

The Secretary
Senate Environment, Communications,
Information Technology and the Arts
Legislation Committee
S1.57 Parliament House
CANBERRA ACT 2600

Dear Sir/Madam

INTERACTIVE GAMBLING BILL 2001

Enclosed is a submission in respect of the Committee's inquiry into the above Bill.

MegaSports (ACT) Pty Ltd made a submission to the Committee in its inquiry in respect of the Interactive Gambling (Moratorium) Bill 2000. Many of the comments made in the August 2000 submission remain relevant in respect of this submission.

I would be pleased to expand on any issues raised in this submission.

Yours faithfully

Brian Gordon
Managing Director

24 April 2001

INTERACTIVE GAMBLING BILL 2001

SUBMISSION BY MEGASPORTS (ACT) PTY LTD TO THE SENATE ENVIRONMENT, COMMUNICATIONS, INFORMATION TECHNOLOGY AND THE ARTS LEGISLATION COMMITTEE.

Background

MegaSports is a wholly owned subsidiary of US based American Wagering Inc. (AWI). MegaSports holds a corporate sports bookmaker licence granted by the ACT Government and has approval to provide sports betting products and services via the Internet in addition to the telephone network. MegaSports has been operational for over two years.

The Interactive Gambling Bill 2001 appears to be the Government's response to the Productivity Commission report, the Senate 'Netbets' report and the report of the National Office for the Information Economy into the feasibility of banning interactive gambling. For three such detailed inquiries, it is unfortunate that the best the Government could come up with is the Interactive Gambling Bill 2001. In summary, the Bill simply fails to hit the mark.

The government is clearly concerned about the extent of problem gambling in Australia. That is a concern shared by a great majority in our community. As a provider of gambling services, it is of great distress to see the all too familiar stories of people in trouble as a result of a gambling habit that is out of control. The social problems of gambling do need to be addressed, however, the ill-considered and ill-conceived approach of this Bill will not achieve any social improvement.

The Bill (or the logic behind the Bill) is flawed in a number of ways. The following outlines concerns and criticisms of the Interactive Gambling Bill 2001.

Object of Legislative action – problem gambling

The objective of the legislation appears to be as a measure to curb the incidence or spread of problem gambling by taking action against the emerging technology of online gambling.

According to Senator Alston's press release of 27 March 2001, the Government is committed to "take strong action to combat the tragic economic and social consequences of gambling in this country." Senator Alston is quoted as saying "that the Internet has the potential to make every home a virtual casino" and alludes that "the firm and decisive action proposed by the Federal Government" will go some way to addressing this problem.

It is submitted that the government's proposed solution - to impose a ban on Australian based gambling service providers, from accepting online gambling transactions from persons physically located in Australia - will have little or no impact in respect of problem gambling. If anything, the action proposed by the Interactive Gambling Bill 2001 has the potential to exacerbate problem gambling by Australians.

Restrict poker machines – not online gambling

If the Federal government is committed to taking “strong and decisive action” in respect of problem gambling, the Government would take action in respect of poker machines in Australia. According to the Productivity Commission report, the rapid proliferation of poker machines has been the greatest cause of gambling problems in Australia. The Productivity Commission recommended the “managed liberalization” of online gambling – not its ban.

Senator Ian Campbell’s Second Reading Speech for the Interactive Gambling Bill 2001, referred to the Productivity Commission finding that 92% of Australians did not want to see any further expansion of poker machines. So, what is the Federal Government’s response? – make an online sports bet or online lottery ticket purchase illegal.

With all of the public statements of concern uttered by the Government, it is totally hypocritical for the Government to use arguments in the report of the National Office for the Information Economy (NOIE) to support its decision to ban online gambling.

The NOIE report indicates that a ban would lead to reduced online gambling, and an equivalent increase on traditional offline activities (including poker machines). This clearly negates any policy objectives the Bill may have with regard to the reduction of problem gambling.

Banning online gambling

If the Federal Government is committed to removing the threats from online gambling – it should legislate to make it totally illegal for an Australian citizen to gamble on line. The vast majority in the community would abide by such laws, if it were illegal to gamble via the Internet. However, the Interactive Gambling Bill 2001 does not make it an offence to gamble on line – there are no incentives in this Bill that will eliminate, restrict or reduce online gambling by Australian citizens. All the Bill does is improve the chances of those who do gamble online – improve the chance that they will get into trouble, that is.

Apart from a modest number of online gambling service providers licensed in Australia, the vast majority of sites are located in the Caribbean and South America with many online casinos and sports books located in Belize, Costa Rica and the Dominican Republic. The extent of consumer protections and regulatory oversight in these countries is almost non-existent. It seems quite ironic that the Federal Government casts doubts upon the “worthiness” of citizenship documents granted by the Dominican Republic to a failed Australian corporate tycoon, but appears willing to allow Australians to gamble with operators “licensed” by the same jurisdiction.

