

Parliament of the Commonwealth of Australia

**Interactive Gambling (Moratorium) Bill
2000**

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

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TABLE OF CONTENTS

<i>Membership Of The Committee</i>	<i>iii</i>
<i>Table of Contents</i>	<i>v</i>
INTERACTIVE GAMBLING (MORATORIUM) BILL 2000	1
Introduction	1
The Committee’s Inquiry.....	1
The Bill	1
Overview of the main issues.....	1
The impact of the moratorium on the level of problem gambling in Australia.....	2
Summary of the evidence	2
Discussion of the evidence.....	2
Impact on the level of problem gambling on the Internet	2
Failure of State and Territory governments to address problem gambling	4
Conclusion.....	6
The impact of the moratorium on interactive gambling service providers (IGSPs) in Australia	7
Summary of the evidence	7
Relevant provisions of the Bill.....	7
Discussion of the evidence.....	8
Operations shifted offshore	8
Market losses.....	8
Conclusion.....	10
The inclusion of interactive wagering and lotteries in the moratorium.....	10
Interactive wagering.....	10
Summary of the evidence	10
Relevant provisions of the Bill.....	10
Discussion of the evidence.....	11

Wagering on the Internet is not interactive and is less likely to lead to problem gambling.....	11
Wagering should be included with other gambling forms	12
Wagering on the Internet is very similar to telephone betting	12
Wagering on the Internet represents a new market	13
Lotteries.....	13
Summary of the evidence	13
Discussion of the evidence.....	14
Conclusion.....	14
The application of the moratorium to interactive gambling operations that are not wholly based in Australia.	14
Summary of the evidence.....	14
Relevant provisions of the Bill.....	15
Discussion of the evidence.....	15
Conclusion.....	15
The scope for IGSPs to offer services to residents in overseas countries where interactive gambling is legal.....	16
Summary of the evidence.....	16
Relevant provisions of the Bill.....	16
Discussion of the evidence.....	16
Conclusion.....	17
Consultation and retrospectivity of the moratorium.....	17
Consultation	17
Summary of the evidence	17
Discussion of the evidence.....	17
Retrospectivity	18
Summary of the evidence.....	18
Discussion of the evidence.....	18

Retrospectivity and the impact of the moratorium on e-commerce investment in Australia	19
Conclusion.....	19
Claims for compensation from IGSPs and State and Territory Governments	20
Summary of the evidence	20
Discussion of the evidence.....	20
Conclusion.....	21
Unintended consequences of the Bill	21
Summary of the evidence	21
Discussion of the evidence.....	21
Conclusion.....	22
RECOMMENDATION	22
APPENDIX 1	23
List of Submissions	23
APPENDIX 2	25
Witnesses Who Appeared Before the Committee	25
APPENDIX 3	27
Documents Tabled at Public Hearings.....	27
MINORITY REPORT BY ALP SENATORS	29
MINORITY REPORT BY DEMOCRATS SENATORS	45

INTERACTIVE GAMBLING (MORATORIUM) BILL 2000

Introduction

1.1 On 17 August 2000, the Senate referred the Interactive Gambling (Moratorium) Bill 2000 (the Bill) to the Senate Environment, Communications, Information Technology and the Arts Legislation Committee. The Committee was required to report to the Senate by 4 September 2000.

The Committee's Inquiry

1.2 The Committee invited submissions from numerous industry, government and welfare groups in Australia who are affected by interactive gambling. It received 30 submissions and held a public hearing on 25 August 2000, where it heard evidence from 23 witnesses.

The Bill

1.3 It is important to note from the outset that the Committee has been requested to examine the Bill, which applies a 12-month moratorium, and not a ban, on interactive gambling service providers (IGSPs) in Australia. Some of the evidence received by the Committee focussed on the consequences of banning interactive gambling. While this is relevant to an informed debate on gambling on the Internet, it is not the focus of the Bill and therefore the Committee's Inquiry.

1.4 The Bill imposes a 12-month moratorium on the development of the interactive gambling industry in Australia by creating a new criminal offence, the provision of an 'interactive gambling service'. The new offence prohibits a person from providing an interactive gambling service unless the person was already providing the service when the moratorium commenced on 19 May 2000. The offence ceases to have effect at midnight on 18 May 2001.

1.5 From the Explanatory Memorandum, it is clear that the main objective of the Bill is to limit the expansion of interactive gambling in Australia over the next 12 months. This will assist to minimise the level of problem gambling on the Internet, therefore providing the Government with some breathing space to consider in more detail the feasibility and consequences of banning interactive gambling.

Overview of the main issues

1.6 In the evidence to the Committee a number of recurring issues emerged about the consequences of the proposed moratorium. In the main, it was suggested that it is too broad in its application. Consequently, the evidence contained numerous calls to amend the Bill so that specified interactive gambling activities are excluded from the moratorium. Several witnesses and submissions also argued that the moratorium should not be imposed at all. The major issues are listed below:

- The impact of the moratorium on the level of problem gambling in Australia.
- The impact of the moratorium on IGSPs in Australia.
- The inclusion of interactive wagering and lotteries in the moratorium.

- The application of the moratorium to interactive gambling operations that are not wholly based in Australia.
- The scope for IGSPs to offer services to residents in overseas countries where interactive gambling is legal.
- Consultation and the commencement date of the moratorium.
- Claims for compensation by IGSPs and State and Territory governments.
- Unintended consequences of the Bill.

The impact of the moratorium on the level of problem gambling in Australia

Summary of the evidence

1.7 Several witnesses and submissions advised that the moratorium would force Australian-based Internet gamblers to access unscrupulous overseas-based sites, which are inadequately regulated and provide few player protections.¹ It was argued that, by limiting the range of services provided by domestic IGSPs, the Bill was discouraging Australians from gambling in a safe and regulated interactive environment.

1.8 The evidence also suggested that State and Territory governments were not adequately addressing problem gambling both on the Internet and in land-based venues, and that their competitive instincts undermined a national regulatory model that embodies a range of harm-minimisation measures.

Discussion of the evidence

Impact on the level of problem gambling on the Internet

1.9 In its submission, Lasseters Online stated that the number of overseas-based IGSPs is constantly increasing and may therefore lead to increased levels of problem gambling:

The claim that by restricting the number of potential providers in Australia consumers will have a fixed choice of Australian-based providers ignores the more than 1000 international IGSPs that they will continue to be able to access. The number of these international IGSPs is growing by around 20 per week.²

1.10 In its submission, WWWagering & Gaming Consultants suggests that, if Australians choose to gamble with overseas-based sites, they face significant risks:

The proposed moratorium will worsen the current plight of Australians who utilise the Internet to gamble – all 2,300 of them. Australians will not be able to register with Australian providers offering enforced harm minimisation and proof of age (identity) safeguards. Australians will only be able to deal with less scrupulous providers – the inevitable result being unthinkable enticements and encouragement

1 See for example Australian Capital Territory Government, Submission 7, p. 1; MegaSports (ACT) Pty Ltd, Submission 10, p. 6; Lasseters Online, Submission 11, p. 1; GoCorp Ltd, Submission 16, p. 3; Tattersall's, Submission 21, p. 1.

2 Lasseters Online, Submission 11, p. 2.

to gamble far worse than any experienced, even in poker machine and lotto venues in Australia.³

1.11 In its submission, the Australian Institute for Gambling Research stated that the moratorium could lead to a loss of revenue that could be used to fund problem gambling programs.⁴ Speaking for the Institute, Professor Jan McMillen advised the Committee that the moratorium would do little to curb problem gambling on the Internet:

Australians, in the nature of this moratorium, are going to continue to gamble through Internet service providers both within Australia and offshore. 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. Other people have made that submission to you, and people will move offshore.⁵

1.12 The Explanatory Memorandum to the Bill concedes that the moratorium will not restrict Australian gamblers' current ability to access offshore sites.⁶ However, this alone will not lead to an increase in problem gambling on overseas-based sites:

By freezing the interactive gambling industry to 19 May 2000 levels, the moratorium may lessen the growth of problem gambling that could have occurred had the industry continued to grow. However, given the moratorium will not prevent the expansion of the offshore industry or the availability of traditional gambling products, it is not possible to gauge whether this will directly affect demand.

