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Interactive Gambling Bill 2001

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I N F O R M A T I O N A N D R E S E A R C H S E R V I C E S

Bills Digest
No. 166 2000–01

Interactive Gambling Bill 2001

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Social Policy and Law and Bills Digest Groups
19 June 2001

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Interactive Gambling Bill 2001

Date Introduced: 5 April 2001

House: Senate

Portfolio: Communications, Information Technology and the Arts

Commencement: The formal provisions of the Bill commence on Royal Assent. Part 2 of the Bill, which creates offence of providing an Australian-based interactive gambling service to customers in Australia, will commence on the 28th day after Royal Assent. Part 3, which establishes the complaints system for dealing with prohibited Internet gambling content, commences on a date to be fixed by Proclamation.

Purpose

To prohibit Australian-based interactive gambling services being provided to customers in Australia and to limit the ability of Australian customers to access Internet gambling sites located overseas.

Background¹

Government Statements and Legislation

On 16 December 1999 the Prime Minister, the Hon. John Howard MP, released a statement announcing Commonwealth support for a national approach to problem gambling. This would involve the establishment of a council of Commonwealth, State and Territory ministers to focus on the following:

- stopping the further expansion of gambling in Australia
- the impact of problem gambling on families and communities
- Internet gambling, and
- consumer protection.

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On 19 May 2000 the Minister for Communications, Information Technology and the Arts, Senator, the Hon. Richard Alston, and the Minister for Family and Community Services, Senator, the Hon. Jocelyn Newman announced² that the Commonwealth was examining legislation to impose a 12-month moratorium on the introduction of new interactive gambling services. A further press release³ on 25 May 2000 elaborated on the moratorium and noted that the Commonwealth would conduct an inquiry into the feasibility and consequences of banning Internet gambling and would ask the States and Territories to participate in this review.

On 17 August 2000 the Government introduced the Interactive Gambling (Moratorium) Bill 2000. The purpose of the Bill was to prohibit for one year those interactive gambling services that were not being provided before 19 May 2000. The Bill passed the Senate on 6 December 2000 after receiving the support of a number of Democrat and independent senators. The *Interactive Gambling (Moratorium) Act 2000* (the Moratorium Act) was assented to on 21 December 2000. The moratorium expired on 18 May 2001.

On 27 March 2001 Senator Alston announced⁴ that the Government would introduce legislation to prohibit Australian gambling services from providing online gambling to Australian residents.

Reports, Inquiries and Statistics

The Productivity Commission Inquiry

On 26 August 1998 the Commonwealth Treasurer, the Hon. Peter Costello MP, directed the Productivity Commission to report on the performance of the gambling industries and their economic and social impacts across Australia, including their impact on the retail, tourism and entertainment industries, and on Commonwealth and State/Territory Budgets. The inquiry was undertaken by Gary Banks, Chairman of the Productivity Commission, and Robert Fitzgerald, who was President of the Australian Council of Social Service from 1993 to 1997.

The final report⁵ was submitted on 26 November 1999. Its key findings included:

- Over 80 per cent of Australians gambled in the last year — spending about \$11 billion — with 40 per cent gambling regularly
- Gambling is a big and rapidly growing business in Australia, with the industries currently accounting for an estimated 1.5 per cent of GDP, and employing over 100 000 people in more than 7000 businesses throughout the country. However, the net gains in jobs and economic activity are small when account is taken of the impact on other industries of the diversion of consumer spending to gambling
- Around 130 000 Australians (about 1 per cent of the adult population) are estimated to have severe problems with their gambling. A further 160 000 adults are estimated to

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have moderate problems, which may not require ‘treatment’ but warrant policy concern. Taken together, these ‘problem gamblers’ represent just over 290 000 people, or 2.1 per cent of Australian adults

- Problem gamblers comprise 15 per cent of regular (non-lottery) gamblers and account for about \$3.5 billion in expenditure annually — about one-third of the gambling industries’ market. They lose on average around \$12 000 each per year, compared with just under \$650 for other gamblers, and
- The prevalence of problem gambling is related to the degree of accessibility of gambling, particularly gaming machines.

