

Interactive Gambling (Moratorium) Bill 2000

Minority Report by ALP Senators

ECITA Legislation Committee

Executive Summary – Labor Senator’s minority report

- Labor senators consider that a moratorium or partial ban on interactive gambling will not prevent access to online gambling and will not prevent Australian gamblers from contacting offshore sites that are unregulated and do not offer consumer protection or probity. Labor does not support an outright ban of gambling on the Internet because we do not consider it to be technically feasible or necessary.
- Labor senators acknowledge that the online gambling industry is currently subject to regulation and oversight and that State and Territory governments already ensure that online and interactive gambling operators meet the highest standards of probity and auditing through licensing agreements.
- Labor senators recommends co-regulation involving a national regulatory framework that provides consumer safeguards and industry Codes of Practice. Such regulation involves legalisation of gambling online within a national regulatory framework which addresses harm minimisation and consumer protection issues as well as criminal issues that relate to new criminal opportunities that may arise from gambling online.
- Labor senators recommends that current regulatory requirements applying to off-line and land-based casinos, clubs or wagering venues should be extended to online casinos and online wagering facilities.
- Labor senators support active Federal involvement in the development of the co-regulatory regime that can be coordinated through the Ministerial Council comprising of relevant State and Federal Ministers
- Labor senators is concerned that Australia’s good international reputation for effective consumer protection laws and strong, workable gambling regulations would be jeopardised by a ban or moratorium and this could result in a rise in criminal activities, such as money laundering.

- Labor senators believes that a moratorium or ban on Internet gambling is contrary to the best interests of the Australian Internet industry and the development of e-commerce in Australia.
- The ALP recommends that a regulatory framework for online gambling regulation should include:
 - Consumer protection - ensuring a quality gambling product by financial probity checks on providers and their staff, maintaining the integrity of games and the proper working of gaming equipment,
 - Mechanisms to exclude those not eligible to gamble under Australian law,
 - Problem gambling controls, such as exclusion from facilities, expenditure thresholds, no credit betting, and the regular provision of transaction records,
 - Measures to minimise any criminal activity linked to interactive gambling,
 - Privacy protection;
 - Containing the social costs by ensuring that adequate ongoing funds are available to assist those with gambling problems,
 - Address revenue issues that impact upon state government decisions relating to interactive gambling,
 - Consistent standards for all interactive gambling operators,
 - An examination of international protocols with the aim of achieving multilateral agreements on sportsbetting and other forms of interactive gambling
 - Regulation of propriety in advertising, including preventing advertising from targeting minors,
 - Limiting the exploitation of monopoly market positions; and
 - Mechanisms to ensure that some of the benefits accrue more directly to the local community.

1. Inquiries

1.1 There have been two recent, extensive inquiries into online gambling, both of which addressed specifically the feasibility of a moratorium or ban on interactive gambling.

- *Netbets*, A Review of online gambling in Australia by the Senate Select Committee on Information Technologies, March 2000.
- Australia's Gambling Industries – Inquiry Report, Productivity Commission, November 1999.

1.2 Whilst the *Netbets* majority report recommended a moratorium on interactive gambling, the report was ambiguous in that it also recommended regulatory controls and consumer protection measures be developed through cooperation between the various stakeholders. The Committee Majority 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 through the Ministerial Council on Gambling.¹

1.3 The Labor minority report in *Netbets* concluded that a policy of strong regulation of interactive gambling is the most practical and effective way of reducing social harm from gambling, including criminal harm, and maximising the benefits that will flow to consumers, the gambling and IT industries, and the Australia economy.

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

1.4 The Productivity Commission report into gambling concluded that there are serious social concerns about the prevalence and widespread availability of gambling activities in Australia, however the Commission noted that:

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

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

¹ *Netbets*, Report by the Senate Select Committee on IT, March 2000, p. x

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

³ Australia's Gambling Industries, Productivity Commission Report, July 1999, Vol 1, 15.9.

