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Submission to the Senate Legislation Committee re: Interactive Gambling Bill 2001

By Tattersall's

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Executive Summary

- 1. The proposed ban on interactive gaming will actually contribute to the level of problem gambling in Australia, not address it;**
- 2. The experts agree that regulation not prohibition is the most effective way forward;**
- 3. Tattersall's, and the industry, have a demonstrated commitment to implement regulations that make responsible gaming and player protection an absolute priority;**
- 4. A regulatory framework (the "AUS Model") has already been developed by State and Territory Governments and will apply uniform player protection and harm minimisation standards across Australia;**
- 5. The proposed legislation is flawed and potentially has the unintended effect of outlawing existing land-based lottery and wagering competitions;**
- 6. Such an impact would be devastating to these well-established industries and would have serious flow-on effects to employment and state revenues;**

- 7. A ban will damage Australia's status as a leading "knowledge nation" and will create a perception overseas that we are not a modern IT economy;**
- 8. If the legislation proceeds, then the Internet sale of State lottery tickets should be exempt from the ban – Australia's State Lotteries are long established and socially acceptable, and the purchase of such lottery tickets is not associated with problem gambling;**
- 9. Australians living in remote and rural locations, and many who are disabled and are unable to access Tattersall's network of retail agencies are those most impacted by the ban. They rely on the services that can be provided through the internet and other interactive media;**
- 10. It is quite untrue to say, as the Commonwealth Government has done, that Australians will not try to access overseas Internet gambling providers. For example, the major countries of Europe have already regulated to allow their operators to market their services over interactive media and many Australians will feel safe in dealing with such entities; and**
- 11. The Interactive Gambling Bill 2001 requires a complete re-draft rather than amendments because this is the only way to make it precise in its scope and to avoid future confusion regarding any exemptions that might be granted.**

1. Introduction

Tattersall's strongly believes the Federal Government's legislative proposal to prohibit interactive gaming is based on an inherently flawed approach that will not achieve its stated objectives, and will actually run the risk of worsening the problem of compulsive gambling behaviour for Australians.

While disadvantaging the overwhelming majority of people who enjoy gaming activity responsibly and safely, a ban will drive problem gamblers towards the thousands of gambling websites overseas – some regulated, others not. Instead of protecting these Australians, the legislation abandons them. At the same time there will be a significant economic impact, with revenue and jobs going offshore and any social consequences for problem gamblers remaining here in Australia.

Tattersall's accepts the existence of problem gambling and has taken an industry leadership role in promoting initiatives that encourage responsible play and that make help and advice readily available. This philosophy and practice would be strengthened because of the nature of the Internet, the direct Operator/Player relationship, and the regulatory conditions that can be imposed and managed for Player Protection.

Like the many expert panels that have already carefully considered the merits of prohibition (the Productivity Commission, the Senate Select Committee on Information Technologies), Tattersall's favours a firm regulatory approach. We also support moves through research to better identify the true extent of problem gambling and its causes. This will enable better-targeted measures to address it instead of the current broad-brush approach adopted by the Commonwealth Government in this proposed legislation.

Significantly, while Tattersall's disagrees with the legislation's intent, it also is extremely concerned by its potential impact on Australia's existing terrestrial lotteries industry. Expert legal advice suggests that the more than \$1 billion in lottery taxes that go to State and Territory governments each year is at risk because the wording of the Bill would see our lottery networks unable to operate as they have done for many years. Not only would this have dire consequences for our well-established businesses but it would also impact severely on the provision of State and Territory health services that have traditionally relied on lotteries revenue.

Notwithstanding, should the Federal Government pursue this course of action and achieve Senate support for it, then Tattersall's would strongly argue that the sale and purchase of State lotteries tickets via the Internet be exempt from prohibition. In no way can it be suggested that buying a weekly lottery ticket, as Australians have regularly done for more than a century, contributes to problem gambling levels in this country. The only outcome is great inconvenience to the many Australians who live in remote and rural locations or who are disabled and no longer want to rely on others to purchase their ticket each week.

2. Prohibition v. Regulation

It is incumbent on the Senate to determine the most appropriate and sustainable public policy outcome from this legislation. However, despite the emotive supporting arguments, the evidence is clear that a ban on interactive gambling will *not* achieve this. According to the experts, prohibition is not the most effective or sound public policy approach in addressing the problem gambling issue and has a number of social and economic drawbacks.

The Federal Government's own Productivity Commission on balance favoured managed liberalisation of Internet gaming, stating:

“The effect of managed liberalisation is to divert demand from the now difficult to access, unsafe sites to the ones that you have specified through consumer protection which are designed to be safe.”