The Commission did not consider that there was sufficient evidence to ban any existing form of gambling. It stated that a better policy course was to pursue a range of strategies to reduce the social risks associated with legalised gambling⁶.

Senate Select Committee Report on Online Gambling

On 31 May 1999 the Senate Select Committee on Information Technologies announced that it would inquire into:

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

The Committee reported on the 16 March 2000. The report, *Netbets: A review of online gambling in Australia*⁷, recommended that:

- Federal, State and Territory governments work together to develop uniform and strict regulatory controls on online gambling with a particular focus on consumer protection;
- pending the implementation of these consumer protection policies no further online gambling licences be granted; and
- State and Territory governments contribute a fixed percentage of their gambling revenue to a national education campaign on gambling and to agencies that assist and rehabilitate problem gamblers.

The report also recommended many specific measures to protect consumers and assist problem gamblers.

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The NOIE Inquiry

On 7 July 2000, Senator the Hon. Richard Alston, Minister for Communications, Information Technology and the Arts, announced that the Government would conduct a study into the feasibility and consequences of banning interactive gambling. This inquiry was undertaken by the National Office for the Information Economy (NOIE). Its report was released on 27 March 2001,⁸ with the following major conclusions:

- There are several technical methods that could potentially be used to implement a ban on interactive gambling based on Internet content control. These include packet filtering, content filtering, router filtering and detection-response filtering. However, all of these methods can potentially degrade general Internet performance, and none would be 100 per cent effective in preventing Australians' access to interactive gambling services. Implementation would take at least six to twelve months and would require consultation with the gambling industry, telecommunications carriers and Internet service providers. Such content control options are only relevant to gambling services provided from overseas
- Implementing a ban on domestic interactive gambling service providers would require legislative change only. The Commonwealth has clear constitutional and enforcement powers to ban interactive gambling within Australia⁹. Any banning legislation would probably not involve an acquisition of property requiring the provision of just terms compensation
- A ban via financial controls is not practical
- Economic modelling commissioned for the study indicates that a ban may have modest or small economic benefits for Australia in terms of restricting access to a harmful activity and possible aggregate benefits for State and Territory taxation revenue. There is also a need for further regulation impact analysis of the costs and benefits of options for implementing any ban, and
- The growth of interactive gambling has the potential for negative social consequences in Australia because of increased accessibility of gambling services.

Recent Gambling Statistics

The recent edition of *Australian Gambling Statistics*¹⁰ presented the following data for 1999-2000. As these figures refer to gambling activities conducted in Australia they do not include Australian gambling on overseas Internet sites, but they do include gambling by non-Australians at Australian venues and Internet sites.

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Category	Interactive Gaming \$	All Gambling \$
Gambling expenditure	5 387 000	13 341 554 000
Per capita expenditure	0.38	931.64
Gambling turnover	105 663 000	113 863 290 000
Per capita turnover	7.38	7 951.07

Notes: 'expenditure' is the net amount lost; 'turnover' is the amount wagered. Interactive gaming is defined as wagering on Internet casino sites: it excludes wagering in the form of sports betting and lotteries via the Internet.

The Northern Territory was the only State/Territory to report expenditure and turnover for interactive gaming in 1999-2000. Interactive gaming turnover increased from \$2.59 million in 1998-99 to \$105.66 million in 1999-00; interactive gaming expenditure increased from \$0.14 million to \$5.39 million. So it is currently a tiny proportion of total gambling, but is growing very rapidly.