Online gambling offers significant potential benefits to some consumers and scope for commercial returns.⁴

The Commission gave weight to the position that regulations applying to other forms of gambling be extended to interactive gambling:

There are also grounds for regulation of internet gambling, along the lines of regulations applying to other gambling forms. The Commission considers that there are ways of controlling online gambling sufficiently to exercise such regulations.⁵

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

2. Problem gambling.

2.1 Problem gambling, as identified in the Productivity Commission report, is linked to accessibility and appeal, and in this context poker machines, lotteries, TABs and casinos are the main forms of gambling that foster problem gambling. Community concerns about the prevalence of gambling in Australian society are not addressed by this bill. This bill singles out one nascent form of gambling: interactive gambling.

The Productivity Commission noted in its key findings that:

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

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

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

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

⁴ Australia's Gambling Industries, Productivity Commission Report, July 1999, Vol 1, 17.1

⁵ Australia's Gambling Industries, Productivity Commission Report, July 1999, Vol 1, 17.1

⁶ Australia's Gambling Industries, Productivity Commission Report, July 1999, Vol 1, xiii.

⁷ Australia's Gambling Industries, Productivity Commission Report, July 1999, Vol 1, 17.15

*Player losses will tend to be smaller...thereby reducing some of the harms.*⁸

2.2 Australia's online operators derive most of their income from overseas, not from within Australia. Up to 90% of online gambling transactions emanate from offshore, principally the USA. Australian online gamblers make up approximately 5% of the market.⁹

Whilst the online/internet market will potentially grow (*The Productivity Commission 'noted that "The internet is still in its infancy and subject to rapid change. As a result it is only possible to speculate about what developments are possible for the delivery of internet gambling services."*¹⁰), evidence presented to the Senate Committee affirmed that online gambling offers a range of consumer and problem gambling 'protections' unavailable in traditional forms of gambling and wagering.

2.3 Barring access by minors to online gambling sites is an important element in addressing the negative social impact of gambling in society. Barring accessibility of minors to online gambling sites is feasible, for example: A minor can only obtain a credit card as a secondary holder to an adult's account and winnings are paid by cheque or credited to the account holder. Existing online gambling operators already provide measures to prevent minors from gambling.

The Productivity Commission noted that while a small group of technologically astute minors will be able to gamble on the internet without parental consent, "this is not a unique problem",¹¹ and is more likely to occur through unregulated sites outside Australia's jurisdiction. Screening requirements, the ease of monitoring accounts and the inability to access winnings instantaneously present effective barriers preventing minors from accessing regulated interactive gambling sites. Parental supervision and education in the use of filter software can assist further in preventing access to unregulated (off-shore) sites. The Productivity Commission found that online gambling posed minimal risk to minors.

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

*If Australian citizens gamble in Australia, some of the advantages are: they will get better odds, they probably will not get ripped off – they may actually have a chance of getting paid some winnings – we can regulate it, and there will be taxes available for problems caused by gambling. If Australian citizens gamble offshore, it is virtually the opposite to all of those: they are often run by undesirables, we cannot regulate it, the odds are usually terrible [and] there is no money going back to the Australian government to deal with social problems caused by gambling.*¹²

2.5 Banning interactive gambling could exacerbate problem gambling by removing a regulated service with in-built safeguards whilst still allowing access to unregulated and

⁸ Australia's Gambling Industries, Productivity Commission Report, July 1999, Vol 1, 17.16

⁹ Official Committee Hansard, Canberra, August 25, p 3.

¹⁰ Australia's Gambling Industries, Productivity Commission Report, July 1999, Vol 1, 17.9

¹¹ Australia's Gambling Industries, Productivity Commission Report, July 1999, Vol 1, 17.17

¹² Senate Select Committee on Information Technologies, Canberra, February 16, 2000, p 257

unlicensed offshore sites. Poker machines, casinos, TABs, lotto tickets, scratchies, phone betting et cetera will continue unabated.

Internet gambling is being singled out to placate community concern expressed in relation to all forms of gambling, but particularly with respect to poker machines and casinos. The Productivity Commission noted that:

The incidence of problem gambling varies by the mode of gambling, with higher incidence for regular players of gaming machines, racing and casino table games.¹³

2.6 This bill, if passed, would mislead the community, potentially creating a false sense of security by contending that the Internet users would be 'safe' from 'harmful' interactive gambling sites. The Explanatory Memorandum accompanying the legislation makes it clear that access to online gambling sites on the Internet will still be available to any online user.

