

# MINORITY REPORT BY LABOR SENATORS

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## SUMMARY OF FINDINGS AND RECOMMENDATIONS

Labor Senators believe that the most effective way to manage interactive and Internet gambling is to have State and Territory cooperation in formulating a national regulatory regime. Labor supports Federal co-ordination of consistent State-based regulatory regimes. The appropriate forum is the Ministerial Council comprising relevant State and Federal Ministers.

Labor Senators consider the approach taken in the Bill to be flawed and inappropriate because it will not achieve the stated objectives of the legislation. Labor Senators note that there are a number of specific concerns with the drafting of certain provisions in the Bill which render the Bill's impact uncertain or unjust.

Labor Senators are concerned to ensure that problem gambling arising from interactive gambling is minimised to the greatest possible extent. We are concerned that the Government approach implemented by this Bill does not control or limit problem gambling in the online environment.

**Labor Senators do not support the Government's Bill. There is one policy that will provide Australians with the highest possible degree of protection. Labor believes that effective regulation of interactive gambling is the only practical way to minimise resultant social harm, including criminal harm. This approach will also maximise the benefits that will flow to consumers, the racing, gambling and IT industries, and the Australia economy.**

**Labor Senators support the approach that we have detailed in minority reports to the Netbets and Interactive Gambling (Moratorium) Bill 2000 inquiries. Having considered the alternative policy approaches to interactive gambling, Labor Senators conclude that the overriding objective is to protect Australians from the potential harms and problem gambling that could arise from gambling through new media.**

Overwhelmingly, the partial ban that the Government seeks to adopt through the Interactive Gambling Bill 2001 has been criticised for its inefficacy and futility. Not only have the ultimate objectives of the Government's policy been defeated by its implementation and flawed approach, but its legislation is likely to exacerbate the very harms that it is intended to minimise.

It is likely that this partial ban on interactive gambling will exacerbate problem gambling by removing a regulated service with in-built safeguards whilst still allowing access to unregulated and unlicensed offshore sites (in addition to regulated, reputable offshore sites).

**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 Senators consider that a partial ban on interactive gambling will not prevent access to online gambling and will not prevent Australian gamblers from accessing offshore sites that are unregulated and do not offer consumer protection or probity. For this reason we cannot support the Government's Bill when it is so patently not in the best interests of Australians and fails to achieve its stated objectives.**

Labor Senators acknowledge that the online gambling industry is currently subject to a high 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.

Labor Senators recommend 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.

**Considering that existing AFP funding is seriously inadequate and the AFP (and other police forces) is expected to fund this additional role from within existing resources, the AFP will be unable to effectively fulfil its role under the Bill, thereby compromising implementation of the measures in the Bill. Labor Senators restate the need for the AFP to be adequately resourced if it is to have any significant impact on the regulation of interactive gambling in Australia.**

Labor Senators do not believe that this Bill will overcome *any* of the problems associated with interactive gambling, so the extent of the relative problems for various modes of gambling (such as wagering and lotteries) is not relevant to our assessment of the Bill. Labor Senators will oppose the Bill in its entirety.

**Labor Senators conclude that the apparent lack of clarity in defining the defence in subsection 15(3) of the Bill needs to be remedied in light of the seriousness of penalties for committing the offences in section 15 of the Bill (the offences relate to the provision of services to Australians by Australian Interactive Gambling Service Providers (IGSPs)).**

**Considering that the gambling modes that are apparently inadvertently prohibited pose a minimal threat to problem gambling, a rationale for their inclusion is unclear, and the Explanatory Memorandum does not provide any guidance on that account. NOIE has stated that they are not intended to be banned so this appears to be another flaw in the Bill, albeit one that the Government could be expected to rectify.**

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.

The overall policy approach of the Government is flawed, this is evident from the fact that the legislation seeks to put in place a system that cannot even achieve its stated objectives, and threatens to defeat and even worsen the consequences sought to be avoided.

The Government's approach to interactive gambling is nonsensical, in fact, only one true rationale can be derived and that is blatantly political scaremongering. Rather than act in the best interests of present and potential Australian consumers of Internet gambling services, the Government seeks to capitalise on the general public's fears of gambling and misunderstanding of the issues, to the ultimate detriment of all Australians.