Removal of regulatory protection

The Interactive Gambling Bill 2001 will not reduce the incidence of problem gambling – all it will do is deny to all Australians the domestic regulatory protections in respect of online gambling. Australians will be forced to run the gauntlet of unregulated or less regulated sites.

For a number of years, Australian State and Territory Governments have worked together to develop regulatory frameworks to control both online gaming and wagering. These protections,

which focus on contemporary consumer protection and gambling regulatory issues, are arguably the strongest in the world.

In its simplest form, The Interactive Gambling Bill 2001 will prevent Australians from being protected by these strong online gambling consumer protection measures. The Federal Government is saying that a person from Athens can enjoy the protection of Australia's online gambling regulation but a person from Adelaide will have to fend for himself or herself.

If the Federal Government is so committed to taking action in respect of problem gambling, there cannot be any logical justification as to why Australian residents are being denied access to the existing regulatory and consumer protection measures.

The optional content filtering provisions in the Bill will strongly appeal to those in the community who oppose gambling. It is right that they have the freedom of choice to install such filtering technology to prevent themselves or their children from accessing online gambling products and services. However, those individuals who wish to gamble online (including the number who may have a tendency to gamble beyond their means) will be extremely unlikely to choose to install such filtering technology.

The Bill will be totally ineffective in reducing any incidence of problem gambling in an online environment. Perhaps the Committee should ask the Minister this question - Does the Federal Government really believe that a Caribbean online casino would have capacity for a family-member initiated exclusion facility?

Reduction in consumer protections

The Bill will allow Australian licensed gambling service providers to continue to service clients located in all other parts of the world. If Australian residents are prevented from accessing these protections, the Bill may remove the incentive for State and Territory Governments to maintain the highest regulatory standards.

The international credibility of the Australian online gambling regulatory framework and the Australian licensed operators will be questioned. Internationally, questions will be asked as to why the Federal Government is preventing its citizens from obtaining the benefits available under the national consumer protection framework.

Jurisdictions may be less likely to commit social justice resources to the enforcement of a regulatory framework that none of its citizens are protected by. All these elements combine to potentially cause harm to Australia's global reputation as a nation that hosts a properly regulated online gambling industry.

Regulation not prohibition

For those who choose to do so, it cannot be guaranteed that an Australian citizen will not get into trouble gambling on line. Unfortunately, the Interactive Gambling Bill 2001 does nothing to address this situation. The Bill simply makes it easier for this to occur by denying Australians access to Australian licensed and regulated sites.

The regulatory requirements of Australian licensed online gambling service providers include provisions in regard to problem gambling and consumer protections to identify and assist patrons to

ensure that they do not gamble beyond their means. Equivalent protections are simply not as effective in an offline environment.

It is submitted that the objective of the legislation would be better served by a regulatory scheme that involves:-

- a) Australian licensed online gambling service providers complying with a strict regulatory framework (as is the case at the moment);
- b) consumer protection measures that are rigorously applied to all clients (as they are at the moment); and
- c) Australian citizens being fully informed about the dangers of problem gambling through an effective and comprehensive national education campaign.

It is submitted that Australian consumers would be more likely to choose Australian regulated online service providers, (knowing that they had the safety of the consumer protection measures demanded by Governments) over operators from unlicensed and unregulated third world countries.

Technology neutral legislation

In layman's terms, the Government's own *Electronic Transaction Act 1999* was enacted to give standing and effect to transactions that occur online. The simplified object of the Act is defined as "for the purposes of a law of the Commonwealth, a transaction is not invalid because it took place by means of one or more electronic communications." In other words the mode of transaction should not determine its legal status and **an online transaction has the same legal standing as an offline transaction.**

Why then, is this principle completely reversed under the Interactive Gambling Bill 2001? The Bill specifically provides that an online bet placed by an Australian resident, with an Australian licensed bookmaker will create an offence, whilst the same transaction over the telephone will be legal. The policy rationale behind this situation just cannot be properly explained or fully justified by the Government.

The mode of delivery of a service cannot and should not be used to determine its legal status. An activity is either legal or illegal – it completely defies logic that a telephone bet is legal and the same transaction online is not.

It is of concern that Senator Alston appears not to understand the detail of his policy or the subject matter. He stated in his press release of 27 March 2001 that "The regime will not apply to long established forms of interactive gambling such as telephone betting." With respect, telephone betting (just like online wagering) is not interactive – the telephone (and the Internet) are simply two different (but passive) delivery platforms for the product.

Wagering v Gaming distinction

In the earlier submission to the Committee, MegaSports argued that there should be a distinction between online wagering and online gaming. The final form of the 12 month moratorium on online gambling reflected this widely held view.

However, there should be no distinction between the two forms of gambling, in regard to the issues contained in the Interactive Gambling Bill 2001. The arguments apply equally to gaming as they do

to wagering. **Australians should not be denied protection from the consumer safeguards developed by State and Territory Governments if they choose to gamble on line.**

The only place where the distinction between wagering and gaming should be clearly identified is in the differences in the regulatory arrangements applying to each element of online gambling.

