

**Lotteries
Submission**

to the

**Environment, Communications, Information Technology and the Arts
Legislation Committee**

INTERACTIVE GAMBLING BILL 2001

Friday 27 April 2001

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ABOUT THIS SUBMISSION

This submission has been prepared on behalf of the following Australian Lotteries:

- Golden Casket Lottery Corporation Limited
- Lotteries Commission of South Australia
- Lotteries Commission of Western Australia
- Tattersall's Sweeps Pty Limited

New South Wales Lotteries Corporation has not participated in this submission.

It provides the submitting Lotteries' views on the *Interactive Gambling Bill 2001* introduced into Parliament on 5 April 2001.

SUMMARY

This submission identifies the key areas of concern in the *Interactive Gambling Bill 2001* for the submitting Lotteries. It provides the Environment, Communications, Information Technology and the Arts Legislation Committee with a background to the Australian Lotteries Industry and then outlines the consequences of the Bill for lotteries in Australia.

This submission can be broadly broken up into two key areas of concern.

The first area refers to what are considered as the unintended consequences of the Bill for lottery games. That is, in its current form, the Bill appears to effectively ban many existing forms of gambling that are not associated in any way with the Internet, including the sale of lottery games through existing lottery outlets.

The second area of concern is the Bill's deliberate inclusion of lottery games sold interactively. This submission explains why the sale of lottery games over the Internet or via other interactive mediums should be exempted from the legislation on the following grounds.

- Lottery games are already easily accessible and do not cause problem gambling.
- A ban on lottery games will disadvantage regional Australians, the elderly and the disabled.
- A ban may make it difficult for Australian lotteries to protect existing markets and consequential government revenues.

It is impossible to accurately predict today what retail and non-retail shopping will be like a decade from now. It is constantly evolving with technology. Since their inception, lotteries organisations have adopted distribution methods in line with the technology of the time. In fact, lotteries jurisdictions worldwide are dependent upon state-of-the-art technology for the distribution of games. Lottery games have been sold electronically through retail networks since the 1980's. As technology further evolves, Australian lotteries organisations (subject to the policy position of each State Government) need the freedom to access new distribution channels when they arise. The Internet and other interactive mediums such as interactive television and WAP technology represent the current new distribution channel opportunities.

The submitting Lotteries urge the Committee to consider recommending that lotteries be exempt from the legislation and believe that this could be easily achieved by making the recommended amendments to the Bill outlined in this submission. The amendments address both the unintended and intended consequences for lotteries.

BACKGROUND - AUSTRALIAN LOTTERIES INDUSTRY

Lotteries were first introduced to Australia in the early 1900's to raise funds for worthwhile community causes. Since that time, lottery games have been progressively introduced and conducted in a socially responsible and sustainable manner by the state government licensed operators that today comprise the Australian Lotteries Industry.

Members of the Australian Lotteries Industry are Golden Casket Lottery Corporation Limited, Lotteries Commission of South Australia, Lotteries Commission of Western Australia, Tattersall's Sweeps Pty Limited and New South Wales Lotteries Corporation (which is not a participant in this submission).

The Australian Lotteries Industry offers the games of Saturday Lotto, Oz Lotto, Powerball, The Pools and Super 66. It also recently developed and launched a new television game show based on scratch lottery tickets, called Cash Bonanza, in partnership with the Nine Network and Grundy Television.

Industry members have formed National 'Blocs' for the purpose of pooling prize monies. In all other respects each 'Bloc Member' is legally, economically and organisationally independent. As independent entities, each lottery organisation provides other lottery games within their respective licensed jurisdictions. Some jurisdictions also offer the game of Keno.

The Lotteries Industry represents just over three per cent of Australian gambling industry turnover (1998/99). In 1999/00 the Lotteries Industry achieved sales of \$3.4 billion across the country, an increase of only 0.6 per cent on the previous year. This is considerably lower than the growth achieved by other gambling industry sectors, and in particular gaming machines.