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# INTERACTIVE GAMBLING BILL 2001

## Minority Report by Labor Senators

### Introduction

1.1 This inquiry into the Interactive Gambling Bill 2001 is the third opportunity at which Senate Committees have examined the appropriate response to interactive gambling in Australia. There have been three substantial inquiries into online gambling (including the two Senate Committee inquiries), all of which addressed the feasibility of a ban on interactive gambling:

- Australia's Gambling Industries – Inquiry Report, Productivity Commission, November 1999;
- *Netbets*, A Review of online gambling in Australia, Senate Select Committee on Information Technologies, March 2000;
- Inquiry into *Interactive Gambling (Moratorium) Bill 2000* Senate ECITA Legislation Committee, 4 September 2000.

1.2 In the latter two reports, Labor Senators have clearly expounded our carefully considered position on the appropriate policy for the regulation of interactive gambling. Labor Senators believe that the most effective way to manage interactive and Internet gambling is to have State and Territory cooperation in formulating a national regulatory regime. Labor supports Federal co-ordination of consistent State-based regulatory regimes.

### Interactive Gambling Bill 2001

1.3 This Bill implements the policy approach for which the Government ultimately opted. The Bill regulates interactive gambling services in Australia by:

- a) creating an offence of providing an Australian-based interactive gambling service to Australian customers; and
- b) establishing a complaints scheme to enable Australians to make complaints about interactive gambling services on the Internet which are available to Australians.

#### *The complaints scheme comprises:*

- complaints mechanism for a person to complain to the ABA about prohibited Internet gambling content;
  - if content is hosted in Australia, the ABA must refer complaints to police if the ABA considers complaint should be so referred (eg if it appears Interactive Gambling Service Provider (IGSP))

is committing offence of providing an Australian-based interactive gambling service to Australians);

- if content is hosted offshore, the ABA must notify the content to police if it considers the content should be so referred. Additionally the ABA will notify the content to ISPs so that providers can deal with it in accordance with procedures specified in an industry code or standard (or if none, the ABA has power to issue notice to ISP to take ‘reasonable steps’ to prevent access).

1.4 As indicated in the Explanatory Memorandum, the Bill implements the second of three policy options considered by the Government:

a) status quo – not impose a ban on interactive gambling, other than existing program initiatives in the context of the Ministerial Council on Gambling.

**b) targeted ban – ban the provision of interactive gambling services by Australian operators to users in Australia and also give Australian users the capacity to filter out these services from offshore providers.**

c) comprehensive ban – apply banning strategy to both domestic and foreign IGSPs by completely prohibiting Australian IGSPs regardless of whether they are providing services to Australians or offshore residents and aggressively preventing strategy to prevent Australians’ access to offshore interactive gambling services (blocking measures at ISP level).

1.5 Labor Senators consider the approach taken in the Bill to be flawed and inappropriate because it will not achieve the stated objectives of the legislation. Labor Senators note that there are a number of specific concerns with the drafting of certain provisions in the Bill which render the Bill’s impact uncertain or unjust.

### **Labor approach to interactive gambling**

1.6 Labor Senators are concerned to ensure that problem gambling arising from interactive gambling is minimised to the greatest possible extent. We are concerned that the Government approach implemented by this Bill does not control or limit problem gambling in the online environment.

1.7 Labor Senators do not support the Government’s Bill. Instead, Labor Senators support a policy of strong regulation of interactive gambling as the only practical and effective way of restricting social harm from gambling to a minimum, including criminal harm, and maximising the benefits that will flow to consumers, the racing, gambling and IT industries, and the Australia economy.

1.8 Effective regulation of interactive gambling involves the legalisation of interactive gambling within a national regulatory framework which addresses harm

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minimisation and consumer protection issues as well as criminal issues potentially arising from new criminal opportunities.

1.9 Labor Senators recommend that a national 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 sports betting 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.

1.10 Given that prohibition is not feasible or desirable,<sup>1</sup> that under a partial ban Australians would still be able to access offshore sites and it is likely that Australian gambling service providers will move offshore and offer gambling services to Australians, Labor Senators support the implementation of an effective co-regulatory

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1 See Productivity Commission, *Australia's Gambling Industries*, 26/11/99: "blanket bans on specific forms of gambling to protect consumers would not be viable or desirable": pp.16.1. 16.7-16.10; policy of prohibition likely to be less enforceable than allowing some licensed sites; making it illegal to operate or use online gaming sites (this Bill has not even gone that far) would have the likely effect of reducing their use, albeit while also creating a black market; State governments may lose significant sources of revenue offshore; people accessing offshore sites may be exposed to significant risks while governments would be unable to regulate consumer protection features; domestic commercial and export opportunities would be eliminated; reduction of consumer choice: pp.18.54, 18.55, 18.57.

regime as the only way to minimise the extent of problem gambling online in Australia.