The moratorium will mean that Australian gamblers will have access to a local interactive gambling industry that is fixed for 12 months at 19 May 2000 levels. This could result in the uptake of interactive gambling services plateauing at current levels for 12 months. If this happens, it is reasonable to anticipate a similar plateauing of problem gambling generated by interactive gambling.⁷

1.13 It is likely that the expansion of the offshore industry in reputable jurisdictions will be limited over the next 12 months. The Committee was advised that a number of overseas governments that have world-class information technology infrastructures are in the early stages of considering interactive gambling. Mr Tom Dale, General Manager, Regulatory and Access Group, National Office for the Information Economy, provided an overview of regulation in overseas jurisdictions:

The situation in the UK, as we understand it, is that an inquiry is being conducted under the auspices of the Home Secretary into a full range of gambling issues—not dissimilar in fact to the Productivity Commission inquiry here last year—of which

3 WWWagering & Gaming Consultants, Submission 3, p. 3.

4 Australian Institute for Gambling Research, Submission 14, p. 2.

5 *Official Committee Hansard*, Canberra, 25 August 2000, p. 20.

6 Explanatory Memorandum, Interactive Gambling (Moratorium) Bill 2000, p. 10.

7 Explanatory Memorandum, Interactive Gambling (Moratorium) Bill 2000, p. 10.

Internet gambling is one part. Although a number of submissions have been made to that inquiry and some of them have been mentioned in submissions and evidence to this committee, I think the actual process by the independent government inquiry is still continuing. My understanding at this stage is that they have not reached any clear conclusions on Internet gambling as such. But we are keeping in touch with them and they are very interested in developments here in Australia.

The US, we have mentioned. The only other jurisdiction which appears to be actively looking at the issue is South Africa. There, my advice is, the actual process of consideration through government and parliament is going fairly slowly. That is the only information I have. Globally, we do not get a lot of indication that this is an issue outside those countries, but there is interest in what is happening here.⁸

1.14 Mr Dale also commented on the legality of interactive gambling in the United States, and informed the Committee of the level of confusion surrounding this issue:

... there have been a number of prosecutions [in the United States] in recent months, for what is technically interstate sports betting being conducted via the Internet. In fact, there has been one operator sent to jail for that offence. Those were federal offences prosecuted by the Justice Department. However, the Justice Department has said publicly that they want further clarification, through legislation, of their power to act against Internet gambling, and that is the reason for some of the current legislation. We have not had any more detail than that from the US government.⁹

Failure of State and Territory governments to address problem gambling

1.15 Evidence to the Committee suggests that States and Territories are differing in their approach to addressing problem gambling, and that there is a need for the Commonwealth Government to take a lead role.

1.16 Professor Jan McMillen, Executive Director, Australian Institute for Gambling Research, provided the Committee with an overview of measures that are being taken to address all forms of problem gambling:

I have been calling for a national strategy [on problem gambling] for some time. What is lacking, I think, is a champion at the Commonwealth level to take this through. We found in other public health areas— for instance, tobacco, alcohol, road trauma and the AIDS campaign—that you needed a champion at the Commonwealth level, and that is lacking.

So at this stage we are working with inconsistent state governments but they are making some effort to at least share information and discuss the possibility of getting some common standards and policies in place. But that is taking a long time—you know what these processes are like—and meanwhile people are hurting.¹⁰

8 *Official Committee Hansard*, Canberra, 25 August 2000, p. 64.

9 *Official Committee Hansard*, Canberra, 25 August 2000, p. 63.

10 *Official Committee Hansard*, Canberra, 25 August 2000, p. 22.

1.17 On the specific issue of interactive gambling, Ms Marilyn Webster, Catholic Nominee, Inter-Church Gambling Taskforce, informed the Committee that the Taskforce 'is not satisfied that consumer protection mechanisms held up in the various states will prevent the capture of new and vulnerable groups of problem gamblers'.¹¹ Similarly, Professor Jan McMillen advised the Committee that the regulatory standards for interactive gambling are inconsistent:

Some of the best operators, certainly, have set some benchmarks that I think could even be improved further; but we also have, as the *Netbets* report quite rightly identified, some licensed operators in Australia who do not meet what I think are even basic, adequate standards. That is my major concern, I think.¹²

1.18 The Explanatory Memorandum to the Bill indicates that there is currently significant differences in the approaches of State and Territory governments to the issue of problem gambling on the Internet:

The Commonwealth cannot rely on the States and Territories to halt the growth of the interactive gambling industry. On 19 April 2000, the Commonwealth signalled its concern about the potential for interactive gambling to exacerbate the negative social impacts of problem gambling in Australia and called on the States and Territories to join it in imposing a voluntary moratorium on the introduction of new interactive gambling services. Only New South Wales and Western Australia indicated support for this initiative. Since this meeting, a number of jurisdictions have continued to issue new interactive gambling licences.¹³

1.19 In its inquiry into interactive gambling, the Senate Select Committee on Information Technologies found that State and Territory governments were not able to agree on a uniform regulatory model and that this compromised the effectiveness of harm-minimisation policies.¹⁴ This finding was supported in evidence to the Committee during its hearing on the Bill. Mr Warren Wilson, Managing Director, TAB Ltd (NSW), referred to the continuing competitive instincts of some States and Territories as they vie for market share:

I think that the aggressive states have been those that have the least to lose—states/territories. That is, they do not have a tax base, they do not have a population base and, therefore, they have little to lose by getting out on the front foot and going forward with these things. I think it is already on the public record that one particular territory said that they wished to be the Nevada of Australia. I think that says it all.¹⁵

1.20 Similarly, when asked about the reasons for the failure of State and Territory governments to find a consistent position with respect to the licensing of interactive gambling, Mr Peter Fletcher, Public Affairs Manager, TAB Ltd (NSW), referred to the competitive nature of different jurisdictions:

11 *Official Committee Hansard*, Canberra, 25 August 2000, pp. 17-18.

12 *Official Committee Hansard*, Canberra, 25 August 2000, p. 26.

13 Explanatory Memorandum, Interactive Gambling (Moratorium) Bill 2000, p. 5.

14 Senate Select Committee on Information Technologies, *Netbets: A review of online gambling in Australia*, March 2000, pp. 79-84.

15 *Official Committee Hansard*, Canberra, 25 August 2000, p. 16.

Certainly there has been some breaking of ranks in terms of consistency on a number of regulatory issues. Some of the smaller states and territories have taken the view that they should offer very laissez faire arrangements whereby their licensees can fully target the more populous states without any recourse to loss of revenues, particularly to the racing industry in those larger states. Those types of arrangements and competition between the states have led to the situation that you allude to.¹⁶

1.21 In addition, a number of harm-minimisation measures that could easily be implemented using existing technologies and which were recommended by the Senate Select Committee in *Netbets*, have failed to materialise. For example, the display of betting odds on a virtual poker machine, clear warnings about the dangers of gambling, enforced (not self-imposed) time limits to gambling activity, and the uniform availability of third-party player-exclusions have not yet been fully addressed.¹⁷

1.22 Evidence to the Committee indicated that Internet technology allows for the implementation of these types of regulatory measures and that governments should make them a part of licensing arrangements:

... look at the strengths of the Internet. Do not look at the issue as simply access to poker machines 24 hours a day; look at the extent to which the medium itself can provide [harm-minimisation policies]. Structure in your licence requirements to stipulate who may access your service and upon what conditions, and deal with it that way. We think that way you address the social policy concerns, which we also share, but you do not do it in a way that has these unintended and adverse impacts on the rest of the Internet industry.¹⁸

Conclusion

1.23 The Committee considers that the combination of the limited uptake of e-commerce (which is usually confined to trusted online retailers), the absence of reputable IGSPs and the availability of other forms of gambling, will discourage most Australians from gambling online with overseas-based IGSPs. By implementing interim controls on the expansion of Australian-based IGSPs, the Bill effectively limits the most likely source for increased gambling activity and therefore problem gambling.

1.24 In addition, there is a need for the Commonwealth Government to take an active role in addressing problem gambling in Australia and the Bill will provide an opportunity to carry out a timely analysis on this very important social issue. The Committee notes that most State and Territory governments will not take a lead role in addressing the social harm issues raised by interactive gambling, which provides further impetus for the Government's proposed intervention.

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

17 Senate Select Committee on Information Technologies, *Netbets: A review of online gambling in Australia*, March 2000, Chapter 3.

18 *Official Committee Hansard*, Canberra, 25 August 2000, p. 26.