Nationally, the Lotteries Industry makes a significant contribution to the Australian economy. An independent study commissioned by the Australian Lotteries Industry in late 1997, entitled *Economic Significance of the Lotteries Industry in Australia*, estimated that the:

- Lotteries Industry makes a direct contribution of over \$1.2 billion to the Australian economy or 0.3 per cent of Gross Domestic Product (GDP);
- indirect effects associated with lotteries' expenditure equate to an overall increase of approximately \$1 billion in Australia's GDP in 1995/96 monetary terms;
- Lotteries Industry has a direct employment impact of 8,185 jobs and an indirect impact of 17,421 jobs; and
- Lotteries Industry is slightly larger than the gas industry and slightly smaller than the forestry and fishing industry on the basis of direct contribution of various industries to Australia's GDP.

Despite representing just over three per cent of total gambling industry turnover, the Lotteries Industry contributes significant revenue to government. In terms of revenue collected by governments from gambling in 1995/96, the Report found that the Lotteries Industry accounted for:

- 30 per cent of all government gambling revenue; and
- 3.2 per cent of total taxes, fees and fines revenue collected by State and Territory Governments.

The positive contribution that the Lotteries Industry makes to the community is highlighted in the Productivity Commission Inquiry Report into Australia's Gambling Industries, which found that 'lotteries generate relatively low social costs and provide a clear (measured) net community benefit' (11.7-8).

UNINTENDED CONSEQUENCES FOR LOTTERIES

Upon review of the *Interactive Gambling Bill 2001*, it has become evident that in its current state, the Bill will effectively ban existing forms of gambling that are not associated in any way with the Internet. As introduced, it has significant, if not catastrophic, impacts for lotteries, one of the country's most established and acceptable forms of gambling. We expect that these consequences are unintended, since they are not referred to in the Explanatory Memorandum. The issues relevant to the submitting Lotteries are outlined below.

The Bill prohibits our existing lotteries operations

Normal lottery sales

In its current state, the Bill would make sales of lottery games through lottery outlets illegal.

Distribution of lottery games is facilitated by electronic means through the telecommunication lines provided by Telstra. These communication lines are essentially the same as telephone lines or indeed the lines that facilitate connection to the Internet.

Clause 15 of the Bill makes it an offence if a person intentionally provides an Australian-based interactive gambling service and the service has an Australian-customer link. The Australian-customer link is defined (Clause 8) as simply having any or all of the customers physically present within Australia. An Australian-based interactive gambling service (Clause 5) is a gambling service provided in the course of business to customers on a carriage service with an Australian-provider link.

An Australian-provider link is a gambling service where the service is provided in the course of carrying on a business in Australia (Clause 7). So for all intents and purposes where a lottery operator supplies a telecommunication connection to an agent or allows the telecommunication lines to be used to order lottery game entries or receipts then the breadth of the definitions in the Bill would capture the current operations.

The definitions of 'Carriage' and 'Internet' are two issues of critical importance, as their interpretation clearly indicates how the Bill will apply to the Lotteries Industry. 'Carriage' is important as Clause 5 of the Bill lists a gambling service as one where the service is provided in the course of carrying on a business and it is provided to customers using a listed carriage service. Under this provision, a state lotteries organisation's telecommunications connections to its agents and customers would mean that it would be classified as an Australian-based interactive gambling service.

By providing an "Australian-based interactive gambling service" in the state it is licensed to do so, the lotteries organisation would be deemed to have contravened Clause 15 of the Bill, for which the breach carries a penalty of 2,000 penalty units per day (\$220,000).

The definition of 'Internet' is also important as Clause 4 of the Bill defines 'Internet carriage service' as a 'listed carriage service that enables end-users to access the Internet'. No definition of 'Internet' is provided in the Bill and so it would be left to the Courts to provide a definition. The potential for a definition of 'Internet' to include any type of telecommunication device is high and that would mean that in the course of normal business, state lotteries organisations would be operating a 'prohibited Internet gambling service' as defined by Clause 6 of the Bill.

Unless corrected, this legislative anomaly has the potential to destroy the Australian Lotteries Industry and expose the Commonwealth Government to significant claims for compensation.

