

SUBMISSION BY TAB LIMITED (NSW)

TO SENATE LEGISLATIVE COMMITTEE

CONCERNING THE INTERACTIVE

GAMBLING BILL 2001

24 April 2001

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1. INTRODUCTION

Thank you for the opportunity to make a further submission on this matter.

To date TAB Limited has participated in this issue via the following:-

- ▶ Submission (dated 30.7.99) to the Senate Select Committee Inquiry Into On-Line Gambling.
- ▶ Appearance at related Senate Committee hearing held at Parliament House, Sydney on 15.10.99.
- ▶ Submission (dated 4.8.00) to the Commonwealth (NOIE) Study into the Feasibility and Consequences of Banning Interactive Gambling.
- ▶ Appearance at related Senate Legislative Committee hearing held at Parliament House, Canberra on 25.8.00.

As with our previous submissions, it may be of assistance to the Committee for TAB Limited to again highlight in summary form the key points made in those forums.

This pre-existing position (with statistics updated wherever relevant) is summarised in “*Section 2*” following.

Our further input concerning the now-proposed Interactive Gambling Bill 2001 appears at “*Section 3*” in this submission.

2. SUMMARY TAB POSITION TO DATE

2.1 TAB Limited and Interactive Gambling

In 1964 the NSW Government established the Totalizator Agency Board of NSW (TAB) to provide an off-course wagering service in NSW on thoroughbred, harness and greyhound racing. The organisation has since grown into one of the largest wagering businesses in the world, with annual sales turnover now exceeding \$4 Billion. The majority (approximately 84%) of this turnover is returned to customers in the form of winning payouts, whilst the organisation retains the remainder (approximately 16%) to cover costs and a profit margin, and to meet fees and taxes to the NSW Racing Industry and Government. In the 1999/2000 financial year payments to the NSW Racing Industry totalled some \$173 million, NSW Government wagering taxes approximately \$189 million, whilst after-tax profits amounted to approximately \$67 million.

Today TAB Limited, as the privatised (in 1998) entity is known, conducts wagering under license on racing and sports events, owns 2KY "Racing Radio", Sky Channel – a satellite television service that telecasts race meetings throughout Australia, and is developing (again under license) new gaming businesses including the monitoring and jackpot-linking of electronic gaming machines within NSW.

TAB's entry into "on-line" wagering can be traced back to the commencement of its telephone betting service in 1965. As a means of providing communications access between customers and the betting agency, this service has been a success, although never at any point having exceeded 20% of the total wagering turnover. In 1991 an automated modem link from select customers' PC's to the TAB system ("Betstream") was established, allowing higher volume PhoneTAB customers to transmit their bets via personal computer without the need for an operator. This service is currently used by approximately 300 high-value ("professional") account customers who typically use the PC-based system to download large numbers of bets, particularly exotic forms such as Trifectas, instantaneously into the TAB host computer. At the current time "Betstream" sales are in the vicinity of \$75 million p.a., constituting approximately 10% of all "account based" betting and over 2% of the overall wagering business.

In June 1997 the organisation accepted its first bet via the Internet ("NetTAB"). It is significant to note that the NSW Government regarded this new service as no more than an extension to the existing telephone operations, providing an alternative communication device between customer and TAB. Indeed with the exception of value-added services which allowed betting odds and related information to be accessed "operator-free" by customers, NetTAB is conducted along near-identical lines to pre-existing PhoneTAB and Betstream operations, with customers being required to

undergo the same account establishment and identification procedures. A more detailed account of how NetTAB operates can be found in our earlier (July 1999) Submission, or via our website at www.racetab.com.au.

It is imperative to stress that both NetTAB and Betstream offer the identical wagering options that are offered in Agencies, Pubs and Clubs and are in reality just two of many distribution channels offering the same betting products on a prescribed range of live racing and sports events.

NetTAB is approaching its 4th full year of operation with some 30,000 registered customers now using the service (as compared with approximately 130,000 standard PhoneTAB users). In terms of TAB Limited's overall wagering business NetTAB sales of \$110 million p.a. currently represent 15% of all account-based betting and approximately 3% of the overall wagering business. This proportion is increasing, which reflects customer preference for the enhanced service elements provided. NetTAB is considered to be a vital part of TAB Limited's business in terms of preserving the market share of its wagering arm in the face of strong competition from alternative local and offshore gambling providers. It is also the most cost-effective of all primary sales channels, contributing the highest profit proportion achieved per dollar invested by customers.