1.11 The *Netbets* minority report by Labor Senators 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.<sup>2</sup>

1.12 Additionally, a range of consumer and problem gambling protections will and have been implemented that are specific to the online environment. Those protections go beyond simply counteracting the potential harms specifically arising in the online environment. In fact, Labor Senators are convinced that the technological means exist to minimise harm to a greater extent than land-based gambling forms and to a far greater extent than achievable by the partial ban proposed by this Bill.

1.13 The position adopted by Labor Senators has been widely supported by those well acquainted with gambling policy and the objective of harm minimisation. Notwithstanding the Productivity Commission's conclusion that there are serious social concerns about the prevalence and widespread availability of gambling activities in Australia, the Commission noted that it:

...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.<sup>3</sup>

1.14 The Commission gave weight to the extension to interactive gambling of regulatory controls applying to traditional land-based forms of 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.<sup>4</sup>

1.15 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:

Online gambling offers significant potential benefits to some consumers and scope for commercial returns.<sup>5</sup>

1.16 The Productivity Commission noted in its key findings that:

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

3 Productivity Commission, Australia's Gambling Industries, 26/11/99, Vol 2, p.16.10.

4 Productivity Commission, Australia's Gambling Industries, 26/11/99, Vol 2, p.18.1.

5 Productivity Commission, Australia's Gambling Industries, 26/11/99, Vol 2, p.18.1.



Policy approaches for the gambling industries 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.<sup>6</sup>

1.17 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.<sup>7</sup>

1.18 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:

Player losses will tend to be smaller...thereby reduc[ing] some of the harms.<sup>8</sup>

1.19 The National Crime Authority, in evidence to the Senate Select Committee on IT during the *Netbets* inquiry, assured that online safeguards for Australian interactive gambling operators offer the 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.<sup>9</sup>

**Labor Senators support the approach that we have detailed in minority reports to the *Netbets* and *Interactive Gambling (Moratorium) Bill 2000* inquiries. Having considered the alternative policy approaches to interactive gambling, Labor Senators conclude that the overriding objective is to protect Australians from the potential harms and problem gambling that could arise from gambling through new media.**

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6 Productivity Commission, Australia's Gambling Industries, 26/11/99, Vol 1, p.3.

7 Productivity Commission, Australia's Gambling Industries, 26/11/99, Vol 2, p.18.20.

8 Productivity Commission, Australia's Gambling Industries, 26/11/99, Vol 2, p.18.21.

9 Senate Select Committee on Information Technologies, Official Committee Hansard, 16/2/00, p.257.

**There is one policy that will provide Australians with the highest possible degree of protection. Labor believes that effective regulation of interactive gambling is the only practical way to minimise resultant social harm, including criminal harm. This approach will also maximise the benefits that will flow to consumers, the racing, gambling and IT industries, and the Australia economy.**

### **Flaws in Government policy approach (criticisms of partial ban)**

1.20 It is considerably more difficult to implement a policy of prohibition than to advocate it, from a technological and practical perspective. An effective ban of Internet gambling would require global cooperation and enforcement strategies, since there are already gambling sites operating internationally. The community interest is not best served by a policy of prohibition, as there are several insuperable obstacles that would prevent effective implementation of the policy and distinct advantages of which the community would be deprived.

1.21 The Productivity Commission has 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.<sup>10</sup>

1.22 The Explanatory Memorandum confirms that a complete ban of interactive gambling is not technically feasible and that this legislation will not prevent problem gamblers accessing online gambling sites. The Bill:

restricts the access of offshore providers to the Australian market, but only to the extent that Australian users choose to ... filter these services.<sup>11</sup>

1.23 Overwhelmingly, the partial ban that the Government seeks to adopt through the Interactive Gambling Bill 2001 has been criticised for its inefficacy and futility. Not only have the ultimate objectives of the Government's policy been defeated by its implementation and flawed approach, but its legislation is likely to exacerbate the very harms that it is intended to minimise.<sup>12</sup>

1.24 Should the Parliament agree to this Bill, Australians will be able to access overseas sites. Those sites are frequently less strictly regulated than Australian sites,

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10 Productivity Commission, Australia's Gambling Industries, 26/11/99, Vol 2, p.18.42.