Television game show

In line with global lotteries trends, all five Australian lotteries organisations recently developed and launched a new television game show based on scratch lottery tickets, called Cash Bonanza, in partnership with the Nine Network and Grundy Television. It is aired on the Nine Network on Saturdays and involves participants purchasing a scratch lottery ticket, which allows the holder a chance to participate as an audience contestant or a telephone contestant in the TV Show. Under the current definition of 'broadcast' in the Bill, the contest for the \$100,000 top prize would be illegal as the use of the telecommunications device to enter the top prize playoff and the showing of the playoff on a 'Broadcasting Service' would be illegal. If the Bill remains in its current form, this and future traditional lottery operations using television as the entertainment medium would be illegal.

Existing telephone ticket ordering services

Some Australian lotteries organisations have telephone ordering and electronic lodgement services, which have been in place for considerable time. They provide a valuable service, particularly to people in regional and remote areas who do not have access to a lottery outlet.

Under Clause 15, telephone ordering and electronic lodgement would be illegal and these services could no longer be provided, thereby further disadvantaging regional Australians, the elderly and the disabled.

WHY LOTTERIES SHOULD BE EXEMPT

Should this Inquiry recommend the Federal Government proceed with recommending a ban, the submitting Lotteries strongly urge the Committee to consider amendments to exempt lotteries from the *Interactive Gambling Bill 2001* based on the following grounds.

Lotteries do not cause problem gambling

Lottery games can be clearly distinguished from other gambling products. They are non-continuous – that is there is a period of time between the stake and determination of the winners.

As a comparison, continuous gambling is characterised by gaming machines where there is a repeated cycle of stake, play and determination and an immediate payout after play. It is these continuous forms of gambling which have been shown to cause problem gambling.

Research projects commissioned throughout Australia consistently indicate that lottery games do not contribute to the expansion of problem gambling and it is extremely rare to find any problem gambler who presents as having a primary problem with lottery games.

The Productivity Commission's Inquiry Report into Australia's Gambling Industries released in 1999 revealed that the incidence and significance of problem gambling varies by gambling mode. It found that problem gambling is highest for gaming machines and racing and lowest for lotteries.

'...it appears that some forms of gambling, such as lotteries and scratchies, in their current forms, currently present low risks for problem gambling. Other forms, particularly regular playing of gaming machines and casino table games, appear to be associated with a higher likelihood of gambling problems.' (6.53)

Productivity Commission Inquiry Report No. 10, Australia's Gambling Industries, 26 November 1999

The Productivity Commission went on further to report that:

'Using survey data from various state surveys and the Commission's National Gambling survey suggests divergent spending shares for different modes. Problem gamblers have a very significant share of the expenditure (however defined) on both wagering and gaming machines - these are also the forms where problem gamblers tend to have the greatest difficulties. In contrast, problem gamblers account for a much lesser share of expenditure in lotteries... Indeed, conventional lotteries appear to be like most other consumer goods and do not appear currently to present any significant hazards for players.' (7.44)

Productivity Commission Inquiry Report No. 10, Australia's Gambling Industries, 26 November 1999

This finding that lottery games are like other consumer goods is reinforced in the industry's own research and numerous other independent studies. Lottery games are predominantly sold in smaller retail outlets; therefore, are viewed by players as being quite different to other forms of gambling – that is either as 'soft' gambling or not gambling at all. In addition, the sale of lottery games is of significant economic benefit to the small business community.

