



COMMONWEALTH OF AUSTRALIA

# Proof Committee Hansard

## SENATE

SENATE SELECT COMMITTEE ON INFORMATION  
TECHNOLOGIES

**Reference: Online gambling in Australia**

WEDNESDAY, 16 FEBRUARY 2000

CANBERRA

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## SENATE

### SELECT COMMITTEE ON INFORMATION TECHNOLOGIES

Wednesday, 16 February 2000

**Members:** Senator Ferris (*Chair*), Senator Bishop (*Deputy Chair*), Senators Calvert, Harradine, Lundy, McGauran, Stott Despoja and Tierney

**Senators in attendance:** Senators Bishop, Calvert, Ferris, Harradine, and Stott Despoja

**Terms of reference:**

To inquire into and report on:

- a. the nature, extent and impact of online gambling in Australia;
- b. the feasibility of controlling access to online gambling, especially by minors;
- c. the adequacy of State and Territory regulations in relation to online gambling; and
- d. the need for federal legislation.

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**Committee met at 4.33 p.m.****MELICK, Mr Aziz Gregory, Member, National Crime Authority**

**CHAIR**—I declare open this public hearing of the Senate Select Committee on Information Technologies. I welcome all witnesses appearing before us today. Today's hearing is the fifth public hearing of the committee's inquiry into the nature, extent and impact of online gambling in Australia. Today we have a witness from the National Crime Authority and from the Productivity Commission. The committee is particularly interested at this stage in the industry's development to ensure that, if there is a need for regulatory intervention in the operations of the industry, these measures are put in place at the earliest opportunity.

I welcome our first witness from the National Crime Authority, Mr Greg Melick. The committee prefers all evidence to be given in public. However, you may at any time request that your evidence or part of your evidence be given in private and the committee will consider any such request. However, I should point out that evidence taken in camera may subsequently be made public by an order of the Senate. I also remind witnesses that the giving of false or misleading evidence may constitute a contempt of the parliament – there is hardly a need to say that to you, Mr Melick. The committee has before it submission No. 6, which has already been published. Are there any alterations or additions that you would like to make to the submission at this stage?

**Mr Melick**—I would just like to make some general comments to put the submission in context and probably make an addition to it.

**CHAIR**—I now invite you to make an opening statement and then we will ask you some questions.

**Mr Melick**—Some of these comments have more to do with policy – and I make them more in a personal capacity than for the organisation – and many of the issues are covered by the Productivity Commission. But I think we should make it clear that there are three aspects of Internet gambling that you have to look at: Australian citizens gambling in Australia, Australian citizens gambling offshore, and offshore citizens gambling in Australia through Australian service providers. All of the comments I make towards the end of my opening statement apply to all of those systems.

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 – in fact, the one Antiguan system was turning an average of 27 per cent by the time they took out their running costs and all the rest of it – and there is no money going back to the Australian government to deal with the societal problems caused by gambling. If you have offshore citizens gambling in Australia, there is a good balance of payments effect for Australia and also it generates taxes which may be used for the benefit of people in Australia with a gambling problem.

They are some of the issues I wanted to highlight because they do not seem to have been brought out in some of the other papers I have seen that have gone to the committee. The problem with all of the systems is that, unless they are properly regulated or unless there are proper systems put in place, they are all ripe to be used to by money laundering criminal elements and the rest of it. The papers deal with the money laundering methods and problems. We can partially control and make life difficult for people using Internet gambling; however, what concerns me and our organisation is the will and the ability of government to actually do something in a timely manner about it. If the industry is not properly regulated and the government is not prepared to enter into agreements or coerce financial institutions to take appropriate methods, any one of the three systems I am talking about can be used to the detriment of the Australian community.

I want to highlight two of the problems. One of the problems is payment by credit card. Most Internet gambling involves payment by credit card. Credit card transactions as a general rule are not covered by Austrac and most of the transaction centres are overseas so we have no jurisdiction control over them. There are also major problems with theft of credit cards and the funds being expatriated back to the gambler and not to the credit card. We have said in the paper that, if nothing else, we should ensure that gamblers return the money to the source from which it came. That would make it a lot easier for us to regulate.

As I understand it, some of the consumer groups want to have the funds paid within 24 hours to the consumer if he wins. That makes life very difficult because they cannot even get clearances through the credit card company in that time and they usually have to pay it out in cash or cheque – it is usually cheque – because credit card companies will take refunds but they have no system in place for allowing payments against the credit card from a third party and they are not particularly interested in

doing that because they do not get any commission for it. It is an administrative cost to the credit card company and they do not get any commission.

**Senator MARK BISHOP**—You mention in paragraph 22 on page 6 about paying winnings back to the account from which the money originally came out when the bet was made. Do you regard that as critical?

**Mr Melick**—It is very important because it does not have an open-ended loop. It is very easy for somebody to deposit money into an overseas credit card and use that overseas credit card to deposit money in an Australian Internet gambling site – or any other gambling site in the world – and then get the gambling site to pay them out. Say they put \$100,000 into the gambling site and they bet conservatively – they bet on even money chances – they would pay the gambling crowd a five or 10 per cent commission. What they have effectively done is pay five or 10 per cent tax instead of 50 per cent tax because they get the money back from that gambling company as gambling winnings, which is not taxable. We have got no way to look behind the gambling transaction to see where the money came from.

**CHAIR**—What is the response to the Lasseters idea of having cheques? We took evidence from Lasseters Casino in Alice Springs and they do not pay out to credit cards at all. They pay an order cheque and it is posted to the recipient of the winnings.

**Mr Melick**—That is a perfect way to launder money if I have got the money in my credit card illegally – which I can do quite easily. It is the easiest place to put it. Unless I am stupid enough to keep going back to the same bank and using different names, I can have 10 credit card accounts under different names and go and deposit money in those on a regular basis, about \$7,000 or \$8,000 in cash. I can go and do that at eight different banks and I can do it for the same credit card three times in a week, and now I have got \$240,000 or \$300,000 a week going to a credit card in such a manner that it is not going to alert Austrac. Once it is into the credit card system, it is not traceable by Austrac. I then use that money to bet with Lasseters, I get from Lasseters a cheque and it is clear. It is tax free.

**Senator MARK BISHOP**—Can you give us an idea whether this is a fear that the NCA has?

**Mr Melick**—We are only aware of one or two people having used it to date. Firstly, it is a very difficult matter to detect. Secondly, it is only in recent years that we have had a big effect on money laundering, and people had to start looking for other methods. As you are probably aware, they use casinos all the time to launder money. I cannot talk about NCA operations, but I can say it is not uncommon to have an unemployed Asian putting millions of dollars over casino tables in turnover in less than six to eight weeks. We can pick that up and do something about it, trace the money back to the source, because the casinos will alert us.

**Senator MARK BISHOP**—So you are saying it is a problem, it is going on as money laundering through casinos –

**Mr Melick**—The money laundering goes on through casinos throughout the world all the time. The trouble with money laundering through casinos is that you have actually got to go and you have got to cash in your chips, and now casinos are becoming more and more responsible – and they have got their obligations to Austrac anyway – and they are reporting it. So if somebody comes in with \$200,000, cashes \$200,000 worth of chips, gambles with \$30,000 or \$40,000 worth, and then goes and cashes in the remainder, they will report it to us. But if it is done on Internet gambling, especially through credit cards or through an overseas site, we have got no way of discerning the source of the income.