The impact of the moratorium on interactive gambling service providers (IGSPs) in Australia

Summary of the evidence

1.25 Some of the evidence to the Committee stated that a temporary pause on the expansion of interactive gambling in Australia, would irrevocably set back Australian IGSPs, who must compete with overseas organisations. Several witnesses submitted that, because the Internet and its related technologies are changing rapidly and consumer expectations are increasingly high, any impediment to meeting such consumer expectation is likely to result in a market loss that may not be recovered into the future.

1.26 However, the Committee was also informed that Australia's reputation as a regulator provides Australian IGSPs with a significant market advantage over their international competitors.

Relevant provisions of the Bill

1.27 The Bill limits the expansion of existing IGSPs by making it an offence for them to provide an interactive gambling service. However, there are a number of defences to this offence, and these are listed in clause 11. Under this provision, it is a defence if the defendant proves that:

- (a) on a particular day before 19 May 2000, the defendant provided an interactive gambling service (the *pre-19 May 2000 service*); and
- (b) the current service is the same or substantially the same as the pre-19 May 2000 service; and
- (c) the current service is provided under the same name as the pre-19 May 2000 service; and
- (d) the pre-19 May 2000 service had at least one arm's length paying customer.¹⁹

1.28 In order to fall within this defence, an organisation would essentially need to have been operating prior to 19 May 2000, and since that time continued to operate in substantially the same manner. The Explanatory Memorandum provides guidance on what constitutes 'substantially the same' service:

In relation to the kind of services provided, a number of aspects of an *interactive gambling service* are so central to what kind of service the service is, that if a service is different from a pre-19 May 2000 service in respect of any of those aspects, it is intended that the service would not be regarded to be the same or substantially the same as the pre-19 May 2000 service. These central aspects of an *interactive gambling service* are:

- the type of betting offered on the service;
- the restrictions, if any, on customers who may access the service;
- the type of communications service used to provide the service to customers; and
- the subject matter of the service.

19 Clause 11, Interactive Gambling (Moratorium) Bill 2000.

Non-central aspects of an *interactive gambling service* could vary in relation to a post-19 May 2000 service and it is intended that the service would still be regarded be the same or substantially the same as a pre-19 May 2000 service. The non-central aspects of the service include aesthetic changes to the service, such as a change to the appearance of a service or the addition of music to the service, or changes to ancillary aspects of the *interactive gambling service* such as billing procedures or application procedures.²⁰

1.29 Consequently, for an IGSP to rely on this defence, it must not alter its operations beyond the limitations set out by clause 11. Much of the evidence to the Committee commented on how this limitation would affect the commercial wellbeing of IGSPs in Australia.

Discussion of the evidence

Operations shifted offshore

1.30 Mr Peter Coroneos, Executive Director, Internet Industry Association, advised that the moratorium, regardless of whether there is a ban in the future, will result in a number of Australian-based organisations moving overseas:

Undoubtedly the message we are getting from both member and non-member interactive gambling operators in Australia is that this moratorium will leave them with no option but to relocate. So to that extent they are adjusting their business plans.²¹

1.31 The Committee heard evidence that the high level of regulation in Australia, and the trust that this builds with online gamblers, may not be enough to keep IGSPs in Australia. Mr Richard Farmer commented that although Australian regulation helps to attract customers, in the long term, the reputation of an IGSP would outweigh its physical location and government regulator.²²

1.32 The Australian Capital Territory Government commented in its submission that the Bill will force Australian IGSPs to progress arrangements offshore.²³ Sportingbet.com, a United Kingdom based online wagering service with plans to locate its regional headquarters in Australia, stated in its submission that it would relocate to another country: 'Sportingbet is one of many international organisations that will move to other locations and still offer their services to a global market (including Australia)'.²⁴

Market losses

1.33 Lasseters Online, which operates Australia's first online casino, alluded to the competitive nature of the Internet, and how the moratorium detracts from its ability to compete effectively:

20 Explanatory Memorandum, Interactive Gambling (Moratorium) Bill 2000, pp. 26-27.

21 *Official Committee Hansard*, Canberra, 25 August 2000, p. 24.

22 *Official Committee Hansard*, Canberra, 25 August 2000, p. 5.

23 Australian Capital Territory Government, Submission 7, p. 1.

24 Sportingbet.com Australia Pty Ltd, Submission 28, p. 1.

The moratorium will impede the growth of existing operators such as Lasseters. The introduction of new services and capabilities is critical within the information technology industry where rapid advances in technology can change the Internet and e-commerce dramatically within a one year period.²⁵

1.34 Lasseters Online also stated that it will not benefit from the exclusion of other Australian IGSPs from the online environment:

The expectation that existing Australian operators will benefit from a protected position in the market and the absence of new competitors, is false. The primary competition for existing Australian operators is the more than 1000 IGSPs. Amongst this market, existing Australian operators will be at a disadvantage because they will be unable to innovate in line with market trends.²⁶

1.35 Some organisations stated that the moratorium will impact negatively on industries that are related to their online gambling operations. For example, ACT TAB Ltd argued that the inclusion of wagering in the moratorium is ‘totally inappropriate’ and ‘represents a major threat to the future funding of the racing industry’.²⁷

1.36 Similarly, TABCORP Holdings Ltd stated that the moratorium:

... could immediately stop the development of any new wagering services by the State TABs in Australia who are presently operating under their wagering licence issued by their respective State governments. This will adversely impact all TAB services including TAB agencies, racecourses and phone betting services.²⁸

1.37 In the Explanatory Memorandum to the Bill, the Government states that, with respect to existing IGSPs, ‘the industry should be able to generate at least the same amount of revenue as it did as at the date the moratorium takes effect.’²⁹ Lasseters Online responded to this statement, saying that it:

... ignores the essential business objective for growth in revenue and returns. Companies are obliged to shareholders and to the health of the business to aim for increased revenue each year rather than ‘the same’.³⁰

1.38 Similar comments were made in other submissions about the need for IGSPs to constantly develop their product in an international market and the obligation they owe to their Australian shareholders.³¹

25 Lasseters Online, Submission 11, p. 1.

26 Lasseters Online, Submission 11, p. 1.

27 ACT TAB Limited, Submission 5, p. 2.

28 TABCORP Holdings Ltd, Submission 27, p. 2.

29 Interactive Gambling (Moratorium) Bill 2000, Explanatory Memorandum, p. 12.

30 Lasseters Online, Submission 11, p. 2.

31 See for example Publishing and Broadcasting Limited Gaming Management Pty Ltd, Submission 9, p. 2; MegaSports (ACT) Pty Ltd, Submission 10, p. 6; Australian Institute for Gambling Research, Submission 14, p. 3; GoCorp Ltd, Submission 16, p. 4; Timothy Ryan, Submission 17, p. 4; Tattersall’s, Submission 21, p. 1.

1.39 Mr Andrew Eakins, Director of Finance, The Federal Group, indicated that the restriction will set back his company by up to two years:

... we would not be able to increase our range of games during that period of time. We would be able to offer only the current games. That restriction would not apply on overseas sites, obviously, so overseas sites would be able to improve their product during this period of time. If, subsequently, there was no ban put on Internet gaming, there was some kind of national regulatory model or whatever, we would be 12, 18 or 24 months behind what the rest of the industry has done in that period. Effectively, there is a commercial ban by way of a moratorium.³²

Conclusion

1.40 The Committee notes that the moratorium could have an impact on the short-term growth of the interactive gambling industry in Australia, and that this is a consequence of the desired outcome of providing the Commonwealth Government with an opportunity to examine the impact of interactive gambling. The potential negative economic impact, however, is offset by the need to ensure that Australians are not subject to the potentially adverse effect of increased gambling opportunities. Further, from the evidence, it appears that the moratorium alone will not result in large numbers of Australian IGSPs moving their operations offshore.

1.41 In addition, the Committee also notes the considerable marketing advantage that Australian regulation provides IGSPs, which is evidenced by the continuing interest of international organisations wishing to establish operations in Australia. The Bill is not likely to damage this market advantage, as it indicates a commitment by the Commonwealth to offer the highest levels of protection to consumers on the Internet.

The inclusion of interactive wagering and lotteries in the moratorium

Interactive wagering

Summary of the evidence

1.42 Some of the evidence to the Committee stated that interactive wagering activities should be excluded from the moratorium. There were two main arguments in support of this conclusion. First, it was stated that wagering on the Internet is not an interactive activity and is less likely than online gaming to result in problem gambling. Second, it was argued that wagering on the Internet is very similar to telephone betting, which is not illegal. The Committee also heard evidence, however, to the effect that the moratorium should apply equally to all forms of gambling on the Internet.