Reactions to the Legislation

The Australian Casino Association has welcomed the fact that the legislation will not prevent the Australian Internet gambling industry from operating in overseas markets, but has criticised the ban on Australian players as it will force them to use less regulated overseas sites.¹¹

The head of the Internet Industry Association, Peter Coroneos, has called the legislation illogical and counterproductive, as it would result in the 'world's best practice protections' being exported, but not being available to Australians.¹²

Professor Jan McMillen of the Australian Institute of Gambling Research has described the Bill as 'morally indefensible', because it implies Australians should be protected from Internet gambling but allows Australians to profit from the harm caused overseas.¹³

Racing groups and the commercial television industry have expressed concerns that the Bill will inadvertently prohibit non-Internet TAB and lottery punting, as well as interactive game shows and TV competitions.¹⁴ The Australian Racing Board has argued that Internet wagering has allowed the TABs to service customers at lower cost and had directly

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benefited the racing industry, which derives 70 per cent of its revenue from TAB payments.¹⁵

The Northern Territory Racing and Gaming Minister, Tim Baldwin, has called on the Government to abandon the proposed ban and adopt the regulatory model released by the States and Territories.¹⁶

Some commentators have argued that the prohibition is logically inconsistent: a bet placed over the phone is regarded as acceptable, but if the same wager is made using a keypad over the Internet, then it will be illegal.¹⁷

Recent Developments Overseas

The following are the major overseas developments reported in the last four months:¹⁸

- Online gambling operators are reported to be looking to move away from tax havens such as Costa Rica to regulated environments, with Quebec, the United Kingdom and New Zealand emerging as possible destinations following the imposition of the Australian moratorium on Internet gambling
- United States Congressman, Robert Goodlatte, has stated that he intends to reintroduce legislation to ban most forms of Internet gambling in the US. Goodlatte's bill in the 106th Congress failed to achieve the necessary majority because of concerns over an apparent lack of liability protection for Internet service providers. A similar bill introduced by Senator Kyl passed the Senate but was axed from the appropriations process after it had been tentatively attached to a larger spending bill. Online gambling in the US, while not specifically banned, is considered by the US Justice Department to be a violation of the Interstate Wire Act, a 1961 law banning telephone gambling
- The failure of the US legislation has encouraged a number of mainstream US corporations to announce Internet gambling plans: Dot Com Entertainment Group, Inc. have signed an agreement with a company in Cyprus to establish an Internet casino and bingo system
- A statement by the American Psychiatric Association warns of the danger of Internet gambling-related problems, particularly for youth
- A bill to permit some forms of Internet gambling is introduced in the New Jersey (US) legislature. It would permit New Jersey residents to place bets at Atlantic City casinos that are licensed to offer Internet gambling. The Bill is not expected to pass this year
- The Paris-based Financial Action Taskforce claims that Internet casinos are being used money laundering by criminal organisations

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- It is reported by Forbes that US gamblers will lose around \$US 3 billion in 2001 to online casinos
- A change in the taxation treatment of gambling by the United Kingdom Government is said to give British bookmakers a significant advantage in the Internet gambling market
- There are now reported to be between 1200 and 1400 Internet gambling sites, a doubling of the number operating in the previous year
- The Danish tax minister advocates a ban on Danish citizens gambling on overseas Internet sites. He suggests that Danish Banks should be set to block authorisation of payments to receivers that are known to be overseas gambling sites in order to protect the Danish monopoly on gambling
- California State legislation is introduced to ban most forms of Internet gambling. The Bill is said to contain provisions to allow officials to pursue financial institutions that facilitate online gambling
- The Nevada lower house approves a bill that would authorise State regulators to licence interactive gambling. The Bill is expected to be approved by the Nevada Senate, and
- Playboy Enterprises, Inc. becomes the first major brand to launch an Internet gambling site, to be based in Gibraltar and powered by Ladbrokes eGaming Limited, the world's biggest bookmaker. The site will have safeguards to ensure that bets will not be accepted from countries where Internet gambling is illegal.

Main Provisions

The Prohibition

The central provision in the Bill is **clause 15** which creates the offence of providing an 'Australian-based interactive gambling service' where the service has an 'Australian-customer link'. A gambling service has an Australian-customer link if, and only if, any or all of the customers of the service are physically present in Australia (**clause 8**). A penalty of \$1.1 million for bodies corporate and \$220 000 for natural persons applies for each day of contravention (**subclause 15(2)**).¹⁹

What gambling services are captured?

