets from within the United States, and they put in blocking protocols. An agent of the Nevada Gaming Board opened an account in Canada, purported to be a Canadian, quoted a Canadian credit card number and dialled from Nevada to Canada an internet service provider so it came up at MegaSports as a Canadian having a bet. The person had identified themselves as a Canadian with a Canadian address and a Canadian credit card, but it turned out that it was an American.²⁴

4.29 It is this sort of risk that has led both Canbet and International All Sports to indicate they will leave Australia should the bill be passed.²⁵ It is therefore important to companies that they can be clear about what measures they are expected to take, to protect them against prosecution.

4.30 One solution is for the bill to provide for the creation of an industry code, along similar lines to Part 4 of the bill, that would set out what steps companies must take to comply with ‘reasonable diligence’.²⁶ Under this system, an Australian internet gaming provider that complies with the code will not be prosecuted even where an Australian gambler succeeds in placing a bet. This contrast with the application of the ‘reasonable diligence’ test on a case by case basis.

4.31 The Committee sees considerable merit in this approach. Alternatively, the due diligence requirements should be set out in the bill itself or in regulations.

Recommendation 4.1

The Committee recommends that the Government take measures to clarify the requirements of ‘due diligence’ for the purposes of section 15, either by amending the Interactive Gambling Bill 2001 or detailing these requirements in associated regulations.

Australian services to offshore gamblers

4.32 A further issue that arises in the consideration of this bill, is whether, if Australian companies are to be prevented from providing gambling services to Australians, they should be permitted to market these services to overseas gamblers.

4.33 In the Second Reading Speech, and Explanatory Memorandum, no justification is given for the approach taken in the bill. However, many submissions were critical. As Professor McMillen of the Australian Institute for Gambling Research states:

24 Mr Farmer, *Proof Committee Hansard*, Canberra 4 May 2001, p 2.

25 Canbet, Submission 10, p 2; IAS, Submission 23, p 4.

26 Mr Farmer, *Proof Committee Hansard*, Canberra 4 May 2001, p 3.

The bill is based on the principle that interactive gambling is unacceptable for Australians because of the potential for harm; yet it will permit Australian operators to provide interactive gambling to international customers. There is an inherent ethical contradiction in this bill. It is morally indefensible to imply that Australians should be protected from this form of gambling yet Australian operators can profit from the harm created in other countries.²⁷

4.34 The World Lottery Association notes that the bill also runs contrary to the usual approach in relation to lotteries:

Indeed, current members in good standing, including the lottery companies in Austria, Sweden, Finland, and other European government lotteries, have restricted their sales only to residents of their respective countries unless they have an agreement with another country.²⁸

4.35 In considering this concern, the Committee notes that the central purpose of the bill is to address problem gambling in Australia. As stated by the Explanatory Memorandum:

Australia already has one of the largest per capita gambling industries in the world. The Productivity Commission found that, on average, adult Australians currently spend at least twice as much on legalised gambling as people in Northern America and Europe – making Australians among the heaviest gamblers in the world.²⁹

4.36 It is therefore neither appropriate nor necessary for the Australian Government to introduce measures relating to problem gambling overseas. This point was made by Mr Dale of NOIE:

It is the obverse of the main policy intention, which is clearly not to expand or control services provided to people outside Australia; it is to restrict services provided to people in Australia and, in doing that, as it not necessary to prevent access by residents of other countries the government has not done that. It is not necessary to achieve the main intention, which was the potential gambling problems of Australians rather than people in other countries. As the minister has said publicly, the general principle should be that initiatives to address or restrict gambling in particular countries are up to the governments of those countries. In this case we have taken action for Australian residents only and do not purport to do anything else.³⁰

4.37 The Committee therefore considers the provisions of the bill to be appropriate.

Banning the users

4.38 The bill creates a number of offence provisions for individuals who provide interactive gambling services. The Committee has received several recommendations that the bill should extend these penalty provisions to make it an offence to bet online with an

27 AIGR, Submission 34, p 1. See also ARBAC, Submission 1, p 4; ACT government, Submission 20, p 2; Centreracing, Submission 19, p 2.

28 WLA, Submission 8, p 1.

29 Explanatory Memorandum, p 3.

30 Mr Dale, *Proof Committee Hansard*, Canberra 4 May 2001, p 63.

Australian licensed provider, as well as to provide false or misleading information in order to place a bet.³¹

4.39 The Committee has not received sufficient evidence on this matter to form any final conclusions, however, both are suggestions that merit further consideration by the Government.

Enforcement mechanisms

4.40 Two church groups commented on the need to strengthen the enforcement mechanisms of the bill by legislating a more proactive monitoring role for the Australian Broadcasting Authority (ABA), rather than simply responding to complaints as envisaged by the bill as drafted. Also, it was suggested that the complaints mechanism must be as user friendly as possible: incorporating a well-advertised free ABA phone hotline and complaint forms available via the ABA website.³²

4.41 The Committee notes that the bill as drafted provides for the ABA to investigate breaches based on either complaints by members of the public or on its own initiative.³³ However, the Committee agrees with the need to ensure the accessibility of the complaints mechanism.

Education campaign

4.42 The final issue relates to community education programs that address the dangers of problem gambling, both on the internet and elsewhere. Such programs were recommended in the NOIE report:

consumer advice campaign to complement a ban on interactive gambling. Such a campaign could inform the community of the potential risks and dangers of gambling online and be targeted at potential new groups of gamblers emerging with the increased accessibility of interactive gambling services.³⁴

4.43 The Committee notes the concern raised by the Internet Industry Association that such an education campaign must not become an internet scare campaign that will harm the overall acceptance and adoption of e-commerce:

there is a risk that unless this 'advice' campaign is carefully managed, it will do no more than reinforce a message that the Net is inherently risky. This would be inconsistent with another recent NOIE report, 'the Phantom Menace', which tried to calm consumer fears about using credit cards online.³⁵

4.44 This is a legitimate concern, which the Committee considers the Government should remain mindful of when preparing the campaign.

31 Megasport, Submission 14, p 5-6; TAB NSW, Submission 7, p 9. Centreracing, Submission 19, p 2.

32 Festival of Light, Submission 13, p 8. See also Baptist Community Services, Submission 32, p 3-4.

33 Section 21

34 p. 62. The matter was also raised by the Baptist Community Services, Submission 32, p 6.

35 IIA, Submission 36, p 4.

Senator Alan Eggleston

Chair

MINORITY REPORT BY LABOR SENATORS

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SUMMARY OF FINDINGS AND RECOMMENDATIONS

Labor Senators believe that the most effective way to manage interactive and Internet gambling is to have State and Territory cooperation in formulating a national regulatory regime. Labor supports Federal co-ordination of consistent State-based regulatory regimes. The appropriate forum is the Ministerial Council comprising relevant State and Federal Ministers.

Labor Senators consider the approach taken in the Bill to be flawed and inappropriate because it will not achieve the stated objectives of the legislation. Labor Senators note that there are a number of specific concerns with the drafting of certain provisions in the Bill which render the Bill's impact uncertain or unjust.

Labor Senators are concerned to ensure that problem gambling arising from interactive gambling is minimised to the greatest possible extent. We are concerned that the Government approach implemented by this Bill does not control or limit problem gambling in the online environment.

Labor Senators do not support the Government's Bill. There is one policy that will provide Australians with the highest possible degree of protection. Labor believes that effective regulation of interactive gambling is the only practical way to minimise resultant social harm, including criminal harm. This approach will also maximise the benefits that will flow to consumers, the racing, gambling and IT industries, and the Australia economy.

Labor Senators support the approach that we have detailed in minority reports to the Netbets and Interactive Gambling (Moratorium) Bill 2000 inquiries. Having considered the alternative policy approaches to interactive gambling, Labor Senators conclude that the overriding objective is to protect Australians from the potential harms and problem gambling that could arise from gambling through new media.

