

*Department of the
Parliamentary Library*



INFORMATION AND RESEARCH SERVICES

Bills Digest

No. 45 2001–02

Interactive Gambling Amendment Bill 2001

ISSN 1328-8091

© Copyright Commonwealth of Australia 2001

Except to the extent of the uses permitted under the *Copyright Act 1968*, no part of this publication may be reproduced or transmitted in any form or by any means including information storage and retrieval systems, without the prior written consent of the Department of the Parliamentary Library, other than by Senators and Members of the Australian Parliament in the course of their official duties.

This paper has been prepared for general distribution to Senators and Members of the Australian Parliament. While great care is taken to ensure that the paper is accurate and balanced, the paper is written using information publicly available at the time of production. The views expressed are those of the author and should not be attributed to the Information and Research Services (IRS). Advice on legislation or legal policy issues contained in this paper is provided for use in parliamentary debate and for related parliamentary purposes. This paper is not professional legal opinion. Readers are reminded that the paper is not an official parliamentary or Australian government document. IRS staff are available to discuss the paper's contents with Senators and Members and their staff but not with members of the public.

Inquiries

Members, Senators and Parliamentary staff can obtain further information from the Information and Research Services on (02) 6277 2416.

A full list of current Information and Research Services publications is available on the ISR of the Parliamentary database. On the Internet the Information and Research Services can be found at <http://www.aph.gov.au/library/>

A list of IRS publications may be obtained from the

IRS Publications Office
Telephone: (02) 6277 2760

Published by the Department of the Parliamentary Library, 2001

INFORMATION AND RESEARCH SERVICES

Bills Digest
No. 45 2001-02

Interactive Gambling Amendment Bill 2001

Kim Jackson
Social Policy Group
10 September 2001

Contents

Purpose	1
Background	1
Advertising Bans and Free Speech.	2
Reason for the Amendment.	3
Main Provisions	3
Comment	3
Endnotes.	4

Interactive Gambling Amendment Bill 2001

Date Introduced: 30 August 2001

House: Senate

Portfolio: Communications, Information Technology and the Arts

Commencement: Royal Assent

Purpose

To amend the *Interactive Gambling Act 2001* so that regulations made under the Act can exclude certain types of advertisements from the prohibition on the advertising of interactive gambling services.

Background

The *Interactive Gambling Act 2001*:

- prohibits interactive gambling services from being provided to customers in Australia
- prohibits Australian-based interactive gambling services from being provided to customers in designated countries
- establishes a complaints-based system to deal with Internet gambling services where the relevant content (prohibited Internet gambling content) is available for access by customers in Australia, and
- prohibits the advertising of interactive gambling services.

The latter prohibition is the subject of Part 7A of the Act. This Part was not included in the original Interactive Gambling Bill 2001, but was inserted as amendments by the Government during the debate in the Senate on 28 June 2001. The amendments were agreed to without debate.

Interactive gambling services are defined in section 5 of the Act as commercial gambling services provided to customers using the Internet, broadcasting, datacasting or other

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

content or listed carriage services. The definition excludes telephone betting services, sports wagering services and other gambling services which are:

- conducted in hotels, clubs and other public places
- exclusively associated with particular broadcasting or datacasting programs, and
- lottery services which meet certain conditions.

Advertising Bans and Free Speech

This would appear to be only the second time that the Commonwealth Parliament has imposed a blanket prohibition on the advertising of a particular product or service, the first being the *Tobacco Advertising Prohibition Act 1992*. The prohibition on the advertising of interactive gambling, like that for tobacco, extends beyond broadcasting and electronic communications to nearly all forms of publishing and public display. The tobacco advertising ban was preceded by the Commonwealth, State and Territory National Health Policy on Tobacco (March 1991) and the legislation took into account State and Territory law on the subject. The Minister's Second Reading Speech on the tobacco advertising legislation also referred to the issue of free speech, and justified the restrictions on speech in terms of the need to protect the community's health, especially the health of children.¹ In speaking for the then Opposition parties, Senator Patterson, referred to the 'considerable debate on this side of the chamber as to the pros and cons of the Bill', with the harmful effects of smoking versus 'the principles of free speech'. The Senator concluded that 'we in the coalition finally reached the decision, with much soul searching, that we would support the Bill'.²

Given the lack of any parliamentary or other comment with regard to the interactive gambling advertising ban, it might now be inferred that such prohibitions on advertising are no longer considered to be a threat to the principle of free speech in this country. Alternatively, it might be argued that the concerns over the tobacco advertising ban were in the context of the legality of tobacco as a product. The prohibition on the advertising of interactive gambling services is not in this category because it was intended only to apply to those services which are themselves illegal under the Act.

Normally, it would not be considered necessary to prohibit the advertising of an illegal service, as those engaged in the supply of such services are not anxious to draw attention to their activities. However, as the Interactive Gambling Act permits interactive gambling services that are illegal in Australia to be offered to overseas customers, an advertising ban was presumably considered necessary to prevent these providers from promoting their services within Australia.

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

Reason for the Amendment

In moving the amendments to the Interactive Gambling Bill on 28 June 2001, the Minister (Senator the Hon. Richard Alston) stated that 'The advertising ban would only apply to interactive gambling services that are banned by the bill'.³ However, it has since come to the Government's attention that the Act may inadvertently prohibit the advertising of land-based casinos which also provide interactive gambling services to overseas customers. **Section 61BA(1)(e)** defines an interactive gambling advertisement as any writing, visual image or audible message that promotes 'any words that are closely associated with an interactive gambling service'. If a land based casino uses its name for its legitimate interactive gambling services, then there is a chance that the name will become 'closely associated' with the interactive gambling service. This would then prevent the casino from using the name in advertising its land-based services.

Of course, any casino which wished to avoid this possibility could simply use a different name for its interactive gambling services. However, this would deny a reputable casino the opportunity of capitalising on its good name with regard to its interactive services. This could be a considerable drawback, as a reputation for reliability is essential for a successful Internet gambling operation.

It might be argued that it is inconsistent for the Government to amend its legislation to facilitate casino operations, when its general policy is to encourage a reduction in gambling levels in the community. However, this ignores the Minister's commitment in the Senate that the advertising prohibition would only extend to those interactive gambling services made illegal by the Act.

Main Provisions

Item 2 of Schedule 1 inserts a **new section 61BGA**. This provides that the regulations made under the Act may provide that certain advertisements are not interactive gambling service advertisements for the purposes of Part 7A of the Act.

Comment

Considering the narrow circumstances which have necessitated the amendment, the regulation-making power appears very broad. **New section 61BGA** has no constraints on what advertisements could be specified in the regulations as being, in effect, exempt from the provisions of the Act.

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

Endnotes

- 1 *Senate Hansard*, 25 November 1992, p. 3488–9.
- 2 *Senate Hansard*, 14 December 1992, p. 4903–5.
- 3 *Senate Hansard*, 28 June 2001, p. 25461.

Warning:

*This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.
This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.*