

**SUBMISSION ON BEHALF OF THE
NORTHERN TERRITORY DEPARTMENT OF INDUSTRIES AND BUSINESS
TO THE
SENATE ENVIRONMENT, COMMUNICATIONS, INFORMATION
TECHNOLOGY AND THE ARTS LEGISLATION COMMITTEE**

Interactive Gambling Bill 2001

The Northern Territory fully supports the objective of the Bill to “minimise the scope for problem gambling among Australians.”(Explanatory Memorandum, p. 2).

However, the Bill creates a regime that will have the opposite effect and is more likely to exacerbate problem gambling than minimise it.

This Submission is in two Parts. Part 1 examines the assumptions, advice and assessments that are cited in support of the Bill in the Explanatory Memorandum (“Ex Memo”). Part 2 examines the operation of the Bill and offers possible amendments for consideration.

Though issue is taken with a number of points made in the Ex Memo and supporting documents, for brevity, only the principal points are noted in this Submission and the views expressed below are necessarily short.

Part 1: The Regulatory Impact Statement – The Assumptions, Advice and Assessments

1. *“The potential to enable ...poker machines.. in every home, 24 hours a day.”*

Having access to the internet means having the potential to access internet gambling. That is a fact of life.

Assessment of the Bill should not proceed on the basis that present access is somehow “potential”; Australians are able to access almost every gambling site in the world. Should this Bill become law, Australians will be able to access every gambling site in the world other than Australian sites (as defined).

2. *“...encourage children to learn and rehearse gambling activities.....”*

No evidence is presented to support this assertion. It may equally be asserted that parental supervision will encourage responsible gambling practices in children, especially where parents are able to access the responsible gambling features that continue to be developed for Australian sites.

Importantly, the regime developed under the Bill will not prevent Australian adults (parents) accessing offshore sites. The Bill does not materially reduce this risk to children.

3. *“...[children] may still find ways around these measures and access gambling from the home...”*

This comment under-estimates the strength of deterrents and controls, and no reasoning is presented to counter the conclusions of the Productivity Commission that access by children will be better restricted in an online environment.

As the level of identity-verification testing is lower with non-Australian sites, the “savvy” child user cited by the Ex Memo is still able to access gambling from the home.

The Bill does not materially affect this risk as the (optional) user-level filtering software, as proposed under this scheme, has been widely available for several years. No evidence is presented to suggest current levels of usage will change.

4. *“...Ministerial Council on Gambling..... COAG considered the issue of problem gamblingInteractive gambling was not discussed by COAG.”*

Although the Ministerial Council on Gambling is to enable the “*exchange of information on responsible gambling strategies, and...[provide] a forum for common issues*” (Ex Memo), the Commonwealth has not consulted with the States and Territories in the development of its policy position.

It is therefore unclear as to why it has not accepted the findings of the Productivity Commission or the Senate Select Committee in relation to favouring regulation over prohibition, especially following the conclusions of the NOIE Report on the feasibility of blocking access to offshore sites.

It is noted that most of the responsible gaming features COAG and the Ministerial Council would like to apply to gaming machines were either inspired by, or are readily provided on, the internet platform.

Some of the features currently provided by Lasseters Online and to be required under the “*Australia: Uniform Standards for the Regulation of Interactive Gaming*” (“the AUS Model”) will be almost impossible to feasibly replicate offline.

5. *“The [NOIE] conducted a study...”*

The NOIE Report confirms the advice previously received by the States and Territories that blocking access to offshore sites is technically possible but has significant technical and commercial consequences. It cannot be reasonably achieved.

The effects of this Bill in fighting problem gambling should therefore be assessed in the light of the conclusion that Australians will have unchanged access to offshore sites.

6. *The economic modelling ..indicates ...a ban may have modest ...benefits for Australia...and benefits for ...taxation revenue*

The economic modelling is not robust and a number of its assumptions are questionable. It does not differentiate between the different types of gambling and the corresponding potential rates of migration to the internet, or provide a transparent assessment of costs and benefits over the medium term.

As the benefits to revenue flow from encouraging players to play gaming machines which lack the harm minimisation features of their internet equivalents, this is not a desirable outcome.

The comments on tax rates fail to take account of the global market conditions and may be disregarded.

There is little confidence in the findings of the economic modelling.

7. *“Interactive gambling is a rapidly growing e-commerce industry...a ban would be consistent with... protect[ing] consumers”*

It is significant that the ban is said to protect 100% of “consumers” when the number of problem gamblers is cited as being 2.1%.

This Bill, which is said to be targeted at problem gambling, will deny the 98% recreational gamblers the benefits of using Australian sites but will not prevent the 2% of problem gamblers from accessing almost all of the gambling sites on the internet. As offshore sites do not have the harm minimisation features required by Australian regulations, this will exacerbate problem gambling.