Overwhelmingly, the partial ban that the Government seeks to adopt through the Interactive Gambling Bill 2001 has been criticised for its inefficacy and futility. Not only have the ultimate objectives of the Government's policy been defeated by its implementation and flawed approach, but its legislation is likely to exacerbate the very harms that it is intended to minimise.

It is likely that this partial ban on interactive gambling will exacerbate problem gambling by removing a regulated service with in-built safeguards whilst still allowing access to unregulated and unlicensed offshore sites (in addition to regulated, reputable offshore sites).

Labor Senators do not support an outright ban of gambling on the Internet because we do not consider it to be technically feasible or necessary.

Labor Senators consider that a partial ban on interactive gambling will not prevent access to online gambling and will not prevent Australian gamblers from accessing offshore sites that are unregulated and do not offer consumer protection or probity. For this reason we cannot support the Government's Bill when it is so patently not in the best interests of Australians and fails to achieve its stated objectives.

Labor Senators acknowledge that the online gambling industry is currently subject to a high degree of regulation and oversight and that State and Territory governments already ensure that online and interactive gambling operators meet the highest standards of probity, auditing and licensing agreements.

Labor Senators recommend that current regulatory requirements applying to off-line and land-based casinos, clubs or wagering venues should be extended to online casinos and online wagering facilities.

Considering that existing AFP funding is seriously inadequate and the AFP (and other police forces) is expected to fund this additional role from within existing resources, the AFP will be unable to effectively fulfil its role under the Bill, thereby compromising implementation of the measures in the Bill. Labor Senators restate the need for the AFP to be adequately resourced if it is to have any significant impact on the regulation of interactive gambling in Australia.

Labor Senators do not believe that this Bill will overcome *any* of the problems associated with interactive gambling, so the extent of the relative problems for various modes of gambling (such as wagering and lotteries) is not relevant to our assessment of the Bill. Labor Senators will oppose the Bill in its entirety.

Labor Senators conclude that the apparent lack of clarity in defining the defence in subsection 15(3) of the Bill needs to be remedied in light of the seriousness of penalties for committing the offences in section 15 of the Bill (the offences relate to the provision of services to Australians by Australian Interactive Gambling Service Providers (IGSPs)).

Considering that the gambling modes that are apparently inadvertently prohibited pose a minimal threat to problem gambling, a rationale for their inclusion is unclear, and the Explanatory Memorandum does not provide any guidance on that account. NOIE has stated that they are not intended to be banned so this appears to be another flaw in the Bill, albeit one that the Government could be expected to rectify.

Labor affirms its support for a regulatory framework, and industry wide codes of practice including:

- mechanisms to exclude those not eligible to gamble under Australian law;
- problem gambling controls (eg, exclusion from facilities, expenditure thresholds, the availability of transaction records);

- privacy protection;
- regulation of propriety in advertising; and
- software and accounting procedures.

The overall policy approach of the Government is flawed, this is evident from the fact that the legislation seeks to put in place a system that cannot even achieve its stated objectives, and threatens to defeat and even worsen the consequences sought to be avoided.

The Government's approach to interactive gambling is nonsensical, in fact, only one true rationale can be derived and that is blatantly political scaremongering. Rather than act in the best interests of present and potential Australian consumers of Internet gambling services, the Government seeks to capitalise on the general public's fears of gambling and misunderstanding of the issues, to the ultimate detriment of all Australians.

INTERACTIVE GAMBLING BILL 2001

Minority Report by Labor Senators

Introduction

1.1 This inquiry into the Interactive Gambling Bill 2001 is the third opportunity at which Senate Committees have examined the appropriate response to interactive gambling in Australia. There have been three substantial inquiries into online gambling (including the two Senate Committee inquiries), all of which addressed the feasibility of a ban on interactive gambling:

- Australia's Gambling Industries – Inquiry Report, Productivity Commission, November 1999;
- *Netbets*, A Review of online gambling in Australia, Senate Select Committee on Information Technologies, March 2000;
- Inquiry into *Interactive Gambling (Moratorium) Bill 2000* Senate ECITA Legislation Committee, 4 September 2000.

1.2 In the latter two reports, Labor Senators have clearly expounded our carefully considered position on the appropriate policy for the regulation of interactive gambling. Labor Senators believe that the most effective way to manage interactive and Internet gambling is to have State and Territory cooperation in formulating a national regulatory regime. Labor supports Federal co-ordination of consistent State-based regulatory regimes.

Interactive Gambling Bill 2001

1.3 This Bill implements the policy approach for which the Government ultimately opted. The Bill regulates interactive gambling services in Australia by:

- a) creating an offence of providing an Australian-based interactive gambling service to Australian customers; and
- b) establishing a complaints scheme to enable Australians to make complaints about interactive gambling services on the Internet which are available to Australians.

The complaints scheme comprises:

- complaints mechanism for a person to complain to the ABA about prohibited Internet gambling content;
 - if content is hosted in Australia, the ABA must refer complaints to police if the ABA considers complaint should be so referred (eg if it appears Interactive Gambling Service Provider (IGSP))

is committing offence of providing an Australian-based interactive gambling service to Australians);

- if content is hosted offshore, the ABA must notify the content to police if it considers the content should be so referred. Additionally the ABA will notify the content to ISPs so that providers can deal with it in accordance with procedures specified in an industry code or standard (or if none, the ABA has power to issue notice to ISP to take ‘reasonable steps’ to prevent access).

1.4 As indicated in the Explanatory Memorandum, the Bill implements the second of three policy options considered by the Government:

a) status quo – not impose a ban on interactive gambling, other than existing program initiatives in the context of the Ministerial Council on Gambling.

b) targeted ban – ban the provision of interactive gambling services by Australian operators to users in Australia and also give Australian users the capacity to filter out these services from offshore providers.

c) comprehensive ban – apply banning strategy to both domestic and foreign IGSPs by completely prohibiting Australian IGSPs regardless of whether they are providing services to Australians or offshore residents and aggressively preventing strategy to prevent Australians’ access to offshore interactive gambling services (blocking measures at ISP level).

1.5 Labor Senators consider the approach taken in the Bill to be flawed and inappropriate because it will not achieve the stated objectives of the legislation. Labor Senators note that there are a number of specific concerns with the drafting of certain provisions in the Bill which render the Bill’s impact uncertain or unjust.

Labor approach to interactive gambling

1.6 Labor Senators are concerned to ensure that problem gambling arising from interactive gambling is minimised to the greatest possible extent. We are concerned that the Government approach implemented by this Bill does not control or limit problem gambling in the online environment.

1.7 Labor Senators do not support the Government’s Bill. Instead, Labor Senators support a policy of strong regulation of interactive gambling as the only practical and effective way of restricting social harm from gambling to a minimum, including criminal harm, and maximising the benefits that will flow to consumers, the racing, gambling and IT industries, and the Australia economy.

1.8 Effective regulation of interactive gambling involves the legalisation of interactive gambling within a national regulatory framework which addresses harm

minimisation and consumer protection issues as well as criminal issues potentially arising from new criminal opportunities.

1.9 Labor Senators recommend that a national regulatory framework for online gambling regulation should include:

- consumer protection - ensuring a quality gambling product by financial probity checks on providers and their staff, maintaining the integrity of games and the proper working of gaming equipment;
- mechanisms to exclude those not eligible to gamble under Australian law;
- problem gambling controls, such as exclusion from facilities, expenditure thresholds, no credit betting, and the regular provision of transaction records;
- measures to minimise any criminal activity linked to interactive gambling;
- privacy protection;
- containing the social costs by ensuring that adequate ongoing funds are available to assist those with gambling problems;
- address revenue issues that impact upon state government decisions relating to interactive gambling;
- consistent standards for all interactive gambling operators;
- an examination of international protocols with the aim of achieving multilateral agreements on sports betting and other forms of interactive gambling;
- regulation of propriety in advertising, including preventing advertising from targeting minors;
- limiting the exploitation of monopoly market positions; and
- mechanisms to ensure that some of the benefits accrue more directly to the local community.