11 Explanatory Memorandum p.14.

12 NT Government; Submission 22; Centrebet, Submission 33; The Federal Group, Submission 3; Sky City, Submission 9; MegaSports, Submission 14; Electronic Frontiers Australia, Submission 16.

if they are regulated at all, and are likely to give rise to higher incidence of problem gambling than if Australia were to have a strictly regulated industry. Gambling revenue will go overseas while Australia is left with the attendant social costs of problem gambling. Additionally technological expertise and expenditure associated with the industry will go overseas.

1.25 The Government's partial ban on interactive gambling will not reduce its accessibility, and arguments that problem gambling justifies or necessitates the partial ban rely on two assumptions:

- that the partial ban will restrict accessibility of interactive gambling; and
- that the incidence of problem gambling increases commensurate with availability of interactive gambling services.

1.26 The evidence supports neither of these assumptions. The Bill does not ban access to gambling via the Internet. In fact, it does not even take the issue seriously by prohibiting Australians from accessing interactive gambling sites. The Bill neither prohibits Australians from accessing overseas sites (or Australian sites for that matter) nor does it implement any measures that will restrict, in any real sense, the accessibility of Australians to interactive gambling.

1.27 As noted above, the Explanatory Memorandum indicates that the Bill "restricts the access of offshore providers to the Australian market, but only to the extent that Australian users choose to ... filter these services".<sup>13</sup> That is not a meaningful restriction to the Australian market. It is misleading for the Explanatory Memorandum to claim that the passage of the Bill will provide increased levels of protection against problem gambling (by minimising the scope for problem gambling among Australians)<sup>14</sup> when it is probable it will have the contrary effect.

1.28 In practice, access to online gambling will not be restricted and provided the service is conducted offshore, Australians will not be prevented from accessing interactive gambling sites. The nature of the online environment is such that placing a partial ban on the industry will not reduce the accessibility of online gambling. A proliferation of online gambling sites in Australia would simply mean greater consumer choice of regulated, Australian services. It would not increase the accessibility of interactive gambling.

1.29 Even if a link could be identified between the accessibility of online gambling and the incidence of problem gambling (none has been), this Bill does nothing to limit the accessibility of online gambling. As long as there are online gaming and wagering sites on the Internet, accessibility to online gambling will increase commensurate with increasing Internet accessibility.

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13 Explanatory Memorandum, p.14.

14 Explanatory Memorandum, p.1.

1.30 In fact, the Explanatory Memorandum to the Bill states that:

... a restriction on Australians' access to this industry would result in increased patronage of entertainment activities that are taxed at a higher rate than interactive gambling, with a corresponding increase in State and Territory revenue.<sup>15</sup>

1.31 This suggests that interactive gamblers will return to land-based gambling forms where the odds of winning are lower, the taxes are higher and the incidence of problem gambling irrefutably high. That can hardly be considered a desirable consequence of the legislation.

1.32 Contrary to the Minister's contention that Australians will be very reluctant to gamble on Mafia.com or Dodgeybros.com (ie offshore sites) because they mightn't get their money back,<sup>16</sup> the Committee received evidence that there are ample reputable gambling service providers to provide for the Australian market.<sup>17</sup> There are also significant numbers of disreputable sites, of dubious probity from which Australians will not be protected. Some gamblers might favour those sites, particularly those susceptible to problem gambling (because of the ease of logging on etc) and it is very difficult to distinguish reputable sites from those that are not.<sup>18</sup>

1.33 In fact, some sites mislead consumers into believing that they are Australian sites to capitalise on the good international reputation of Australian gambling regulation. Evidence to the *Netbets* Inquiry demonstrates this point:<sup>19</sup>

**Prof. McMillen**—It is Australia that is the brand in terms of regulatory reputation and standards.

**CHAIR**—That is perhaps why a couple of illegal sites in the Caribbean have koala bears and an Australian flag.

**Prof. McMillen**—Or the Sydney Harbour Bridge.

1.34 Australian online gambling operators have indicated that they will simply relocate offshore if this Bill is enacted, and continue operating and servicing local and international online gamblers from outside Australia.<sup>20</sup> In this way, there is unlikely to be any reduction in interactive gambling services available to Australians as a consequence of this Bill.

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15 Explanatory Memorandum, p.10.

16 See Senate Hansard, 28/3/01, p.23190.

17 Centrebet, Submission 33; Australian Racing Board, Submission 2.

18 Proof Committee Hansard, 4/5/01, p.4; Australian Racing Board, Submission 2; Australian Casino Association, Submission 12.