In order to understand the nature of the offence created by **clause 15** reference must be made to a number of defined terms in Part 1 of the Bill. The term 'Australian-based interactive gambling service' is defined in **clause 5**. It includes a 'gambling service'²⁰ where the service:

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- is provided in the course of carrying on a business; and
- is provided to customers using an Internet carriage service or other listed carriage service, a broadcasting service, content service or a datacasting service; and
- has an Australian-provider link.

The last element is designed to ensure that the prohibition only applies where the gambling service: is provided in the course of carrying on a business in Australia; has its central management and control in Australia; is provided through an agent in Australia; or is provided to customers using an Internet carriage service, and any or all of the content is hosted in Australia (**clause 7**).

Subclause 5(3) limits the ambit of Australian-based interactive gambling services by specifying a number of 'excluded services'. This term currently includes a telephone betting service, contracts such as futures and options contracts covered by the Corporations Law and services which are exempted by Ministerial determination under **clause 10**.

Wagering

A wagering service provided over the Internet to allow betting on horse racing or sporting events is clearly within the ambit of the prohibition in **clause 15**. Many submissions were made to the Senate Environment, Communication, Information Technology and the Arts Legislation Committee (the Senate Committee) which sought to distinguish online gaming from online wagering and arguing that the latter activity should be excluded from the Bill.

The *Netbets Report* defined online gaming as where the 'gambling event is based on a computer program and the outcome is determined by a random number generator. These activities contain no element of skill and include games such as black-jack, poker, lotteries and electronic gaming machines.'²¹ In contrast, in a wager the gambling event takes place on a race track or sports field and the Internet is just a mechanism for placing the wager.

Proponents of the view that wagering should be exempt from the prohibition state that the nature of the activity, involving analysis and skill, is less likely to cause problems than gaming. Further, they argue that on the ground of technological neutrality, Internet wagering should not be treated differently from telephone betting. The economic value of the racing industry to the community was also highlighted in submissions. In contrast, proponents of a uniform approach stated that while gaming machines were primarily responsible for creating problem gamblers, wagering on racing was also significant.

Similar arguments were made during the debate about the Moratorium Act. In order to secure the passage of that legislation through the Senate, the Government had to agree to exempt online wagering from the moratorium.²² The Government has indicated some willingness to bargain on this issue in relation to this Bill. The Minister has committed the Government to 'having a good look' at amendments that would exempt wagering.²³

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Lotteries

The Senate Committee also heard a number of submissions from operators that lotteries should be exempted from the Bill. Submissions argued that lotteries were not as addictive as other games of chance and do not contribute significantly to problem gambling in Australia. The Senate Committee accepted these submissions noting that ‘many Australians would not necessarily even consider lotteries as falling within the definition of gambling’.²⁴

If this recommendation were accepted by the Parliament it would represent a significant change from the Moratorium Act which prohibited the introduction of new online lotteries during its period of operation.

Unintended Consequences

Gambling operators have also submitted that the Bill will capture activities that were not within the Government's contemplation. This broad scope of the Bill arises largely from the fact that the definition of Australian-based interactive gambling service captures services offered through any ‘listed carriage service’.²⁵

The term ‘listed carriage service’ is defined in section 16 of the *Telecommunications Act 1997*. Generally speaking, it includes a carriage service between two points in Australia or a point inside Australia and a point outside Australia. A carriage service is a means for carrying communications by means of guided or unguided electromagnetic energy.²⁶ The Senate Committee heard evidence that wide area networks used by operators such as the NSW TAB to support on-course agencies and linked poker machine jackpots would be caught even though the customer does not place any bets on-line.