1.10 Given that prohibition is not feasible or desirable,¹ that under a partial ban Australians would still be able to access offshore sites and it is likely that Australian gambling service providers will move offshore and offer gambling services to Australians, Labor Senators support the implementation of an effective co-regulatory

1 See Productivity Commission, *Australia's Gambling Industries*, 26/11/99: "blanket bans on specific forms of gambling to protect consumers would not be viable or desirable": pp.16.1. 16.7-16.10; policy of prohibition likely to be less enforceable than allowing some licensed sites; making it illegal to operate or use online gaming sites (this Bill has not even gone that far) would have the likely effect of reducing their use, albeit while also creating a black market; State governments may lose significant sources of revenue offshore; people accessing offshore sites may be exposed to significant risks while governments would be unable to regulate consumer protection features; domestic commercial and export opportunities would be eliminated; reduction of consumer choice: pp.18.54, 18.55, 18.57.

regime as the only way to minimise the extent of problem gambling online in Australia.

1.11 The *Netbets* minority report by Labor Senators recommended that the existing regulatory requirements for land-based casinos, clubs and wagering venues should be extended to online casinos and wagering facilities. Probity, audit and licensing requirements should be equally strict to maintain the level of gambling regulation that presently exists.²

1.12 Additionally, a range of consumer and problem gambling protections will and have been implemented that are specific to the online environment. Those protections go beyond simply counteracting the potential harms specifically arising in the online environment. In fact, Labor Senators are convinced that the technological means exist to minimise harm to a greater extent than land-based gambling forms and to a far greater extent than achievable by the partial ban proposed by this Bill.

1.13 The position adopted by Labor Senators has been widely supported by those well acquainted with gambling policy and the objective of harm minimisation. Notwithstanding the Productivity Commission's conclusion that there are serious social concerns about the prevalence and widespread availability of gambling activities in Australia, the Commission noted that it:

...does not consider that there is enough evidence to warrant banning any existing gambling form...a better policy course is to pursue a range of strategies to reduce the social risks associated with legalised gambling.³

1.14 The Commission gave weight to the extension to interactive gambling of regulatory controls applying to traditional land-based forms of gambling:

...there are also grounds for regulation of internet gambling, along the lines of regulations applying to other gambling forms. The Commission considers that there are ways of controlling online gambling sufficiently to exercise such regulations.⁴

1.15 With respect to interactive gambling, the Productivity Commission found that, while new technologies potentially increased opportunities for the spread of gambling and resultant social dysfunctions:

Online gambling offers significant potential benefits to some consumers and scope for commercial returns.⁵

1.16 The Productivity Commission noted in its key findings that:

2 *Netbets*, Report by the Senate Select Committee on IT, March 2000, p. 113.

3 Productivity Commission, Australia's Gambling Industries, 26/11/99, Vol 2, p.16.10.

4 Productivity Commission, Australia's Gambling Industries, 26/11/99, Vol 2, p.18.1.

5 Productivity Commission, Australia's Gambling Industries, 26/11/99, Vol 2, p.18.1.

Policy approaches for the gambling industries need to be directed at reducing the costs of problem gambling – through harm minimisation and prevention measures – while retaining as much of the benefit to recreational gamblers as possible.⁶

1.17 Labor Senators consider this to be the most appropriate approach to interactive gambling. The Productivity Commission further confirmed that the Internet can provide certain consumer protection measures for problem gamblers:

There are some features of internet gambling which may moderate problem gambling.⁷

1.18 These measures include the possibility of increased scrutiny by household members, the absence of cash transactions, the issuing of transaction records and payment of winnings by cheque. Furthermore, as the odds for Internet gambling are often lower due to lower tax rates and lower technology costs:

Player losses will tend to be smaller...thereby reduc[ing] some of the harms.⁸

1.19 The National Crime Authority, in evidence to the Senate Select Committee on IT during the *Netbets* inquiry, assured that online safeguards for Australian interactive gambling operators offer the consumer protection needed to address problem gambling:

If Australian citizens gamble in Australia, some of the advantages are: they will get better odds, they probably will not get ripped off – they may actually have a chance of getting paid some winnings – we can regulate it, and there will be taxes available for problems caused by gambling. If Australian citizens gamble offshore, it is virtually the opposite to all of those: they are often run by undesirables, we cannot regulate it, the odds are usually terrible [and] there is no money going back to the Australian government to deal with social problems caused by gambling.⁹

Labor Senators support the approach that we have detailed in minority reports to the *Netbets* and *Interactive Gambling (Moratorium) Bill 2000* inquiries. Having considered the alternative policy approaches to interactive gambling, Labor Senators conclude that the overriding objective is to protect Australians from the potential harms and problem gambling that could arise from gambling through new media.

6 Productivity Commission, Australia's Gambling Industries, 26/11/99, Vol 1, p.3.

7 Productivity Commission, Australia's Gambling Industries, 26/11/99, Vol 2, p.18.20.

8 Productivity Commission, Australia's Gambling Industries, 26/11/99, Vol 2, p.18.21.

9 Senate Select Committee on Information Technologies, Official Committee Hansard, 16/2/00, p.257.

There is one policy that will provide Australians with the highest possible degree of protection. Labor believes that effective regulation of interactive gambling is the only practical way to minimise resultant social harm, including criminal harm. This approach will also maximise the benefits that will flow to consumers, the racing, gambling and IT industries, and the Australia economy.

Flaws in Government policy approach (criticisms of partial ban)

1.20 It is considerably more difficult to implement a policy of prohibition than to advocate it, from a technological and practical perspective. An effective ban of Internet gambling would require global cooperation and enforcement strategies, since there are already gambling sites operating internationally. The community interest is not best served by a policy of prohibition, as there are several insuperable obstacles that would prevent effective implementation of the policy and distinct advantages of which the community would be deprived.

1.21 The Productivity Commission has noted technical difficulties in imposing a ban or moratorium on Internet gambling and cautioned against the expense and viability of such an approach:

It should be emphasised that the relevant question for public policy is not *whether* online gambling can be controlled, but the *extent* to which it can be controlled. Full control is an unobtainable objective, which would be undesirable to achieve because of its attendant costs.¹⁰

1.22 The Explanatory Memorandum confirms that a complete ban of interactive gambling is not technically feasible and that this legislation will not prevent problem gamblers accessing online gambling sites. The Bill:

restricts the access of offshore providers to the Australian market, but only to the extent that Australian users choose to ... filter these services.¹¹

1.23 Overwhelmingly, the partial ban that the Government seeks to adopt through the Interactive Gambling Bill 2001 has been criticised for its inefficacy and futility. Not only have the ultimate objectives of the Government's policy been defeated by its implementation and flawed approach, but its legislation is likely to exacerbate the very harms that it is intended to minimise.¹²

1.24 Should the Parliament agree to this Bill, Australians will be able to access overseas sites. Those sites are frequently less strictly regulated than Australian sites,

10 Productivity Commission, Australia's Gambling Industries, 26/11/99, Vol 2, p.18.42.

11 Explanatory Memorandum p.14.

12 NT Government; Submission 22; Centrebet, Submission 33; The Federal Group, Submission 3; Sky City, Submission 9; MegaSports, Submission 14; Electronic Frontiers Australia, Submission 16.

if they are regulated at all, and are likely to give rise to higher incidence of problem gambling than if Australia were to have a strictly regulated industry. Gambling revenue will go overseas while Australia is left with the attendant social costs of problem gambling. Additionally technological expertise and expenditure associated with the industry will go overseas.

