



Internet Industry Association

**Submission to
the Environment, Communications, Information
Technology & the Arts Legislation Committee**

Interactive Gambling Bill 2001

24 April 2001

This submission is presented on behalf of the Internet Industry Association, Australia's national Internet industry organisation. The IIA represents over 340 members including include telecommunications carriers, content creators and publishers, web developers; e-commerce traders and solutions providers; hardware vendors, systems integrators; banks, insurance underwriters, internet law firms, internet service providers, educational and training institutions, internet research analysts and a range of other businesses providing professional and technical support services.

On behalf of its members, the IIA provides policy input to government and advocacy on a range of business and regulatory issues, to promote laws and initiatives which enhance access, equity, reliability and growth of the medium within Australia.

The IIA has consistently argued for strong regulation in the area of online gambling. This is in keeping with our **proactive engagement** of a range of social policy issues arising from the development and use of the internet in Australia. These include our work:

- in conjunction with the Privacy Commissioner and the Attorney General's department for the development of a legal framework to support the protection of **personal information**
- the protection of minors from exposure to **inappropriate content** online
- the promotion of better access for **disabled** users, and
- the promotion of best practice in relation to **consumer protection** online.

Many of our initiatives in these areas are available for viewing on our site at www.iaa.net.au.

The IIA has previously submitted papers to both the Senate Committee and also the National Office for the Information Economy (NOIE) inquiry into the feasibility of banning interactive gambling. We append in **Attachment 1** a copy of our submission to NOIE for this Committee's reference.

The NOIE report resulting from its inquiry¹ and upon which the present Bill appears to be largely based contains substantial flaws in the government's approach to, and justifications for, banning online gambling. Some of the more obvious deficiencies are canvassed below. In reviewing these, we ask the Committee to bear in mind that the IIA's position on online gambling does not stem from support for the practice of gambling per se, nor from a position of disregard for the welfare of those who would seek to access it. Rather, we take the view that it is a phenomenon will continue to expand globally, irrespective of what measures are taken domestically, and cannot realistically be blocked to users within Australia. Our position is therefore grounded in pragmatism, having regard to the technology itself, coupled with a genuine desire

¹ at <http://www.noie.gov.au/projects/consumer/gambling/report.pdf>

Note: all further references in this submission refer to the NOIE report unless otherwise stated.

to support solutions which can actually improve the protection of end users in an online environment.

In response to the NOIE report which serves as the foundation for the approach taken in the current Bill, we make the following observations:

1. The *Econtech* economic impact study that NOIE draws on for its economic analysis concludes that a ban may increase social welfare for Australians. (NOIE p.54) But this is only true if you accept the assumption that online gambling is 30% more dangerous than offline gambling. We reject that assumption and rely on the player protections which will apply uniformly in Australia if the States and Territories are permitted to finish and implement the draft *AUS Model*, as they are keen to do.

The *AUS Model* contains some 40 pages of player protections and regulatory standards, many of which are not capable of implementation offline in the foreseeable future (for example, third party exclusions and enforceable betting limits and time out periods). The assumption the *Econtech* makes would only be true if the States and industry are prevented from finishing their work on uniform player protections. Commonwealth intervention will, if anything, impede that process.

2. Assuming instead that online gambling is no more harmful than offline gambling, then the net social welfare change is negative \$9 million per annum, that is, society is \$9 million worse off after a ban on Australian sites, as currently proposed. It would only be by accepting *Econtech's* most ambitious assumption that we may see any positive net social benefit, and even that does not include the cost to either industry or government of implementing the ban.² The submission from the Australian Federal Police,³ states that they could enforce a ban within Australia provided they are given the resources and additional powers to do so. So a resource cost is conceded, but not apparently factored into the total net cost of a ban.
3. Arguing, as we do, that well regulated online sites within Australia will offer better protections than land based venues, and using *Econtech's* own model, there will be a **net social benefit** in permitting internet gambling in excess of **\$43 million per annum**. This social benefit can be applied in welfare enhancing ways, for example in treating problem gambling generated by offline establishments. In short, the Internet should be seen not as the problem here, but as part of the solution.
4. The NOIE report cites Department of Family and Community Services' (FaCS) survey of Australians in their attitudes to banning internet gambling. The government is therefore relying on its own statistics to justify its rhetorical position. But these statistics operate both ways. In particular, they reveal that 96% of respondents said they had "no, or very little interest in accessing gambling on the Internet".⁴ Furthermore, the survey found that "predicted rates of Internet

² p.54, NOIE report

³ p. 31

⁴ cited at p. 61

access (and the possibility of accessing interactive gambling services) are not very high.⁵

This raises the following question: If most Australians when surveyed by the department driving this legislation have no intention of using internet gambling, how then can the government make the logical leap to conclude that it must ban internet gambling within Australia before it becomes a problem?