Relevant provisions of the Bill

1.43 Clause 4 of the Bill specifies the types of gambling services that are covered by the moratorium. These are summarised in the Explanatory Memorandum:

A Gambling service is defined in clause 4 to mean:

- (a) a service for the placing, making, receiving or acceptance of bets; or

32 *Official Committee Hansard*, Canberra, 25 August 2000, p. 38.

- (b) a service the sole or dominant purpose of which is to introduce individuals who wish to make or place bets to individuals who are willing to receive or accept those bets; or
- (c) a service for the conduct of a lottery; or
- (d) a service for the supply of lottery tickets; or
- (e) a service for the conduct of a specified kind of game, or
- (f) a gambling service (within the ordinary meaning of that expression) that is not covered by any of the above paragraphs.

1.44 This is a broad definition and includes wagering and lotteries. However, a further qualification to the definition is made in clause 5, which requires the gambling service to be provided using specified telecommunications means.

Discussion of the evidence

- Wagering on the Internet is not interactive and is less likely to lead to problem gambling

1.45 A number of witnesses and submissions highlighted the difference between wagering and gaming, and therefore argued that a different regulatory regime should apply to each. The principal difference was that wagering is not repetitive and is dependent on an external event or outcome. In contrast, gaming is highly repetitive and the activity is generated by the person, usually at the press of a button or the click of a mouse.

1.46 In its submission, ACT TAB Ltd stated that wagering on the Internet is not an interactive gambling activity as the wager is usually placed ahead of an event, the timing of which is determined by an external body:

Placing wagers on racing or ‘live’ events is far removed from Internet gaming and interactive gambling. The events on which wagers are made are conducted at racecourses throughout the country and run to a time schedule set by racing clubs. In no way could these events be classified as ‘interactive’.³³

1.47 A similar point was made by MegaSports (ACT) Pty Ltd in its submission, which highlighted that unlike ‘mindless button pushing of virtual poker machines or simple red/black choices of virtual roulette, wagering requires some degree of skill and analysis.’³⁴

1.48 Mr Warren Wilson, Managing Director, TAB Ltd (NSW), implied that wagering on the Internet will not lead to an ‘unwieldy’ growth in wagering activity and a consequent increase in problem gambling:

... Sky Channel commenced a home racing service on 5 September 1998 and now, through all of the pay TV operators, the home racing channel is available in about 1.3 million homes—nearly one in four homes throughout the country, and yet it is still only single digit growth that is probably below or around inflationary growth in the country. So the point is that, even with these new technologies or new distribution mechanisms, we have not seen any outrageous or unwieldy sort of

33 ACT TAB Limited, Submission 5, p. 1.

34 MegaSports (ACT) Pty Ltd, Submission 10, p. 3.

growth in the business. My point is that the technology will not—as some of the doomsayers suggest—create rampant growth in wagering. It just will not happen.³⁵

- Wagering should be included with other gambling forms

1.49 In contrast to the above arguments, however, the Committee also heard evidence that the moratorium should apply equally across all forms of interactive gambling. Mrs Joanne Pafumi, Consultant, Lasseters Holdings, provided the reasoning for this inclusive approach:

We are also concerned about some issues raised this morning in regard to the consistent application of the bill across gambling forms. I refer to the Productivity Commission, which reported on the source of problems for gamblers in counselling. It found that gaming machines were the primary source, with 68.9 per cent of problem gamblers reporting that method. Racing accounted for 15.6 per cent; casino table games, five per cent; lottery games, 3.7 per cent; bingo, 2.7 per cent; and other kinds, 4.1 per cent. So while the source of problem gambling in society is heavily skewed towards gaming machines, other forms of gambling must take some responsibility for problem gambling in society. We believe firmly that if you are part of the problem, you should be part of the solution. For that reason we believe that regulation with respect to interactive gambling should be consistent across all forms of gaming.³⁶

1.50 Professor Jan McMillen, Executive Director, Australian Institute for Gambling Research, indicated that wagering activity is on the rise and that even though ‘sports betting is a small part of the market it had a growth rate of 42 per cent in the last financial year’.³⁷ Professor McMillen also stated that the changes to wagering activities are not being closely regulated by State and Territory governments and are ‘slipping through the net’.³⁸

1.51 The Committee also heard evidence that there should be no distinction between wagering and gaming on the Internet, and therefore both should fall under the moratorium. For example, Ms Marilyn Webster, representing the Inter-Church Gambling Taskforce, advised the Committee that their organisation does not distinguish between wagering and interactive gambling.³⁹

- Wagering on the Internet is very similar to telephone betting

1.52 Several submissions to the Committee stated that there is little distinction between a wagering activity that is conducted on the Internet, at a racetrack, or over the telephone. Consequently, if it is legal to place a bet using a telephone, then it should also be legal on the Internet.

1.53 In its submission, CentreRacing Ltd stated that the Bill fails to make a valid distinction between telephone and Internet wagering:

35 *Official Committee Hansard*, Canberra, 25 August 2000, p. 10.

36 *Official Committee Hansard*, Canberra, 25 August 2000, p. 44.

37 *Official Committee Hansard*, Canberra, 25 August 2000, p. 22.

38 *Official Committee Hansard*, Canberra, 25 August 2000, p. 22.

39 *Official Committee Hansard*, Canberra, 25 August 2000, p. 22.

The process and exposure of a punter placing a bet on a horse race are the same whether he does so in person, over the telephone (either speaking or pressing buttons on a handset) or using a standard computer keyboard. ...

The definitions of 'standard telephone service', 'telephone betting service' and 'voice call' [in the Bill] all appear to allow for data input of bets using a telephone handset but apparently not a standard keyboard. There is no rational basis for such a distinction.⁴⁰

1.54 The Committee notes that several other submissions supported this point of view.

- Wagering on the Internet represents a new market

1.55 Professor Jan McMillen, Executive Director, Australian Institute for Gambling Research, stated that Internet wagering is likely to attract a new market, and that experience indicates the size of this market will grow considerably:

I suspect it is a new market. There probably is migration and that will probably accelerate, but I also think there is a new market. History has shown that when technology facilitates the development of a new product and a new mode of delivery in gambling the market expands. The cake gets bigger; it is just the slices of the cake that shift. It happened with casinos; it happened with gaming machines; it happened with online lotteries, and now it is going to happen with this form of gambling as well. We will end up with more Australians gambling and gambling more.⁴¹

1.56 Mr Tom Dale, General Manager, Regulatory and Access Group, National Office for the Information Economy, explained the Government's policy behind the application of the moratorium to a range of gambling activities, despite the similarities between their access on the Internet and telephone:

It is one of a number of areas in the bill where I guess a line had to be drawn. The existing telecommunications regime makes a number of regulatory distinctions between different forms of carriage service. We are trying to be consistent with that regime, among other things, and I think it sits logically with that approach.⁴²

Lotteries

Summary of the evidence

1.57 The Committee heard a number of similar arguments against the inclusion of Internet lotteries in the moratorium.⁴³ That is, lotteries on the Internet are no different to those in the terrestrial environment, and they have minimal impact on the levels of problem gambling.

40 CentreRacing, Submission 20, p. 1.

41 *Official Committee Hansard*, Canberra, 25 August 2000, p. 22.

42 *Official Committee Hansard*, Canberra, 25 August 2000, p. 61.

43 Tattersall's, Submission 21, p. 1.

Discussion of the evidence

1.58 Mr John Mortimore, General Manager, Tatts.com Division, Tattersall's, stated that lotteries may not even be a source of problem gambling in Australia:

As a former chairman of the Australian lotto bloc and a long serving member of the industry I can assert that I have never seen any cogent evidence of the development of problem gambling behaviour in respect of the purchase of lottery tickets. The community does not even consider the purchase of lottery tickets to be gambling behaviour, in any case.⁴⁴

1.59 Mr Peter Coroneos, Executive Director, Internet Industry Association, expressed concern about the Government's divergent approach to existing activities that are conducted on the Internet such as, for example, the purchase of a lottery ticket:

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. We question why the moratorium seeks to go so widely in its effect at a time when we are dealing with an activity which is legal and is responsibly enjoyed by many Australians.⁴⁵

Conclusion

1.60 The Committee recognises that there are a number of similarities between wagering activity and lotteries on the Internet and their availability through other mediums such as the telephone and physical venues. It also notes the differences between wagering and gaming.