The Commission identified the following potential adverse social consequences of complete prohibition:

- It may have the negative impact of driving the activity underground, creating a criminal class out of people who are caught up in illicit consumption, creating large potential profits for illegal suppliers and a web of corruption;
- If the activity were illegal, treatment would also be difficult. Information on problem gambling would also be poor, frustrating the development of appropriate care services;
- Illegality would also have the effect of denying consumers of gambling protection from unfair and corrupt suppliers, and governments would not be able to raise revenues from the industry;
- It would not be practicable in the medium term, given contractual obligations between governments and gambling providers and the significant adjustment costs which would be experienced by venues which had made large investments in gambling technologies; and
- It fails to recognise freedom of choice, which communities value highly.

In its March 2000 report, “Netbets – A review of online gambling in Australia”, the Senate Select Committee on Information Technologies agreed with the Productivity Commission findings. It stated:

“Strict regulation of online gambling, and not prohibition, is the preferable policy option, as it is a more practical and effective solution to the risk of problem gambling. It would allow for a range of harm minimisation policies to be applied to online gambling which would negate the prospect of higher levels of problem gambling. These policies are more likely to be successfully applied as they are suited to Internet technology.”

It concluded:

“The Committee believes that a prohibition would be difficult and expensive to implement, and is not guaranteed to prevent an increase in problem gambling. Rather than preventing access by problem gamblers to online gambling sites, it is more likely that a prohibition would steer them to overseas-based gambling sites that are only a mouse click away and fail to address problem gambling. A prohibition would also detract from the benefits associated with online gambling, such as the development and enhancement of e-commerce systems and infrastructure, and providing a legitimate entertainment outlet for responsible gamblers.”

Apart from ignoring the recommendations of its own experts and the legislators who examined the options and alternatives available, the Federal Government’s approach also refuses to acknowledge that Australia has been a world leader in developing practical regulations to govern interactive gaming.

The AUS (Australian Uniform Standards for the Regulation of Interactive Gambling) Model recognises that prohibition of interactive gambling is not feasible due to the global nature of the Internet. The recently released updated AUS Model has taken account of the Productivity Commission findings and has adopted many of the protective enhancements recommended by the Netbets Report. It provides a uniform national regulatory framework for interactive gaming to:

- Promote harm minimisation and responsible gaming;
- Ensure the probity and integrity of industry participants; and
- Ensure game fairness, system integrity and the quality of services to players.

This model has the support of all State and Territory governments, apart from NSW, and puts into place greater protections against problem gambling than exist in current forms of “land based” gambling activities.

These protective features include, for example, that gamblers can set limits on the amount that they gamble, that credit gambling is prohibited, that players are given the option of selecting the duration of a session of play, that the option of having automatic breaks in play of at least five continuous minutes per hour must be available, that strict player verification controls apply, and that players can be excluded from gambling sites.

Tattersall’s also supports this tough regulatory approach and had already incorporated many of the measures, as well as its own responsible gaming initiatives, into its tatts.com website.

3. Direct Impacts of Prohibition

The move to ban Internet gambling takes an unfortunate “head in the sand” attitude to the issues raised by Internet gaming. As identified above, the prohibitionist approach raises more issues than it solves and creates a range of difficulties associated with effective enforcement.

Those familiar with the nature of the Internet and the technology available to users around the world understand that trying to enforce controls is similar to King Canute seeking to hold back the tide. The Federal Government has conceded as much with its admission that overseas gaming sites will be able to freely operate in Australia. The Government’s view that problem gamblers will not trust overseas sites beggars belief, and is not backed by any statistical or empirical research.

In reality, Australia will have the absurd outcome in which unregulated overseas gaming sites are available, and are likely to be most attractive to people at risk of problem gambling who will disregard any warnings issued about the dangers of using these sites.

Moreover, the Government has also failed to advise Australians that the major countries of Europe are regulating to allow their Gambling Operators to market via the Internet and other interactive media. This is happening already, and Australians can already transact with the major UK Bookmakers or the National Lotteries of France, Austria, Germany, and the UK, and others. It is pertinent to ask seriously if the Government believes Australians will be better protected in transacting with such entities than those that are owned, operated and regulated in Australia.

As well, the ban will have economic consequences with jobs lost in Australia and millions of Australian dollars going offshore. Overseas gaming and lottery operators will be able to freely operate in Australia without competition from Australian-based operators, capturing local market share. The ban will also restrict Australia’s ability to develop world-competitive information technology, and this will have a subsequent impact on our balance of payments and the value of our dollar.

4. Unintended Impacts of Prohibition

Upon review of the proposed *Interactive Gambling Bill 2001*, it has become evident that in its current state, the Bill would effectively ban existing forms of gambling that are not associated in any way with the Internet. As drafted, it has catastrophic consequences for the State Lotteries and other gaming organisations operating through wide area telecommunications networks (“WAN”).