NOIE told the Senate Committee that it was not the intention of the legislation to address those matters and that amendments were being drafted to deal with these issues. Subsequently, the Government sought legal advice on the Commonwealth's capacity to ban linked jackpot poker machines. The Prime Minister then stated that the amendments to remove the ‘unintended consequences’ were on hold while the Government considered this advice.²⁷ Recent comments by the Minister for Communications, Information Technology and the Arts, however indicate that the Government will not be seeking to use this Bill to prohibit linked poker machine jackpots and will leave regulation of poker machine gambling to the States. The Minister stated:

‘we have always taken the view, as do they [the States], that we have a direct responsibility in relation to telecommunications which applies to interactive services. They have a direct responsibility for poker machines, and they ought to address that responsibility’.²⁸

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The Defence of Reasonable Diligence

Subclause 15(3) provides gambling operators with a defence where they can bring evidence suggesting a reasonable possibility²⁹ that they did not know or could not with reasonable diligence have ascertained that the service had Australian customers. The burden of contradicting this evidence then shifts to prosecution.³⁰

The *Explanatory Memorandum* indicates that reasonable diligence may require the use of 'geolocation software programs' to determine the country from which a person is accessing the Internet and block web pages from view.

In determining whether the use of geolocation software programs or other monitoring systems constituted reasonable diligence, regard would need to be had amongst other things, to the technical and commercial feasibility of using such programs or systems.³¹

Submissions to the Senate Committee argued that this reasonable diligence defence was vague and uncertain. Gambling operators questioned the reliability of the geo-location software promoted in the *Explanatory Memorandum* and two operators indicated that they would go offshore rather than take the risk.

The Senate Committee recommended that the due diligence requirement should be clarified either in the Bill or through regulations. The Committee also saw merit in an approach where the requirements of due diligence were set out in a relevant industry code.³²

The Complaints Scheme

The second element of the regulatory framework is a complaints scheme. The framework is similar to that imposed by the *Broadcasting Services Amendment (Online Services) Act 1999* for dealing with violent or sexually explicit Internet content.

Part 3 bestows investigatory functions on the Australian Broadcasting Authority (ABA). **Clause 16** provides that a complaint may be made to the ABA if a person believes that end-users in Australia can access prohibited Internet gambling content³³ using an Internet carriage service. **Clause 23** protects complainants from civil liability that may arise from making a complaint or statements to the ABA provided that they acted in good faith.

Clause 17 enables complaints to be made by a person who believes that an Internet service provider (ISP) has contravened an industry code or online provider rules (see below). An Australian resident, a body corporate carrying on activities in Australia or the Commonwealth, a State or a Territory, may make a complaint (**clause 19**).

Division 2 governs ABA investigations. Under **clause 20**, the ABA must *not* investigate a complaint if it relates to Internet content hosted in Australia. Instead it may refer the complaint to the Australian Federal Police or the police force of a State or Territory. If the ABA decides to do so the complainant must be notified.

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The ABA's role in regulating online content need not be passive. **Clause 21** provides that the ABA may investigate whether there have been breaches of the regulatory framework on its own initiative. **Clause 22** gives the ABA broad power to conduct investigations as it sees fit.

Content hosted Overseas

Division 3 deals with the action the ABA is required to take against prohibited content that is hosted outside Australia. Under **clause 24**, if the ABA is satisfied that Internet content hosted outside Australia is prohibited Internet gambling content, the ABA must:

- decide whether to notify the content to a law enforcement agency, and
- notify the content to ISPs where there is an industry code or standard determined by the ABA dealing with Internet gambling matters, or
- if there is no applicable industry code or standard, give each ISP a ‘*standard access-prevention notice*’ directing the ISP to take all *reasonable* steps to prevent end-users from accessing the content.

Subclause 24(2) provides some guidance as to whether steps are ‘reasonable’. Regard must be had to considerations of technical and commercial feasibility as well as the need to encourage the development of Internet technologies and their application.³⁴

ISPs will not be obliged to comply with a standard access-prevention notice if they are employing a ‘*recognised alternative access-prevention arrangement*’ that has been declared by the ABA. Examples of such arrangements could include an arrangement that:

- involves the use of regularly updated Internet content filtering software; or
- uses a filtered Internet carriage service. (**subclause 24(6)**).

An arrangement may only be declared if the ABA is satisfied that it is likely to provide a reasonably effective means of preventing access by end-users to prohibited Internet content.