**Senator MARK BISHOP**—So your recommendation in paragraph 22 is not just a suggestion but is quite critical to your law enforcement activities?

**Mr Melick**—Yes, unless there are other systems put in place, and I do not have those solutions at the moment. The other thing is that I find it extraordinary that Internet service companies would want to pay out so quickly by cheque, especially on the chance of the credit card being stolen.

**Senator MARK BISHOP**—That might be a commercial risk they are prepared to take.

**Mr Melick**—It might be.

**CHAIR**—But also there are a number of security IDs that they have got to go through each time they open up a credit card account to gamble on it. Certainly at Lasseters that was part of their access process, wasn't it?

**Senator MARK BISHOP**—I think Mr Melick is making the suggestion that some of the procedures to get credit cards are fairly easily got round.

**Mr Melick**—Organisations send out application forms. We are renting a house. We have had applications for credit cards for three lots of previous tenants come to us, and all we would have to do is fill it in and send it back and we would have it, because they are already an established customer with the bank.

**CHAIR**—Senator Stott Despoja cannot stay too long, so let's give her a chance to ask some questions. We will come back to the rest of us.

**Senator STOTT DESPOJA**—Thank you, Chair. I have just got one to begin with, Mr Melick. Might I take this opportunity to wish you all the best, once you leave the NCA, and I hope you enjoy your evening this evening. There is a huge crossover of NCA committee members here – that is the reason I say that.

I am curious more generally about your recommendation for a review of existing criminal offences. I know that you have made two points in relation to this, one to deal with the issue of national or international jurisdictions but also about emerging criminal methods. I am just wondering if this is a recommendation you are making, and who would be responsible for that kind of overview. When you talk about emerging criminal methods, presumably this is much broader than online gambling.

**Mr Melick**—The world has a massive problem with electronic commerce and governments have to start coming to grips with it. I have been agitating for three years for some basic reforms and I cannot get anywhere, nobody seems very interested in it. For instance, everybody who gets a domain name or an Internet address should have to have a 100-point check. If we had done it three years ago when I first started agitating about it, we would have several million fewer people to have to worry about now. Sooner or later we have to prove the identity of an Internet user. If we cannot, people are going to have a lot of things to hide behind.

We have the potential for massive jurisdictional argument. I should not be saying this as I am about to go back into private practice and I am looking forward to making a lot of money by running all these jurisdictional arguments. If you have somebody in a rowboat in the middle of the Pacific who causes funds to be moved from a Queensland account into a Western Australian account, where has the offence occurred? There are all sorts of suggestions to say that either state in which the damage has been done has some sort of jurisdiction. I am not so sure about that. I think there is going to be a lot of arguments about that.

America overcame the problem in 1952 when they legislated the wire fraud provisions of the federal criminal code which make it a federal offence to use any part of the telecommunications system to commit any part of a crime anywhere in the United States. There is one problem with that: if the federal government enacts such legislation, it will have to appropriate a lot more money for federal law enforcement because in America once that happened federal expenses went up. But I do not see any other way to realistically deal with the problem than to use our telecommunications power under the Constitution to enact such legislation.

**Senator MARK BISHOP**—That American legislation was to bust the mob over there, wasn't it?

**Mr Melick**—No, that was the racketeering legislation. No, the wire fraud was because they had so many disputes between states. It goes back to the question in the old days about blackmail: if a letter is written and posted in Germany and received in England, do the English courts have jurisdiction? The jurisdiction of the courts has been extended by such cases as Stonehouse, who was the sleazy English politician who drowned his wife in the Caribbean or in some foreign country.

**CHAIR**—He faked his own death?

**Mr Melick**—That is right, he did. I was thinking of another case. You are quite right. He was dealt with for fraud in England. That to me was a bad case of probably making good law. Just because of the moral outrage at the case the court stretched the limits to make sure the English law applied. I do not see why we should be opening ourselves up to all this when it can be so easily dealt with by something as simple as the wire fraud legislation.

The Americans have taken it further. They had postal legislation and they now have Fedex legislation in similar terms to wire fraud. Recently when I was in the States I was quite amused to see a twin-turbo prop with American Postal Service written on the side of it lined up against seven Fedex jumbos. It makes you realise just how big Fedex has become. So the Americans take a pragmatic view and, when an organisation becomes big, they will enact legislation to cover it.

In Internet gambling the Americans are being quite proactive. You can cause a lot of problems for gamblers or gambling institutions by legislating, for instance, to make gambling debts unenforceable. Internet gambling in America is illegal. There are the Marino and the Haines cases, which you are probably aware of, which sent a few shudders down the spines of the credit card companies. The other thing you can do is regulate Internet service providers by forcing them to remove domain names once they have been identified as a gambling site.

People keep saying there is nothing you can do. You can do a lot, but you have to have the guts to enact the laws and be prepared to spend the money to enforce them. I happen to agree with the principle of the legislation which Senator Harradine had introduced. People say it is interfering with free speech, it is overregulating and all the rest of it. I am not going into the morality or otherwise of the underlying legislation; I do not think it is appropriate that I comment on that at this committee. I think the legislation itself is appropriate, but the industry are outraged by it. They say, 'It is impossible. We should not have to do this. You are placing a lot of your workload on us.' My view is

they are making a lot of money out there, they are the ones providing the service, they are the ones who can regulate it and they are going to have to be forced to shoulder the load.

**Senator STOTT DESPOJA**—Do you have a comment on its enforceability? I understand your rationale in that they should give some of these profits for regulation, but in relation to the government's responsibility and some of the responsibilities contained under the online services legislation, do you think it is a workable bill? Do you think it is workable legislation?

**Mr Melick**—The legislation is workable if you are prepared to spend the money enforcing it. Governments have a very poor record of spending adequate money on enforcement. I am talking about governments of all colours and persuasions, state and federal. Initially, it is very expensive to set up. At the moment, there is no forensic capability in Australia to deal with electronic commerce, Internet fraud and matters such as that. Clinton has just allocated in excess of \$2 billion to set up a capability in the States. They are a long way behind as well. They have suddenly realised just how serious it is becoming. We have to start spending real money on this. I think – and this is a personal view; I have not discussed it with my other members formally, though I have discussed it informally – we probably need to have some overarching body in Australia that is responsible for all law enforcement in relation to electronic issues to try to bring together all the jurisdictions and all the interested parties. It would be for criminal offences like Internet gambling, pornography and the lot.

**Senator STOTT DESPOJA**—Would it be a national body? Most of your comments seem to be geared towards uniformity or national legislation.

**Mr Melick**—I think it has to be something like that. It has to be something like national legislation underpinning state legislation to remove the jurisdictional boundaries, quite frankly. I would have thought that it should not be that hard to get agreement between the bodies. The biggest problem about getting agreement, as far as I can see, is that state governments are worrying about missing out on the income from Internet gambling.

**CHAIR**—They would consider that quite a significant issue.

**Mr Melick**—Yes.

**Senator STOTT DESPOJA**—I want to clarify the notion of the points check. It is 100 points for people to establish accounts?