2.7 Online gambling operators maintain that problem gambling is not an issue for them. Canbet, for example, have operated a telephone betting service for four years and an internet service for 20 months:

We have not had one complaint that we have taken a bet from a problem gambler. We have not had one complaint from a parent that we have taken a bet from an under-age child. We have not had one request from a spouse of a punter to say, 'Please, stop my spouse betting; he is sending us broke', nor have we had one request from a punter. We have had some losers and we have also had some winners, but never has it been brought to our attention that there is a problem gambler.¹⁴

2.8 The Inter-Church Gambling Taskforce, whose submission supported this legislation, acknowledged that this legislation is more an expression of values than a solution to a potential problem. The Inter-Church Gambling Task Force expressed support for a prohibition on interactive gambling, but has not expressed support for a prohibition on other forms of land based gambling. The Task Force stated that they:

...understand that to a certain extent, in respect of land based gambling, the horse has bolted [and] at this point in time a prohibition in respect of land based gambling is not feasible. [Our support for this bill emanates] from a statement of values, an expression of concern, about what kind of community we want to create for our children and what kinds of values we want to see emphasised.¹⁵

2.9 Despite the availability of increased online racing services to Australian homes, there is little evidence of a parallel increase in problem gambling. The Home Racing Channel, which has been available on Sky Channel since 5 September 1998, has not resulted in a perceivable surge in problem gambling. TAB Ltd (NSW) told the Committee:

...even with these new technologies or new distribution mechanisms, we have not seen any outrageous or unwieldy sort of growth in the business. My point is that the

¹³ Australia's Gambling Industries, Productivity Commission Report, July 1999, Vol 1, 6.1

¹⁴ Official Committee Hansard, Canberra, August 25, 2000, p 3.

¹⁵ Official Committee Hansard, Canberra, August 25, 2000, p 28-29.

*technology will not—as some of the doomsayers suggest—create rampant growth in wagering. It just will not happen.*¹⁶

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

3. Online Gambling regulations.

3.1 The online gambling industry is already subject to a high degree of regulation and oversight by State and Territory governments and Australia has a reputation as providing good consumer protection legislation, as acknowledged in the Productivity Commission Report.

3.2 The Australian Casino Association (ACA) has updated a Code of Practice that addresses many of the harm minimisation measures recommended by both the Productivity Commission and *Netbets*. ACA prohibits credit gambling, allows members to pre-set betting limits, provides Personal Identification Numbers to ensure family members cannot access gambling sites, ensures privacy and security of participants, issues winnings via non-negotiable cheques (not credit cards) and works with AUSTRAC to counter money laundering.

3.3 Evidence presented by the online gambling industry clearly demonstrated that Australia provides consumers with the highest level of protection in the world. The Australian Casino Association, advocating the general industry position, called for:

*The ACA advocates coordinating strict licensing regulation between Australian online gaming sites. That is the only practical way to protect Australian players and minimise the risk of problem gambling. The ACA Online Gambling Task Force has developed a code of practice which members adhere to, and this provides the highest level of consumer protection available. Australian casinos operate under regulations that are among the most stringent in the world and are at the leading edge of global gaming practices in terms of social and industry best practice. This also applies to our online businesses, where Australia has an enormous opportunity to present to the world the highest quality product with the tightest regulations.*¹⁷

3.3 Existing and prospective online gambling operators also favour strict regulation and a federal legislative framework, including Codes of Practice for sporting organisations, to ensure match fixing, point-shaving and insider information are addressed.

¹⁶ Official Committee Hansard, Canberra, August 25, 2000, p 10.

¹⁷ Official Committee Hansard, Canberra, August 25, 2000, p 32.

3.4 The Productivity Commission also supports regulation and control of the online gambling industry. They considered that,

*some form of regulation of internet gambling, is, in principle, an important objective, and is consistent with the aspirations of other regulations applying to gambling – consumer protection, probity and preservation of revenue.*¹⁸

3.5 A primary concern for Australian online gamblers is being ‘ripped off’ on the Internet. A moratorium/ban will force Australian punters wanting to bet online offshore, to unregulated and potentially dubious sites that do not offer consumer protection. There are approximately 800 unregulated offshore Internet casinos worldwide, with 20 new sites opening each day. These sites cannot guarantee personal security or provide the safeguards Australian online operators currently practice.