Clause 27 is an anti-avoidance provision. The ABA may issue a ‘*special access- prevention notice*’ where it is satisfied that material is substantially similar to content which is subject to a standard access-prevention notice. This provision is designed to accommodate the possibility that Internet content may be modified in a minor way in an attempt to defeat the regulatory regime.

Clause 28 is related to the enforcement provisions in **Part 5**. It provides that an ISP must comply with a standard access-prevention notice (**subsection 28(1)**) or a special access-prevention notice (**subsection 28(2)**) ‘as soon as practicable or in any event by 6 pm on the next business day after the notice has been given’. These two subsections constitute part of the ‘online provider rules’ (**clause 54** see below). Breach of these rules

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renders an ISP liable to the offence provisions in **clause 55** and/or **clause 57**. Penalties of \$5500 for an individual and \$27 500 for a corporation apply for each day of contravention.

ISP Code of Practice

The Bill facilitates the involvement of ISPs to develop codes of practice that address concerns about the accessibility of Internet gambling. If these codes are not developed or are deemed inadequate, the ABA is empowered to develop mandatory standards for the industry. **Part 4** of the Bill deals with these matters.

Clause 36 states the Parliament's regulatory policy with respect to industry codes. A single code should be developed by a body representing ISPs that deals with exclusively with 'designated Internet gambling matters'. This term is defined in **clause 35** to include the formulation of a designated notification scheme and procedures to be followed by ISPs in dealing with Internet content notified to ISPs by the ABA. The clause also instructs the ABA to make reasonable efforts to ensure that an industry code or industry standard is registered before the commencement of Part 3 of the Bill.³⁵

The ABA must register the code if it complies with the checklist of matters contained in **clause 38**. These matters relate to whether there has been appropriate consultation in the development of the code and whether the code addresses the issues required by the legislation. The ABA may direct an ISP to comply with an industry code under **clause 42**. Compliance with such a direction is an 'online provider rule'. If an ISP fails to comply with a direction by the ABA to comply with the relevant code, it will be guilty of an offence under **clause 55**.

The Bill provides for a number of circumstances where the ABA may impose an industry standard, namely where:

- a request for the development of an industry code is not complied with (**clause 44**)
- where no industry body or association representing ISPs exists (**clause 45**)
- an industry code is found to be totally deficient (**clause 46**), and
- an industry code is partially deficient (**clause 47**).

Standards made by the ABA are subject to disallowance by either House of Parliament. ISPs must comply with the industry standard (**clause 48**). Contravention of an applicable standard is a breach of the online provider rules and renders a person guilty of an offence under **clause 55**.

Part 5 draws together the requirements on ISPs under the Bill, and terms them 'online provider rules'. The purpose of this is to tie them in with the enforcement provisions.

The online provider rules are set-out in **clause 54**. They require that:

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- an ISP must comply with a standard access-prevention notice
- an ISP must comply with a special access-prevention notice, and
- ISPs must comply with industry standards or ABA directions to adhere to the relevant industry code.

The ABA may, *but is not required to*, issue a formal warning to a person contravening the online provider rules (**clause 58**). The ABA has the additional power to apply to the Federal Court seeking an order that an ISP cease operations if it believes that the entity in question is not complying with an online provider rule (**Clause 59**).

Clause 60 protects ISPs from civil proceedings arising from activities done in compliance with an industry code, an industry standard or ABA notices to take reasonable steps to prevent end-user access to prohibited Internet gambling content.

Part 7 provides for the review of ABA decisions under the Bill by the Administrative Appeals Tribunal or Administrative Review Tribunal, depending on whether the legislation establishing the latter body commences.

A review of the operation of this legislation must be conducted by 1 July 2004 (**clause 68**).