The Bill includes within the ambit of its primary offence provision (Clause 15) any gambling body (such as a State Lottery) that uses a WAN or other carriage service within Australia to conduct its business, whether or not the actual betting by the customer takes place on-line.

Therefore, in its current state, the Bill would effectively ban many existing forms of gambling that are not associated in any way with the Internet – all that would be necessary to bring a gambling operation within the scope of the legislation is that it uses a listed carriage service (i.e. a network connecting two or more points in Australia) to provide a gambling service to its customers.

5. Reaction to the Proposed Legislation

Amongst informed observers, there has been a very negative reaction to the Government's prohibitionist approach. Newspaper editorials across the nation have almost universally condemned the legislation as being unworkable, ineffective and out of step with reality. Below are some relevant extracts:

“... the Government has decided to put meaningful policy on controlling internet gambling in the too-hard basket. Instead, we get a ban that applies only to local online gambling sites.” The Australian (29/3/01).

“... this means overseas gamblers would be able to enjoy a regulated, reliable service while Australian punters would be forced to take their chances with unregulated operators.” Courier Mail (29/3/01).

“The Government should instead be taking up the proposals for targeted regulation of Internet gambling proposed by the Productivity Commission and the Senate Select Committee on Information Technologies. This approach would both allow the Australian internet industry to continue providing a service in which it has developed international competitiveness, and take advantage of the specific qualities of the Internet to deal with gambling problems.” The Australian Financial Review (29/3/01).

“... the Government's proposed ban on Internet gambling does not provide a solution. Experience has shown that bans do not stop compulsive behaviour – often they merely challenge the ingenuity of people who want access to what is banned.” West Australian (31/3/01).

“The most effective response would be to licence and regulate Internet gambling to ensure some basic standards. For example there could be a requirement for betting limits and for an advance deposit of a players' betting kitty with no credit card additions allowed on the same day.” Daily Telegraph (29/3/01).

“In its zeal to limit any further spread of gambling in Australia, the Howard Government has over-reacted.” Herald Sun (30/3/01).

“The difficulty with imposing an Internet ban, however, is that the Net is notoriously resistant to such controls. At least four Internet “filters” could be used to stop Australians from gambling with a local company on the Net, but it would be possible for punters to circumvent all of them.” The Age (31/3/01).

“It would have been better not to have used this heavy-handed prohibitionist approach. Problem gamblers in Australia will be driven to unregulated, overseas sites beyond Australian control. It would have been far better to have regulated the Australian sites where the harm of compulsive gambling can at least be minimised.” Canberra Times (29/3/01).

Furthermore, Tattersall’s does not accept the polling relied upon by the Federal Government that claims to show Australians overwhelmingly support a ban on Internet gaming. These people have not been briefed on the full range of protections incorporated in the proposed regulatory framework of the Australian States or on the possible alternatives, and are therefore expressing uninformed opinions based on the effects of emotive rhetoric.

Tattersall’s is certain that Australians would not support a situation where overseas gaming interests are allowed to operate in our markets without genuine player protection and in the absence of Australian competition, thereby resulting in a loss of jobs and income to our national economy.

6. Tattersall’s

Tattersall’s is the largest private organisation in Australia and the oldest private gaming operator in the English-speaking world. Over a period of 100 years Tattersall’s has established itself as a highly reputable and trusted company and is a lottery or gaming licensee in Victoria, Tasmania, the Australian Capital Territory and the Northern Territory. Lottery is a long-held socially acceptable form of gambling, introduced to Australia in the early 1900s to raise funds for worthwhile causes. Tattersall’s most popular lottery game, Tattslotto, is one of the biggest selling lottery games, per capita, in the world.

Tattersall’s lottery products are sold by nearly 1000 retail outlets throughout Australia as well as in a number of island nations of the South Pacific. In addition, Tattersall’s is part of a consortium managing South Africa’s National Lottery.

Before the Federal Government’s moratorium on interactive gaming was instituted, Tattersall’s enabled its customers to purchase lottery tickets direct from its websites. Previously these customers had only been able to do so through two online agents. This initiative proved extremely popular, particularly with customers living in remote and rural locations and also with disabled people who often find it difficult to access Tattersall’s network of agencies.

7. Responsible Gaming

In line with its responsible gaming commitment, Tattersall's put into place a detailed registration, verification and safeguard system that prohibited plays by minors, placed a limit on how much could be spent, featured regular responsible gaming messages, and had links to sites that gave assistance to problem gamblers.