19 Netbets inquiry, Official Committee Hansard, 15/10/99, p.74.

20 Proof Committee Hansard, 4/5/01, p.3; Canbet Submission 10.

## Arguments for a ban

1.35 The need for public protection from the social impact of problem gambling is argued in support of an outright ban on online gambling by community and church and welfare organisations that regularly encounter problem gamblers and see the extent of the negative effects gambling has on their lives.

1.36 Widespread community concerns about the prevalence of problem gambling are not addressed by this legislation. Nor are concerns about the availability of gambling opportunities in the home. While the Bill purports to address problem gambling, it will not prevent the 2.1 per cent of Australians who are problem gamblers from accessing almost all of the gambling sites on the Internet.<sup>21</sup>

1.37 Essentially the arguments that have been presented to the Committee for a ban are misguided. Support for the Bill arises from the erroneous view that the Bill will achieve its stated objective of protecting Australians from problem gambling. Labor Senators believe that the Bill will be counterproductive in that respect.

## Problem gambling and interactive services

1.38 Growth in the incidence of problem gambling in recent years is attributable to increased accessibility of land-based gambling forms, particularly electronic gaming machines (EGMs). Indeed, evidence presented to the Committee during the *Netbets* Inquiry relating to the increased availability of EGMs in New South Wales and Victoria and limitation of availability in Western Australia and Tasmania indicates an incontrovertible link between EGM availability and the incidence of gambling problems.

1.39 Currently, online operators derive most of their income from overseas, with Australian online gamblers making up approximately 5 per cent of the market.

1.40 Whilst this market is likely to grow, it is clear that online gambling offers a range of consumer and problem gambling ‘protections’ unavailable in traditional forms of gaming and wagering. The ALP believes that online gambling provides the technological means to minimise harm to a greater extent than land-based gambling forms. Regulation of the industry to minimise problem gambling can involve a prohibition of credit betting, imposition of expenditure thresholds and self-exclusion mechanisms, and even require providers to examine unusual spending habits. We consider that such controls can minimise the harm of gambling to a lower level than achievable by an outright ban under which unregulated and overseas sites could proliferate.

1.41 In practice, it is likely that this partial ban on interactive gambling will exacerbate problem gambling by removing a regulated service with in-built safeguards

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21 Productivity Commission, Australia’s Gambling Industries, 16/11/99, Vol. 1, p.6.1.

whilst still allowing access to unregulated and unlicensed offshore sites (in addition to regulated, reputable offshore sites). As with the *Broadcasting Services Amendment (Online Services) Bill* 1999, this legislation will lull the community into a false sense of security by contending that the Internet will be free from interactive gambling sites.

1.42 Whilst other forms of interactive gambling continue unabated (poker machines, casinos, TABs, scratchies, phone betting), Internet gambling is being singled out by the Coalition in an attempt to placate community concern, but no real solution is being offered, because there is no means of entirely preventing the harm, and the most effective option to minimise the harm has not been implemented.

1.43 A primary concern for Australian online gamblers is being ‘ripped off’ on the Internet. A partial ban will drive Australian punters wanting to bet online to offshore to unregulated and potentially dubious sites that do not necessarily provide credit card and consumer protection.

1.44 Last year there were approximately 800 unregulated offshore Internet casinos worldwide, which cannot guarantee personal security or provide the safeguards Australian online operators currently practice. That number has now almost doubled to some 1400 sites, with Australian sites comprising less than 2 per cent of the Internet gambling sites worldwide.<sup>22</sup> It is nigh on impossible to distinguish reputable sites from those that are not.<sup>23</sup>

1.45 It may be true in theory that a complete ban on interactive gambling by Australians is the only way to avoid consequential problem gambling, if it could be achieved. However, a complete ban is technically unfeasible and practically impossible and the Government is not even attempting to ban Australians from participating in interactive gambling.

1.46 Whilst there may be some value in the mere denunciation of interactive gambling that this Bill purports to give, the question needs to be asked - at what cost? Labor Senators do not think that the consumer and problem gambling risks which are the necessary consequence of such a limited approach permit its serious consideration as satisfactory public policy.

1.47 If the regime proposed by this Bill is implemented, potential problem gambling will be unchecked, unable to be monitored and there will be none of the protection measures in place that can restrict the harm. The Explanatory Memorandum concludes that pressure on welfare agencies will potentially be reduced,<sup>24</sup> however no evidence has been adduced to support that conclusion. Certainly funding for dealing with problem gambling is likely to decline as gambling

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22 Proof Committee Hansard, 4/5/01, p.37.