1.61 The Committee believes that the Internet will bring such significant change to wagering activity that a moratorium is required for the Government to consider its impact. The Internet will increase the accessibility and appeal of wagering activity. The improved content and options it provides for gamblers such as placing more bets on more events, along with the fact that it can be accessed in private and in the workplace, will lead to increased gambling activity and with it a greater propensity for problem gambling.⁴⁶

1.62 The Committee endorses the consistent and uniform approach of the Bill to all forms of interactive gambling services, including lotteries.

The application of the moratorium to interactive gambling operations that are not wholly based in Australia.

Summary of the evidence

1.63 Some of the evidence to the Committee stated that the extra-territorial application of the Bill is excessive, and that it should be amended so that it does not apply to IGSPs that have a connection with Australia, but whose operations are based overseas. The Committee was also advised however, that this aspect of the Bill is necessary to ensure that organisations

44 *Official Committee Hansard*, Canberra, 25 August 2000, p. 33.

45 *Official Committee Hansard*, Canberra, 25 August 2000, p. 19.

46 The Productivity Commission found that there is sufficient evidence to suggest a significant connection between greater accessibility and the greater prevalence of problem gambling. Productivity Commission 1999, *Australia's Gambling Industries*, Report No. 10, Ausinfo, Canberra, Vol. 1, Box 8.1.

cannot circumvent the moratorium simply by having their Internet service hosted on an offshore server.

Relevant provisions of the Bill

1.64 Clause 5(1)(c) of the Bill has the effect of extending the moratorium to IGSPs that may not be based or operating in Australia. The Explanatory Memorandum provides an example of its application, and states that a business could come within the terms of the moratorium if it:

... provides an on-line gambling service such as a casino which has its web-site maintained in an offshore jurisdiction and the company executive (or principal company executives) are based in Australia.⁴⁷

Discussion of the evidence

1.65 In its submission, eBet Ltd argues that any moratorium should relate only to the operation of Internet gambling services on Australian soil or to Australian companies who target or accept customers from Australia.⁴⁸ It argues that without this amendment, the Bill would unduly impact on eBet's overseas operations:

By way of example: If our company were to establish an Internet betting service for a European racetrack, licensed by a European Government and accepting only European resident customers, it would seem that we would be in breach of the law should the Bill pass in its current form.

We ask you to consider how this in any way assists the Government in its endeavours with respect to protecting *Australians* that it perceives as at risk from Internet gambling.⁴⁹

1.66 A similar point was raised by the Northern Territory Government, which stated that this could drive legitimate Australian businesses offshore.⁵⁰

1.67 Mr Tom Dale, General Manager, Regulatory and Access Group, National Office for the Information Economy, said that the extra-territorial application of the Bill is required to ensure that 'firms did not seek to avoid the provisions of the Bill by simply moving servers around and things like that'.⁵¹

Conclusion

1.68 The Committee believes that the application of the moratorium to interactive gambling operations that are not wholly based in Australia, is necessary to ensure that the moratorium has its desired effect. Without this restriction, Australian-based IGSPs could, as Mr Tom Dale advised the Committee (see paragraph 1.67), move their operations offshore and possibly continue to offer interactive gambling services to Australians. Furthermore,

47 Explanatory Memorandum, Interactive Gambling (Moratorium) Bill 2000, p. 21.

48 eBet Ltd, Submission 23, p. 1.

49 eBet Ltd, Submission 23, p. 2; see also *Official Committee Hansard*, Canberra, 25 August 2000, p. 35.

50 Northern Territory Government, Submission 15, p. 2.

51 *Official Committee Hansard*, Canberra, 25 August 2000, p. 59.

from the point of view of consistency, it would be severely hypocritical of the Australian Government to expose overseas consumers to a service, which has been declared illegal for the period of the moratorium in Australia while its potential, undesirable social consequences are evaluated.

The scope for IGSPs to offer services to residents in overseas countries where interactive gambling is legal

Summary of the evidence

1.69 A number of submissions argued that the moratorium should not apply in cases where Australian residents are not targeted by IGSPs. Several organisations - mainly those that provide gaming or wagering on international sporting events - indicated that they were prepared to target overseas markets only. This is due to the fact that Australia is a very small gambling market and that the Internet enables cheap and easy access by overseas residents.

1.70 Further, some Australian organisations have developed working relationships and partnerships with overseas bodies, with a view to assisting them with gambling products for their domestic markets. Under the moratorium, the Australian-based organisations would be restricted from assisting to develop new products.

1.71 The Committee also heard, however, that there is a need for consistency between Australia's domestic and international policies, and the Commonwealth Government should only endorse interactive gambling for international markets once it has done so domestically.

Relevant provisions of the Bill

1.72 Clause 9 of the Bill extends the application of the moratorium to 'acts, omissions, matters and things outside Australia'. The Explanatory Memorandum states that this provision is consistent with the intention of the Bill, which is to 'pause the development of the Australian-based interactive gambling industry, which includes the provision of services to persons outside Australia.'⁵²

Discussion of the evidence

1.73 In its submission, Publishing and Broadcasting Limited Gaming Management Pty Ltd (PBLG) suggested that the Commonwealth Government may be intruding on the policies of foreign governments:

If the Government and Parliament want to put Australians' access to online gambling services 'on hold', PBLG submits that the moratorium should be targeted at that end. ...

By permitting Australian companies to participate in the overseas online gaming market, while denying Australians the opportunity to gamble, the Government's purpose would be fulfilled without jeopardising a great e-commerce opportunity for Australia.

In putting this view, PBLG believes that:

52 Explanatory Memorandum, Interactive Gambling (Moratorium) Bill 2000, p. 24.

- It is for foreign governments, rather than Australia's, to determine foreigners' access to the Internet.⁵³

1.74 Mr Tom Dale, General Manager, Regulatory and Access Group, National Office for the Information Economy, stated that there is a sound public policy reason for this restriction:

... there is a valid public policy point that if the Australian parliament decides that an issue is sufficiently harmful to pass legislation to restrict it domestically, effectively the export of such a harm is arguably very much contrary to good public policy and not guaranteed to win you friends overseas.⁵⁴

Conclusion

1.75 The Committee notes that the Bill does not prohibit existing Australian IGSPs from continuing to offer their existing services to overseas markets. It merely limits it to existing levels. It could be a source of international embarrassment if, without adequate consultation, the Commonwealth Government endorsed a product the suitability of which it is now considering as part of its domestic policy. It is possible that Australia's reputation as a world-leading technical regulator of gambling would be compromised if it was not consolidated with an equally sound social policy. The Committee believes that the sovereign right of the Australian Government to determine what happens on Australian territory must be understood.

1.76 The Committee also notes that some Australian IGSPs have not complied fully with the policies of overseas governments. For example, Lasseters Online and Canbet Ltd informed the Committee that they accept bets from United States residents even though the government of that country has placed severe restrictions on interactive gambling services.

Consultation and retrospectivity of the moratorium

Consultation

Summary of the evidence

1.77 A number of witnesses stated that both the interactive gambling industry and government regulators had minimal opportunity for input into the drafting of the Bill.

Discussion of the evidence

1.78 The consultative process for the Bill is outlined in the Explanatory Memorandum:

On 19 May 2000 the Commonwealth wrote to State and Territory Ministers outlining the Government's intention to legislate for a moratorium. The letter invited States and Territories to provide input into the nature and scope of a legislated moratorium. The Commonwealth also issued several public statements outlining its approach to the moratorium and this resulted in a number of queries and correspondence from industry representatives. The Commonwealth's intention has been to signal in a very broad way its intention to legislate for a moratorium.

53 Publishing and Broadcasting Limited Gaming Management Pty Ltd, Submission 9, p. 2.

54 *Official Committee Hansard*, Canberra, 25 August 2000, p. 59.

The Commonwealth will be in a better position to consult on the detail of the moratorium once it has developed and introduced legislation into Parliament.⁵⁵

1.79 Mr Peter Bridge, representing the Australian Casino Association, advised that it was not consulted with respect to the drafting of the Bill.⁵⁶ Similarly, Mr John Mortimore, General Manager, Tatts.com Division, Tattersall's, told the Committee that, in his capacity as a member of the recently formed Australian Gaming Council, he was not aware of any consultations with its member organisations.⁵⁷

1.80 In his evidence to the Committee, Mr Tom Dale, General Manager, Regulatory and Access Group, National Office for the Information Economy, stated that there was no industry input into the Bill, and that this practice has been followed in the past:

I will just note for the moment that it is not normal practice, although it can sometimes occur, for the specific details of draft legislation to be made available to the public or to interested parties in industry. There was certainly consultation with the industry and state governments and a number of user groups in the early stages of the government's consideration of gambling policy generally, including Internet gambling. That was earlier this year but before the process of drafting the bill commenced.⁵⁸

Retrospectivity

Summary of the evidence

1.81 Some of the evidence to Committee stated that the retrospectivity of the Bill will result in investment losses in the interactive gambling industry. Several organisations argued that it was unfair that their activities are legal under State and Territory laws, but will potentially become illegal under the Bill. In addition, retrospectivity results in an uncertain investment environment which could damage the wider Internet industry.