3.6 A blanket ban or moratorium makes it impossible for an Australian government to regulate consumer protection or standardise harm minimisation features. The latter is considered by the Productivity Commission an important element in providing palliative measures to address problem gambling and provide consumer information.

3.7 The Northern Territory Government argued that a moratorium or ban would, in effect, decimate result in the industry losing their international competitiveness:

*the fact is that we feel we should manage the change presented by the new technology rather than try to resist it. In this light, it is suggested a moratorium is misconceived. All it has done is retard the development of additional player protection measures by Australian regulators. It has made the task of developing a local globally competitive industry that much harder...Operators work in a globally competitive market which requires the development and enhancement of new products. They cannot survive if they are simply going to be frozen to existing bet types or to existing sports types as suggested by the bill.*¹⁹

3.8 The ACT Government told the Committee that they issued licences based on the assumption that Australians would prefer to bet with an Australian site that provided well regulated and protected features that offshore sites that did not offer these measures. Their position is that:

*a choice was faced some time ago when looking at this area as to whether there should be a comprehensive attempt to properly regulate an area of emerging activity, or to attempt to push the activity out of sight and out of the purview of Australians altogether. The ACT government reached a view quite early on that the latter of those courses of action was technically impossible, outside certainly our power and probably outside the power even of the Australian government, and that it was important for that reason to develop a comprehensive legislative arrangement to ensure that interactive gambling, if it occurred, occurred in a properly regulated way.*²⁰

¹⁸ Australia’s Gambling Industries, Productivity Commission Report, July 1999, Vol 1, 17.31

¹⁹ Official Committee Hansard, Canberra, August 25, 2000, p 50.

²⁰ Official Committee Hansard, Canberra, August 25, 2000, p 51.

3.9 The Tasmanian Government presented maintained that their regulatory regime for online gambling is in fact stricter than for off-line gambling.

The Tasmanian government remains implacably opposed to a moratorium or a ban on Internet gambling. It considers that the Tasmanian gaming licences are issued under the strongest possible conditions of probity, and it expects that only top-class respected companies and/or individuals will apply and be granted those licences. The Tasmanian government also asserts that the regulations in place in the Tasmanian jurisdiction are exponentially more onerous than those which apply to terrestrially based casinos, for instance. A minor gambling at a terrestrial casino in Tasmania attracts a fine to the organisation in the order of \$2,000. A minor accessing an online gaming site, if provided a service, faces a fine of not less than \$60,000 for a first offence and a fine of not less than \$100,000, plus two years jail, plus loss of licence for a subsequent offence. The Tasmanian government considers that the ability to control gambling online is enhanced by our regulations regarding online gambling in a far more comprehensive manner than is able to be conducted in relation to terrestrial casinos.²¹

3.10 This is the first time that the Commonwealth has tried to restrict gambling since 1903, when they tried to stop the Tattersalls lottery being sold across borders.

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

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

4. Technical feasibility on a moratorium or ban

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

It should be emphasised that the relevant question for public policy is not whether online gambling can be controlled, but the extent to which it can be controlled. Full control is an unobtainable objective, which would be undesirable to achieve because of its attendant costs.²²

4.2 The Explanatory Memorandum²³ confirms that a ban or moratorium is not technically feasible and that this legislation will not prevent problem gamblers accessing online gambling sites. The Memorandum states:

²¹ Official Committee Hansard, Canberra, August 25, 2000, p 52-3.

²² Australia's Gambling Industries, Productivity Commission Report, July 1999, Vol 1, 17.33.

²³ Interactive Gambling (Moratorium) Bill 2000 Explanatory Memorandum, p 11.

The moratorium will not restrict Australian gamblers' current ability to access offshore sites.

Although the intention of this Bill *appears* to be a freeze on internet gambling, the Explanatory Memorandum confirms that:

the moratorium will not prevent the expansion of the offshore industry or the availability of traditional gambling products.