2.2 Interactive Wagering Versus Gaming

During the course of the current Interactive Gambling policy debate, TAB Limited has attempted to draw attention to the fundamental differences which apply to Interactive Wagering as opposed to Interactive Gaming. We further understand that the social and public policy concerns which surround this debate primarily relate to the recent emergence of on-line gaming via "cyber casinos" which effectively provide in-home access to a vast array of new simulated gaming products such as poker machines, roulette, blackjack, baccarat, craps, two-up etc. These games can be played at high rapidity 24 hours a day, and do not rely on an actual event or occurrence for their determination.

Interactive Wagering on the other hand relies on the conduct of 3rd party "live" racing and sports events. The determination of the types of events and contingencies available for betting purposes and the actual conduct of the betting itself is tightly regulated by the State Government. In addition the integrity of the racing and sporting events themselves is a matter which Government takes a keen interest in, either directly via its statutory role in racing administration or indirectly via its scrutiny of the various types

of sporting events and contingencies deemed as being fair and acceptable for legal wagering purposes.

Wagering per se is therefore a tightly controlled industry that is well established throughout Australia and is the principal source of funding for the entire racing industry. The availability of in-home interactive wagering is, via various telephonic communications mechanisms, a long-standing and vital part of this infrastructure. Computer-to-computer (“Betstream”) and Internet (“NetTAB”) wagering are more recent technological developments which also currently rely on telephone (modem) connection between customer and gambling operator, but fundamentally offer the same services and products.

We note that the above policy differentiation has now been widely accepted by Australian Governments in all jurisdictions as well as overseas Governments (including USA viz. Kyl bill exemptions). Any moves to extend interactive gambling moratoriums or bans into the on-line wagering environment will be destructive in terms of existing TAB revenues which in the 1999/2000 year contributed over \$360 million to Racing Industry and State Government funding in NSW alone.

2.3 An Appropriate Regulatory Approach

TAB Limited has argued during this inquiry that attempts to impose blanket prohibitions on Internet gambling will be difficult to enforce and will (as has been proven in other areas) drive illegal operators and their customers underground or offshore with an associated loss of probity, security, consumer protection and harm-minimisation controls for participants. In this respect TAB Limited generally endorses the position taken by the Productivity Commission which has advocated a policy of managed liberalisation for Internet gambling.

Difficulties experienced to date in respect of (Australian) jurisdictional inconsistency in regulation and taxation, in addition to the current difficulties in effectively deterring access by unlicensed offshore operators, leads us to continue to advocate Federal Government involvement to secure arrangements for licensed and reputable operators only.

In summary therefore our preferred regulatory approach is as follows:-

- ▶ **Exemption** of Australian-licensed interactive **wagering** operations from the current Federal Government policy position encompassing bans and other restrictions, and

- ▶ Prohibitions on Australian residents' access to any interactive **gaming** or **wagering** operations (including those offshore) which are not licensed by an Australian jurisdiction.

2.4 Overview - TAB Position to Date

TAB Limited has proven over some 35 years of telephonic-based interactive wagering, 10 years of PC-based direct input betting and 4 years of internet-based services that properly regulated on-line gambling by government-licensed operators provides the best social and public policy option available to protect the interests and wellbeing of participants.

Clearly, changing technologies have recently demonstrated the need for Federal Government involvement to ensure that consistent standards are maintained via the exclusion of access to non-licensed operations.

Whilst we would again stress the fundamental differences applicable to interactive wagering operations which should require their exemption from legislative restrictions in the interactive gaming field, TAB Limited is supportive of additional Federal Government initiatives which would allow properly regulated interactive gambling to operate in the best interests of the Australian public.

3. TAB COMMENTS RE INTERACTIVE GAMBLING BILL 2001

3.1 Re-inclusion of Wagering and Damage to the Racing Industry

TAB is alarmed that the continuity of its pre-existing internet ("NetTAB") and direct input ("Betstream") services are threatened by the re-inclusion of all interactive wagering operations (except for telephone betting) in the new bill. This reversal in

moratorium policy will have devastating financial effects on TAB Limited and its stakeholders, potentially amounting to tens of millions of dollars per year. As stated earlier, these two services are absolutely vital to the company, both in terms of sales (\$185 m per annum) and total-business share (5%). More importantly these two sales channels represent the highest growth areas of the business, primarily as a result of continuing migration of pre-existing customers across from other channels, especially PhoneTAB.