Concluding Comments

The Bill prevents Australian Internet gambling operators from providing services to customers in Australia but does not prevent operators from providing the same services to overseas residents. In its current form, it is unlikely to substantially damage the major Internet gambling operators in Australia as they source most of their revenues from overseas³⁶. Some commentators have questioned the morality of attempting to protect Australians from Internet gambling while allowing Australian firms to profit from problem gamblers in other countries³⁷. In contrast, the Minister has argued that it is not appropriate for Australia to be a 'world policeman' on Internet gambling and that access to Internet gambling is a matter for governments in each country.³⁸

The Bill has also been criticised for failing to do enough to protect Australians from accessing overseas services. The Senate Committee heard that the measures favoured by the Bill to prevent access to overseas sites such as the use of ISP filter technology can be readily circumvented³⁹. An alternative approach suggested⁴⁰ involved the control of financial transactions, for example by prohibiting credit card gambling and preventing banks and other entities from crediting funds to overseas based Internet gaming operators. NOIE reported that such an approach is technically feasible:

It is possible for credit and debit card issuers to develop payments systems that track specific merchant codes in order to identify likely gambling transactions. Once

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identified, a financial institution can take appropriate action, such as refusing to authorise the charge.⁴¹

However NOIE rejected the use of financial controls because of practical difficulties including that:

- legislation to block payments involving gambling transactions could be evaded if the payments were made to an intermediary rather than interactive gambling merchant
- service codes for gambling merchants may capture non- gambling services such as food or accommodation from an offline casino affiliate
- Australian gamblers could use non-card based payments mechanisms such as cash, cheque, direct credit or debit where merchants are not identified by type of service, and
- the proposal would involve the financial burden of controlling interactive gambling being placed on the financial sector and its customers.

The argument that financial transaction controls on Internet gambling could be evaded and therefore should not be pursued does not appear to be convincing given the weaknesses in ISP filter technology. While financial transactions controls may not prevent Australians from Internet gaming with foreign operators, they may make it considerably more difficult and thereby curb activity.

An alternative approach advocated by the Opposition is that of improved regulation. This view is consistent with that propounded by the Productivity Commission in its report into Australia's gambling industries. The ALP has stated that a total prohibition on Internet gambling is neither feasible nor desirable and that State and Territory co-operation is required to implement a national regulatory framework. It argues that a legal, regulated industry is the best harm minimisation policy.

Endnotes

- 1 For general background and links to relevant sites on gambling policy, see the Parliamentary Library brief at http://www.aph.gov.au/library/intguide/SP/gambling_ebrief.htm.
- 2 Joint Media Release, 'Commonwealth to impose online gambling moratorium', 19 May 2000.
- 3 Joint Media Release, 'Proposed moratorium on interactive gambling services', 25 May 2000.
- 4 Media Release, 'Interactive gambling ban', 27 March 2001.
- 5 See <http://www.pc.gov.au/inquiry/gambling/index.html> for the report and associated documents.
- 6 Productivity Commission, *Australia's Gambling Industries*, 1999, Vol.2, p. 16.10.