In practice, access to online gambling will not be restricted and provided the service is conducted offshore, Australians will not be prevented from accessing offshore interactive gambling sites.

4.3 A ban or moratorium would not prevent a server located within Australia from accepting wagers or bets then communicating that information via an encrypted virtual private network to facilities located offshore. It would be almost impossible to police this type of activity.

4.4 Labor senators are particularly concerned that the proposed ban is not technologically neutral and mandates what forms of communication technologies can and can't be used for gambling. 'Interactive', for example, is defined by the Macquarie Dictionary as "relating to an electronic device which responds to instructions from the user by providing optional paths for the user to follow, such as a computer, or a push-button telephone, which is being used in two-way electronic communication with its user."

Allowing television and telephone interactive gambling (which Canbet claims costs them \$2.60 per transaction) but not internet gambling (which Canbet claims costs them 0.20 cents per transaction) discriminates against a particular technology.²⁴

4.5 A moratorium or ban would entail significant costs to enforce as new technologies enter the market place. Given the prospective uptake of digital television and the likelihood that new online technologies will continue to be marketed, it is probable that additional amendments will be required which will make the technical imposition of a ban even less feasible.

4.6 Australia's international reputation, particularly as a global participant in e-commerce and online commerce, will be further harmed as we will be seen as a censorious country stifling Internet growth through technically unworkable legislation.

4.7 Australian online gambling operators indicated that they will simply relocate offshore if this Bill is enacted and continue operating and servicing local and international online gamblers outside of Australian regulations. This renders any moratorium or ban ineffectual as Australians will still be able to bet online with what are, in essence, Australian companies, however the harm minimisation protection measures and probity checks will not necessarily be available. PBL Gaming Manager, Mr Wayne Jones, stated that if this legislation proceeds:

we would have to look very closely and see if there are other opportunities to relocate in some manner offshore²⁵.

²⁴ Official Committee Hansard, Canberra, August 25, 2000, p 3.

²⁵ Official Committee Hansard, Canberra, August 25, 2000, p 47.

Mr Peter Bridge, Managing Director of Lasseters Holdings stated:

*In regard to Lasseters, we would also have to look at going offshore if this ban was implemented.*²⁶

4.8 Professor McMillen, from the Australian Institute for Gambling Research, argued for a 'pause' in Internet gambling so that we could "stop and take a look at what was going on". However, Professor McMillen confirmed that this legislation would not achieve that aim. Given the technical infeasibility of a ban, Professor McMillan called for State and Commonwealth governments to cooperate in forming a legislative framework:

*I agree that a pause is necessary to look at the issues, I accept the Commonwealth's preference for a ban, but I am unconvinced that a ban is either technically feasible or that it will actually be cost effective in policy terms. If that is the case and it is shown that a ban is not feasible, I would call again for urgent and concentrated effort on improving the regulatory standards that exist in this country, to establish a national approach that includes issues of consumer protection and of the probity and operating standards for the industry.*²⁷

*If the primary objective of the legislation is to restrict the market so that we can look at the issue of problem gambling and prevent the expansion of the increase of problem gambling, I think that is going to fail, simply, as I said, because people are going to bet with existing Australian licensees, and some of them do not have effective consumer protection programs in place. There is no requirement in this bill for that to occur. They are also going to bet offshore.*²⁸

4.10 The Northern Territory government submitted that they were well placed to manage the technical challenge of regulating online gambling. Mr Tony Clark, appearing on behalf of the NT Government, said that they had investigated the possibility of blocking access to offshore online sites and found that "not realistic". Given that situation, they opted to develop globally competitive sites that provide socially responsible standards:

*Interactive technology enables socially responsible gambling measures to actually be built into the products. For example, you will have heard of betting limits, self-exclusion and the availability of self-diagnosis for problem gambling. No existing physical world product offers you these benefits. As a regulator, I would in fact prefer that all gambling was conducted on the Internet so that I could have access to those sorts of benefits.*²⁹

4.11 The ACT Government also maintained that they had investigated a ban and found such an approach technically impossible. The ACT Government's Attorney General, The Hon. Gary Humphries, said in evidence that the ability to prevent access to certain internet sites was beyond their power and therefore they opted to develop a legislative framework that provided necessary regulations and safeguards for Australian gamblers:

²⁶ Official Committee Hansard, Canberra, August 25, 2000, p 47.