1.25 The Government's partial ban on interactive gambling will not reduce its accessibility, and arguments that problem gambling justifies or necessitates the partial ban rely on two assumptions:

- that the partial ban will restrict accessibility of interactive gambling; and
- that the incidence of problem gambling increases commensurate with availability of interactive gambling services.

1.26 The evidence supports neither of these assumptions. The Bill does not ban access to gambling via the Internet. In fact, it does not even take the issue seriously by prohibiting Australians from accessing interactive gambling sites. The Bill neither prohibits Australians from accessing overseas sites (or Australian sites for that matter) nor does it implement any measures that will restrict, in any real sense, the accessibility of Australians to interactive gambling.

1.27 As noted above, the Explanatory Memorandum indicates that the Bill "restricts the access of offshore providers to the Australian market, but only to the extent that Australian users choose to ... filter these services".¹³ That is not a meaningful restriction to the Australian market. It is misleading for the Explanatory Memorandum to claim that the passage of the Bill will provide increased levels of protection against problem gambling (by minimising the scope for problem gambling among Australians)¹⁴ when it is probable it will have the contrary effect.

1.28 In practice, access to online gambling will not be restricted and provided the service is conducted offshore, Australians will not be prevented from accessing interactive gambling sites. The nature of the online environment is such that placing a partial ban on the industry will not reduce the accessibility of online gambling. A proliferation of online gambling sites in Australia would simply mean greater consumer choice of regulated, Australian services. It would not increase the accessibility of interactive gambling.

1.29 Even if a link could be identified between the accessibility of online gambling and the incidence of problem gambling (none has been), this Bill does nothing to limit the accessibility of online gambling. As long as there are online gaming and wagering sites on the Internet, accessibility to online gambling will increase commensurate with increasing Internet accessibility.

13 Explanatory Memorandum, p.14.

14 Explanatory Memorandum, p.1.

1.30 In fact, the Explanatory Memorandum to the Bill states that:

... a restriction on Australians' access to this industry would result in increased patronage of entertainment activities that are taxed at a higher rate than interactive gambling, with a corresponding increase in State and Territory revenue.¹⁵

1.31 This suggests that interactive gamblers will return to land-based gambling forms where the odds of winning are lower, the taxes are higher and the incidence of problem gambling irrefutably high. That can hardly be considered a desirable consequence of the legislation.

1.32 Contrary to the Minister's contention that Australians will be very reluctant to gamble on Mafia.com or Dodgeybros.com (ie offshore sites) because they mightn't get their money back,¹⁶ the Committee received evidence that there are ample reputable gambling service providers to provide for the Australian market.¹⁷ There are also significant numbers of disreputable sites, of dubious probity from which Australians will not be protected. Some gamblers might favour those sites, particularly those susceptible to problem gambling (because of the ease of logging on etc) and it is very difficult to distinguish reputable sites from those that are not.¹⁸

1.33 In fact, some sites mislead consumers into believing that they are Australian sites to capitalise on the good international reputation of Australian gambling regulation. Evidence to the *Netbets* Inquiry demonstrates this point:¹⁹

Prof. McMillen—It is Australia that is the brand in terms of regulatory reputation and standards.

CHAIR—That is perhaps why a couple of illegal sites in the Caribbean have koala bears and an Australian flag.

Prof. McMillen—Or the Sydney Harbour Bridge.

1.34 Australian online gambling operators have indicated that they will simply relocate offshore if this Bill is enacted, and continue operating and servicing local and international online gamblers from outside Australia.²⁰ In this way, there is unlikely to be any reduction in interactive gambling services available to Australians as a consequence of this Bill.

15 Explanatory Memorandum, p.10.

16 See Senate Hansard, 28/3/01, p.23190.

17 Centrebet, Submission 33; Australian Racing Board, Submission 2.

18 Proof Committee Hansard, 4/5/01, p.4; Australian Racing Board, Submission 2; Australian Casino Association, Submission 12.

19 Netbets inquiry, Official Committee Hansard, 15/10/99, p.74.

20 Proof Committee Hansard, 4/5/01, p.3; Canbet Submission 10.

Arguments for a ban

1.35 The need for public protection from the social impact of problem gambling is argued in support of an outright ban on online gambling by community and church and welfare organisations that regularly encounter problem gamblers and see the extent of the negative effects gambling has on their lives.

1.36 Widespread community concerns about the prevalence of problem gambling are not addressed by this legislation. Nor are concerns about the availability of gambling opportunities in the home. While the Bill purports to address problem gambling, it will not prevent the 2.1 per cent of Australians who are problem gamblers from accessing almost all of the gambling sites on the Internet.²¹

1.37 Essentially the arguments that have been presented to the Committee for a ban are misguided. Support for the Bill arises from the erroneous view that the Bill will achieve its stated objective of protecting Australians from problem gambling. Labor Senators believe that the Bill will be counterproductive in that respect.

Problem gambling and interactive services

1.38 Growth in the incidence of problem gambling in recent years is attributable to increased accessibility of land-based gambling forms, particularly electronic gaming machines (EGMs). Indeed, evidence presented to the Committee during the *Netbets* Inquiry relating to the increased availability of EGMs in New South Wales and Victoria and limitation of availability in Western Australia and Tasmania indicates an incontrovertible link between EGM availability and the incidence of gambling problems.

1.39 Currently, online operators derive most of their income from overseas, with Australian online gamblers making up approximately 5 per cent of the market.

1.40 Whilst this market is likely to grow, it is clear that online gambling offers a range of consumer and problem gambling ‘protections’ unavailable in traditional forms of gaming and wagering. The ALP believes that online gambling provides the technological means to minimise harm to a greater extent than land-based gambling forms. Regulation of the industry to minimise problem gambling can involve a prohibition of credit betting, imposition of expenditure thresholds and self-exclusion mechanisms, and even require providers to examine unusual spending habits. We consider that such controls can minimise the harm of gambling to a lower level than achievable by an outright ban under which unregulated and overseas sites could proliferate.

1.41 In practice, it is likely that this partial ban on interactive gambling will exacerbate problem gambling by removing a regulated service with in-built safeguards

21 Productivity Commission, Australia’s Gambling Industries, 16/11/99, Vol. 1, p.6.1.

whilst still allowing access to unregulated and unlicensed offshore sites (in addition to regulated, reputable offshore sites). As with the *Broadcasting Services Amendment (Online Services) Bill* 1999, this legislation will lull the community into a false sense of security by contending that the Internet will be free from interactive gambling sites.

1.42 Whilst other forms of interactive gambling continue unabated (poker machines, casinos, TABs, scratchies, phone betting), Internet gambling is being singled out by the Coalition in an attempt to placate community concern, but no real solution is being offered, because there is no means of entirely preventing the harm, and the most effective option to minimise the harm has not been implemented.

1.43 A primary concern for Australian online gamblers is being ‘ripped off’ on the Internet. A partial ban will drive Australian punters wanting to bet online to offshore to unregulated and potentially dubious sites that do not necessarily provide credit card and consumer protection.

1.44 Last year there were approximately 800 unregulated offshore Internet casinos worldwide, which cannot guarantee personal security or provide the safeguards Australian online operators currently practice. That number has now almost doubled to some 1400 sites, with Australian sites comprising less than 2 per cent of the Internet gambling sites worldwide.²² It is nigh on impossible to distinguish reputable sites from those that are not.²³

1.45 It may be true in theory that a complete ban on interactive gambling by Australians is the only way to avoid consequential problem gambling, if it could be achieved. However, a complete ban is technically unfeasible and practically impossible and the Government is not even attempting to ban Australians from participating in interactive gambling.