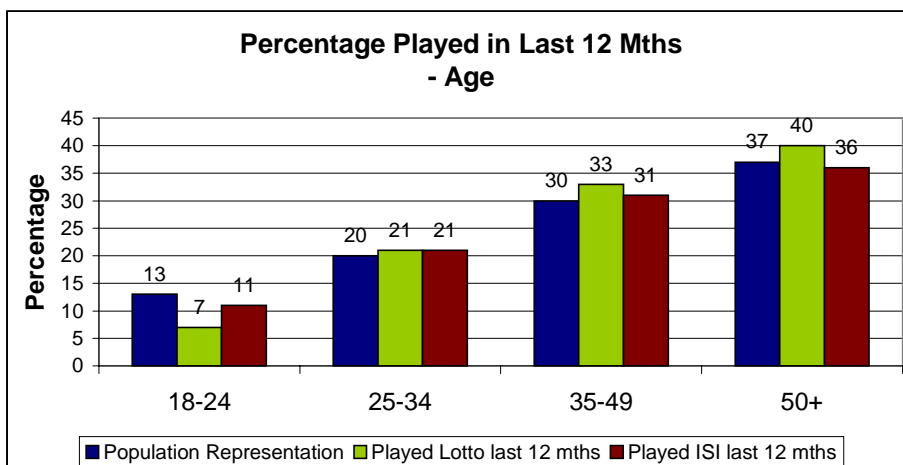
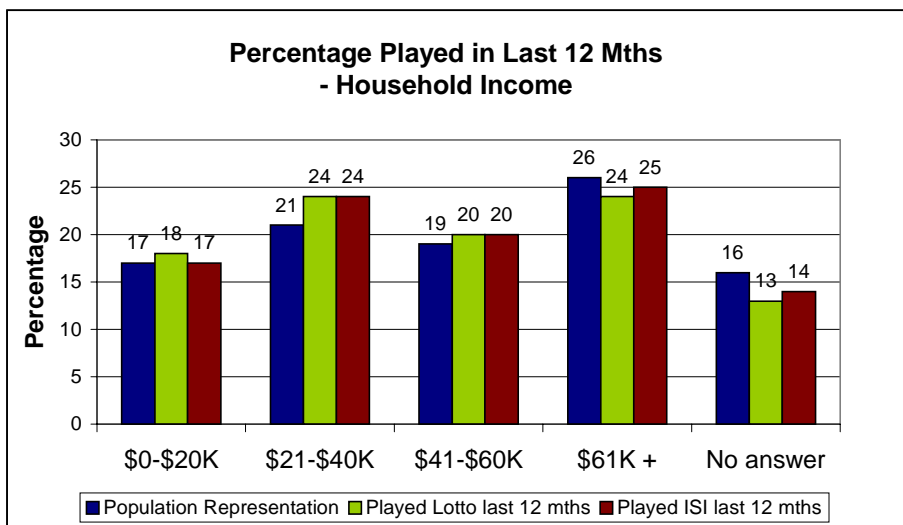
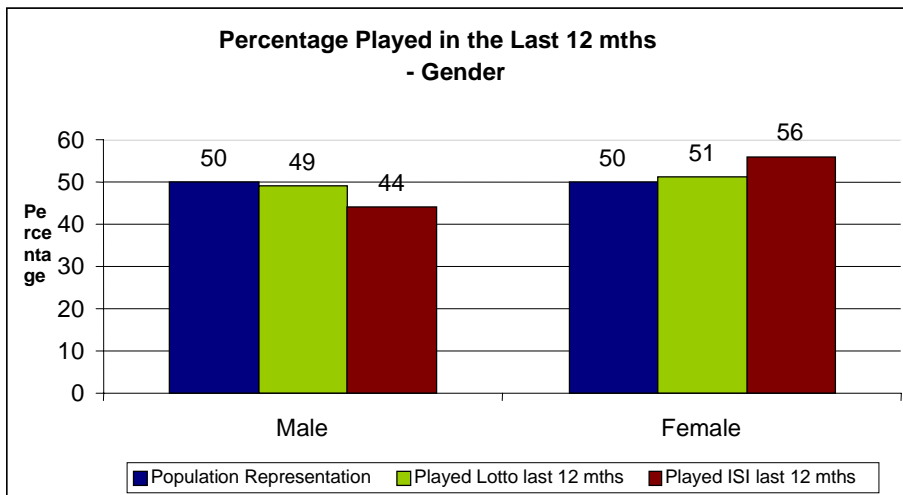
The Productivity Commission also confirmed that lotteries are the only forms of gambling that have been proven to show a clear community benefit.

