

AUSTRALIAN DEMOCRATS

DISSENTING REPORT

1. Introduction

In our view, the Interactive Gambling Bill 2001 may be a well-intentioned attempt to address normative values on Australia's gambling culture, particularly for problem gamblers. However, we believe the Bill is unworkable and thus should be defeated in its entirety.

Contrary to popular perception, the Bill does not and cannot prohibit on-line gambling. It is impossible to ban or prohibit internet accessibility of any nature in its entirety. The internet is without international borders and straddles countless and conflicting legal jurisdictions.

All this Bill achieves, if passed, is a prohibition on Australians using Australian based gaming sites from within Australia. This means on-line gamblers can and will still go to overseas sites with the 'click of a mouse'.

The result is that Australian money and jobs then goes overseas and internet gaming is still accessible to any Australian who seeks it.

Accordingly, we do not support the key recommendation (R. 2.1) of the Chair's report that the Senate adopt the prohibition approach to internet regulation proposed by the Interactive Gambling Bill 2001. It follows then, that we believe the Chair's other two recommendations (R. 3.1 and R. 4.1) are not relevant, although, considered in abstraction, we acknowledge their rationale.

2. Problem Gambling

At the outset, we emphasize that problem gambling is a serious social issue with disastrous consequences for individuals, their families and communities. Moreover, we are most concerned that problem gambling has particularly severe consequences in low socio-economic communities. That is, problem gambling has a major social equity dimension.

Problem gambling is not reducible to one readily isolable factor, thus we are committed to a multi-faceted harm minimisation and education approach, including the 'managed liberalisation' regulatory measures as advocated in the Productivity Commission's *Australian Gambling Industries* report.¹

A significant driver in this social problem is the proliferation of Electronic Gaming Machines (EGMs) or 'pokies', which in turn, is directly correlated with the needs of State and Territory governments to maximise revenues. A clear example of this relationship is the significantly

1 Refer Australian Democrats Supplementary Report in Senate Select Committee on Information Technologies, *Netbets: A Review of On-line Gambling in Australia*, May, 1999.

lower incidences of problem gambling in Western Australia - the state that has best resisted the temptation to allow proliferation of EGMs.²

We believe it is clear that State and Territory governments' increasing reliance on gambling revenues is symptomatic of a systemic political failure by successive Governments to develop an equitable and realistic revenue base. It is not feasible that significant inroads into problem gambling can be achieved independently of addressing the broader resourcing issues for States and Territories.

3. Prior Consideration

As the Chair's report notes, there has been significant public discussion of the proposed ban on interactive gambling and thus the basic positions and arguments are well known.

The Senate report *Netbets: A Review of Online Gambling In Australia* and the Productivity Commission report recommended a regulatory approach over prohibition. The Democrats concurred with that approach in our supplementary comments in the Netbets report. We believe no evidence presented to this inquiry or canvassed in the Chair's report explains why the findings of the earlier Senate inquiry should now be disregarded, nor provide a convincing case that prohibition is the best approach.

4. The Bill

The Bill makes it an offence for providers located in Australia to provide interactive gambling services to a person physically present in Australia.

The committee heard a number of principled objections to this approach, including the right of Australian adults to take responsibility for their own lives³ and the highly dubious ethical stance whereby Australians should be protected from interactive gambling with Australian sites but Australian operators can profit from citizens of other countries.⁴

In addition to the principled arguments, there are a number of significant technical flaws in the reasoning of the Bill's approach.

The Bill does not make it illegal for a person physically located in Australia to access off-shore interactive gambling providers. As NOIE have pointed out the technical and commercial difficulties with quarantining access to off-shore sites cannot be reasonably achieved.

Thus, if the estimate that 2.1 per cent of gamblers are problem gamblers is accepted, this creates an important anomaly whereby:

The Bill ... will deny the 98 per cent recreational gamblers the benefits of using Australian sites but will not prevent the 2 per cent of problem gamblers from accessing almost all of the gambling sites on the internet. As offshore sites do not

2 Western Australian Government, Submission 17, p 1.

3 Ms Rotermund, Submission 4, p 1.

4 Australian Institute for Gambling Research, Submission 34, p 2.

have the harm minimisation features required by Australian regulations, this will exacerbate problem gambling.⁵

The committee heard evidence from a number of submittees and witnesses that the internet is the most effective platform for harm minimisation.

As Mr Clark, representing the Northern Territory Department of Industries and Business, stated:

It is ironic that many of the features that COAG and the Ministerial Council on Gambling would like to see implemented in the physical world are inspired by or easily achievable on the Internet technological platform. Even more ironic is that with many of those that we are currently looking at with a view to moving into the physical world we will struggle to replicate what is available on the Internet ... We expect these features to help in fighting problem gambling. Indeed obviously the Productivity Commission, COAG and the Ministerial Council do as well or they would not have recommended that these features be applied to the physical world.⁶

Other submittees gave some detail as to the technological mechanisms available to ensure harm minimisation, including ‘smart card’ technology.⁷ While there are some important concerns with privacy aspects of such technologies, we believe an effective regulatory framework is the proper place for addressing such concerns.

We also note the plausible, though speculative claim, that technological mediated harm minimisation approaches would have a broader spin off in helping to foster the uptake of e-commerce using smart card and other technologies.⁸

5. Wagering

A number of submittees and witnesses argued that wagering should not be captured by the Bill. It was argued, for instance, that:

- a) wagering differs qualitatively from interactive gambling as wagering is “about skill and judgement”⁹ whereas interactive gambling is determined by a random number generator “with the certainty that participants will in the end lose a set proportion of their bet”.¹⁰
- b) banning wagering may have significant impact on the racing industry, particularly in regional Australia,¹¹ because off-shore operators will return no revenue to the industry,¹²

5 Northern Territory Government, Submission 22, p 3.

6 Mr Clark, *Committee Hansard*, Canberra, 4 May 2001, pp. 48 – 49.

7 Fujitsu, Submission 27; Regis Controls, Submission 15

8 Regis Controls, Submission 27, p 2.

9 Dr Ashman, *Committee Hansard*, Canberra, 4 May 2001, p 9.

10 Canbet, Submission 10, p 1.

11 Australian Racing Board, Submission 6

12 Mr Charley, *Committee Hansard*, Canberra, 4 May, 2001, p 11.

- c) the internet does not introduce any new games but functions as a new way to place a bet, primarily replacing phone betting,¹³
- d) the internet constitutes a cost saving for providers.¹⁴

We believe such arguments have merit but also note the argument advanced by a number of submittees, that wagering should not be exempt because wagering is a significant source of problem gambling and is not as well developed in harm minimisation approaches as internet gambling.¹⁵

There is a strong case that harm minimisation is best approached in the context of regulation thus we remain unconvinced by the rationale advanced in the Chair's report that wagering, unlike lotteries, should not be exempt from the ban. However as the Bill should be defeated in its entirety it is entirely academic whether we will seek to amend or support an amendment to exempt wagering.

6. Emerging Issues

By way of conclusion, the inquiry did clarify some emerging issues in respect of datacasting and television delivery of gambling services. While the Democrats would need to look more closely at this issue before adopting a position, we do believe that a future inquiry into this form of gambling delivery may be warranted.

Senator Brian Greig
Democrats IT Spokesperson

13 TABCORP, Submission 24, p 8, ARB, Submission 2, p 8.

14 TAB NSW, Submission 7, p 3. See also Mr Charles, *Committee Hansard*, Canberra, 4 May 2001, p 16.

15 AIGR, Submission 34, p 2. See also Mrs Pafumi, *Committee Hansard*, Canberra 4 May 2001, p 41.