**Mr Melick**—Yes. Internet service providers are not very happy about this idea because it means they would have to have a physical presence. You would have to have an office to go to, unless of course you have an appropriate electronic signature and electronic identity regime set up that could then be used. At the moment, it is just tapping a few notes on the keyboard, and all you need is a credit card. As I said, it is not all that hard to get a false credit card.

**Senator MARK BISHOP**—We had a lengthy discussion in the debate on the broadcasting services bill on take-down provisions, notice issues and that sort of thing. Repeatedly we were told by the CSIRO and other government agencies that it was not feasible to effectively disable pornography coming in from overseas. Your submission here recommends a form of disablement. Can you comment on that?

**Mr Melick**—You can disable everything coming into Australia, but the first problem you are going to have is how to detect it and at what level you do it in the Internet domain. Once it is detected and you give the server notice, the ISP has to then take the domain name off his service or he is in strife. Your problem is then when people start going to Internet service providers outside of Australia. It means they have to pay an ISD phone call rate to do it, so it becomes more expensive for them, but once they start doing that the only way you can properly control it is by having international agreements on it. That is where the problem is. I can directly dial to an Internet service provider overseas and pay the associated costs. Of course, if the profit is there in gambling, they may be prepared to bill that themselves. There may have a 1800 number equivalent.

**CHAIR**—Presumably if they are wanting to launder money, having to dial overseas is no barrier compared with the opportunities that they have then got for themselves.

**Mr Melick**—Of course.

**Senator MARK BISHOP**—I was not really thinking so much of the money laundering or the drugs aspect but more of the argument between a properly regulated domestic industry and competition from offshore.

**Mr Melick**—You are always going to have that. America have become very firm about this and, as far as I can see, they are standing alone. They have launched a couple of successful prosecutions against an Antiguan company and another American company, which is in the Dominican Republic, America and Canada. They have actually had some success at blocking sites.

**Senator MARK BISHOP**—To summarise what you say, you are of the view that it is technically feasible, but once the server is relocated out of Australia or the domestic consumer gets its source from offshore then you have to have international agreements to address the same issue. Is that right?

**Mr Melick**—Yes. I must put the caveat that I do not claim to be an IT expert. I have a good understanding of it; I do not claim to be an expert on it. I downloaded from the Internet just this morning a very interesting paper by an American assistant attorney in New York called Joel Schwartz which deals with these issues and how to do the block and take down provisions on domains and so on. I have undertaken to make it available to the committee. It is quite lengthy, over 50 pages.

**Senator HARRADINE**—You are going to provide a copy of that to the committee?

**Mr Melick**—Yes.

**Senator HARRADINE**—Good, thank you.

**Mr Melick**—There are gaps. There are always going to be gaps, so you try to make life difficult. If you go to the financiers and say, ‘Your financial arrangements will be unenforceable if it is for illegal purposes,’ and if you go to the Internet service providers and say, ‘You will have to comply with this sort of regime,’ you start making life difficult. Other countries start doing the same. You are always going to have your tax havens and all the rest of it which are going to facilitate this sort of traffic, because it is worth while. Vanuatu, I think, is offering once-only fees of \$1½ million for establishing an Internet gambling site. There is another paper which I have prepared – it is still in very raw form – which I have also undertaken to get to you. It is interesting that, when you look at some of the places in Internet addresses, you see that Aces Casino is licensed in Venezuela, the ultimate owner is in the US and the domain server is in the US; then you have one here, Cyberbets, which is licensed in Dominica, the ultimate owner is in the United States, and the server location is in Canada to overcome the problem.

**CHAIR**—We had evidence fairly early on in this inquiry from Canbet. One of the witnesses, Mr Colquhoun, who I think is quite a well-known lawyer in Canberra, told us that they got a very large number of US gambling individuals who bet on the US football. I asked him whether he was concerned about going to the United States, given that it was well known that that was the principal base of their business, and he said he was not worried about it at all. He felt that the question of a successful transaction was so uncertain that he did not see that his company was in any way vulnerable to prosecution by the United States government.

**Mr Melick**—The state of New York has launched a successful prosecution and actually arrested people, seized their assets and come to financial agreements with them.

**CHAIR**—I have seen that.

**Mr Melick**—If you want to go to the money and shake it all the way to the United States Supreme Court, you may win or may lose – I don’t know. But you have to have an awful lot of money to litigate all the way up there, the way the American legal system is.

**CHAIR**—So you would see that the online casinos in Australia that are currently taking bets from US citizens who are living in the United States are actually vulnerable to prosecution now?

**Mr Melick**—I had better be careful with that, because the ones that were arrested in this were actually US citizens, although they had established the Internet gambling site in Antigua. I am not sure about the extraterritorial applying of a US law to an Australian citizen who is aiding and abetting an offence in the United States.

**CHAIR**—It comes to the point of where the transaction occurs, doesn’t it?

**Mr Melick**—According to US law, it occurs in the United States.

**CHAIR**—If it comes off a US credit card, I suppose it does.

**Mr Melick**—Not even that, because you have got to use part of the US telecommunications system, so it is caught by the wire fraud legislation. In Australia we have not got that, so we have not got that certainty at the moment. As far as a US regulator is concerned, there has been offence committed in the United States. As to whether or not the international comity provisions or extraterritoriality of the criminal provisions of the United States code would cover it, I do not know.

**Senator CALVERT**—I have a quick question before I go. Greg, what law enforcement agencies does the NCA deal with about online gambling so far, and what are the views of these international agencies with regard to fighting money laundering?

**Mr Melick**—We have had informal discussions with very few people about it – the New York Attorney-General’s Department and some FBI people. The United States have been very slow as well in getting this up and running, and that is part of the problem. The FBI now has a unit; I spoke briefly to the director of the FBI

about it when he was out here last year, and he said, 'Speak to us in about 10 months time, when we will have a lot more to be able to tell you about it.' There is a conference occurring in March between the Oceania police commissioners, for which they are getting one state and one federal person out from the United States. I will be a lot better informed after that conference.

In Australia at the moment we have jurisdictional problems. It would be ideal if the Federal Police could deal with it under telecommunications, but at the moment it appears it is going to have to be the NCA in conjunction once again with federal and state partners until we get the legislative mess sorted out. When I say 'legislative mess', I mean there is just no legislation to deal with it, quite frankly; that is the problem. Every law enforcement agency we speak to is worried about the potential. We cannot give you too many hard examples because there are only two we know of in Australia. There have been a few in the United States. We think the Russians are into it in a big way, but we can't prove it. There are no hard and fast examples, but it is such an easy way to do it.

Australia has been very lucky with Austrac. Austrac does a superb job and it is the envy of a lot of overseas law enforcement agencies. Australia is one of the areas where people might start to try to do it first because our financial reporting system is so good. But at the moment we just do not have the forensic capability to properly detect what is going on.

**CHAIR**—We have had a submission from Austrac.

**Mr Melick**—Yes, I have seen it and we support the submission. Austrac say consideration should be given to placing a reporting agency in their gambling operations, but it is the credit card which is the big problem.