Discussion of the evidence

1.82 In its submission, the Northern Territory Government stated that the retrospectivity clauses of the Bill are unfair and should be amended:

Public comments have been made that the Bill, including the criminal offence provisions, would have retrospective effect. If so, it is submitted that this is unfair as the actions that constitute the offence were not known to existing operators until the release of the Bill. ...

However, it appears a penalty may not be imposed except for actions occurring after the Date of Assent. If so, the Bill should be recast to have *prospective* effect only, and references to the May 2000 date should be removed.⁵⁹

55 Explanatory Memorandum, Interactive Gambling (Moratorium) Bill 2000, p. 12.

56 *Official Committee Hansard*, Canberra, 25 August 2000, p. 40.

57 *Official Committee Hansard*, Canberra, 25 August 2000, p. 40.

58 *Official Committee Hansard*, Canberra, 25 August 2000, p. 59.

59 Northern Territory Department of Industries & Business, Submission 15, p. 2.

1.83 Similarly, a confidential submission received by the Committee stated that the retrospectivity of the Bill raised problems for business planning:

It is hard to understand the logic and fairness of the retrospective nature of the Bill. The term 'gambling service' was not defined until the tabling of the Bill before Parliament. How was it envisaged that Australian companies manage the operation of their commercial activities from the date Senator Alston made a press release in May 19 this year without definition?⁶⁰

- Retrospectivity and the impact of the moratorium on e-commerce investment in Australia

1.84 A number of witnesses commented that the uncertainty caused by the moratorium could have a negative impact on foreign investment in Australia. Mr Keith Cullen, Managing Director, eBet Ltd, stated that the retrospectivity impacts negatively on the interactive gaming and other Internet industries:

Telecommunications covers every single business. There is a certain argument that says governments can use their powers under telecommunications to impact retrospectively and make criminal the activities of legitimate operators that were not operating in a vacuum—this is the important point here, which is frustrating.⁶¹

1.85 Mr Paul Appleby, Chief Executive Officer, GoCorp Ltd, stated in evidence that the moratorium has caused a high level of uncertainty, and as a result his organisation has examined the prospect of claiming compensation:

I must say it makes it very confusing for a business that is trying to move forward, and for the investor community, to try to have some confidence in investing in the business as it goes forward. ... This has to cause serious concern not only for the gaming sector but also for the e-commerce sector in general, the fact that the government can legislate retrospectively with regard to investments that have already been made, and been made in good faith under existing legislation. It is a major concern for our investors.⁶²

Conclusion

1.86 Gambling has been a prominent public policy issue since it became evident that problem gambling in Australia is a major social problem. Since the release of the Productivity Commission report into Australia's gambling industries in November 1999, a number of Government press releases have been released, with the Prime Minister's December 1999 statement clearly foreshadowing future developments:

Internet gambling has the potential to dramatically increase the number of problem gamblers because it will be accessible to every household 24 hours a day.

I would envisage that this issue will be a major focus of the proposed Ministerial Council on Gambling and its advisory body. In addition the Government will be undertaking consultations with relevant industry and consumer groups and will also

60 Confidential submission, Submission 29, p. 4.

61 *Official Committee Hansard*, Canberra 25 August 2000, p. 39.

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

take account of the forthcoming report of the Senate Information Technology Committee's inquiry into on-line gambling.⁶³

1.87 That Senate Committee subsequently released its report, *Netbets: A review of online gambling in Australia*, in March 2000 in which it indicated that further significant reforms were required and that without these a moratorium should be imposed. Consequently, the gambling community has been aware since March 2000 that the Commonwealth Government was considering using its powers to possibly impose a moratorium.

1.88 Therefore, the Committee considers that adequate notice was provided. Further, it would be unduly restrictive on the Commonwealth Government to expect that comprehensive consultations be carried out with respect to all Commonwealth legislation.

Claims for compensation from IGSPs and State and Territory Governments

Summary of the evidence

1.89 Some of the evidence to the Committee stated that, as several organisations had spent millions of dollars in obtaining interactive gambling licences, which may subsequently be blocked or frustrated by the moratorium, a claim for compensation may lay against the Commonwealth.

Discussion of the evidence

1.90 In its submission to the Committee, the Australian Casino Association stated that a number of its members may seek compensation as a result of the moratorium:

The retrospective legislation is unfair and a number of our members could take legal action. Compensation could be sought for the millions of dollars members have spent developing a legal business with a licence granted by a State or Territory Government.⁶⁴

1.91 Mr Michael Gard, Senior Adviser, Tasmanian Government, stated in evidence that the Federal Group, Tasmania's only operating IGSP, would have the support of its Government if it claimed compensation:

[The Federal Group] have indicated that they had to spend in the order of \$14 million developing their site. They have said publicly that should this ban proceed they will sue. The Tasmanian government is on record as saying that they will do all they can to support the Federal Hotels' action to recoup their losses.⁶⁵

1.92 The Explanatory Memorandum to the Bill considered the issue of investment losses by licensees and the possibility that this could lead to a claim for compensation. It states that licensees may have to pursue compensation under the general principles of contract law:

Some recently licensed providers may have made business decisions and investments based on an ability to generate revenue in the near future. Given a moratorium will temporarily delay these providers from entering the market, it is

63 'National Approach to Problem Gambling', Media Release, Prime Minister, 16 December 1999.

64 Australian Casino Association, Submission 13, p. 2.

65 *Official Committee Hansard*, Canberra, 25 August 2000, p. 56.

possible the providers will have to carry the cost of any investment decisions taken before the announcement of the moratorium. Recent licensees frustrated from operating by the moratorium may claim for restitution from States and Territories for the costs associated in obtaining a license. Principles of restitution will apply to any contracts frustrated by the Commonwealth's action to prevent one party to a contract from gaining a windfall benefit at the expense of the other party.⁶⁶

Conclusion

1.93 It is a consequence of the policy making process by the Commonwealth Government that there may be some conflict or inconsistencies between State and Territory policies. This is in fact contemplated by the Commonwealth Constitution, which provides that in the case of overlap between different legislatures, the Commonwealth Government's laws will prevail.

Unintended consequences of the Bill

Summary of the evidence

1.94 Evidence to the Committee highlighted at least two instances in which organisations believed that the Bill would impact unintentionally on gambling operations.

Discussion of the evidence

1.95 Mr John Mortimore, General Manager, Tatts.com Division, Tattersall's, stated that the Bill could have unintended consequences in so far as it applies to terrestrial lottery activities:

A further problem with the bill is what I assume to be an unintended consequence of its drafting. We have been told that the bill is supposed to ban only new gambling services offered by means of the Internet. However, a quick review by Tattersalls' legal counsel indicates that the bill is so drafted that it may also ban new services offered via Tattersalls' terrestrial systems for retail lotteries and gaming. Since Tattersalls is working with the Victorian government and its regulators on attempting to produce new systems in the future which will complement our responsible gambling platform and assist in dealing with problem gambling behaviour, obviously such an impact would be most unfortunate.⁶⁷

1.96 The Committee notes that this issue was not addressed in the submission provided by Tattersall's and that from the evidence provided by Mr Mortimore, it is not clear how the Bill has an unintended consequence.

1.97 In contrast to Mr Mortimore's statement, Mr Tom Dale, General Manager, Regulatory and Access Group, National Office for the Information Economy, stated that he is not aware of any unintended consequences:

A third point concerns the question of exemptions. That was covered in some detail by a number of witnesses this morning, particularly in relation to, firstly, wagering and, secondly, to lotteries. All I will note at the moment is that, as far as we are aware, there are still no unintended consequences of the draft, the inclusion of

66 Explanatory Memorandum, Interactive Gambling (Moratorium) Bill 2000, p. 9.

67 *Official Committee Hansard*, Canberra, 25 August 2000, p. 34.

those forms of gambling is intended, and we can answer questions about that if you like.⁶⁸

1.98 In its submission, CentreRacing Ltd stated that its operations would be affected by the Bill because it had undergone a recent name change.⁶⁹ This has occurred because the proprietor, Mr Terry Lillis, purchased the horseracing component of Centrebet Pty Ltd, one of Australia's first online wagering services, and has subsequently named it 'CentreRacing'.