1.46 Whilst there may be some value in the mere denunciation of interactive gambling that this Bill purports to give, the question needs to be asked - at what cost? Labor Senators do not think that the consumer and problem gambling risks which are the necessary consequence of such a limited approach permit its serious consideration as satisfactory public policy.

1.47 If the regime proposed by this Bill is implemented, potential problem gambling will be unchecked, unable to be monitored and there will be none of the protection measures in place that can restrict the harm. The Explanatory Memorandum concludes that pressure on welfare agencies will potentially be reduced,²⁴ however no evidence has been adduced to support that conclusion. Certainly funding for dealing with problem gambling is likely to decline as gambling

22 Proof Committee Hansard, 4/5/01, p.37.

23 Proof Committee Hansard, 4/5/01, p.4; Proof Committee Hansard, 4/5/01, p.37.

24 Explanatory Memorandum, p.11.

revenue goes offshore. Meanwhile the rate of problem gambling may remain unchanged or possibly increase.²⁵

1.48 As stated in a Ministerial media release on this issue, there are “very disturbing examples of how Internet gambling organisations actually feed the addictions of problem gamblers”.²⁶ There are no examples of such unscrupulous behaviour by Australian gambling operators; rather, it is offshore operators, at whose mercy the Government plans to leave Australian gamblers, who are engaging in such activity.

1.49 Some Australian online gambling operators have maintained that problem gambling has not been evident. Centrebet stated that there is no evidence of problem gambling amongst gamblers utilising its company’s services:

We say that on the basis that we maintain an online account for all our customers and there is a transaction record for those people. We can see their betting record and we can see the history of their betting experience. We also communicate with our customers quite regularly with queries and the like. On average, about one customer a year would come to us and say that they would like their account closed for a reason which might include that they think that they should limit their gambling opportunities. But it is not always for that reason; there are sometimes other reasons why they might be saying that. There is a very low incidence of that sort of problem. When we examine our client’s accounts and our records, we do not see the transaction histories that would suggest that there is problem gambling: we do not see funds being refreshed and reinvested in accounts. It is partly because sports wagering online does not create the continuous opportunities to place a bet as other mediums do.²⁷

1.50 Similarly during last year’s public hearings for the *Interactive Gambling (Moratorium) Bill 2000*, Canbet advised:

We have not had one complaint that we have taken a bet from a problem gambler... We have not had one request from a spouse of a punter to say, ‘Please, stop my spouse betting; he is sending us broke’, nor have we had one request from a punter. We have had some losers and we have also had some winners, but never has it been brought to our attention that there is a problem gambler.²⁸

1.51 This suggests a well-regulated industry such as that existing in Australia is the most effective means of substantially restricting problem gambling. This Bill, if passed, would mislead the community, potentially creating a false sense of security by

25 NT Government, Submission 22, p.5.

26 Senator the Hon R. Alston, Minister for Communications, Information Technology and the Arts, 2 April 2001.

27 Proof Committee Hansard, 4/5/01, pp.5-6.

28 Official Committee Hansard, 25/8/00, p 3.

contending that the Internet users would be 'safe' from 'harmful' interactive gambling sites. It is clear from the Explanatory Memorandum that access to online gambling sites on the Internet will still be available to any online user.

Labor Senators do not support an outright ban of gambling on the Internet because we do not consider it to be technically feasible or necessary.

Labor Senators consider that a partial ban on interactive gambling will not prevent access to online gambling and will not prevent Australian gamblers from accessing offshore sites that are unregulated and do not offer consumer protection or probity. For this reason we cannot support the Government's Bill when it is so patently not in the best interests of Australians and fails to achieve its stated objectives.

Labor Senators recommend that a national regulatory framework for online gambling be implemented which includes: Consumer protection - ensuring a quality gambling product by financial probity checks on providers and their staff, maintaining the integrity of games and the proper working of gaming equipment; mechanisms to exclude those not eligible to gamble under Australian law, problem gambling controls, such as exclusion from facilities, expenditure thresholds and the availability of transaction records; provision to minimise any criminal activity linked to gambling and privacy protection.

Existing State/Territory Regulation

1.52 The online gambling industry is already subject to a high degree of regulation and oversight by State and Territory governments and Australia has a reputation as providing good consumer protection legislation:

The approach that the Australian States and Territories have taken is widely regarded by overseas players as being without question the world's best practice ...the high reputation that the existing online gambling sites currently have accounts for the fact that most of their traffic is coming from offshore, and that their businesses are growing so rapidly.²⁹

The strict regulatory regime that has existed in Australia has worked to the advantage of the industry, in that it enjoys a high reputation worldwide. Australia leads the way in responsible [interactive] gambling and the AUS Model only serves to enhance this reputation. Indeed, many overseas jurisdictions have modelled their regulatory regimes on the Australian model.³⁰

29 Internet Industry Association, Proof Committee Hansard, 4/5/01, p.56.

30 Australian Casino Association, Proof Committee Hansard, 4/5/01, p.40.

1.53 The AUS Model (Australia: Uniform Standards for the Regulation of Interactive Gaming) is an effective co-regulatory regime that has been developed by the States and Territories and is due to be implemented as soon as it is finalised (it is presently in the final stages).

1.54 The Northern Territory Government advised the Committee that the new AUS Model has a considerable new player protection features including:

- the capacity to set a deposit limit (presently \$500 per month at Lasseters);
- players are given the option of setting a bet limit and a loss limit;
- self-imposed breaks in play are available;
- credit betting or playing on credit is not allowed; and
- improved national self-exclusions.

1.55 The Australian Casino Association and its membership (includes all Australian land-based casinos) have endorsed the model. Western Australia is not participating in application of the model, although it did participate in its development and does endorse its contents, because WA will not license gaming machines, interactive or otherwise.³¹

Labor Senators acknowledge that the online gambling industry is currently subject to a high degree of regulation and oversight and that State and Territory governments already ensure that online and interactive gambling operators meet the highest standards of probity, auditing and licensing agreements.

Labor Senators recommend that current regulatory requirements applying to off-line and land-based casinos, clubs or wagering venues should be extended to online casinos and online wagering facilities.

Other concerns with Government's approach

1.56 This legislation has the potential to inflict significant harm to Australia's reputation as a place for investment in the Information Economy. Interactive gambling is part of the broader e-commerce environment and regulation ensures security and trust in online trading, be it in shares and stock, or interactive gambling.

1.57 Labor Senators maintain that Australia's international reputation for delivering both good consumer protection laws and workable gambling regulations would be jeopardised by a ban or moratorium and this could result in a rise in criminal activities, such as money laundering.

31 WA Government, Proof Committee Hansard, 4/5/01, p.54.

1.58 Labor believes that a partial ban on Internet gambling is contrary to the best interests of the Australian Internet industry and the development of e-commerce in Australia.

1.59 In our report to the *Netbets* Inquiry, Labor Senators concluded that it was

The Australian Federal Police should be empowered to direct ISP's to takedown foreign or offshore gambling sites engaging in illegal or grossly improper activities. This will minimise, although not eliminate, the harm that these actions can potentially inflict. **The Federal Government has a responsibility to ensure that the AFP is adequately resourced to effectively deal with these issues.**

1.60 In spite of the present funding crisis of the Australian Federal Police,³² this Bill requires the Australian police forces to take on a similar role to that recommended by Labor Senators, yet the Government's Explanatory Memorandum states:

The cost of the Government's monitoring role under the legislation has been estimated at around \$1.5m in 2001-02 for start up, and then \$0.75m for each of the forward years. **These costs should be absorbed.**³³ [Emphasis added]

1.61 It is obvious that the AFP's role in enforcing this legislation will be severely restricted because it will be required to perform this role within existing, inadequate resources.