**CHAIR**—Can you to give us your thoughts on how we can deal with the issue of under age access?

**Mr Melick**—I do not know. That is a real problem. It is the same as pornography. Most children are more computer literate than their parents. If their parents establish an electronic signature, ID, passwords and all the rest of it, most children know about it anyway.

**CHAIR**—Or a PIN?

**Mr Melick**—Yes. Even if you went for a higher security thing with an electronic signature I still think the children would overcome it. I think the biggest problem is going to be the children getting access to money – they are going to have to have access to their parents' credit cards or something like that because very few children have a credit card in their own right.

**CHAIR**—I suppose you have to ask yourself how responsible would a parent be to, first of all, let the child know the PIN and, secondly, let the child know the access code to get into the credit card.

**Mr Melick**—A lot of parents leave it written down or have their own little encryption system on a computer which is very basic and easy to crack. Children are quite bright. I think the biggest thing about children and gambling is they have to have a source of funds in the first place to gamble. I think that is what is going to limit them. I am not aware of any Internet gambling site that does not require funds to be credited either into their account or via your credit card before you are allowed to place the bet. So that, I think, is going to be the biggest inhibitor on children gambling.

**CHAIR**—Do you have a view on the current arrangement whereby people can continue to gamble by immediate access to their credit card to deposit more funds in their gambling account?

**Mr Melick**—I think that is a policy, social and moral issue. I think it is a problem, but I do not think it is for me in my capacity as a member of the NCA to comment upon it.

**CHAIR**—Nevertheless, if we think about the money laundering aspect and the comments you have made on that, obviously the more easy access is to the credit card the greater the amount that could be laundered.

**Mr Melick**—Quite true, and some credit cards have unlimited credit on them as well. I am not sure because I have not asked American Express, but I think, for instance, if you have an American Express platinum card, you can buy a house on it.

**CHAIR**—Yes.

**Mr Melick**—I am not sure if they would allow a person to gamble \$100,000 they did not have on a platinum card.

**CHAIR**—American Express may not know until it has occurred.

**Mr Melick**—Sorry, it is a charge card, it is a credit card – in other words, you are just sent a monthly bill. All the gambler has to do is pay his monthly bill. He is hoping that his \$100,000 is going to be returned via the gambling provider. I am not sure what the current situation is with American Express on things like that.

**CHAIR**—As a holder of an American Express charge card, I can tell you that I have never had the amount checked. No matter what amount I have put on my American Express credit card, a phone call has never been made to check it. Whether that would happen if it were an online casino is another matter, but one of the

advantages of those cards is that they do not have an upper limit as long as you pay the monthly account. So it is an issue. One area we have been exploring is consumer protection, and that comes under that banner, doesn't it?

**Mr Melick**—Unlike some Australian credit cards, you can pay an American Express credit card bill anywhere in the world. Last year in Hong Kong, I had a bit of extra cash and I tried to pay off my Westpac Visa card, and they would not take it in Hong Kong. If I had an American Express card in Australia, I could use that to gamble on the Internet in Australia. The money could be credited to my bank account via a cheque as gambling winnings. I could then travel to New York and pay my American Express card off with the money or have my drug associate in New York pay it by American Express card. That would not be picked up by Austrac.

**CHAIR**—I think the same applies with Diners.

**Mr Melick**—It does; it is worldwide.

**CHAIR**—It is considered an international card.

**Senator MARK BISHOP**—I am just going through the Austrac submission. I thought they had a recommendation for an amendment of an existing act, but I cannot find it.

**Mr Melick**—I am sorry I do not have a copy of the submission with me, so I cannot help you.

**Senator MARK BISHOP**—I was going to ask you to comment on it.

**Mr Melick**—I will be available to the committee secretary at any time if there are any supplementary questions or anything like that. I have already indicated that I want to provide some additional material.

**Senator MARK BISHOP**—I am sorry, Mr Melick, I cannot find the recommendation.

**CHAIR**—I suppose the things that you have told us today make me feel very apprehensive about the future of gambling on the Internet and the ability that we would have to regulate it.

**Mr Melick**—Quite frankly, I do not want to be disrespectful to the government, but I doubt if the government has the political will to either enact the legislation or to provide the financial backing to allow the regulation that would be necessary to properly control it. That is my concern. Of course, there is that third category that I talked about – that is, having Internet gambling sites in Australia, but only available to overseas people. The only problem I have got with that is that it could be used by overseas criminals to launder money into Australia. We are aware of examples of overseas criminal groups establishing legitimate family groups here to launder their funds from overseas.

**CHAIR**—It still raises the question about whether you would stop Australians gambling anyway because they could still, no doubt, if they wanted to, get access to gambling sites overseas in any case.

**Mr Melick**—I think eventually what is going to happen is that Australians will probably wake up to the fact that a lot of the overseas Internet gambling sites provide a lousy return.

**CHAIR**—Sure. If there is any return at all.

**Senator MARK BISHOP**—The market is going to fix that.

**Mr Melick**—One would hope so. But if you have got any sense and if you are an overseas Internet service provider, because it costs you so little to set up a virtual casino, you just provide a fair return and the market forces will mean you will get a lot of clients.

**Senator MARK BISHOP**—Yes. So you favour Commonwealth involvement in regulation of online gambling?

**Mr Melick**—I think it is necessary.

**Senator MARK BISHOP**—It is necessary?

**Mr Melick**—Without it, I think it is open slather and law enforcement will suffer. We think \$3.5 to \$4 billion worth of funds are laundered out of Australia every year. If you make it any easier, those figures will increase and our economy is fairly vulnerable to figures like that. Figures like that would not make much difference in America, but it makes a fair difference in Australia.

**Senator MARK BISHOP**—To take it one step further: do you advocate the banning of online gambling?

**Mr Melick**—I suppose my view is that, if it is not going to be properly regulated, we should not have it.

**Senator MARK BISHOP**—If it is going to be properly regulated?

**Mr Melick**—I do not want to get involved. My problem is that I am here in the capacity as a member of the National Crime Authority, not in a personal capacity, and the Authority does not have a position on the moral or social issues of it.

**Senator MARK BISHOP**—We are not really interested in the moral or social viewpoint. The reason I ask the question is that the Productivity Commission came down essentially with three options: ban Internet

gambling; what they called ‘managed liberalisation’; and, thirdly, laissez faire. They advocated the middle path because of the social costs. Their view was that effective regulation, coordinated by the Commonwealth, could minimise the harm that has just arrived from online gambling. I am really asking you: does the NCA have a view on their three options?

**Mr Melick**—It has got to be one of the two. It certainly cannot be the third. Laissez faire is definitely out. But I just have not discussed the other two aspects with my fellow members, and I would rather not speak for them, if you do not mind.

**Senator MARK BISHOP**—Understood.

**Senator HARRADINE**—Is it fair to ask, Mr Melick, whether you could respond on notice as to whether the NCA has a view in response to that question?

**CHAIR**—We can certainly ask him to take it on notice.

**Mr Melick**—I am happy to take it on notice, Senator. It may well be that we come back and say it is a matter of policy for the government. We have got to be very careful, in that we try to deal with matters within our bailiwick and not comment on policy or social issues. We are a controversial enough organisation without trying to do that. We will have to take the question on notice and come back to you on it.