23 Proof Committee Hansard, 4/5/01, p.4; Proof Committee Hansard, 4/5/01, p.37.

24 Explanatory Memorandum, p.11.

revenue goes offshore. Meanwhile the rate of problem gambling may remain unchanged or possibly increase.<sup>25</sup>

1.48 As stated in a Ministerial media release on this issue, there are “very disturbing examples of how Internet gambling organisations actually feed the addictions of problem gamblers”.<sup>26</sup> There are no examples of such unscrupulous behaviour by Australian gambling operators; rather, it is offshore operators, at whose mercy the Government plans to leave Australian gamblers, who are engaging in such activity.

1.49 Some Australian online gambling operators have maintained that problem gambling has not been evident. Centrebet stated that there is no evidence of problem gambling amongst gamblers utilising its company’s services:

We say that on the basis that we maintain an online account for all our customers and there is a transaction record for those people. We can see their betting record and we can see the history of their betting experience. We also communicate with our customers quite regularly with queries and the like. On average, about one customer a year would come to us and say that they would like their account closed for a reason which might include that they think that they should limit their gambling opportunities. But it is not always for that reason; there are sometimes other reasons why they might be saying that. There is a very low incidence of that sort of problem. When we examine our client’s accounts and our records, we do not see the transaction histories that would suggest that there is problem gambling: we do not see funds being refreshed and reinvested in accounts. It is partly because sports wagering online does not create the continuous opportunities to place a bet as other mediums do.<sup>27</sup>

1.50 Similarly during last year’s public hearings for the *Interactive Gambling (Moratorium) Bill 2000*, Canbet advised:

We have not had one complaint that we have taken a bet from a problem gambler... 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.<sup>28</sup>

1.51 This suggests a well-regulated industry such as that existing in Australia is the most effective means of substantially restricting problem gambling. This Bill, if passed, would mislead the community, potentially creating a false sense of security by

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25 NT Government, Submission 22, p.5.

26 Senator the Hon R. Alston, Minister for Communications, Information Technology and the Arts, 2 April 2001.

27 Proof Committee Hansard, 4/5/01, pp.5-6.

28 Official Committee Hansard, 25/8/00, p 3.

contending that the Internet users would be ‘safe’ from ‘harmful’ interactive gambling sites. It is clear from the Explanatory Memorandum that access to online gambling sites on the Internet will still be available to any online user.

**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 Senators consider that a partial ban on interactive gambling will not prevent access to online gambling and will not prevent Australian gamblers from accessing offshore sites that are unregulated and do not offer consumer protection or probity. For this reason we cannot support the Government’s Bill when it is so patently not in the best interests of Australians and fails to achieve its stated objectives.**

**Labor Senators recommend that a national regulatory framework for online gambling be implemented which includes: 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.**

### **Existing State/Territory Regulation**

1.52 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:

The approach that the Australian States and Territories have taken is widely regarded by overseas players as being without question the world’s best practice ...the high reputation that the existing online gambling sites currently have accounts for the fact that most of their traffic is coming from offshore, and that their businesses are growing so rapidly.<sup>29</sup>

The strict regulatory regime that has existed in Australia has worked to the advantage of the industry, in that it enjoys a high reputation worldwide. Australia leads the way in responsible [interactive] gambling and the AUS Model only serves to enhance this reputation. Indeed, many overseas jurisdictions have modelled their regulatory regimes on the Australian model.<sup>30</sup>

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29 Internet Industry Association, Proof Committee Hansard, 4/5/01, p.56.

30 Australian Casino Association, Proof Committee Hansard, 4/5/01, p.40.



1.53 The AUS Model (Australia: Uniform Standards for the Regulation of Interactive Gaming) is an effective co-regulatory regime that has been developed by the States and Territories and is due to be implemented as soon as it is finalised (it is presently in the final stages).

1.54 The Northern Territory Government advised the Committee that the new AUS Model has a considerable new player protection features including:

- the capacity to set a deposit limit (presently \$500 per month at Lasseters);
- players are given the option of setting a bet limit and a loss limit;
- self-imposed breaks in play are available;
- credit betting or playing on credit is not allowed; and
- improved national self-exclusions.

1.55 The Australian Casino Association and its membership (includes all Australian land-based casinos) have endorsed the model. Western Australia is not participating in application of the model, although it did participate in its development and does endorse its contents, because WA will not license gaming machines, interactive or otherwise.<sup>31</sup>

**Labor Senators acknowledge that the online gambling industry is currently subject to a high 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.**

**Labor Senators recommend 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.**

### **Other concerns with Government's approach**

1.56 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.