Economic Consequences of the Legislation

As identified in this submission, the Interactive Gambling Bill 2001 will do nothing to achieve the objective of reducing the spread of problem gambling on Australia.

It is submitted that the passage of this Bill would actually cause a negative impact on the Australian economy, particularly in regard to the development of e-commerce in this country. This is contrary to the "economic modelling" contained in the NOIE report, which indicated a net gain to the Australian economy through a ban on Australian online gambling.

It is the view of MegaSports, that NOIE's economic modelling has neglected important elements of a ban on interactive gambling for Australian residents, including:-

- The detrimental affect of uncertainty on investment in the interactive gambling sector – including that which is for 'export only';
- The potential for significant export earnings growth in the future;
- The externalities (or spin-offs) involved with the development of interactive gambling in Australia (including e-commerce know-how and innovation);
- The social and other costs of a substitution into traditional gambling products; and
- The possibility that the social costs of interactive gambling are actually lower than that of traditional gambling, due to factors (identified by the Productivity Commission) such as the ability to more closely monitor betting activity and more effectively communicate information to gamblers.

The inclusion of these factors into the modelling conducted by NOIE would be expected to result in a significantly different outcome. Therefore another element of the justification for the Interactive Gambling Bill 2001 must be challenged and questioned by the Committee.

Legal Implications – Right to Compensation

The NOIE report, and the Explanatory Memorandum for the Bill provided that:-

“The Commonwealth has clear constitutional and enforcement powers to ban interactive gambling within Australia. Any banning legislation would probably not involve an acquisition of property requiring the provision of just terms compensation.”

Clearly, the Minister is not sure of the situation – both documents are not definite on the question of compensation.

Legal advice to MegaSports advises that the right to accept bets from Australians (which is something that the ACT sports betting licence allows MegaSports to do) is in the nature of a property right. The Commonwealth cannot acquire property without just terms. Therefore if an Act of Parliament that takes away a property right, it cannot do so unless it is on just terms. MegaSports would be entitled to compensation following the passage of this Bill. This situation would be expected to apply to every licensee (bookmaker, online casino, TAB etc.) in Australia.

Therefore, passage of the Interactive Gambling Bill 2001 would be expected to result in significant claims for compensation from every interactive gambling service provider in Australia.

It is submitted that the Committee must obtain specific legal advice in respect of this matter before it can properly consider the implications of the Interactive Gambling Bill 2001.

Offence provision – practical application

Clause 15 of the Bill establishes the offence provisions. Clauses 5 and 8 establish the criteria to commit an offence under Clause 15. The corporate fines of up to \$1.1m per day for offences against the legislation provide a clear and very significant incentive to avoid accepting wagers from Australian residents. However the compliance and enforcement elements of these provisions is less clear.

The onus is entirely on the gambling service provider to not take bets from Australian residents. The Bill does not provide any assistance to licensed operators in this process. For example, there are no offence provisions that make it an offence to bet online with an Australian licensed provider. Similarly, there are no clear offence provisions that make it an offence for an Australian resident to provide false or incorrect information to circumvent the ban on taking bets from Australians. No matter what the operator may do, there are those that will attempt to circumvent the ban on Australians.

Similarly, how will the Act deal with a situation where a legitimate client of an Australian gambling service provider who permanently lives in the UK, comes to Australia for a holiday? It would not be unusual for a person to travel with his own laptop, dial into his own ISP and access his established account to gamble on line. Under this scenario, how would a service provider be able to detect that this person is physically located in Australia.

The Bill does not give any clarification as to what would constitute “intentionally” in sub-clause 15(1)(a). Why has this critical offence provision been left so vague? It is critical that the Committee require a more detailed definition of this key provision.

At the very least, **the Bill must define or describe the actions necessary to prove what would be considered as a licensed gambling service provider taking “reasonable diligence” to ensure that gambling transactions were not accepted from an Australian based client.** The Explanatory Memorandum discusses “reasonable diligence”, however, without any clarification it would be almost impossible for any Australian based gambling service provider to operate.

With the current wording of the offence provisions, there are too many doubts as to the application and enforcement of the ban imposed by the Interactive Gambling Bill 2001 for it to be a good law.

Conclusion

It is submitted that the objective of taking strong and decisive action in respect of problem gambling, will not be met by the passage of the Interactive Gambling Bill 2001. The Bill does not help those Australian residents who choose to gamble on line – it actually denies them vital consumer protections that may reduce the incidence of gambling beyond ones means.

The policy underpinning the Bill does not justify how a transaction is lawful if conducted via a telephone but unlawful if conducted via the Internet.

The right to accept bets from Australians is in the nature of a property right and the Commonwealth Government cannot take away that right (acquire property) without just terms. Significant claims for compensation would be expected if the Bill is passed.

The offence provisions of the Bill are so broad that it could effectively put every gambling service provider out of business.

In summary, whilst the policy intent is noble, the execution of the policy, in the form of the Interactive Gambling Bill 2001, is a dismal failure. The Committee must reject the Bill or recommend significant changes to address the issues raised in this submission.