**CHAIR**—That would be very good. Thank you.

**Senator HARRADINE**—In your contacts with your peers in the United States, I guess there is a bit of concern being expressed by them about the developments in Australia. Is that so, or not?

**Mr Melick**—They hope that we will do what they are doing: ban it altogether and make it a criminal offence. The view amongst quite a few law enforcement people – I have only spoken to three or four directly, but I am talking about the apocryphal information I have – is that the more the organisations that ban it, the fewer the places the criminals have got to go to, to launder their funds. Therefore, it becomes easier to detect. But it is a pretty big world out there, and unless you get a lot of other countries it will not work. Australia is fairly small in the overall scheme of things. You have got to get the ECU to come on board, and the United States and Australia, and you just try and close a lot of these gaps up. It is interesting, when you talk about pornography and other matters such as that, that Singapore, China and a third country actually censor materials allowed into the country on the Internet.

**CHAIR**—Malaysia.

**Mr Melick**—I do not think it was Malaysia but it would not surprise me if they did – it sounds like the sort of regime they have got. But if you get sufficient countries prepared to do it, you give people fewer places to operate from and therefore, as I said, it makes it easier to trace the money and detect it.

**Senator HARRADINE**—What about EC countries?

**Mr Melick**—At the moment I am not aware of any attitude one way or the other in relation to Internet gambling. I have not spoken to anybody from those jurisdictions. Our chairman has just come back from a money laundering conference over there. I might take that also on notice and see if he picked anything up at the conference, and come back to you on it.

**Senator HARRADINE**—Thank you.

**CHAIR**—That appears to exhaust our questions to you this afternoon, Mr Melick, aside from those that you have taken on notice for us. Thank you very much for making yourself available today, and for the frank way you have answered our questions. It has been very helpful. I take this opportunity also to thank you for the contribution that you have made to the National Crime Authority, as your term comes to an end. Thank you very much.

[5.14 p.m.]

**BANKS, Mr Gary Ronald, Chairman, Productivity Commission**

**LATTIMORE, Dr Ralph, Assistant Commissioner, Productivity Commission**

**CHAIR**—Welcome. The committee prefers that all of your evidence be given in public. This is a public hearing. However, you may at any time request that your evidence, part of your evidence or the answer to a question be given in private and the committee will consider any such request. However, I should point out that evidence taken in camera could subsequently be made public by an order of the Senate. I am sure I do not need remind you that giving false evidence or misleading evidence is a contempt of the parliament.

The committee does not have a submission specifically from you before it today, but my understanding is that the purpose of your evidence today is to inform the committee of the findings contained in your final report entitled *Australia's gambling industries*, particularly in relation to the reference we have before us on online gambling. I now invite you to make an opening statement and at the conclusion of those remarks we have some questions for you.

**Mr Banks**—Thank you very much, and thank you for inviting us to give an opportunity to brief you on the final report. As you know, we briefed you on the draft report and a bit of time has gone by since then. We released the final report in December, and that added up to 15 months of work, which is a large report. We thought it might be helpful to very briefly remind you of some of the key elements in the report. I thought I would make a few introductory remarks and then Dr Lattimore would give a very brief slide presentation, if that is acceptable to you, with just some of the key points. We have got it designed not to take more than five or six minutes. So, hopefully, it will not take too long.

There is one point to reiterate. It was an information report and we did our best, I suppose, to make the report information rich by providing a framework, facts, analysis and options for people such as yourselves, for policy makers, to consider. We brought an independent viewpoint that the commission always brings to these things, where an independent viewpoint is not always apparent in some of the other work that is publicly available. I suppose our overall findings, in a nutshell, are that there are potentially substantial benefits and costs from the gambling industries in total. The costs we saw as primarily focused on problem gambling and the attendant social costs related to problem gamblers themselves and those with whom they come into contact.

As you know, we conducted an unprecedentedly large survey in Australia to look at the rates of problem gambling. We came up with a number of 2.1 per cent in our final report of the adult population who fitted into the broad category of problem gambler, with one per cent of that adult population in the category of severe problem gamblers. That number is often regarded as a small number, and I suppose what we tried to do in the report was to put it into context in various ways. One of those ways of looking at it is that those people spend a lot more money than other gamblers. Indeed, that 2.1 per cent of the adult population adds up to one-third of industry revenue. So this is a significant issue seen in that context. We are talking about one-third potentially of the industry's market consisting of people who have significant problems with their gambling. That led to the notion of substantial benefits and cost to the theme in our report that policy approaches in this area need to be aimed at reducing the costs of problem gambling, while retaining as much of the benefit as possible.

Secondly, flowing from the fact that problem gamblers do constitute a large proportion of the gambling industry's revenue, and for other reasons, we felt that self-regulation alone would not be sufficient, and that there is a legitimate role for government in this area. Indeed, we felt there was a role for government to exceed the role that it has assumed to date, in particular in the area of consumer protection. The third point we emphasised was the need for an independent regulator and regulatory processes and policy making processes in this area which were much more transparent and which allowed a much better assessment of both the costs and the benefits of an activity that generates both costs and benefits that are not always readily apparent.

Those general considerations, which I think permeate the whole report, are reflected in our analysis of Internet gambling where we talk about, in our terms, a quantum leap in accessibility, which is brought about through Internet gambling. But that leap in accessibility again brings both benefits and costs – costs in particular – through the potential increase in problem gamblers associated with that medium.

Again, we have tried to look at regulatory approaches that can take account of both the benefits and the costs and, as indicated earlier, look at the options and make some judgments about the trade-offs involved – all the while keeping in mind that there is a lot of uncertainty about this new medium, what its effects are going to be and the number of trade-offs that have to be made. So we are partly trying to look at more robust policy approaches which might be more sustainable regardless of whether things go in one way or another – in other words, as some of the uncertainties are resolved, a policy approach that can accommodate some of those uncertainties without having made very bad mistakes. That is an interesting issue. I thought Dr Lattimore could briefly go through the framework that we looked at and then show a few slides which set out some of the considerations in relation to the benefits and costs of different regulatory approaches.

**CHAIR**—Dr Lattimore, have you got a copy of these to make available to the committee?

**Mr Banks**—We have, yes.

**Dr Lattimore**—I will go through them briefly and then I will hand them out.

*Slides were then shown —*

**Dr Lattimore**—The first slide indicates the three elements on which the framework is based. There is an assessment of some benefits. These include, for example, that the Internet will expand some choice for consumers. The price and cost of some form of Internet gambling is a lot cheaper than some of the physical forms. There are new forms of gambling that are available on this medium. There are issues of convenience and so on. So there is an element of consumer choice and benefit on that side. There is the potential of export markets. We have been a bit wary of giving too much of a tick to export and economic development in general when it comes to gambling, but on the Internet side, where Australia has a bit of a market lead and where the nature of the technology means you can get substantial new markets based on a small fixed cost, it is perhaps a bit bigger than in some other gambling areas. While we are somewhat agnostic, and it depends on issues such as substitutability, we considered that there were likely to be, on balance, some tax revenue gains.