²⁷ Official Committee Hansard, Canberra, August 25, 2000, p 26.

²⁸ Official Committee Hansard, Canberra, August 25, 2000, p 20.

²⁹ Official Committee Hansard, Canberra, August 25, 2000, p 50.

*We assumed that Australians, for example, would prefer to bet on an Australian site as opposed to a site based overseas, and that if we could provide well regulated effective sites, sites that offered protection, sites likely to ensure that Australian gamblers received their winnings if they won, sites that were otherwise appropriate in all respects, that Australians would use those sites in preference to overseas ones.*³⁰

4.12 Labor senators are also concerned that the Bill, if interpreted literally, could lead to the banning of other forms of interactive gambling, such as telephone betting. Section 5b of the legislation defines a gambling service as

the service is provided to customers using any of the following
(i) an Internet carriage service;
(ii) any other listed carriage service;

Whilst the *intent* of this legislation may be to mandate a particular technology to exclude (ie, the internet), the legislation opens up legal challenges as ‘other listed carriage services’ may include existing wagering and gambling services not supplied online.

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

Labor considers that a moratorium or ban on interactive gambling will not prevent access to online gambling and will not prevent Australian gamblers from contacting offshore sites that are unregulated and do not offer consumer protection or probity.

5. Opposition to the Bill.

5.1 The Committee was presented with overwhelming opposition to a moratorium or ban, from:

- The gambling industry (Canbet, ACT TAB, NSW (TAB), Australian Casino Association, The Federal Group, Tattersalls, EBET Limited, Gocorp, Lasseters, PBL/ECORP),
- The Internet Industry (Internet Industry Association), and
- State and Territory Governments (ACT Government, Northern Territory Government and the Tasmanian Government).

5.2 The main opposition to a moratorium was expressed by the various stakeholders in the gambling and wagering industry who indicated that they would relocate offshore and continue operating if a ban/moratorium was imposed. Canbet’s Mr Richard Farmer gave evidence that, as 95% of his business is derived from overseas, his company would relocate if a moratorium was imposed:

³⁰ Official Committee Hansard, Canberra, August 25, 2000, p 51.

The Prime Minister has said that he thinks all Internet gambling should be done away with after the moratorium. If that were the decision of the government, I would just shrug my shoulders and move.³¹

5.3 Concerns were raised with respect to the unfair nature of the retrospective clause in the legislation. The Bill makes it a criminal offence to offer a new interactive gambling service after the moratorium date of 19 May 2000.

The Internet Industry of Australia, which made clear it did not necessarily advocate or condone the practice of gambling, nevertheless insisted that the retrospective clause disadvantages businesses.

We believe the retrospectivity of the legislation to the date of the media release of the minister on 19 May does not exemplify good policy-making. We believe it arbitrarily disadvantages businesses that have no means of managing that risk. Indeed, some of them have entered into contracts and/or raised public capital prior to that date and we are concerned as to the precedent of policy making in this manner. I also understand that some of the states have raised similar concerns.³²

5.4 A number of online operators held off ‘in good faith’ the commencement of their services. These operators now face restrictions or being unable to operate altogether. The Northern Territory’s submitted that

there should be no retrospective effects. The operation of the clause is unclear when one compares the terms of the bill with the public statements that have been made by the Commonwealth. I would suggest that the restrictions on current operators are too stringent. Operators work in a globally competitive market which requires the development and enhancement of new products. They cannot survive if they are simply going to be frozen to existing bet types or to existing sports types as suggested by the bill.³³

5.5 The ban on existing services will stifle innovation, rendering online gambling and other related companies uncompetitive. Companies not involved in interactive gambling per se, (such as MB2 which provides wagering-related services to sports betting enthusiasts) have received legal advice that under the Bill’s Definitions, Paragraph B, it can be interpreted as including services that do not accept wagering or betting, but provide information and hot-links to online betting services.