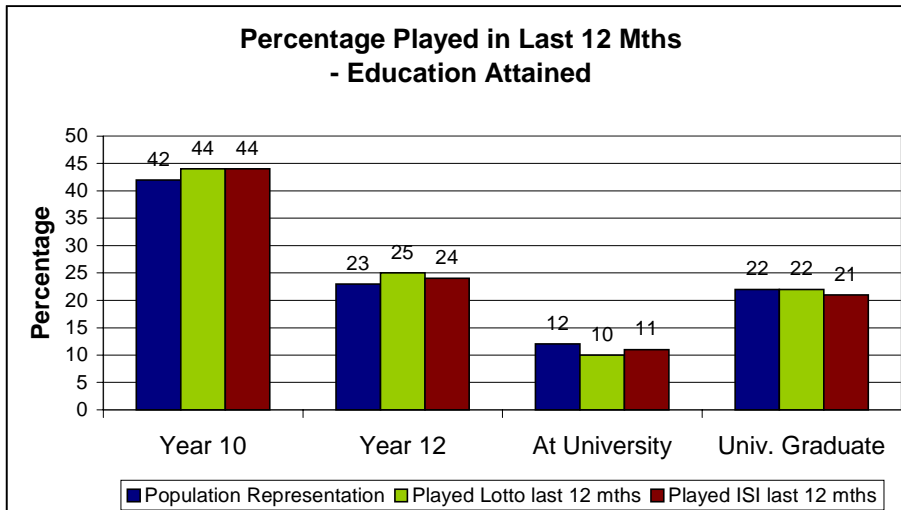
'The Commission's estimates indicate that lotteries generate relatively low social costs and provide a clear (measured) net community benefit of between \$1.1 billion and \$1.5 billion.' (11.7-8)

Productivity Commission Inquiry Report No. 10, Australia's Gambling Industries, 26 November 1999

This finding is reinforced by an independent study commissioned by the Australian Lotteries Industry in 1997. *The Economic Significance of the Lotteries Industry in Australia Report* found that the Lotteries Industry made a direct contribution to Australia's GDP of \$1.2 billion, as well as an indirect contribution of almost \$1 billion in 1995/96.

Unlike other gambling industry segments which have been criticised for being directed at a small segment of the population who can least afford it, the socio-demographic profiles of lottery players are broad ranging and generally representative of the population as a whole as evidenced in the graphs below. While these graphs refer to Queensland, they are generally indicative of lottery participation in all Australian states.

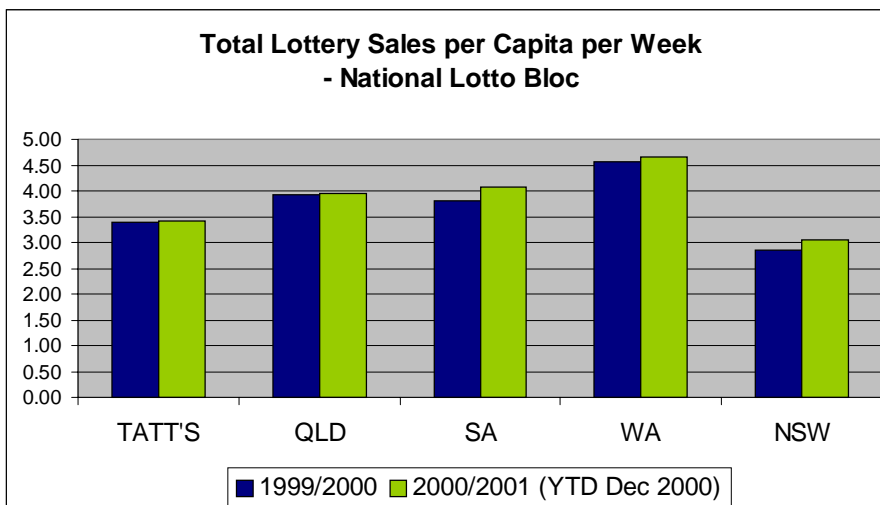




Notes:

- ISI refers to Instant Scratch-Its

Nationally, lottery participation rates are high (approximately 60 per cent of the adult population play lottery games at least once per year). Importantly though, average spend per capita per week is low (\$3.62) and has remained at a similar level for the last two years as outlined in the graph below. This is consistent with the fact that lotteries are mature products, currently experiencing little growth.



Notes:

- Population and demographic figures are sourced from Roy Morgan Leadership Survey, Feb 2000 – Jan 2001.
- Lotto/Instant Scratch-Its participation rate figures are sourced from Golden Casket Tracking Research, Feb 2001.
- Tattersall's is licensed in Victoria, Northern Territory, Tasmania and ACT.