On the cost side, as Gary says, the indication is that accessibility is far bigger than, in a sense, you see with other physical forms of gambling because the home and a computer with Internet access becomes in essence a gaming machine or a casino table game. With that, we get more problem gamblers. We may get other social costs, other community costs. We also see the prospects of consumers dealing with shonky sites, which we know exist. So there is a supplier integrity problem. There is an issue which we took very seriously, which was the one of access by minors. On reflection, and looking at the evidence on that, our initial concerns were somewhat lessened when we looked at some of the difficulties of a minor getting access to the Internet. In the end, we actually thought that was less of a concern, on balance, given the evidence, than some of the other concerns.

The policy options we have in mind see these things as balancing. The trick is to try to bring to bear regulatory options which maximise the net benefits – reduce the costs and maximise the benefits. We looked at three broad options: the do-nothing option; applying some regulatory measures, which presume then that Internet gambling is to some extent subject to control; and the use of complementary non-regulatory measures which deal with the problems. I will go through each of those.

The do-nothing option is one option. There are a number of limited advantages with this option. The Internet business is not yet very large. We have got an estimate of about 85,000 Internet consumers in Australia. The amount of revenue accounted for by the Internet is a small proportion of total gambling revenue in Australia. There are also some natural feedback effects. Consumers search for reputable sites. They are cautious. High quality suppliers want to differentiate themselves from low quality suppliers by signalling their integrity. So there are some mechanisms which take place in the marketplace without anybody doing anything.

Overall, on balance, we had deep concerns about such an option because it does not really deal with the issue of problem gambling. It does not deal with people who are not that cautious about using the Internet. We know there are people in that position. I should say that, even where legitimate suppliers provide gambling in the world marketplace, we do not see that as providing guarantees for problem gamblers. They might provide legitimacy in terms of payment, but they do not have strong incentives to deal with problem gamblers.

That takes us to the next slide that deals with the threshold issue of control. Even if it is considered highly desirable, this is an issue on which you have to assess whether it is worth going to the next step of looking at regulatory methods. We considered it certainly possible for domestic sites but somewhat more problematic for overseas sites. Nevertheless, in looking at this issue in the inquiry report, we realised it did not have to be perfect to suffice. All regulations have some imperfections. The issue is whether they are sufficient to do the job that you require of them. Our judgment was that there were a number of measures that could be used that would be sufficient. That would consist of making unlicensed sites illegal and using IP addresses, not domain blocking, at the ISPs, and potentially some financial controls. In the longer run, there may be further measures for dealing with control through international negotiation.

Overall then, we made the assessment that control to some degree was possible. That raises in turn the issue of what you wish to control and how much you want to control. There are a number of dimensions to that issue of control. You could control depending on the form of gambling. We note, for example, that the Kyl bill in the US, which proposes a ban on Internet gambling, does not extend it to all forms of gambling. It exempts, for example, horse racing. Those associations actually support the ban on other forms. It could depend on where the site is and whether it is a domestic or a foreign location. It could depend on the extent to which a site meets some standards. I would like to look at three options for regulatory control that bring some of these points home.

This is option number one. In all of these, the approach we took in the inquiry was to look at the cost and benefits of each option. We did not feel any option was perfect. It was just a matter of trying to think which of them gave the best outcome. This option of managed liberalisation essentially imposes control, depending on whether a site meets a critical standard of consumer protection. We call it a partial ban option because it does ban sites that do not meet those standards. The ban is effected through the blocking and possibly by payment mechanisms I mentioned before.

The consumer protection regulations embrace three basic areas. In addition to the standard probity rules that we are familiar with for all land form based gambling, the three areas are: informed consent, such as through price information and expenditure statements, through giving consumers control, such as through spending limits, self-exclusion and coordination of sites – rather than each site just being an independent site – and the availability of filter software and of online help services which are appropriate to the medium.

**Mr Banks**—We put that slide up partly to emphasise that we see consumer protection as a really important issue with a lot of dimensions to it. It is something that really needs to be done well. The point was made by a previous witness raising a question about the approach you would use, depending on what protections were in place. We certainly echo that sentiment. This is very important to get this side right. We can come back to some of the elements of that in a moment.

**Dr Lattimore**—It is not revenue based. Consumer protection is the key and fundamental first step in looking at these regulations. We saw it as desirable that managed liberalisation use a national framework. That would include tax revenue issues, the consumer protection and, for obvious reasons, the blocking which would have to be done at one level rather than at each jurisdictional level.

The effect of managed liberalisation is to divert demand from the now difficult to access, unsafe sites to the ones that you have specified through consumer protection which are designed to be safe. In a sense, that would provide you with a safety valve. Even if control is not perfect, it does not need to be perfect. If consumers have access to safe sites, then they will generally use them in preference to sites which are somewhat dubious in nature. Their principle is also consistent with the notion that all forms of gambling must conform to some standard. Then you do not worry so much about the medium; you worry about whether it conforms to that standard or not.

There is a second option, which is to ban domestic sites. This is clearly feasible and has already been done by some states, both nationally in some jurisdictions and internationally. For example, New Zealand's approach has been to wait and see and to otherwise not allow domestic sites. Certainly this is a technically feasible measure, but it has little advantage for consumers. The foreign sites which are unregulated are not a plane trip away; they are a mouse click away. They do not really deal with many of the prime issues that we were concerned about, like problem gambling and suspect supplier integrity. At the same time, it eliminates the domestic commercial advantages and the advantages for consumerism, so it has some substantial drawbacks.

The third option is to extend a ban not just to domestic sites but to foreign sites. The social impact of such a broad ban depends on controllability. If controllability is high, then unquestionably this reduces social costs through reducing problem gambling. If it is low, however – and bear in mind that we really do not know yet how effective any of the measures will be until we get to that era – it may actually exacerbate risks for problem gamblers and consumers by taking away access to safe sites. It leaves you with a problem where the market is driven by the lemons rather than the lemons being driven out by the high quality sites. What the social impacts would be of such a measure depends on the degree of controllability. Like the previous option, it also loses the consumer benefits and the commercial opportunities, and in a transition it clearly affects existing legal suppliers in Australia.

Of the three regulatory options, on balance the commission favours the partial ban, the managed liberalisation, because it best balances the consumer protection measures with the consumer and commercial potential of the Internet. But there is something that can be done regardless of whichever of those regulatory options are taken. We saw, regardless of the regulatory options, some non-regulatory issues. They were things like the promotion of safe practice, so people know some of the risks of going onto Internet gambling sites without knowing something about supplier integrity, some of the dangers of problem gambling, the provision of help services, listing services which indicate which sites are legitimate and which are somewhat dubious,

and the facilitation of PC based filtering. None of these options affect consumer choice in any way, and they may reduce problems, but the evidence from the implementation of similar sorts of measures on physical forms of gambling is that, by themselves, these would not be sufficient to deal with problem gambling. It is likely that you would have some need for regulation of consumer protection to achieve that.

There are many other aspects that we could raise about the report. There were not a lot of new findings in the final report from the draft, but we did do some more work on tax and a few other matters that Gary might allude to if you wish to raise those in particular.

**CHAIR**—Does anyone have any questions related to that presentation before we move on to additional remarks?

**Senator MARK BISHOP**—There are some issues I wish to raise but not particularly deriving from Dr Lattimore's comments.