The higher proportionate revenue returns obtained from these channels (via their lower cost structures) also underlines their fundamental importance to TAB's wagering business and its associated stakeholders.

In its discussions with Government over this issue, TAB has stressed that the removal of such key interactive wagering channels will financially damage not only the company and its many shareholders, but the NSW Racing Industry which relies on TAB product and profit fees for the greater proportion of its revenues.

In this respect TAB points to the submission from the Australian Racing Board (ARB) entitled "*Why Wagering Must Not be Included In a Ban on Interactive Gambling*", which makes the following key points:-

- ▶ The Australian Racing Industry depends on consistent revenue from wagering to meet its costs. 70% of racing's total revenue is derived from TAB payments.

- ▶ Australian Racing is a major economic activity contributing to GDP, jobs and government revenue.

- ▶ Racing is particularly important in providing employment in regional Australia. The 100,000 persons employed in the Racing Industry, especially those in regional areas, are unlikely to find replacement employment in substitute industries.

- ▶ Wagering on the Internet is only an alternative method of placing bets, and is equivalent to the existing (“remote”) TAB telephone betting service. Its importance to the Racing Industry is that it allows the TAB’s to service customers at lower costs, which directly benefits the Industry.

- ▶ Despite the existence of internet **wagering** since 1997, the significant growth area in gambling has been in **gaming**. Wagering has experienced negligible growth.

In recommending that all Australian-based interactive wagering should be excluded from the scope of the proposed ban, the ARB predicts the following consequences for stakeholders in the Racing Industry if Government ignores such advice:-

- ▶ Racing Industries in every State and Territory will see a reduction in income which will adversely affect race clubs, breeders, owners, racing professionals and supporting industries;

- ▶ State/Territory Governments will face a reduction in financial contributions as betting taxes received from the Industry; and

- ▶ The Racing Industry will be forced to rationalise and reduce its offering, in terms of geographic coverage, including country and regional participation, and the quality of racing.

3.2 Scope of Legislation and Potential “Unintended Consequences”

TAB Limited has sought and received independent legal advice concerning the scope of the Interactive Gambling Bill 2001 via its solicitors Freehills.

This advice confirms that the following **pre-existing** TAB interactive wagering services would be **banned** under the new legislation:-

- ▶ **“NetTAB”** Internet wagering, currently servicing 30,000 registered account holders and producing sales of approximately \$110 million per annum.

- ▶ **“Betstream”** direct input wagering, currently servicing 300 registered “professional/high-value” account holders and producing sales of approximately \$75 million per annum.

There appears to be a strong argument that the following TAB services could also be encompassed due to the technical drafting of the bill as it stands:-

- ▶ **All TAB wagering operations** including on-course, Agencies, PubTAB and ClubTAB services.

- ▶ **TAB’s State-wide linked poker machine jackpot system** (which is being developed for use in Registered Clubs under license by the NSW Government).

TAB’s advice indicates that the abovementioned “unintended consequences” essentially arise as a result of the reliance by the above services on telecommunications technology for the transfer of various gambling information between “remote” sites and a central host computer. Such technology provides the cornerstone of all TAB operations in terms of the reliance that the company has on linking its 1600 cash outlets (Agencies, PubTAB’s and ClubTAB’s) and its 160,000 account (“remote”) customers with the company’s host computer system. In respect of the State-Wide poker machine links system, it should clearly be noted that TAB’s license does not in any way provide for an increase in the number of poker machines available in the market-place under the links technology.

In addition to the above, TAB is advised that the intended exemption for telephone betting services provided for in the bill is so narrow as to be largely irrelevant. In this respect the exemption may only apply when **all** dealings with customers in relation to a gambling service are wholly by way of voice calls (including synthetic voice etc.) using a standard phone service. In a totalizator the “gambling service” would be the taking of bets in relation to the totalizator pool – this being achieved through a variety of mechanisms such as TAB agencies. As such, it is the solicitors’ view that only “stand alone” telephone betting operations would be exempt. TAB’s, which offer telephone betting as only one of many channels into a single totalizator pool, arguably could not therefore claim the intended telephone betting exemption.