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- 7 See http://www.aph.gov.au/senate/committee/it_ctte/gambling/index.htm for a copy of the report.
- 8 See <http://www.noie.gov.au/projects/consumer/gambling/report.pdf> for a copy of the report.
- 9 Under section 51(v) the Commonwealth has power to make laws with respect postal, telegraphic, telephonic and other like services. The argument that the Commonwealth power does not extend to post 1900 forms of mass communication such as radio (*R v Brislan; Ex parte Williams* (1935) 54 CLR 262) and television (*Jones v Commonwealth* (1965) 112 CLR 206) has been rejected by the High Court.
- 10 Tasmanian Gaming Commission, *Australian Gambling Statistics 1974-75 to 1999-00* (April 2001).
- 11 Australian Casino Association, *Media Releases*, 27 March 2001 and 3 April 2001. See www.auscasinos.com.
- 12 Brendan Pearson, 'Online gambling bill branded illogical', *Financial Review*, 5-6 May 2001; Selina Mitchell, 'We win on overseas gaming sites', *Australian*, 10 April 2001.
- 13 Ibid.
- 14 Ibid.; Selina Mitchell. 'TV group objects to gaming ban', *Australian*, 8 May 2001.
- 15 Jennifer Stynes, 'ARB plea for net wagering', *Financial Review*, 9 April 2001.
- 16 Camden Smith, 'Go our way on Net gaming call', *Northern Territory News*, 6 April 2001. State and Territory Governments released the 'Australian Uniform Standards for the Regulation of Interactive Gambling' in April 2001. A copy can be obtained from this Internet site: <http://www.qogr.qld.gov.au/PUBLICATIONS/detail.asp?nID=545&nGroupId=26>
- 17 Ross Wilson, 'Ban on Net gambling goes too far', *The Canberra Times*, 9 April 2001.
- 18 The *Netbets* report (http://www.aph.gov.au/senate/committee/it_ctte/gambling/index.htm) and the Bills Digest for the Internet gambling moratorium bill (<http://www.aph.gov.au/library/pubs/bd/2000-01/01BD050.htm>) have sections on earlier overseas developments. The stories reported in this section have been taken from RGT OnLine News (<http://www.rgtonline.com>).
- 19 The higher potential penalty for corporations arise from the operation of Section 4B(3) of the *Crimes Act 1914* which provides that:
- 'Where a body corporate is convicted of an offence against a law of the Commonwealth, the court may, if the contrary intention does not appear and the court thinks fit, impose a pecuniary penalty not exceeding an amount equal to 5 times the amount of the maximum pecuniary penalty that could be imposed by the court on a natural person convicted of the same offence.'
- 20 This expression is itself broadly defined in clause 4.
- 21 Senate Select Committee on Information Technologies, *Netbets: A Review of online gambling in Australia*, March 2000, p. 2.
- 22 See section 5 of *Interactive Gambling Moratorium Act 2001*

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- 23 Minister for Communications, Information Technology and the Arts, *Transcript of Interview on the Sunday Program*, 17 June 2001.
- 24 p. 23
- 25 The Moratorium Act also used this broad definition however the issue was not as crucial as that legislation did not apply to established services.
- 26 See section 7 of the *Telecommunications Act 1997*.
- 27 Selina Mitchell, 'Canberra stays its hand on gambling', *The Australian*, 5 June 2001.
- 28 Minister for Communications, Information Technology and the Arts, *Transcript of Interview on the Sunday Program*, 17 June 2001.
- 29 This will satisfy the evidential burden imposed on the defendant. See subsection 13.3(3) of the *Criminal Code*.
- 30 Subsection 13.1(2) of the *Criminal Code*.
- 31 p. 38.
- 32 Senate Environment, Communication, Information Technology and the Arts Legislation Committee, *Interactive Gambling Bill 2001*, May 2001 p.35. The Committee's report is located at the following link: http://www.aph.gov.au/senate/committee/ecita_ctte/IG2/IG2.pdf
- 33 This is essentially any gambling service accessible to Australian residents over the Internet other than contracts such as futures and options contracts covered by the Corporations Law and services which are exempted by Ministerial determination under clause 10. See clause 6.
- 34 The latter consideration is one of several contained in subsection 4(3) of the *Broadcasting Services Act 1992* which must be taken into account.
- 35 This Part deals with the complaints system for prohibited Internet gambling content and it commences on a date to be set by Proclamation (**clause 2**).
- 36 It is reported that Canbet for example draws 98 per cent of its revenue from gamblers located outside Australia. AAP, 'Minister blasts Canbet chief for hypocrisy', *The Canberra Times*, 2 April 2001.
- 37 Australian Institute of Gambling Research, *Submission to Senate Environment, Communications, Information Technology and Arts Legislation Committee*, p. 1.
- 38 Minister for Communications, Information Technology and the Arts, *Transcript of Interview on Meet the Press*, 1 April 2001.
- 39 See Fujitsu submission to Senate Environment, Communications, Information Technology and Arts Legislation Committee, p. 1.
- 40 See submissions of the Western Australian Government, p.2 and the Festival of Light p.6. . These submission are located at the following link:
http://www.aph.gov.au/senate/committee/ecita_ctte/Ig2/IG2Sublist.htm
- 41 NOIE, *Report of the investigation into the feasibility and consequences of banning interactive gambling*, 27 March 2001, p. 34. The full report can be located at the following link:
<http://www.noie.gov.au/projects/consumer/gambling/report.pdf>

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