**Mr Banks**—I am sorry it took a little longer than we expected.

**CHAIR**—That is all right. The only thing I was going to remark on before we moved on was that nowhere in your presentation did you seem to take into account the issue of money laundering. The previous witness, who was just concluding his evidence when you arrived, was from the National Crime Authority. He gave us quite a frightening picture of the opportunities that Internet gambling provides for money laundering, both in Australia from overseas and by dubious Australians using existing sites. Did you take that into account as being a potential cost when you looked at the costs and benefits of Internet gambling in principle?

**Mr Banks**—I was trying to remind myself as he was speaking of just how much we had looked at that. We did not have a substantial treatment of that under the heading of Internet gambling. We had looked at it in the broader context of physical gambling and had drawn the conclusion, partly based on a roundtable that the Institute of Criminology held on our behalf – that indeed money laundering was not seen to be a major issue anymore in the physical domain through Austrac's processes and so on. In terms of Internet gambling, there may well be larger risks. I guess we had the understanding that they were more likely to occur for the unlicensed sites than for the licensed sites. I am not sure whether that distinction was made but, for the licensed sites and certainly for the domestic sites, in principle the same kinds of processes that Austrac follows with casinos and so on could be applied.

**CHAIR**—Would you like to finish your presentation related to the other issues before we move to questions?

**Mr Banks**—I did not really have much more to say other than to pick up on what Ralph was saying. He said that we had finetuned that chapter in a number of respects, but they are not major changes; they are more changes of detail. We did some more calculations in relation to the tax options and what the span of net benefits or returns might be there. We looked a little bit more at interactive television and its connection with the Internet. Obviously there are some synergies there. Over time we concluded that basically these options were going to merge into one and indeed, to the extent that accessibility is increasing, that will be a factor in increasing it even more.

**Senator MARK BISHOP**—I was going to ask you about digital television, particularly when it becomes one digital TV, which is not very far away, as you know, and then interactive gambling, which the experts tell us is 18 months to two years away. I was going to ask you to comment on the social costs of accessibility one and two. If we go down this path of managed liberalisation with a conceptual base in consumer protection, how is that going to apply with a hugely expanded market? A lot of the evidence we had in Melbourne and Sydney was predicated upon creating new markets, particularly amongst high income earners. Younger people and industry people were looking to get into that market via the interactive stuff and digital TV. Maybe you could make a few points on that.

**Mr Banks**—I suppose there are two aspects to the interactive TV. It partly depends on whether you have direct access to the Internet through your television and therefore exposure to the unlicensed sites or not. If we assume that it is the latter and that there would still be controls on what sites you had access to through your TV, it becomes a bit more tractable in that some of the problems with the shonky operators, as Ralph put it, are diminished a bit. But you still come back to the normal problems that we think warrant a range of consumer protection measures. Those measures should be just as implementable through interaction on television as they are through interaction on a PC screen.

We have not thought too much about the technicalities of that, but the principle should apply. Indeed, a precondition for the availability of such an option should be the kinds of protections that are in place in relation to Internet gambling in terms of precommitment, the strict controls on access to the medium identification, measures for minors and so on. All of those should translate across to that other medium, so they should be seamless in that sense. Potentially it has a lot of the same problems, but it may be more tractable to the extent that it is not accessing the World Wide Web but rather a closed network within Australia which is subject to licensing conditions and so on. Did you want to comment?

**Dr Lattimore**—On the issue of it being a closed network and treating it like any other form of gambling, there is the advantage that, like Internet gambling, you can actually make feasible a number of consumer protection measures that are more costly on some of the physical forms.

**Senator MARK BISHOP**—Is there any rationale for having different or lesser regulation of purely virtual sites as opposed to virtual sites that might be attached to or part of an existing land based gambling firm, house or industry?

**Mr Banks**—I am not sure. Dr Lattimore might have a view on that. In both cases, if they are in the virtual domain, similar considerations apply. But, if they are attached to a land based casino, club or hotel, then we come back to something that is much more manageable in terms of supervision and surveillance.

**Senator MARK BISHOP**—That is the suggestion that has come from a number of bodies – that there appears to be a fair degree of probity and accountability with most of the mainstream land based gambling institutions in Australia. If you are going to attach to them an Internet licence or whatever to operate in a virtual world, existing conditions, if you like, are satisfactory.

**Mr Banks**—I still think they would need, for their Internet business, all the protections that we think are needed to be applying to that business. It would not be that you would have various protections occurring on the casino floor but not in their Internet site. The fact that the debate is moving in respect of real gambling sites would make it easier in some ways for those to accept the sorts of things that need to be done for their Internet business. I think Lasseters is a good example of a casino that operates as a casino but also has an Internet gaming facility that has a lot of protections in place that we think are appropriate.

**Senator MARK BISHOP**—So whatever conditions that are applied to land based gambling, as a minimum, should apply to virtual gambling, whether on its own or attached?

**Mr Banks**—In some ways, virtual gambling provides the opportunity to have more extensive and appropriate controls than you could apply or do apply at the moment to the physical form. I think we would want to go beyond what is available currently in casinos if the casino operated an Internet gambling facility. But the point we make in our report is the Internet dimension shows you what you could possibly carry back into the real sites, because it shows what is possible. Perhaps it is a bit easier because you are operating through technology, where these things like precommitment can be made part of the parcel. But it demonstrates what is possible or achievable – at least as an objective – in the real domain.

**Dr Lattimore**—The only thing is that if they have already met the probity conditions it would make some sense not to have a separate probity test if they were the same operators on the Internet site. But then they would have to meet the recording requirements on that actual Internet site and have to have any algorithms they used tested, like a gaming machine and so on. There would be a separate set of requirements but no obvious necessity to duplicate the probity ones.

**CHAIR**—I am interested in exploring a little the idea of having overarching national or federal legislation. Given the competitive nature of the states and particularly in this area where they now are able to access fairly significant amounts of money in revenue as a result of gambling, how likely do you think it would be that they would all come together?

**Mr Banks**—In some respects they have come together through the code – at least agreeing on a draft code but not necessarily applying it in practice. But there has been a meeting of minds to the extent that they see cooperation as desirable in principle and, potentially, that cooperation could be realised as other sites develop. But, at the moment, we do have some inconsistencies. I think they have recognised, therefore, that there is mutual benefit in having some processes that avoid destructive competition, in particular, which would erode their tax base. I think that might be a major motivation.

The perspective we brought to bear is that the existing code, however, even if it worked perfectly in terms of them abiding by the rules in terms of tax transfers, and the protections in place do not accommodate the threat that offshore sites would pose to domestic users. That could really only be achieved through the avenue of the Commonwealth. And that is an important dimension. When you talk to people, as you have done, that is one thing that they always raise – these shonky sites that often pretend to be an Australian site, but have a server in another country and ownership somewhere else and so on. So they are quite tricky in the way they operate.

That side of things would not be covered under existing arrangements. It may also be that, even from a revenue point of view, the states would see benefit in having the Commonwealth involved in creating a kind of discipline on them to follow a uniform taxing approach where, at one limit, the Commonwealth itself – like with the GST – could undertake the taxing and remit the money to the different jurisdictions.