In the above circumstances TAB recommends that drafting amendments be made by Government to ensure that the scope of the bill is confined to the intended interactive gambling services. TAB would be available to provide further advice and assistance in this respect if so desired by Government.

3.3 Access to Offshore Operations

The philosophy underlying the Bill is that “interactive gambling” should not be available to Australians. The success of such an objective will, in TAB’s view, largely rely on whether the “blocking” arrangements for access to offshore gambling operations can be effectively implemented and maintained. TAB has doubts as to whether the proposed arrangements under the Bill will be adequate for the following reasons:-

- ▶ “Blocking” will only apply in respect of specific internet sites or content as notified by the ABA. The reporting and investigation requirements leading up to actions in each case are unlikely to be completed in a timely manner, leaving consumers “exposed” during this period.

- ▶ Internet Service Providers are required to take “reasonable steps” to prevent access. The steps which are “reasonable” are to be determined having regard to the “technical and commercial feasibility of taking such steps” – giving no real assurance of the adequacy of the arrangements.

- ▶ An order by the ABA would apply only to Australian Internet Service Providers. We understand that it will still be technically possible for Australians to access foreign interactive gambling sites through, for example, foreign internet service providers or Australian telecommunications providers (eg. W.A.P.). Whilst it is unlikely that “ordinary mums and dads” would go to such lengths, it is very likely that offshore gambling operators may be willing to establish such arrangements for **significant gamblers**. The loss of “professional” high-value **wagering** customers remains a serious threat to TAB and Racing Industry viability. In the **gaming** environment it is likely that “problem gamblers” will be attracted by such services.

In the above circumstances TAB would suggest that Government should look towards implementing additional regulatory measures to ensure that maximum barriers are created to offshore access. This may include the creation of an offence for Australian players taking part in such gambling activities.

[NB. We note that similar offence provisions have been introduced by the NSW Government prohibiting the placing of bets on Australian racing events with any offshore gambling operator.]

4. SUMMARY

This submission makes the following key points in respect of proposed Federal Government policy concerning interactive gambling and the recently tabled Interactive Gambling Bill 2001:-

- ▶ TAB has stressed the difference between interactive wagering and interactive gaming. Whilst gaming opens up opportunities for new gambling forms and consumer markets, interactive wagering is a mature product offering an alternative communications means to the telephone. No new betting events or contingencies are created via interactive wagering.

- ▶ The re-inclusion of interactive **wagering** services in the proposed legislation will require the removal of pre-existing TAB services “NetTAB” and “Betstream” which currently service over 30,000 account customers and produce some \$185 million per annum in turnover. The loss of these services will have a devastating effect on the company and its major stakeholders.

- ▶ As demonstrated via relatively low growth levels in wagering, the above services have not created significant numbers of “new” gamblers, but have “migrated” pre-existing TAB customers across from other sales channels, particularly PhoneTAB.

- ▶ The loss of these services will significantly effect TAB profitability due to the higher marginal profit returns they achieve as a result of lower cost structures.

- ▶ Reductions in TAB profitability via closure of these services will detrimentally affect the NSW Racing Industry which receives a significant proportion of its total revenues from TAB. Similar effects will be felt by the Racing Industry in all Australian States and Territories via damage to their respective TAB’s.

- ▶ TAB is advised that the drafting of the Interactive Gambling Bill 2001 may result in a “wider than intended” coverage (ban) on forms of gambling that rely on telecommunications technology. These unintended consequences need to be addressed by Government. In addition some doubt has been cast on the validity of the intended telephone betting exemption for TAB’s.

- ▶ TAB is concerned that proposed offshore-access-blocking arrangements may prove ineffective, particularly at the “high-value” customer end of the market. TAB proposes that tighter regulatory arrangements be considered, including consideration of the establishment of an offence at the player level.

- ▶ TAB’s primary recommendation remains the **exclusion of all Australian-licensed wagering services** (ie. defined as services enabling betting on live racing and sports events) from the proposed Government legislation in this field.

TAB Limited would be appreciative of the opportunity to discuss its submission at further length with Government, including (if appropriate) the appearance of senior management representatives at any scheduled Senate Committee hearings held on this issue.

Any initial enquiries or further information may be referred in the first instance to Mr Peter Fletcher, Public Affairs Manager, TAB Limited, ph. (02) 9218 1276.

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