One of the key findings of the Productivity Commission was the link found between the availability of gambling – especially gaming machines - and the incidence of problem gambling. There was, however, one exception to this finding – Lotteries.

Lottery games are one of the most accessible forms of gambling and yet unlike other forms of gambling, it appears that there is no correlation between problem gambling and the accessibility of lottery games.

This is further evidenced in Western Australia (where gaming machines are only licensed within the Casino). Western Australia has the highest per capita expenditure on lottery games and yet the lowest prevalence of problem gambling.

Given that lotteries are already the most accessible form of gambling and their high accessibility does not influence problem gambling, the sale of lottery game entries over the Internet or through other interactive means should have no impact on problem gambling.

The Internet and other interactive mediums simply represent new forms of electronic distribution channels for lottery games, consistent with other consumer goods.

Selling lottery games electronically is not a new concept for the Australian Lotteries Industry. Lottery games have been sold electronically through retail networks since the 1980's. As new technology emerges, lotteries organisations investigate new ways of electronic transacting, whether it be via telephone, the Internet, or other currently unidentified interactive mediums.

It is virtually impossible to predict how patterns of retail versus non-retail shopping will develop in the future and lotteries organisations need the freedom to access these new distribution channels as they become available.

This 'e-tail' environment is no more 'continuous' or interactive in nature than a retail transaction in an existing lottery outlet.

The Productivity Commission distinguished between 'virtual gaming' where consumer gamble on software generated online games such as blackjack or roulette and where the Internet is used as a mechanism for placing bets on physical events. The Report relevantly states:

'Alternatively, gamblers can use the internet to place bets on separate physical events such as horse and dog races and football, cricket and tennis events that take place on a *real* race track or playing field. Or they may use the internet to place bets on lotteries, where there are physical draws. Unlike virtual gaming, this form of gambling is a new *mechanism* for placing wagers, rather than a new form of gambling per se.' (18.5)

Productivity Commission Inquiry Report No. 10, Australia's Gambling Industries, 26 November 1999

The Report further discusses this aspect as follows:

'Gamblers who bet on racing, or purchase lotto or lottery tickets may find the internet a more convenient method of gambling — just as phone betting increased the convenience of TAB wagering. For these gamblers the product or wager on the internet is the same as that offered by a venue. The difference is that the product can be purchased from home — the provision of gambling in these forms via the internet will likely lead to some substitution in the *medium* by which gambling takes place, but not the country of the supplier, and indeed, in most cases not even the supplier. It should be noted that internet wagering represents a relatively small technological step since people could already lodge their bets remotely by phone.'

Productivity Commission Inquiry Report No. 10, Australia's Gambling Industries, 26 November 1999

In the policy debate concerning the proposed ban on interactive gambling there has been little consideration of this aspect. The focus has primarily been placed on emotive issues such as a casino or poker machine in every lounge room rather than the ancillary impact of the proposed ban on the technological development of existing lotteries.

Therefore, if harm minimisation and consumer protection are the Federal Government's prime motivators for introducing this legislation, then the sale of lottery game entries over the Internet or via other interactive mediums (subject to the policy position of each state government) should be exempt from the *Interactive Gambling Bill 2001*. Recommendations on how the Bill can be amended to exempt lottery games is outlined in the next section.

The Australian Lotteries Industry already adheres to strict regulatory regimes in the respective jurisdictions. Should lottery games be exempt from the *Interactive Gambling Bill 2001*, the submitting Lotteries undertake to comply with appropriate additional regulatory requirements as they apply in each lottery jurisdiction.

A ban including lotteries will disadvantage regional Australia, the elderly and the disabled

A ban that includes lotteries will disadvantage people in rural and remote areas, who do not have access to a local lottery outlet. This is particularly important given that as regional retail infrastructure further diminishes, regional Australians are becoming increasingly dependent on the Internet to satisfy their retail needs.

In addition, the submitting Lotteries are committed to ensuring accessibility and ease of use of games and services by both the elderly and the disabled.

Some Australian lotteries organisations currently have telephone ordering services, which have been in place for considerable time. They provide a valuable service, particularly to people in regional and remote areas, the elderly and the disabled who do not have access to a lottery outlet.

