

# CHAPTER 1

## INTRODUCTION

### Referral and conduct of the inquiry

1.1 On 5 April 2001, the Senate referred the Interactive Gambling Bill 2001 (the bill) to the Environment, Communications, Information Technology and the Arts Legislation Committee for inquiry and report by 23 May 2001.

1.2 The Committee advertised the reference in *The Weekend Australian* newspaper on Saturday 14 April 2001, and wrote to a number of interested individuals and organisations inviting submissions. The Committee received in response 37 submissions, which are listed at Appendix 1, and held a public hearing in Canberra on Friday 4 May 2001. A list of witnesses appears at Appendix 2.

### Background to the inquiry

1.3 The proposed ban of interactive net gambling has been the subject of considerable public debate over the past couple of years. This has been fuelled by the growing community concern over the extent of problem gambling in Australia, and its associated social costs, together with fears that the internet and emergent datacasting technology has the potential to significantly worsen the problem. As a result, the Productivity Commission conducted an investigation into gambling, which reported in December 1999. Their three volume report addressed the scope of economic and community impacts of gambling in Australia. This was followed in March 2000, by the report of the Senate Select Committee on Information Technologies, *Netbets – a review of online gambling in Australia*. Since then:

- In April 2000, the Ministerial Council on Gambling met for the first time. The Commonwealth government proposed a voluntary twelve month moratorium on interactive gambling services which was ultimately rejected by a majority of states and territories.
- On 17 August 2000, the government introduced the Interactive Gambling (Moratorium) Bill 2000, which imposed a 12 month moratorium on the development of the interactive gambling industry in Australia. The bill was referred to this Committee which tabled its report in September 2000, and recommended that the bill proceed. The legislation was passed by both Houses in December 2000, with the moratorium coming into effect on 19 May 2000 and ending twelve months later on 18 May 2001.
- On 17 October 2000, the Commonwealth government hosted an interactive gambling forum in Melbourne.
- On 3 November 2000, the Council of Australian Governments (COAG) agreed to the development of a strategic framework to deal with problem gambling: four central themes including prevention, early intervention and continuing support, the building of effective partnerships and research.<sup>1</sup>

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1 Western Australian government, Submission 17, p 5.

- In March of this year, the National Office for the Information Economy (NOIE), completed its report into the feasibility and consequences of banning interactive gambling, commissioned by Senator the Hon Richard Alston, Minister for Communications, Information Technology and the Arts. This report provides a comprehensive summary of the findings of the above reports, and the key issues.<sup>2</sup>

1.4 The Committee also notes that in relation to gambling, the Commonwealth government is able to base its actions on sections 51(v) postal, telegraphic, telephonic and other like services, and section 51(xx) corporations power of the Australian Constitution. Thus, the Commonwealth has clear constitutional authority to legislate with respect to both telecommunications and business corporations.

### **The bill**

1.5 The purpose of the bill is to limit the availability of interactive gambling services to Australians. A wide definition of interactive gambling is used which includes gambling provided using the internet, a broadcasting service, or a datacasting service.

1.6 The framework in the bill has two main elements. Firstly it makes it an offence to provide an Australian-based interactive gambling service to customers in Australia. Secondly the bill establishes a complaints scheme which will enable Australians to make complaints about interactive gambling services on the internet which are available to Australians.<sup>3</sup>

1.7 According to the Explanatory Memorandum, the main elements of the proposed framework are:<sup>4</sup>

- an offence provision which makes it an offence for providers with a specified link to Australia to provide interactive gambling services to a person physically present in Australia;<sup>5</sup>
- an industry-based system for responding to complaints in relation to interactive gambling services where the relevant content is available for access on the internet by Australian customers;<sup>6</sup>
- a complaints mechanism will be established in which a person may complain to the Australian Broadcasting Authority (ABA) about prohibited internet gambling content;<sup>7</sup>
- in relation to internet content hosted in Australia, the ABA must refer the complaint to an Australian police force if the ABA considers that the complaint should be so referred eg. if it appears from the complaint that a person may be committing an offence of providing an Australian-based interactive gambling service to Australians;<sup>8</sup>

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2 National Office for the Information Economy, *Report of the investigation into the feasibility and consequences of banning interactive gambling*, 27 March 2001, pp 10-14.

3 Explanatory Memorandum, p 1.

4 Explanatory Memorandum, pp 1-2.

5 Section 15.

6 Part 4 – Complaints system: industry code and industry standard.

7 Part 3 – Complaints system: prohibited Internet gambling content.

8 Section 20(3)

- in relation to internet content hosted outside Australia, the ABA must notify the content to the police if it considers that the content should be referred to the police. In addition the ABA will notify the content to internet service providers so that the providers can deal with the content in accordance with procedures specified in an industry code or standard. In the absence of an industry code or standard the ABA will be given powers to issue a notice to Internet service providers to take reasonable steps to prevent access to the internet content;<sup>9</sup>
- internet service providers will be protected from civil proceedings by customers affected by ABA notices;<sup>10</sup>
- a graduated scale of sanctions against internet service providers for breaching ABA notices or the bill will apply.<sup>11</sup>

1.8 It should also be noted that the bill does not attempt to mandate any particular technological solutions to filtering overseas sourced material. The bill adopts a co-regulatory approach, with industry able to develop its own codes to comply with the requirements of the bill.<sup>12</sup> The Australian Broadcasting Authority (ABA) maintains the capacity to underpin these codes with binding standards addressing either entire codes or particular aspects of regulation.<sup>13</sup>

1.9 The nature of the obligations to be created by either the industry code or the ABA standards is not set out in the bill, although the intent appears to be the creation of a similar regime to that for the *Broadcasting Services Act 1992* regulating prohibited internet content. Thus the Explanatory Memorandum states:

The code provides appropriate community safeguards for the designated internet gambling matters. An example of what may be considered an appropriate community safeguard is that the code provides for appropriate regularly updated internet content filtering software.<sup>14</sup>

### Structure of the report

1.10 In the next chapter, the report examines the fundamental question of whether internet gambling should be banned, and thus whether the bill is necessary and justified. Chapter 3 then focuses on the scope of the proposed ban, and in particular, whether wagering and lotteries should be included. Chapter 4 considers issues relating to the implementation of the bill, including the effectiveness of the proposed provisions and the extent to which the ban will protect Australian based gamblers on the internet.

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9 Section 24

10 Sections 23 & 60

11 Sections 55-57.

12 Division 4 – Industry code

13 Division 5 – Industry standard

14 Explanatory Memorandum, p 51.