Conclusion

1.99 Clause 5(5) of the Bill allows the Minister for Communications, Information Technology and the Arts to exclude a service from the operation of the Bill. The Explanatory Memorandum describes the circumstances in which a service may be excluded:

This Ministerial determination power has been included in the Bill to ensure that, if there is a service in a class of services that would arguably be an *interactive gambling service* as a result of subclause 5(1), but the service is not the kind of service that should be covered by the moratorium, the Minister may determine that each service in the class of services is exempt and therefore is taken not to be an *interactive gambling service*.

The Ministerial determination power is intended to be used only in extraordinary circumstances to ensure that the moratorium does not apply to services to which it was never meant to apply. The Ministerial determination may not specify that a particular provider is taken not to provide an *interactive gambling service*. The determination must be a general rule of application, which relates to each service included in a specified class of services.⁷⁰

1.100 The Committee considers that this provision adequately covers any situation in which it is clear that the Bill was not intended to apply.

RECOMMENDATION

1.101 The Committee reports to the Senate that it has considered the Interactive Gambling (Moratorium) Bill 2000 and recommends that the Bill proceed.

Sen Alan Eggleston

Chair (LP WA)

68 *Official Committee Hansard*, Canberra, 25 August 2000, p. 59.

69 CentreRacing Ltd, Submission 20, p. 2.

70 Explanatory Memorandum, Interactive Gambling (Moratorium) Bill 2000, pp. 22-23.

**APPENDIX 1
SUBMISSIONS TO THE
INTERACTIVE GAMBLING (MORATORIUM) BILL 2000**

1	Mr John Quiggin
2	Tasmanian Government
3	World Wide Wagering & Gaming Consultants Pty Ltd
4	Regis Controls Pty Ltd
5	ACTAB Limited
6	Interactive Entertainment Technology Pty Ltd (IETEC)
7	ACT Legislative Assembly
8	Mr Adam Garrigan
9	Publishing & Broadcasting Limited Gaming Management Pty Ltd (PBLG)
10	MegaSports (ACT) Pty Ltd
11	Lasseters Online
12	The Federal Group
13	Australian Casino Association
14	Australian Institute for Gambling Research (AIGR)
15	NT Department of Industries & Business
16	GOCORP Limited
17	Mr Timothy J. Ryan
18	International All Sports Ltd
19	MB2
20	Centre Racing
21	TATTERSALLS
22	eSuccess
23	eBet Limited
24	Gamblers Help Line Inc
25	Senator Grant Chapman
26	Two Way TV Australia Pty Ltd
27	TABCORP
28	Sportingbet.com Australia Pty Ltd
29	Confidential
30	GGS

APPENDIX 2

WITNESSES THAT APPEARED BEFORE THE COMMITTEE

CANBERRA, FRIDAY 25 AUGUST 2000

Canbet

- Mr Richard Farmer

Internet Industry Association

- Mr Peter Coroneos

Tim Ryan – Licenced Bookmaker

- Mr Timothy Ryan

ACT TAB

- Mr Roger Smeed

NSW (TAB)

- Mr Warren Wilson
- Mr Peter Fletcher

Australian Institute for Gambling Research

- Professor Jan McMillen

Inter-Church Gambling Taskforce

- Ms Marilyn Webster

Australian Casino Association

- Mr Peter Bridge
- Mr John Farrell

The Federal Group

- Mr John Farrell
- Mr Andrew Eakins

Tattersalls

- Mr John Mortimore

Ebet Limited

- Mr Keith Cullen

Gocorp

- Mr Paul Appleby
- Mr Gary Garton

Lasseters

- Mr Peter Bridge
- Ms Joanne Pafumi

PBL, ECORP

- Mr Anthony Benschel
- Mr Wayne Jones

ACT Government

- The Hon Gary Humphries

Northern Territory Government

- Mr Tony Clark

Tasmanian Government

- Mr Mike Gard

NOIE

- Dr Rod Badger
- Mr Tom Dale

APPENDIX 3 DOCUMENTS TABLED AT PUBLIC HEARINGS

CANBERRA, 25 AUGUST 2000

- **ACT Government**

Instructions to Applicant, a document containing information on how to apply for an Interactive Gambling Licence in the ACT.

- **Tasmanian Government**

Appendix A, Parts 1 & 2 to Submission No. 2 – Draft – Tasmanian Gaming Commission, Interactive & Wagering Player Protection Standards, August 2000.

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)

Interactive Gambling (Moratorium) Bill 2000
Report of the Senate Environment, Communications, Information Technology
and the Arts Legislation Committee

Australian Democrats
Dissenting Report

Senator Stott Despoja

- 1.1 The Australian Democrats do not support the recommendation of this Report of the Senate Environment, Communications, Information Technology and the Arts Legislation Committee to proceed with a retrospective 12 month moratorium on Australian interactive gambling licences and services as proposed in the Interactive Gambling (Moratorium) Bill 2000.
- 1.2 The Australian Democrats maintain the issues of technical feasibility of banning interactive gambling and the effective protection of Australians from problem gambling should be the primary considerations and criteria for assessing the appropriateness of the proposed moratorium.
2. *Banning Interactive Gambling*
 - 2.1 The Explanatory Memorandum indicates that the main objective of the Bill is to limit the expansion of interactive gambling in Australia over the next 12 months. This will assist in minimising the level of problem gambling on the Internet, thereby providing the Government with some breathing space to consider in more detail the feasibility and consequences of banning Internet gambling.
 - 2.2 The Majority report postulates that, as Australian gamblers will have access to a local interactive industry fixed for 12 months at 19 May 2000, levels of uptake of interactive gambling services and therefore problem gambling generated by interactive gambling could plateau simultaneously.¹
 - 2.3 It is unsound to assume a direct relationship between the number of online gambling sites and the level of activity or number of users on these sites. It could be argued that the media coverage surrounding the uncertain retrospective moratorium and the general increasing usage of the Internet by Australians has led to a greater awareness of interactive gaming services and ability to access domestic and overseas sites.
 - 2.4 Therefore, assuming that there is a relationship in turn between interactive gambling and problem gambling, the risk of problem gambling could increase from May 19 2000 to May 19 2001 independent of the proposed moratorium.

¹ Chair's Report at 1.12

3. *International developments*

- 3.1 The Chair's report recognises that the expansion of the offshore industry in 'reputable jurisdictions' will be limited over the next 12 months.² Such limitations will significantly reduce the level of choice for online gamblers and will reduce the standard of gambling service and protection available to Australian online gamblers.

The Australian Democrats conclude that a moratorium to investigate the feasibility of a ban on interactive gambling services will not necessarily stem or decrease problem gambling in Australia.

4. *State Cooperation*

- 4.1 It has been suggested and noted in the Chair's Report that States and Territories are differing in their approach to addressing problem gambling. This assertion is in contradiction to evidence that approximately 95% of State and Territory licensing requirements for online gambling services is corresponding.
- 4.2 The Explanatory Memorandum of the Bill suggests that there is currently a significant disparity between the State and Territory responses to problem gambling on the Internet. The Explanatory Memorandum cites the differing responses of jurisdictions to the May 19 announcement as evidence of this, contrasting jurisdictions which supported the proposal with those which continued to issue new interactive gambling licences.³
- 4.3 The Australian Democrats recognise that there has been different *responses* by the States and Territories to the Government's non-consultative announcement of a twelve month retrospective moratorium on interactive licences and services at the May meeting of the Ministerial Council for Corporations.
- 4.4 The Australian Democrats also recognise that the States and Territories were acting in response to a regulatory issue of the interactive gambling industry not 'problem gambling on the Internet' as stated at 1.18 of the Chair's report.
- 4.5 The Australian Democrats express concern regarding the lack of definition between interactive gambling and problem online gambling and the interchangeable use of these two terms in turn in the Explanatory Memorandum of the Bill and the Chair's Report. It must be acknowledged that not all online gambling is problematic or pathological gambling.

² Chairs Report at 1.13

³ Explanatory Memorandum, Interactive Gambling (Moratorium) Bill 2000 at page 5.