**CHAIR**—Whilst still allowing each of the states presumably to set competitive odds in their establishments?

**Mr Banks**—That is right. There is still considerable scope for each state to have particular arrangements in terms of odds, the sorts of games that are played, what sorts of establishments can operate them and so on. We

see value in greater uniformity in terms of an informational role for the Commonwealth, or at least a national coordinated way, so that consumers who are accessing sites that come out of Victoria get access to the same sort of information and protections as someone who goes to the Northern Territory or another site. And, indeed, there is value in having in all states access to a common source of help for people who need help with their problem gambling. So that can be coordinated, too. That would also bring benefits in terms of generating more information on the dimensions of the problem.

**CHAIR**—Do you have a view on whether people should have state restrictions on where they can gamble? For example, at the moment you can only gamble at Lasseters if you do not live in the Northern Territory or if you live overseas. That is something that has puzzled me about section 92, I must admit.

**Mr Banks**—Yes. This is partly a transition matter. Tasmania is another example, where, under the first initiative anyway, locals were not permitted to gamble. Just looking at it first-hand, it looked like it was almost designed to lose revenue, which would seem perverse. I believe there are means afoot to change that. Ralph, have you anything to add?

**Dr Lattimore**—I think each jurisdiction is looking at it, but I think the initial intention was to make clear that revenue cannibalisation was not occurring, rather than to deny rights to gamble to anybody in particular. It was just to make absolutely clear cut that other jurisdictions were not going to do badly over the Northern Territory's move to make Internet gambling available.

**CHAIR**—It has puzzled me as to why they have not challenged that interference with interstate trade. I am sure they have got very good reason for it. Have you looked at the Kyl bill?

**Mr Banks**—We have. In the final report, we have a box where we try to trace American developments and we have looked at the Kyl bill and we have looked at the changes to the Kyl bill. Ralph indicated earlier that they had made some changes, which made it look more presentable and I think they got a unanimous vote in the Senate. It is now before the House of Representatives and there might still be some questions about its constitutionality and so on, which need to be resolved. But there is still a question mark over exactly what is going to happen there.

So we have looked at it. We have also looked at the presidential commission that looked at gambling in the United States and it also looked at online gambling, as you know, and came up with a strong ban option which was not the way we saw it. However, the treatment in that report in our view did not give enough attention to the possibilities of consumer protection through this medium nor did it analyse the costs and benefits in a comprehensive way that we thought would give you more confidence in their conclusions. So we have stepped back from that and looked at the issues in an Australian context afresh or separately from that. Of course, what the US does could impact on us in a variety of ways, including commercially for the industry. Ralph, do you want to comment?

**Dr Lattimore**—No, that is fine. The only other thing we did suggest was that, were Australia to go ahead with managed liberalisation, it would be sensible to include a provision not to take customers from countries where they have declared it illegal to engage in Internet gambling. So some of the concerns that other jurisdictions might have about whatever regime you might adopt could be, to some degree, lessened that way.

I should add that, if you go to sites like Lasseters and so on, if you as a consumer try to pretend you are somewhere else in your registration details and they find out, you do not necessarily get paid. Certainly they would have the right not to pay you, under the registration provisions. So there are fairly reasonable incentives for people to declare honestly who they are.

**CHAIR**—At the moment, Lasseters do not pay winnings direct to credit cards. They pay by cheque in the mail, so that gets around that question that you would have some difficulty with.

**Dr Lattimore**—Yes. You would have to use a very circuitous mechanism.

**CHAIR**—Yes, you would. But obviously a number of the Australian sites now are taking huge numbers of clients from the United States, and there seem to be different views on whether or not that exposes those people to some sort of legal vulnerability.

**Mr Banks**—I think potentially it does. I could make available to you an interesting article by Tom Burton. I have forgotten which paper Tom was with when he wrote that article, but he was looking at the precedent of another case in terms of what regulations should apply in e-commerce. He drew the conclusion that Internet gambling is seen by US law, anyway, to be happening in the computer of the person who is doing the gambling, and that the local laws therefore would apply in that jurisdiction. Given the US proclivities in this area, in the way it deals with other countries that break laws it thinks are sensible, there could be quite an issue there for us. So I think it would be sensible to have arrangements in place to reassure countries like the US that, regardless of which way they went, their nationals would not be accessing Australian sites – if a ban were applied in the US, they would not have Australian sites open to them as an alternative.

**CHAIR**—So Australia would make some sort of agreement?

**Mr Banks**—An agreement, or we could simply decide domestically, through the regulatory regime, that that would be precluded.

**CHAIR**—So you are saying that bets would not be accepted from people with residential addresses in the United States?

**Mr Banks**—That is right. At the moment I do not believe that is part of the draft code that the states agreed. So it is an area of ambiguity, I suppose.

**CHAIR**—It is an interesting area, though. Canbet, the group based here, gave us evidence that a large proportion of their client base is Americans who bet on American football, which they are not able to do in their own country. Interestingly enough, in their evidence to us they said they did not believe that they were legally vulnerable, either.

**Dr Lattimore**—There is deep ambiguity about what is legal and not legal at the moment. I guess the passage of the Kyl bill might resolve it one way or the other, to some extent.

**Mr Banks**—And again, in terms of this other precedent I was talking about, whether betting through the Internet on racing, which is in a sense an alternative to over the phone, has a legal distinction as against an interactive game on your PC would be another question, I suppose, in that uncertainty.

**CHAIR**—One of the things that occur to me is that the opportunity to warn people about problem gambling during the steps of access to a gambling site is much greater than to warn people before they start playing poker machines or, indeed, use almost any other form of gambling that is currently available in Australia.

**Mr Banks**—That is right. The other important aspect of that is that to some extent warnings now, and the whole panoply of things that we think are important, are coming to a gambling population of poker machine gamblers who have already been gambling for some period of time. We have got the opportunity with the Internet to get it right first time, so that first-time users of that medium are immediately confronted with all the options and the cautions that apply, and presumably will take it on board from the outset – or at least be thinking about whether they wanted to do those things. That is why it is important to get it right from the start.

**CHAIR**—If only we could apply those warnings to the poker machine players.

**Mr Banks**—That is right. The point I made earlier about Internet providing technology, in particular for precommitment, which we think is an area that is most promising in terms of protection, finding ways of translating that into poker machines, is an interesting challenge. We have heard quite a bit about smart cards and so on. Indeed, that might be over time the avenue that would achieve that. It would bring benefits to the industry, obviously, because they see obvious benefits in doing that through the information it provides to them, but it also provides an avenue for information to come back to the punter, or the gambler, for them to specify, as they could do on the Internet, what their betting limits might be in any particular session and so on. For that to be really effective it would have to be a system that was obviously wider than one venue or perhaps one jurisdiction as well, but it does offer some of the same kinds of protection, and that is an area that is moving quite fast.

**CHAIR**—Yes. Senator Bishop, do you have any further questions?

**Senator MARK BISHOP**—Nothing further, Chair. Thank you, gentlemen.

**Mr Banks**—Thanks very much, and good luck with your deliberations. It is not an easy area.

**CHAIR**—As you have found, it is a challenging topic to take on. Thank you very much for making yourselves available again and for the frankness with which you answered our questions. We appreciate that.

**Mr Banks**—Thank you.

**Committee adjourned at 5.56 p.m.**