1.57 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.

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31 WA Government, Proof Committee Hansard, 4/5/01, p.54.

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

1.59 In our report to the *Netbets* Inquiry, Labor Senators concluded that it was

The Australian Federal Police should be empowered to direct ISP's to takedown foreign or offshore gambling sites engaging in illegal or grossly improper activities. This will minimise, although not eliminate, the harm that these actions can potentially inflict. **The Federal Government has a responsibility to ensure that the AFP is adequately resourced to effectively deal with these issues.**

1.60 In spite of the present funding crisis of the Australian Federal Police,<sup>32</sup> this Bill requires the Australian police forces to take on a similar role to that recommended by Labor Senators, yet the Government's Explanatory Memorandum states:

The cost of the Government's monitoring role under the legislation has been estimated at around \$1.5m in 2001-02 for start up, and then \$0.75m for each of the forward years. **These costs should be absorbed.**<sup>33</sup> [Emphasis added]

1.61 It is obvious that the AFP's role in enforcing this legislation will be severely restricted because it will be required to perform this role within existing, inadequate resources.

**Considering that existing AFP funding is seriously inadequate and the AFP (and other police forces) is expected to fund this additional role from within existing resources, the AFP will be unable to effectively fulfil its role under the Bill, thereby compromising implementation of the measures in the Bill. Labor Senators restate the need for the AFP to be adequately resourced if it is to have any significant impact on the regulation of interactive gambling in Australia.**

### **Specific flaws in the Bill raised during Inquiry**

A number of specific concerns with the Bill and the policy approach it adopts were raised with the Committee. These include:

1. The inclusion of wagering in the Bill – serious detrimental impact on racing industry, wagering not associated with problem gambling to extent that online casino games are.

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32 Duncan Kerr, Shadow Minister for Justice, Press release, 14/5/01, available at <http://www.alp.org.au//media/0501/dkmsafp140501.html>

33 Explanatory Memorandum, p.10.

2. The penalties imposed on Australian IGSPs if Australians access their sites are apparently excessively harsh given the practical impossibility of conclusively determining the location of the gambler.
3. Apparently inadvertent ban on lotteries, linked poker machines, keno etc – it was argued that the rationale for inclusion if intended is omitted from the Explanatory Memorandum, or if unintended it is unclear and any explanation is omitted, giving rise to concerns that the Bill unintentionally causes these industries detriment without justification.

## 1. Wagering v gaming

1.62 The Explanatory Memorandum to the Bill distinguishes interactive wagering and lotteries from interactive gaming in assessing the impact of the proposed legislation on the interactive gambling industry. The market for interactive wagering and lottery services is primarily domestic, and therefore the restrictions in the Bill “may ... have significant negative commercial consequences for segments of the industry that are focused on a domestic market.”<sup>34</sup>

1.63 The racing industry has advised the Committee that the impact of the prohibition of its Internet services will be seriously detrimental, with jobs and the entire racing industry at risk from the loss of revenue to overseas operators.

1.64 Arguments have been presented to the Committee that problem gambling resulting from wagering activities does not justify the ban. The wagering industry distinguishes itself from the gaming industry in this respect. However the Productivity Commission concluded that the problem gambling was most prevalent for EGMs, casinos games and racing. Racing is not excluded from the problems. There is presently inadequate evidence of the impact of sports betting as this gambling mode has not been in existence for a sufficient period of time to undertake any meaningful analysis.

1.65 During last year’s inquiry into the *Interactive Gambling (Moratorium) Bill* 2000, the Committee received evidence that despite the availability of increased online racing services to Australian homes, there was 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 perceptible 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 technology will not—as some of the doomsayers suggest—create rampant growth in wagering. It just will not happen.<sup>35</sup>

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34 Explanatory Memorandum, p.10.

35 Official Committee Hansard, 25/8/00, p 10.

1.66 The Productivity Commission agreed:

The case for banning internet wagering (sports betting and racing) or traditional lotteries are weaker [than for gaming technologies], reflecting likely lower risks and the fact that other mediums for making these gambles are close substitutes for the internet.<sup>36</sup>

**Labor Senators do not believe that this Bill will overcome any of the problems associated with interactive gambling, so the extent of the relative problems for various modes of gambling (such as wagering and lotteries) is not relevant to our assessment of the Bill. Labor Senators will oppose the Bill in its entirety.**