8. *Impact Analysis: Option 1: Status Quo:*
“..a range of ...sites will continue to be available....potential problem gambling will be unchecked.”

Under the status quo, almost all sites will be available but Australians will be able to access local sites offering the best harm minimisation features in the world. This will promote responsible gambling practices and combat the present incidence of problem gambling.

Potential problem gambling will be unchecked when it is directed only to offshore, unregulated sites as under the preferred “targeted ban” option.

9. *Impact Analysis: Option 2: Targeted Ban:*
“moderate effect...only 5% of Lasseters...players are Australian.....Australian users make up only a tiny proportion....”

This statement does not take account of the restricted nature of Lasseters’ access to the Australian market. The economic modelling significantly underestimates the direct and indirect costs of such a ban on the industry and wider economy, and should be disregarded.

10. *Impact Analysis: Option 2: Targeted Ban:*
“restrictions of interactive wagering and lottery services may therefore have significant consequences...”

The rationale for including wagering and lottery services within the ban is unclear. In these cases, the internet serves as a cost-effective communication channel enabling bets or entries to be made at the cost of a local call, rather than by fax or phone.

The targeted ban will freeze Australian wagering and lottery providers in using old technology. In the short-term, this will make them unable to compete; in the longer term, they will be unable to survive.

As Australian problem gamblers will continue to be able to access offshore sites, the benefits in combating problem gambling are unclear.

Closure of Australian wagering providers will see the loss of several hundred Northern Territory jobs in the area of e-commerce. The development of sustainable e-commerce in Regional Australia is difficult but is more so when an activity that is permissible by fax or phone is not able to be conducted using the very communications technology that overcomes the problems of distance.

11. *Impact Analysis: Option 2: Targeted Ban:*

“...ban should cover interactive gambling to people located in Australia but not to people outside Australia..”

This is a difficult position to sustain on a number of levels, not least as a matter of principle.

It assumes operators will continue to find Australia an acceptable location. From a marketing point-of-view this is unlikely in the medium term, especially when a site claims it meets high regulatory standards but is denied access to its home market on the basis of concerns about problem gambling.

12. *Impact Analysis: Option 2: Targeted Ban: Impact on Interactive Gambling Consumers and Problem Gamblers*

“A restriction on the range of. .services ...would reduce consumer choice. However, consumers and in particular problem gamblers would have some protection from interactive gambling services....”

This is a dangerously inaccurate conclusion. Problem gamblers will continue to be able to access every internet gambling site in the world other than local sites. Rather than offering any “protection”, this approach blocks problem gamblers from accessing the very sites that have features designed to help combat the problem.

13. *Impact Analysis: Option 2: Targeted Ban: Impact on Welfare and Problem Gambling Agencies*

“...pressure ..would be reduced..”

As problem gamblers will still be able to access offshore sites, there is no evidence to support this assertion. Indeed, the rate of problem gambling may be unchanged but the funding sources for services would be threatened as gambling revenue would flow offshore.

14. *Impact Analysis Option 2: Targeted Ban: Impact on Communications Industries*
“provide for approved content filters to be made available to...users. ..in practice, ..discharged by providing hyperlinks to.. websites of approved filter providers..... installation is entirely voluntary.

This provides no advance on current practice. Indeed, from 1999 the Northern Territory has required by law that an internet gaming operator provides access to the same software.

There is no evidence to show that any increase in current rates of use of such software is expected. Accordingly, it is unclear how any reduction in problem gambling is expected to occur.

It is also unclear why the Australian taxpayer is to subsidize the commercial interests of such software providers by providing updated lists of internet gambling sites for use by users worldwide.

15. *Restriction on Competition*

“It restricts the access of offshore providers to the Australian market, but only to the extent that Australian users choose to ..filter these services..”

It is unfortunate that the most accurate statement of the effect of this Bill is given under an assessment of the restrictions on market access to offshore providers. It is made after the conclusion has been drawn.

It is difficult to reconcile such a simple statement of fact with the claims of achieving an increased level of “protection against problem gambling” that were made earlier in the Ex Memo.

16. *Second Reading Speech: “Efforts by States and Territories to reach agreement on new national standards for regulating internet gambling have not succeeded...”*

This is a mistake of fact. The new regulatory model, the AUS Model, was prepared with the participation of regulators from all of the States and Territories as well as Norfolk Island and New Zealand. The degree of commonality in the regulatory approach and the level of co-operation between the States and Territories is persistently mis-stated, despite advice.

Summary of Part 1.

The Ex Memo shows a poor understanding of the gambling environment and likely future developments. It fails to take account of the considered findings of the Productivity Commission and the Senate Committee, and asserts contrary views without supporting evidence.