These telephone ordering services are not dissimilar to the traditional TAB telephone betting systems and like the TABs, some members of the Bloc are updating their telephone ordering services to enable people to buy their tickets over the Internet. Tattersall's has two agents (accredited representatives) who do distribute via the electronic channel of the Internet.

A ban will make it difficult to protect existing lottery markets and government revenues

It is the view of the submitting Lotteries that the complaints scheme outlined in Part 3 of the legislation will not significantly limit Australian access to international gambling sites.

Lottery games are currently sold over the Internet. This presents a threat to the Australian Lotteries Industry. Overseas government licensed lotteries jurisdictions are also regulated and generally reputable, so it is less likely they will invoke complaints to the Australian Broadcasting Authority if they are accessible to Australians.

A La Fleurs Lotteries Industry Journal tracking study on international senior lottery executives' attitudes confirms the view that the Internet is one of the next big distribution channels for the lotteries throughout the world. It found that 84 per cent of international senior lottery executives believe that selling lottery games on the Internet is inevitable and that sales will continue to grow from this channel.

By prohibiting Australian lotteries organisations from selling their games over the Internet or via other interactive mediums to Australians, lotteries organisations will have no capacity to defend their existing markets from international competitors. There may also be a greater adverse flow-on impact if the Australian Lotteries Industry is weakened by overseas competition, thereby reducing the amount of money returned to the small business community, the community at large and the Australian economy.

RECOMMENDED AMENDMENTS TO *INTERACTIVE GAMBLING BILL 2001*

The submitting Lotteries believe that lottery games can easily be exempted from the *Interactive Gambling Bill 2001* through the introduction of the following draft amendments.

4 Definitions

In this Act, unless the contrary intention appears:

authorised lottery means a lottery, trade promotion or similar game authorised or regulated under a Lottery Act.

...

gambling service means:

- (a) a service for the placing, making, receiving or acceptance of bets; or
- (b) a service the sole or dominant purpose of which is to introduce individuals who wish to make or place bets to individuals who are willing to receive or accept those bets; or
- (c) a service for the conduct of a lottery other than an authorised lottery; or
- (d) a service for the supply of lottery tickets other than an authorised lottery; or
- (e) a service for the conduct of a game, other than an authorised lottery, where:
 - (i) the game is played for money or anything else of value; and
 - (ii) the game is a game of chance or of mixed chance and skill; and
 - (iii) a customer of the service gives or agrees to give consideration to play or enter the game; or
- (f) a gambling service (within the ordinary meaning of that expression), other than an authorised lottery, that is not covered by any of the above paragraphs.

Lottery Act means a law of the Commonwealth, a State or a Territory which authorises and regulates the conduct of a lottery, trade promotion or similar game in any part of Australia.

5. Australian-based interactive gambling services

...

(3) For the purposes of this Act, none of the following services is an Australian-based interactive gambling service:

- (a) a telephone betting service;
- (b) a service to the extent to which it relates to the entering into of contracts that, under Corporations Law, are exempt from a law relating to gaming or wagering (see section 9);

(c) a service for the conduct of an authorised lottery;

(e)(d) an exempt service (see section 10).

CONCLUSION

In summary, the submitting Lotteries believe that the Bill as it currently stands has both intended and unintended consequences for lotteries that could potentially decimate the Australian Lotteries Industry.

The Bill is flawed in its current drafting, as it prohibits current lottery operations and appears to go beyond the perceived ambit of the Commonwealth Government to ban interactive gambling services to Australians. It is the submitting Lotteries' understanding that the legislation was born out of the Government's desire to potentially stop putting a gaming machine in every home, not to prohibit the current operation of lotteries.

The Bill needs redrafting to ensure that existing reputable and fully regulated lottery operations are not affected, regardless of their channel of distribution.

Lotteries by their very nature are not the root cause of problem gambling and should be exempted from the operations of this Bill. They are 'non-continuous' soft gaming products predominantly sold in a retail environment.

Given that lottery games are already the most accessible form of gambling and their high accessibility does not contribute to problem gambling, the sale of lottery games over the Internet and through other interactive mediums should not be problematic. The Internet and other interactive mediums simply represent other distribution channels for the sale of lottery games.