Surely the survey should have been done before any move to impose additional regulations on the industry, over and above those which apply at State level. One wonders what is driving the political response. You can ask people (as FaCS did) if you think the government should ban online gambling, and 68% will agree.⁶ But with the same study showing that 60% of respondents lived 5 minutes or less from an offline gambling venue, and with reports from the Productivity Commission report onwards saying that problem gambling is an offline phenomenon, the credibility of this intervention must be questioned.

5. Disturbingly, the NOIE report reveals a concern that traditional forms of gambling should not be impacted by a decision to ban online gambling. In other words, the government appears not to want to impede offline gambling used by average Australians. NOIE states: "Banning a new, and relatively little-used form of gambling is unlikely to disadvantage anyone wishing to be able to gamble"⁷ as if this was a point in favour of an online ban. One is forced to ask: What then is the policy rationale operating here?
6. NOIE recommends a "consumer advice campaign to complement a ban on interactive gambling. Such a campaign could inform the community of the potential risks and dangers of gambling online and be targeted at potential new groups of gamblers emerging with the increased accessibility of interactive gambling services".⁸

Naturally, we are supportive of end-user empowerment, but there is a risk that unless this "advice" campaign is carefully managed, it will do no more than reinforce a message that the Net is inherently risky. This would be inconsistent with another recent NOIE report, "the Phantom Menace", which tried to calm consumer fears about using credit cards online.

7. NOIE refers to a recent report called "Current State of Play" based on studies it commissioned from Merrill Lynch and Goldman Sachs, and also a study by the OECD which "confirm Australia's position as a leading new economy". They seem to refute any suggestions that this policy might undermine that reputation and thereby jeopardise investment in the development of Australian e-commerce and infrastructure. That is not the way it is presently perceived in the US. Australian will only be an attractive investment destination when and only when we have a reputation of being regulatory-friendly and not fraught with sovereign risk.

⁵ *ibid.*

⁶ p. 61

⁷ *ibid.*

⁸ p. 62

8. While we are naturally relieved that at this stage the government does not see ISP level blocking as feasible in enforcing a domestic ban, the larger question remains: why they are singling out the Internet for discriminatory treatment at all. The only thing they point to is 'greater accessibility', though they do not seek to interfere with established access methods like telephone betting, even though there is the constitutional power to do so, and given that there is a universal service obligation to provide telephones into every household. Refer again to the finding in the report that 60% of FaCS respondents lived 5 minutes or less from an offline gambling venue. Almost all Australian homes have at least one installed telephone. In contrast, there are only currently under 40% of households online, so one wonders where the spectre of accessibility really comes from. The catchcry which seems to characterise the approach here is that we must avoid 'a casino in every lounge room'. Under the proposed legislation we will still potentially have a foreign casino in every lounge room as well as an SP bookie in every lounge room. Any justification for this policy must fail on the basis that it will effectively eradicate the safest forms of gambling that are currently accessible to home users, only to leave those offering inferior protections, or protections outside Australia's sphere of control.
9. Finally, we note that the NOIE report states on page 17:

It is likely that smaller Carribean (sic) and Central American jurisdictions will predominate only as long as developed nations like Canada, the United States, South Africa and the States of the European Union remain out of the market. It is also likely that both consumers and providers will have more confidence in licences from major countries.

We are advised that both South Africa and the UK will both permit and regulate the activity. In addition, the State of Nevada is preparing to legislate to permit online gambling and is looking at the Australian AUS Model as a basis for regulation. Likewise, Native American Reservations within the US are according to the NOIE report "considering using their special sovereign status to legalise interactive gambling". It is no wonder that Australian businesses likely to be restricted from operating here are rushing to meet these emerging markets.