In addition, Tattersall's pioneering "Have Fun, but Play It Safe" campaign applies to all its gaming activities. Our code of practice stipulates that Tattersall's:

- Will only undertake activity directed towards marketing interactive gambling as a valid leisure and entertainment product;
- Recognises the public has a democratic right to participate in their chosen form of entertainment;
- Enables any individual player identified as a "problem gambler" to readily access assistance from gambling help services;
- Makes available information concerning the availability of gaming support groups to all customers registered with Tattersall's; and
- Makes available and promotes a self-exclusion procedure within the Tattersall's websites.

8. The Case for Exempting Lotteries

If the Federal Government's legislation proceeds, then Tattersall's would seek to have the sale and purchase of lottery tickets exempted. As was the case argued with sports wagering under the moratorium, lotteries constitute a gambling event that takes place in a physical location with the drawing of numbers. The Internet merely provides a new mechanism for buying the tickets.

Significantly, it provides enormous convenience for people who are unable to access Tattersall's network of retail ticket agencies, whether they be living in isolated locations or on military bases, travelling overseas, or find it difficult to travel to an agency because of a physical disability.

Tattersall's had thousands of customers who relied on the convenience of buying lottery tickets each week via our Internet website. We were forced to withdraw this popular service following the 12-month ban on internet gaming – despite the target of the moratorium presumably being the type of casino games commonly associated with problem gambling.

It is unfortunate that lotteries, that enjoy wide community acceptance, were caught up in the ban and are currently included in the Government's proposed legislation.

Tattersall's believes that thousands of Australians should not be denied the opportunity and convenience to buy their weekly Lotto ticket from Tattersall's via its websites. It is absurd for a technologically advanced nation such as Australia to prevent people using the Internet to purchase such a socially accepted product.

Thousands of Tattersall's customers have expressed their frustration and anger about the ban. Some of their e-mail comments are re-produced below:

I live in the rural classed sector of this lovely country and never miss a lotto ticket. I have to drive to the nearest agent and on several occasions have made the trip to find the lotto agent machine "down" (not operating). So much effort and money can be saved with online purchases.

The government need only take a look at the many American gambling sites that list their winners and gauge the vast amount of Australian gambling dollars going out of our country.

I live on one of the remotest Aboriginal communities in the Northern Territory about 540 km west of Alice Springs and it is impossible for us to just drive to the nearest newsagent like Mr. Howard. It amazes me how he kowtows to the do-gooders who try to deprive the average citizen out here in the bush from having a bit of fun on the lotto. We do not have many other pleasures in life, which only costs us a few dollars so far from civilization.

I strongly resent the Federal Government's move to ban online Tattslotto purchases. This move contravenes the Disability Discrimination Act (by making it harder for people with disabilities to acquire Tattslotto tickets) and has the same effect on rural people who live far away from a "real" Tattslotto outlet. It is also offensive to my right as a citizen to make adult choices. Has Mr Howard forgotten this is an election year?

The Federal Government has displayed a total lack of insight on Internet gambling. I have Multiple Sclerosis but am able-bodied on most days. However, their narrow-minded stupidity and selfish act of discrimination may affect me in the future and this will put me in the position of having to depend on others or their sympathy to be able to purchase a simple lotto ticket. And believe me, no one ever wants to lose his or her independence.

If a business is legal, it cannot be illegal simply because it is on the Internet. Banning your own Lotto on the Internet is a good way to send your citizens elsewhere on the Internet to purchase Lotto, and leak money out of the country.

The sale of Tatts lottery tickets over the Internet is no different to selling them at the newsagent or wherever, and at times it can be more convenient. People with a gambling problem/addiction will feed it no matter how or what is done to curtail it. Responsible gamblers need options too.

I live 200 km from my nearest lotto agent. Buying over the Internet was a quick and convenient way to purchase tickets.

I can still buy Lotto tickets through a NZ Website, or I could join a queue at any local outlet - thank you NOT for the inconvenience. If I chose to do so, I could still gamble on the Internet, but now the funds have been forced offshore - out of sight, out of mind perhaps? But then I could walk into any local club, casino or TAB. The drover's dog could not have put together a more ludicrous piece of legislation.

NOTE: Names and e-mail addresses are available on request.

9. Conclusion

It is true that legislators must often respond to community concerns and perceptions. However, they also have a responsibility to implement sound public policy, with the objective of achieving practical outcomes.

Tattersall's shares the widespread concerns about problem gambling in Australia, but believes that only a realistic and uniform regulatory approach will provide effective safeguards. Such an option will also ensure that the vast majority of Australians who gamble safely and responsibly are not disadvantaged.

In light of this view, Tattersall's believes the Interactive Gambling Bill 2001 should be either rejected or significantly re-drafted. If the Bill proceeds with amendments then Tattersall's would seek a commitment from the Federal Government that it will consult with the gaming industry regarding the amendments to avoid further unintended consequences that could have a significant detrimental impact.