5.6 There has been no consultation with State or Territory governments regarding the impact of this legislation, as the ACT Government’s Attorney General the Hon, Gary Humphries told the committee:

³¹ Official Committee Hansard, Canberra, August 25, 2000, p 5.

³² Official Committee Hansard, Canberra, August 25, 2000, p 19.

³³ Official Committee Hansard, Canberra, August 25, 2000, p 50

*We did not believe the legislation was desirable or effective. Those views have not been taken up by the federal government. To the extent that we have put an issue on the table that has not been taken up, I suppose we have not been properly consulted.*³⁴

Mr Mike Gard, representing the Tasmanian Government, confirmed that his state had also been excluded from consultations with the Commonwealth over potential impacts a moratorium would have. Mr Gard told the Committee that:

we received a copy of the bill the day after it was tabled in parliament from a licence holder

5.7 The Internet Industry expressed opposition to this Bill on a number of grounds³⁵:

- *The Bill will characterise the Internet as inherently harmful,*
- *Sites which are subject to control within Australia will be substituted for unregulated sites overseas.*
- *Present state and territory licence conditions for online operations force them to greater degrees of restriction than exist with their offline counterparts.*
- *The argument that allowing gambling into the home will set a bad example for children is not necessarily sustainable as applying this argument to other issues suggests that no alcohol should be consumed in the home in case it teaches children to become alcoholics.*
- *Internet service providers fear that the moratorium is in fact nothing more than a precursor to a complete ban.*
- *There are serious concerns about the technical capabilities of implementing a ban and there is concern about the consequential effects on the costs of Internet access in Australia, possibly widening the information divide.*
- *ISP members are concerned about the effect on network performance and the stability of the Internet as a medium which underlies commerce in Australia.*
- *The extraterritorial nature of the bill means that even businesses that are located offshore, have some corporate nexus back to Australia and seek not to target Australian users will still be caught.*
- *The banning of the sale of lottery tickets online seems to us a fairly ludicrous proposition when they are legally available from the local newsagent.*
- *As a general rule, we argue that what is legal offline should be legal online and that the Internet should not be discriminated against simply on the basis of accessibility.*

³⁴ Official Committee Hansard, Canberra, August 25, 2000, p 54.

³⁵ Official Committee Hansard, Canberra, August 25, 2000, p 18-19.

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

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

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

6 Criminal sanctions

6.1 A number of submissions pointed out the unfairness of legislation that seeks to impose criminal sanctions for intentionally supplying an online gambling service. The Northern Territory submission observed that:

*it may be somewhat unfair to adopt a criminal approach to stopping this activity and thereby avoiding paying compensation to operators who in good faith have invested millions of dollars to fulfil what has been a lawful activity. I would observe that it may be somewhat unfair to adopt a criminal approach to stopping this activity and thereby avoiding paying compensation to operators who in good faith have invested millions of dollars to fulfil what has been a lawful activity.*³⁶

6.2 Existing State and Territory sanctions are sufficiently stringent for online operators. In some jurisdictions, such as Tasmania, the penalties for allowing minors access is greater for online operators than for offline ones.

*A minor gambling at a terrestrial casino in Tasmania attracts a fine to the organisation in the order of \$2,000. A minor accessing an online gaming site, if provided a service, faces a fine of not less than \$60,000 for a first offence and a fine of not less than \$100,000, plus two years jail, plus loss of licence for a subsequent offence. The Tasmanian government considers that the ability to control gambling online is enhanced by our regulations regarding online gambling in a far more comprehensive manner than is able to be conducted in relation to terrestrial casinos.*³⁷

7. Conclusion

³⁶ Official Committee Hansard, Canberra, August 25, 2000, p 50.

³⁷ Official Committee Hansard, Canberra, August 25, 2000, p 53.

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

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

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

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

7.4 Given that prohibition does not work, and a ban/moratorium would simply allow operators of online casinos and sportsbetting agencies to move offshore and remove any protection to consumers, Labor supports the continued development of an effective co-regulatory regime and opposes the Bill.

Senator Kate Lundy

(ALP, ACT)

Senator Mark Bishop

(ALP, WA)