Considering that existing AFP funding is seriously inadequate and the AFP (and other police forces) is expected to fund this additional role from within existing resources, the AFP will be unable to effectively fulfil its role under the Bill, thereby compromising implementation of the measures in the Bill. Labor Senators restate the need for the AFP to be adequately resourced if it is to have any significant impact on the regulation of interactive gambling in Australia.

Specific flaws in the Bill raised during Inquiry

A number of specific concerns with the Bill and the policy approach it adopts were raised with the Committee. These include:

1. The inclusion of wagering in the Bill – serious detrimental impact on racing industry, wagering not associated with problem gambling to extent that online casino games are.

32 Duncan Kerr, Shadow Minister for Justice, Press release, 14/5/01, available at <http://www.alp.org.au//media/0501/dkmsafp140501.html>

33 Explanatory Memorandum, p.10.

2. The penalties imposed on Australian IGSPs if Australians access their sites are apparently excessively harsh given the practical impossibility of conclusively determining the location of the gambler.
3. Apparently inadvertent ban on lotteries, linked poker machines, keno etc – it was argued that the rationale for inclusion if intended is omitted from the Explanatory Memorandum, or if unintended it is unclear and any explanation is omitted, giving rise to concerns that the Bill unintentionally causes these industries detriment without justification.

1. Wagering v gaming

1.62 The Explanatory Memorandum to the Bill distinguishes interactive wagering and lotteries from interactive gaming in assessing the impact of the proposed legislation on the interactive gambling industry. The market for interactive wagering and lottery services is primarily domestic, and therefore the restrictions in the Bill “may ... have significant negative commercial consequences for segments of the industry that are focused on a domestic market.”³⁴

1.63 The racing industry has advised the Committee that the impact of the prohibition of its Internet services will be seriously detrimental, with jobs and the entire racing industry at risk from the loss of revenue to overseas operators.

1.64 Arguments have been presented to the Committee that problem gambling resulting from wagering activities does not justify the ban. The wagering industry distinguishes itself from the gaming industry in this respect. However the Productivity Commission concluded that the problem gambling was most prevalent for EGMs, casinos games and racing. Racing is not excluded from the problems. There is presently inadequate evidence of the impact of sports betting as this gambling mode has not been in existence for a sufficient period of time to undertake any meaningful analysis.

1.65 During last year’s inquiry into the *Interactive Gambling (Moratorium) Bill* 2000, the Committee received evidence that despite the availability of increased online racing services to Australian homes, there was little evidence of a parallel increase in problem gambling. The Home Racing Channel, which has been available on Sky Channel since 5 September 1998, has not resulted in a perceptible surge in problem gambling. TAB Ltd (NSW) told the Committee:

...even with these new technologies or new distribution mechanisms, we have not seen any outrageous or unwieldy sort of growth in the business. My point is that the technology will not—as some of the doomsayers suggest—create rampant growth in wagering. It just will not happen.³⁵

34 Explanatory Memorandum, p.10.

35 Official Committee Hansard, 25/8/00, p 10.

1.66 The Productivity Commission agreed:

The case for banning internet wagering (sports betting and racing) or traditional lotteries are weaker [than for gaming technologies], reflecting likely lower risks and the fact that other mediums for making these gambles are close substitutes for the internet.³⁶

Labor Senators do not believe that this Bill will overcome any of the problems associated with interactive gambling, so the extent of the relative problems for various modes of gambling (such as wagering and lotteries) is not relevant to our assessment of the Bill. Labor Senators will oppose the Bill in its entirety.

2. Penalties

1.67 It has been argued that the penalties in section 15 of the Bill are totally inappropriate because:³⁷

a) The defence in subsection 15(3) to the offence in subsections 15(1) and (2) is not defined with sufficient clarity. The defence is that the provider did not know and could not, “with reasonable diligence” have ascertained that the service had an Australian customer link. Precisely what constitutes “reasonable diligence” is unclear, yet the defendant bears the evidential burden.

b) It is inappropriate to imply that technological solutions are available to support the legislation, and it is unfair to impose severe penalties on IGSPs which inadvertently allow Australians to access their services as a consequence of unreliable location methods. Existing geolocation software is unreliable in locating users.

c) The penalty is disproportionate to the crime considering that if the same bet is taken over the telephone it is perfectly legal.

1.68 Essentially the justifiability or otherwise of the provisions of section 15 depend on the definition of “reasonable diligence”. Certainly existing methods of location are time-consuming, expensive and unreliable. In light of the seriousness of the penalties, the complaints of IGSPs seem justified, and either “reasonable diligence” needs to be defined taking the available technology and ways of circumventing it into account or the penalties must be considered unreasonable.

Labor Senators conclude that the apparent lack of clarity in defining the defence in subsection 15(3) of the Bill needs to be remedied in light of the seriousness of penalties for committing the offences in section 15 of the Bill.

36 Productivity Commission, Australia’s Gambling Industries, Vol.2, p.18.54.

37 EFA, Proof Committee Hansard, 4/5/01, p.58, Submission 16; Canbet, Submission 10; Centrebet, Submission 33.

3. Inadvertent inclusion of lotteries, TV shows, linked EGMs etc

1.69 A number of submissions to and witnesses before the Committee drew our attention to some apparently inadvertent and unintended consequences of the Bill. It was suggested that these deficiencies result from inadequate consultation processes in the formulation of the Government's policy, and from the undue haste with which it has drafted the Bill.³⁸

1.70 It seems that the Bill might prohibit:

- some terrestrial-based gambling services linked by telecommunications services;
- TAB network operations and back-office operations;
- services currently provided by the television networks (TV games);
- the sale of lottery tickets in newsagencies using telecommunications services.

1.71 NOIE advised the Committee that it is not the intention of the legislation to prohibit those types of services, and that if those services are inadvertently covered there may be a need for some amendments or further clarification.³⁹ It was suggested by NOIE that the Minister's power to exempt certain services from the coverage of the prohibition was intended to be used to deal with any uncertainties that might be discovered in the Bill.⁴⁰

1.72 There are three points that Labor Senators wish to make in this respect:

- a) The Government's haste in and lack of consultation prior to the introduction of this Bill has resulted in flaws which go beyond the fundamental flaws in the policy approach.
- b) It is inappropriate to rely on the Minister's exemption power considering the extent of uncertainty that has been revealed to exist in the Bill.
- c) The flawed approach to public policy in this Bill, namely the technology specific prohibition that it seeks to impose, is as inappropriate as it is convoluted and complicated to implement.

Considering that these gambling modes that are apparently inadvertently prohibited pose a minimal threat to problem gambling, a rationale for their inclusion is unclear, and the Explanatory Memorandum does not provide any

38 Submissions. EFA.

39 Proof Committee Hansard, 4/5/01, p.59 (re lotteries, TABs, keno etc); Proof Committee Hansard, 4/5/01, p.60 (re TV games).

40 Proof Committee Hansard, 4/5/01, p.59.

guidance on that account. NOIE has stated that they are not intended to be banned so this appears to be another flaw in the Bill, albeit one that the Government could be expected to rectify.

Conclusions

1.73 Labor Senators maintain that the most effective way to manage interactive and Internet gambling is to have State and Territory cooperation in formulating a national regulatory regime.

1.74 Labor supports Federal co-ordination of consistent State-based regulatory regime. The appropriate forum is the Ministerial Council comprising relevant State and Federal Ministers developing a national regulatory framework.

1.75 Labor affirms its support for a regulatory framework, and industry wide codes of practice including:

- mechanisms to exclude those not eligible to gamble under Australian law;
- problem gambling controls (eg, exclusion from facilities, expenditure thresholds, the availability of transaction records);
- privacy protection;
- regulation of propriety in advertising; and
- software and accounting procedures.