5. *Harm Minimisation*

5.1 The Australian Democrats support the assertion of the Chair's report that "Internet technology allows for the implementation of (harm minimisation)...regulatory measures and that governments should make them a part of licensing arrangements".⁴

5.2 The Australian Democrats maintain and strongly endorse the recognition in the Chair's report of the strength of Internet technologies to provide new and greater means of player protection,⁵ and the evidence Mr Coroneos of the Internet Industry Association, submitted to the Committee highlighting:
 ...the strengths of the Internet. Do not look at the issue as simply access to poker machines 24 hours a day; look at the extent to which the medium itself can provide {harm minimisation policies}. Structure in your licence requirements to stipulate who may access your service and upon what conditions and deal with it that way. We think that way you address the social policy concerns, which we also share, but you do not do it in a way that has these unintended and adverse impacts on the rest of the Internet industry.⁶

6. *Intellectual property*

6.1 Software requirements for the Australian online gambling industry place it at the forefront of online research and development in areas including:

- Artificial intelligence
- Security
- 3-D modelling and financial transaction processing.⁷

6.2 The Australian Democrats recognise the world standard expertise and potential intellectual property products stemming from such valuable research and development.

6.3 A moratorium and/or ban of interactive gambling services in Australia would at the very least hinder and may prevent business support of this highly profitable technology and Australia's capacity to develop and maintain intellectual property in this area.

7. *State competitiveness*

7.1 It has been suggested that the competitive relationship between the States and Territories regarding gambling revenue tax bases would undermine a national cooperative regulatory framework.

7.2 The State and Territory competition for market share can instead be harnessed as a tool to promote a stringent world's best practice regulatory system. States and Territories are in competition for domestic online gamblers and similarly for patronage from overseas markets. The potential revenue from overseas markets is greater and provides greater potential for cooperative industry growth based on strong regulatory practice than differentiation between States and Territories at a domestic level.

⁴ Chairs Report at 1.22

⁵ Chairs Report at 1.22

⁶ *Official Committee Hansard*, Canberra 25 August 2000 at page 26.

⁷ Australian Casino Association, Submission to the National Office of the Information Economy Interactive Gambling Moratorium Bill - Study, August 2000.

- 7.3 It is recognised that a national certification is a greater market advantage than individual standards from Australian States and Territories. Overseas markets will more readily identify with one benchmark Australian standard rather than differing competing State and Territory standards.
- 7.4 The Australian Democrats maintain that the market advantage of a highly rigorous national standard for all Australian online gambling service providers is a highly attractive incentive for States and Territories to pursue a national cooperative stringent regulatory system. The potential of such a market share is greater than that provided by lowest common denominator practice.
- 7.5 If Australian States and Territories were to ignore consumer demand for secure player protected services and to pursue the lowest common denominator online gambling licensing and service provision, or even continue current standards of practice, overseas jurisdictions will always be able to provide a less regulated option.
- 7.6 The Provision of a high nationally consistent regulatory starting point in conjunction with a national education campaign on the standards and harm minimisation strategies (consistent with the harm minimisation recommendations of the Senate Select Committee on Information Technologies in *NetBets*⁸) creates a competitive pressure for domestic online gambling services. Service providers will be compelled to provide domestic and international online gamblers with a service that not only meets the worlds best practice Australian Standard, but exceeds that provided by other States and Territories and services providers within these jurisdictions.

The Australian Democrats recommend promotion of a cooperative regulatory framework between the States and Territories which stipulates a high regulatory starting in conjunction with a national education campaign.

8. *The real issue: problem gambling*
- 8.1 The Australian Democrats recognise the wide community concern and hurt that problem gambling creates.
- 8.2 Problem gambling is a wide reaching issue which is further reaching than the issue of Internet gambling. The Australian Democrats recognise that an Australian Research Council funded national survey of gambling related problems in Australia estimated a 1.3% prevalence of ‘probably pathological gambling’ domestically, which translates to 15.6% of regular once a week or more video gaming machine players and 17% of regular betting players.⁹
- 8.3 Demographic risk factors of problem gambling include:
- Male
 - Under 30 years of age

⁸ Senate Select Committee on Information Technologies, *Netbets: A review of Online gambling in Australia*, March 2000 Chapter 3.
Dickerson Mark, Problem Gambling in Australia, Australian Institutes for Gambling Research, University of Western Sydney, <http://137.154.93.11/aigr/abstract3.htm>

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- Predominantly TAB, on-course betting and video gaming machine useage.¹⁰
- 8.4 It is currently estimated that 2 300 Australians currently utilise the Internet to gamble, ¹¹ despite 2.3 million Australian households having access to the Internet in May 2000.¹²
- 8.5 The Australian Democrats, therefore, do not support the Chair's Report claim that a moratorium on Australian online licence and services will provide an opportunity to carry out timely analysis and consideration of problem gambling.¹³
- 8.6 Problem gambling is a highly complex and multifaceted social phenomenon which cannot begin to be addressed by an interim moratorium on interactive gambling.
- 8.7 The Australian Democrats strongly support the use of gambling revenue to research and address the issue of problem gambling in Australia and independent projective research of the impact to which Internet gambling may have on the phenomenon.

The Australian Democrats maintain that a multifaceted harm minimisation regulatory strategy is the most effective strategy against problem gambling in Australia.

¹⁰

Ibid.

¹¹

WWWagering & Gaming Consultants, Submission 3, p.3.

¹²

Australian Bureau of Statistics, Use of the Internet by Householders, 25 August 2000 at page3.

¹³

Chairs report at 1.24.

Recommendations

The Australian Democrats therefore maintain:

- **support for a multi-faceted harm minimisation report as recommended in *Netbets*.¹⁴**
- **that a ban on interactive gambling services will not necessarily protect Australians from problem gambling.**

The Australian Democrats recommend:

- **A three month non-retrospective moratorium on the issuing of Australian interactive gambling licences for the express purpose of facilitating the States and Territories in establishing a national regulatory system stipulating a strong world's best practice minimum standard for all Australian licensed online gambling services.**
- **The licensing standards of the national regulatory system be effective from the end of the three month period.**
- **The national regulatory system will apply to operations where:**
 - **all services provided in the course of carrying on a business in Australia;**
 - **the central management and control of the service is in Australia;**
 - **or the service is provided thorough an agent in Australia (in keeping with definitions under Interactive Gambling (Moratorium) Bill 2000).**
- **The moratorium applied to both wagering and gaming services.**

The Australian Democrats recognise the distinctions between wagering and gaming, however, support a moratorium to both services to allow establishment of a national regulatory standard which can be interchangeably applied and recognised by domestic and international Internet gamblers.
- **The moratorium apply to issuing of all new interactive gambling licences from the commencement of the moratorium and existing licences upon renewal.**

The Australian Democrats recognise that a moratorium on all new licences and services in Australia will not stem the ability of Australians to gamble online and approach the issue of interactive gambling from a position of effective address for problem gambling.

The Democrats, therefore, consider a halt to Internet gaming licences necessary to establish a standard cooperative national regulatory regime.

All Australian interactive gambling services will not be curtailed under the Governments Interactive Gambling (Moratorium) Bill 2000 and will provide an artificial market advantage to established Australian Internet gambling operators for the period of the moratorium and post-moratorium.

¹⁴

Senate Select Committee on Information Technologies, *op.cit.*

Australian operators which currently hold a licence and are under operation, or have been granted a State or Territory licence will be able to continue operation through the Democrats proposed licence moratorium. However, this will not provide a 'free for all' for Internet gaming services.

The cost of adhering to the established national standard for operation in domestic and international jurisdictions will provide a significant incentive for operators to establish operations in the interim in line with world's best practice and harm minimisation processes as recommended in *NetBets*.

The Australian Democrats have been advised that many currently licensed Australian interactive gambling operators are willing to adopt the National Standards before the requirement to upon licence reapplication. Even without this cooperation and recognition of the competitive advantage the standards will provide, all Australian online gaming services would be operating under the Australian standard within a twelve-month time period with licence renewal processes.

- **The National Regulatory Standards be developed and implemented with harm minimisation and player protection measures as the primary focus.**
- **A public education campaign be a core component of the National Regulatory System for Interactive Gambling highlighting the requirements for online gambling operators in Australian and harm minimisation.**

The Australian Democrats recommend that an appropriate percentage of revenue from Interactive Gambling be allocated to a centralised fund for the establishment and maintenance of the public education arm of the system.

Senator N. Stott Despoja

(AD, SA)