It is naïve in its economic assessments and misleading as to the effect the Bill will have on problem gambling.

Part 2. The Interactive Gambling Bill 2001

The Bill is very lengthy, when its effect is simple: it creates an offence for Australian providers to provide services to Australian residents, and requires (optional) filtering software to be provided to users. Complaints will serve to identify gambling sites, the details of which will be passed on to filter manufacturers.

Despite its simple effect, the Bill uses elaborate language to describe its operation. For example, in relation to industry codes and industry standards, the Bill refers to criteria such as being “satisfied that the arrangement is likely to provide a reasonably effective means of preventing access by those end-users to prohibited Internet gambling content”. This provision, which is directed to content from offshore sites, seems to assume that prevention is achievable when all that will be required is the provision of (optional) filtering software.

This is but one example of a Bill that seems to be designed to give an impression of achieving more than is possible.

1. *Proposal: Differentiate between the technologies.*

This Bill purports to apply to all interactive technology even though the nature of the technologies, their effects and their capacity for control vary from case to case.

In respect of the internet, its global nature and resistance to jurisdictional control have presented special challenges. However, a key distinction between internet and broadcasting services is that consumers choose to access particular internet sites. This is not so in the case of broadcast services such as television. These services have the potential to be more invasive in terms of delivering gambling to homes, and without the strict harm minimisation features that are applicable to the internet.

In recognition, it is proposed that clause 5 of the Bill be amended to delete the reference to “internet carriage service”, and that a ban be imposed on providing gambling services by means of broadcasting services.

2. *Clarify Scope of the Bill – (1) Effect on Current Services.*

It is arguable this Bill catches all current forms of gambling that are telecommunications-enabled, such as Keno, current lotteries such as Lotto where the entries are recorded in a central computer, and linked jackpots.

This effect underlines concerns about the “shot gun” nature of this Bill and the lack of precision in both its policy definition and its application.

The Bill should be amended to put beyond doubt that these forms of gambling are not caught by its terms.

3. *Clarify Scope of the Bill – (2) Games of Skill*

The Ex Memo elaborates at length on what is and is not a “gambling service” and offers opinions on what constitutes gambling that are inconsistent with current regulatory approaches.

In terms of excluding “games of skill”, it is noted that the first regulatory model prepared for interactive gambling in 1997 included all games of skill. The latest AUS Model regulatory scheme will include such games of skill as are declared to be subject to its terms.

It is noted that there are judicial decisions that “poker” is a game of skill. It is not clear whether the Federal Government regards poker as a form of gambling that should be caught by Bill.

4. *Clarify Scope of the Bill – (3) Betting*

The Ex Memo says that “two individuals merely having a bet over the internet would not be a gambling service.” It is unclear whether a Bet Exchange, which provides a forum for two individuals to make a bet between them, would be caught by the law.

5. *Clarify Scope of the Bill – (4) Trade Lotteries*

The Ex Memo says that “free entry” or promotional lotteries are not caught by the Bill. This is regarded as a form of gambling by all States and Territories and is regulated by them. It is unclear why such lotteries are to be exempt from the Bill.

6. *Clarify the Operation of the Bill – the Offence provision*

Section 15 imposes significant daily penalties on providers who breach its terms. It is a defence for a provider to show that with “reasonable diligence” it could not have ascertained an Australian-customer link.

This brings into question the approved player registration and verification procedures. Is a provider required to do more, or is it able to claim compliance with those procedures constitutes “reasonable diligence”?

Is “reasonable diligence” to be decided on an industry basis or by taking into the account the particular circumstances of the provider? In other words, is the industry required to adopt the latest (and often the most costly) verification strategies, or are small providers only to adopt processes that are “reasonable” in their circumstances?

7. *Exclude Wagering Services and Lotteries*

In terms of problem gambling, it is unclear why internet wagering with Australian providers is to be banned when the identical service may be offered by the identical provider provided it is offered by way of the telephone or fax.

In terms of problem gambling, it is unclear why an entry into a lottery cannot be placed by means of the internet, but it is acceptable to enter using another “closed” telecommunications network. In other words, why is it unacceptable for a person to use technology to make an entry, but it is acceptable for the entrant to instruct another person to use technology to make an entry on his or her behalf?

8. *Negative the Bill*

Should the sensible amendment suggested above regarding wagering and lotteries be agreed to, the Bill will apply to, essentially, internet casino games only.

Yet these are the very gambling services for which harm minimisation features are most desirable. However, access to offshore service providers that do not offer these features will be unrestricted under this law. This is a nonsensical result.

If this is to be its only area of application, the Bill should be defeated in its entirety.