Having regard to the foregoing, it is our conclusion that the legislation as currently drafted will lead to a retrograde outcome where Australians will be able to use the Internet to reach offshore sites hosted in jurisdictions applying protections based on our regulatory standards, but they will not be able to bet on Australian based sites offering the same protections. Under the proposed legislation, these will only be available to offshore players.

This result highlights a retrograde outcome which likely to flow from the proposed approach and for that reason we are recommending that the legislation be rejected outright.

The solution instead lies in the adoption by States and Territories of the AUS Model, which industry has already indicated it will support and comply with. Any other outcome will essentially lead to the exportation of best practice out of the country to the detriment of those whom the government seems most concerned to protect.

The Committee should be aware that the present provisions may actually make the operations of even non-Internet based TAB and lottery operations illegal if they transmit data over wide area networks. This may simply be a drafting oversight. If it is, it indicates a lack of attention to unintended consequences that may arise through this broad brush approach to online regulation.

If on the other hand, the measure is intended, we would be forced to conclude that the intention is to undermine electronic data transfer of content which the Commonwealth deems unsuitable for domestic consumption. Such a precedent is highly disturbing to the IT industry. The fact that this data transfer includes that currently integrated into conventional operations currently permitted under relevant State and Territory licenses could be seen as deliberate extension of power by the Commonwealth on matters outside its traditional areas of jurisdiction, on the pretext of protecting citizens from activities which they can pursue perfectly legally offline.

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Attachment 1: Submission to NOIE on the Feasibility and Consequences of Banning Interactive Gambling Services

Internet Industry Association

21 August 2000

The Internet Industry Association is Australia's national Internet industry organisation. Members include telecommunications carriers, content creators and publishers, web developers, e-commerce traders and solutions providers, hardware vendors, systems integrators, banks, insurance underwriters; Internet law firms, ISPs, educational and training institutions, Internet research analysts, and a range of other businesses providing professional and technical support services. In addition, we now have a small number of online gambling operations who have joined in support of our constructive approach to internet regulation. On behalf of its members, the IIA provides policy input to government and advocacy on a range of business and regulatory issues, to promote laws and initiatives which enhance access, equity, reliability and growth of the medium within Australia.

The IIA believes that a ban on online gambling is not sustainable either from a social policy, skills development or technical standpoint.

While we have made it clear in all our public comments on the issue of regulating online gambling, the IIA does not necessarily condone the practice of gambling per se. However, we believe that those whom the policy seeks most to protect are those who are most likely to seek circumvention around blocks placed within Australia. Likewise, those sites which are operating in unregulated jurisdictions outside of Australia are most likely to offer online users the means by which they can circumvent any ban which Australia would seek to impose. The consequence of this phenomenon suggests that banning will not be a fruitful direction in which to proceed.

We have previously provided the Senate with a detailed submission which canvasses our arguments in full. The submission is available on our site at <http://www.ii.net.au/gambling>. We understand that you are in possession of that submission and ask that you take that into account in your deliberations.

In addition, we refer you to both the Productivity Commission and "Netbets" reports, neither of which recommended the banning on online gambling.

We believe that a well regulated industry within Australia, operating under consistent and strict State-based regulation, is the best way in which Australians can engage in online gambling knowing that they are dealing with reputable operators. Most online gambling operators to whom we have spoken support implementing most if not all of the player protection recommendations of "Netbets". This surely is a better way forward than to attempt to outlaw what is lawful online.

We dispute what would appear to be the core justification for Commonwealth intervention in this area, namely that gambling is more accessible online. Age constraints are feasible online and player betting limits are capable of imposition with

more efficacy than is ever likely to occur offline, particularly in a co-operative environment where information sharing can occur between licensed operators working in conjunction with regulators.

Online gambling is not of any sizeable proportion at the moment, and is not likely to come close to the scale to offline operations in the foreseeable future. Further, given the capacity of the technology to offer higher levels of player protection compared with what can be offered offline, we believe that any move to ban the practice is both unwarranted and counterproductive.

The IIA will be convening a Technical Advisory Group which will assess, among other things, technological limitations and the consequences to network stability of blocking. We are happy to make that information available to NOIE as it becomes available.

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