## **2. Penalties**

1.67 It has been argued that the penalties in section 15 of the Bill are totally inappropriate because:<sup>37</sup>

a) The defence in subsection 15(3) to the offence in subsections 15(1) and (2) is not defined with sufficient clarity. The defence is that the provider did not know and could not, “with reasonable diligence” have ascertained that the service had an Australian customer link. Precisely what constitutes “reasonable diligence” is unclear, yet the defendant bears the evidential burden.

b) It is inappropriate to imply that technological solutions are available to support the legislation, and it is unfair to impose severe penalties on IGSPs which inadvertently allow Australians to access their services as a consequence of unreliable location methods. Existing geolocation software is unreliable in locating users.

c) The penalty is disproportionate to the crime considering that if the same bet is taken over the telephone it is perfectly legal.

1.68 Essentially the justifiability or otherwise of the provisions of section 15 depend on the definition of “reasonable diligence”. Certainly existing methods of location are time-consuming, expensive and unreliable. In light of the seriousness of the penalties, the complaints of IGSPs seem justified, and either “reasonable diligence” needs to be defined taking the available technology and ways of circumventing it into account or the penalties must be considered unreasonable.

**Labor Senators conclude that the apparent lack of clarity in defining the defence in subsection 15(3) of the Bill needs to be remedied in light of the seriousness of penalties for committing the offences in section 15 of the Bill.**

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36 Productivity Commission, Australia’s Gambling Industries, Vol.2, p.18.54.

37 EFA, Proof Committee Hansard, 4/5/01, p.58, Submission 16; Canbet, Submission 10; Centrebet, Submission 33.

### 3. Inadvertent inclusion of lotteries, TV shows, linked EGMs etc

1.69 A number of submissions to and witnesses before the Committee drew our attention to some apparently inadvertent and unintended consequences of the Bill. It was suggested that these deficiencies result from inadequate consultation processes in the formulation of the Government's policy, and from the undue haste with which it has drafted the Bill.<sup>38</sup>

1.70 It seems that the Bill might prohibit:

- some terrestrial-based gambling services linked by telecommunications services;
- TAB network operations and back-office operations;
- services currently provided by the television networks (TV games);
- the sale of lottery tickets in newsagencies using telecommunications services.

1.71 NOIE advised the Committee that it is not the intention of the legislation to prohibit those types of services, and that if those services are inadvertently covered there may be a need for some amendments or further clarification.<sup>39</sup> It was suggested by NOIE that the Minister's power to exempt certain services from the coverage of the prohibition was intended to be used to deal with any uncertainties that might be discovered in the Bill.<sup>40</sup>

1.72 There are three points that Labor Senators wish to make in this respect:

- a) The Government's haste in and lack of consultation prior to the introduction of this Bill has resulted in flaws which go beyond the fundamental flaws in the policy approach.
- b) It is inappropriate to rely on the Minister's exemption power considering the extent of uncertainty that has been revealed to exist in the Bill.
- c) The flawed approach to public policy in this Bill, namely the technology specific prohibition that it seeks to impose, is as inappropriate as it is convoluted and complicated to implement.

**Considering that these gambling modes that are apparently inadvertently prohibited pose a minimal threat to problem gambling, a rationale for their inclusion is unclear, and the Explanatory Memorandum does not provide any**

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38 Submissions. EFA.

39 Proof Committee Hansard, 4/5/01, p.59 (re lotteries, TABs, keno etc); Proof Committee Hansard, 4/5/01, p.60 (re TV games).

40 Proof Committee Hansard, 4/5/01, p.59.

**guidance on that account. NOIE has stated that they are not intended to be banned so this appears to be another flaw in the Bill, albeit one that the Government could be expected to rectify.**

## **Conclusions**

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

1.74 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.

1.75 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.

1.76 Given that a complete ban is not feasible and would simply allow operators of online casinos and sports betting 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 and the flawed policy it seeks to implement.

1.77 The overall policy approach of the Government is flawed, this is evident from the fact that the legislation seeks to put in place a system that cannot even achieve its stated objectives, and threatens to defeat and even worsen the consequences sought to be avoided.

1.78 The Government's approach to interactive gambling is nonsensical, in fact, only one true rationale can be derived and that is blatantly political scaremongering. Rather than act in the best interests of present and potential Australian consumers of Internet gambling services, the Government seeks to capitalise on the general public's fears of gambling and misunderstanding of the issues, to the ultimate detriment of all Australians.

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**Senator Mark Bishop**  
**Deputy Chair**  
**(ALP, WA)**

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**Senator Kate Lundy**  
**(ALP, ACT)**