1.76 Given that a complete ban is not feasible and would simply allow operators of online casinos and sports betting agencies to move offshore and remove any protection to consumers, Labor supports the continued development of an effective co-regulatory regime and opposes the Bill and the flawed policy it seeks to implement.

1.77 The overall policy approach of the Government is flawed, this is evident from the fact that the legislation seeks to put in place a system that cannot even achieve its stated objectives, and threatens to defeat and even worsen the consequences sought to be avoided.

1.78 The Government's approach to interactive gambling is nonsensical, in fact, only one true rationale can be derived and that is blatantly political scaremongering. Rather than act in the best interests of present and potential Australian consumers of Internet gambling services, the Government seeks to capitalise on the general public's fears of gambling and misunderstanding of the issues, to the ultimate detriment of all Australians.

Senator Mark Bishop
Deputy Chair
(ALP, WA)

Senator Kate Lundy
(ALP, ACT)

AUSTRALIAN DEMOCRATS

DISSENTING REPORT

1. Introduction

In our view, the Interactive Gambling Bill 2001 may be a well-intentioned attempt to address normative values on Australia's gambling culture, particularly for problem gamblers. However, we believe the Bill is unworkable and thus should be defeated in its entirety.

Contrary to popular perception, the Bill does not and cannot prohibit on-line gambling. It is impossible to ban or prohibit internet accessibility of any nature in its entirety. The internet is without international borders and straddles countless and conflicting legal jurisdictions.

All this Bill achieves, if passed, is a prohibition on Australians using Australian based gaming sites from within Australia. This means on-line gamblers can and will still go to overseas sites with the 'click of a mouse'.

The result is that Australian money and jobs then goes overseas and internet gaming is still accessible to any Australian who seeks it.

Accordingly, we do not support the key recommendation (R. 2.1) of the Chair's report that the Senate adopt the prohibition approach to internet regulation proposed by the Interactive Gambling Bill 2001. It follows then, that we believe the Chair's other two recommendations (R. 3.1 and R. 4.1) are not relevant, although, considered in abstraction, we acknowledge their rationale.

2. Problem Gambling

At the outset, we emphasize that problem gambling is a serious social issue with disastrous consequences for individuals, their families and communities. Moreover, we are most concerned that problem gambling has particularly severe consequences in low socio-economic communities. That is, problem gambling has a major social equity dimension.

Problem gambling is not reducible to one readily isolable factor, thus we are committed to a multi-faceted harm minimisation and education approach, including the 'managed liberalisation' regulatory measures as advocated in the Productivity Commission's *Australian Gambling Industries* report.¹

A significant driver in this social problem is the proliferation of Electronic Gaming Machines (EGMs) or 'pokies', which in turn, is directly correlated with the needs of State and Territory governments to maximise revenues. A clear example of this relationship is the significantly

1 Refer Australian Democrats Supplementary Report in Senate Select Committee on Information Technologies, *Netbets: A Review of On-line Gambling in Australia*, May, 1999.

lower incidences of problem gambling in Western Australia - the state that has best resisted the temptation to allow proliferation of EGMs.²

We believe it is clear that State and Territory governments' increasing reliance on gambling revenues is symptomatic of a systemic political failure by successive Governments to develop an equitable and realistic revenue base. It is not feasible that significant inroads into problem gambling can be achieved independently of addressing the broader resourcing issues for States and Territories.

3. Prior Consideration

As the Chair's report notes, there has been significant public discussion of the proposed ban on interactive gambling and thus the basic positions and arguments are well known.

The Senate report *Netbets: A Review of Online Gambling In Australia* and the Productivity Commission report recommended a regulatory approach over prohibition. The Democrats concurred with that approach in our supplementary comments in the Netbets report. We believe no evidence presented to this inquiry or canvassed in the Chair's report explains why the findings of the earlier Senate inquiry should now be disregarded, nor provide a convincing case that prohibition is the best approach.

4. The Bill

The Bill makes it an offence for providers located in Australia to provide interactive gambling services to a person physically present in Australia.

The committee heard a number of principled objections to this approach, including the right of Australian adults to take responsibility for their own lives³ and the highly dubious ethical stance whereby Australians should be protected from interactive gambling with Australian sites but Australian operators can profit from citizens of other countries.⁴

In addition to the principled arguments, there are a number of significant technical flaws in the reasoning of the Bill's approach.

The Bill does not make it illegal for a person physically located in Australia to access off-shore interactive gambling providers. As NOIE have pointed out the technical and commercial difficulties with quarantining access to off-shore sites cannot be reasonably achieved.

Thus, if the estimate that 2.1 per cent of gamblers are problem gamblers is accepted, this creates an important anomaly whereby:

The Bill ... will deny the 98 per cent recreational gamblers the benefits of using Australian sites but will not prevent the 2 per cent of problem gamblers from accessing almost all of the gambling sites on the internet. As offshore sites do not

2 Western Australian Government, Submission 17, p 1.

3 Ms Rotermund, Submission 4, p 1.

4 Australian Institute for Gambling Research, Submission 34, p 2.

have the harm minimisation features required by Australian regulations, this will exacerbate problem gambling.⁵

The committee heard evidence from a number of submittees and witnesses that the internet is the most effective platform for harm minimisation.

As Mr Clark, representing the Northern Territory Department of Industries and Business, stated:

It is ironic that many of the features that COAG and the Ministerial Council on Gambling would like to see implemented in the physical world are inspired by or easily achievable on the Internet technological platform. Even more ironic is that with many of those that we are currently looking at with a view to moving into the physical world we will struggle to replicate what is available on the Internet ... We expect these features to help in fighting problem gambling. Indeed obviously the Productivity Commission, COAG and the Ministerial Council do as well or they would not have recommended that these features be applied to the physical world.⁶

Other submittees gave some detail as to the technological mechanisms available to ensure harm minimisation, including ‘smart card’ technology.⁷ While there are some important concerns with privacy aspects of such technologies, we believe an effective regulatory framework is the proper place for addressing such concerns.

We also note the plausible, though speculative claim, that technological mediated harm minimisation approaches would have a broader spin off in helping to foster the uptake of e-commerce using smart card and other technologies.⁸

5. Wagering

A number of submittees and witnesses argued that wagering should not be captured by the Bill. It was argued, for instance, that:

- a) wagering differs qualitatively from interactive gambling as wagering is “about skill and judgement”⁹ whereas interactive gambling is determined by a random number generator “with the certainty that participants will in the end lose a set proportion of their bet”.¹⁰
- b) banning wagering may have significant impact on the racing industry, particularly in regional Australia,¹¹ because off-shore operators will return no revenue to the industry,¹²

5 Northern Territory Government, Submission 22, p 3.

6 Mr Clark, *Committee Hansard*, Canberra, 4 May 2001, pp. 48 – 49.

7 Fujitsu, Submission 27; Regis Controls, Submission 15

8 Regis Controls, Submission 27, p 2.

9 Dr Ashman, *Committee Hansard*, Canberra, 4 May 2001, p 9.

10 Canbet, Submission 10, p 1.

11 Australian Racing Board, Submission 6

12 Mr Charley, *Committee Hansard*, Canberra, 4 May, 2001, p 11.

- c) the internet does not introduce any new games but functions as a new way to place a bet, primarily replacing phone betting,¹³
- d) the internet constitutes a cost saving for providers.¹⁴

We believe such arguments have merit but also note the argument advanced by a number of submittees, that wagering should not be exempt because wagering is a significant source of problem gambling and is not as well developed in harm minimisation approaches as internet gambling.¹⁵

There is a strong case that harm minimisation is best approached in the context of regulation thus we remain unconvinced by the rationale advanced in the Chair's report that wagering, unlike lotteries, should not be exempt from the ban. However as the Bill should be defeated in its entirety it is entirely academic whether we will seek to amend or support an amendment to exempt wagering.

6. Emerging Issues

By way of conclusion, the inquiry did clarify some emerging issues in respect of datacasting and television delivery of gambling services. While the Democrats would need to look more closely at this issue before adopting a position, we do believe that a future inquiry into this form of gambling delivery may be warranted.

Senator Brian Greig
Democrats IT Spokesperson

13 TABCORP, Submission 24, p 8, ARB, Submission 2, p 8.

14 TAB NSW, Submission 7, p 3. See also Mr Charles, *Committee Hansard*, Canberra, 4 May 2001, p 16.

15 AIGR, Submission 34, p 2. See also Mrs Pafumi, *Committee Hansard*, Canberra 4 May 2001, p 41.

AUSTRALIAN DEMOCRATS

MINORITY REPORT

Context

This report is written at a time when the extension of gambling outlets in Australia has reached alarming proportions. In recent surveys a majority of Australians have indicated their opposition to the opening up of further outlets for gambling.

The main reasons for this opposition has to do with the harm caused to individuals and families through gambling addiction. There is also a growing concern about the increasing dependence of State Governments on gambling as a source of revenue.

Some social commentators have commented especially on the extension of gambling within Australian homes which would occur if the extension of internet gambling goes ahead.

Rev Tim Costello, in his book “Wanna Bet”, points out that the demand to extend gambling facilities comes from the industry itself, not from public demand for more outlets. He also writes of the incremental increase in gambling through State Governments’ progressive watering down of the tougher regulations of 20 – 30 years ago.

The proposed legislation is the first time since the second World War that any Australian government has proposed legislation that limits gambling rather than extending/regulating gambling.

We welcome the commitment from the Government to the Democrats that it will commit funds towards research into the social and economic effects of gambling and towards an education programme warning Australians about the dangers of the misuse of gambling. The Democrats urge the Federal Government also to continue to work with the States to increase funding for counselling and rehabilitation programmes.

The effect of the legislation

We recognise that the concept of banning all internet gambling is problematic because there is technically no way to stop access to internet sites at Australia’s borders. On this point, we agree with Senator Greig’s report. Nonetheless, this legislation, using the Australian Constitutional telecommunications and corporations powers, will limit the availability of interactive gambling services to Australians by making it an offence to provide them within Australia.

The States would not be able to issue licences nor profit from taxes collected from interactive gambling and whilst Australians would be able to access offshore sites, in our view they would be less inclined to do so knowing that there would likely be fewer consumer safeguards in place.

Industry and some states argue that a regulatory approach is more appropriate than legislation however, we note that regulations have no jurisdiction over offshore providers either.

We also share the view of Senator Greig's report that there is no good argument to allow Australian internet gambling providers to operate overseas. We do not accept that the very high revenue of \$1 billion said to be lost out of this country if Australian operators cannot conduct business overseas justifies a weakening of Australia's stand on opposing internet gambling. In fact, it is our view that any moral suasion this legislation might carry in assisting other countries to also protect their residents from social damage due to internet gambling, would be lost through this provision in the bill.

Recommendations

We support the recommendations of the majority report but will move amendments to the legislation.

Senator Lyn Allison

Senator John Woodley

APPENDIX 1

LIST OF SUBMISSIONS

- 1 Australian Registered Bookmakers' Advisory Council
- 2 Australian Racing Board
- 3 The Federal Group
- 4 Ms Alexandra Rotermund
- 5 Lasseters Online
- 5(a) Lasseters Online
Answers to Questions on Notice
- 6 Boystown Lotteries
- 7 TAB Ltd (NSW)
- 8 World Lottery Association
- 9 Sky City Ltd
- 10 Canbet
- 10(a) Canbet
- 11 Mr Peter Watson
- 12 Australian Casino Association
- 13 Festival of Light (SA)
- 14 MegaSports (ACT) Pty Ltd
- 15 Regis Controls Pty Ltd
- 16 Electronic Frontiers Australia
- 17 Western Australian Government
- 17(a) Western Australian Government
- 17(b) Western Australian Government

18	Mr Andrew Baxter
19	Centreracing
20	Australian Capital Territory Government
21	Tattersall's Holdings Pty Ltd
22	Northern Territory Government
23	International All Sports Ltd
24	TABCORP Holdings
25	Siemens Ltd Telecommunications
26	Mr Greg Wear
27	Fujitsu Australia Ltd
28	GoCorp
29	State Retailers Association of South Australia
30	Golden Casket Lottery Corporation Limited Lotteries Commission of South Australia Lotteries Commission of Western Australia Tattersall's Sweeps Pty Limited
31	Jupiters Ltd
32	Baptist Community Services (SA) Inc
33	Centrebet Pty Ltd
34	Australian Institute for Gambling Research
35	Federation of Australian Commercial Television Stations
36	Internet Industry Association
37	Austar Entertainment Pty Ltd

APPENDIX 2

LIST OF WITNESSES

Canberra - Friday, 4 May 2001

Canbet Ltd

- Mr Richard Farmer, Chairman

Centrebet

- Mr Piers Morgan, General Manager

Jupiters Ltd

- Mr Rob Hines, Group General Manager

Australian Racing Board

- Mr Robert Charley, Chairman
- Mr Andrew Harding, Executive Officer

Australian Registered Bookmakers' Advisory Council

- Dr Jack Ashman, Chairman
- Mr Tim Ryan, Member, Internet Betting Subcommittee

TAB Ltd

- Mr Warren Wilson, Managing Director
- Mr Peter Fletcher, Public Affairs Managing Director

TABCORP Holdings

- Mr David Charles, General Manager, Government Affairs

Golden Casket Lotteries

Lotteries Commission of SA

Lotteries Commission of WA

Tattersall's Sweeps Pty Ltd

- Mr Bill Thornton, Chief Executive

Tattersall's Holdings Pty Ltd

- Mr John Mortimore, General Manager

Federation of Australian Commercial Television Stations (FACTS)

- Ms Julie Flynn, Chief Executive Officer
- Ms Susan Oddie, General Manager, Business Affairs, Network 10

Festival of Light (SA)

- Mrs Roslyn Phillips, Research Officer

Baptist Community Services (SA) Inc

- Mr Paul Madden, Executive Director

The Federal Group

- Mr Gregory Farrell, Managing Director
- Mr John Farrell, Director, Business Development

Australian Casino Association

- Mr Chris Downy, Executive Director
- Mr Gregory Farrell, Deputy Chair, Online Gambling Taskforce
- Dr Rob Campbell, Consultant, ACIL

Lasseters Online

- Ms Joanne Pafumi, Consultant

Northern Territory Government

- Mr Tony Clark, Director Policy & Legislation Development, Planning and Strategic Development Division, NT Department of Industries and Business

Western Australian Government

- Mrs Petrice Judge, Director of Federal Affairs, Office of Premier and Cabinet
- Mr Ray Bennett, CEO, WA TAB
- Mr Jon Nichols, Manager, Policy and Executive Support, Office of Racing and Gaming
- Ms Jan Stewart, CEO, Lotteries Commission of WA

Internet Industry Association

- Mr Peter Coroneos, Executive Director

Electronic Frontiers Australia

- Ms Irene Graham, Executive Director

National Office for the Information Economy

- Mr Keith Besgrove, Acting Chief General Manager,
Business and Community Online Group
- Mr Tom Dale, General Manager, Regulatory

APPENDIX 3

ADDITIONAL DOCUMENTS

Tabled documents

Federation of Australian Commercial Television Stations (FACTS)

- Videotape titled *Seven Digital Presenter*

Northern Territory Government

- Australia: Uniform Standards for the Regulation of Interactive Gambling (The AUS Model) – Exposure Draft, released 5 April 2001, by the National Working Party on Interactive Gambling, pp 1-23.

