

**SUBMISSION TO THE SENATE ECITA LEGISLATION COMMITTEE ON THE
INTERACTIVE GAMBLING BILL**

Summary

- **Jupiters supports a national regulatory approach to the implementation of player protection standards across all jurisdictions for interactive gambling as recommended by the Productivity Commission Report on Gambling Industries (November 1999).**
- **The Bill has unintended consequences in that it will prohibit Australian gambling operators from continuing to offer their existing services in traditional gambling premises such as clubs, hotels, racetracks and TABs and adversely impact on small to medium sized businesses (for example, newsagencies).**
- **The Bill is inconsistent with the Federal Government's National Policy on functional equivalence and technology neutrality legislated for in the Electronic Transactions Act 1999.**
- **There are strong grounds to support the position that wagering services should be excluded from the Bill.**
- **There is no solution that is both technically and commercially viable to enable an Australian gambling operator to ensure that their Internet site is not accessed by a legitimate overseas based client while visiting Australia. The due-diligence defence must be defined and included in the Bill. Jupiters has suggested amendments to the Bill which will, if enacted, eliminate its unintended consequences and policy inconsistencies and exclude wagering services.**

Introduction

Jupiters Limited is a public listed company which has over 19,500 shareholders, most of whom are Australians and employs approximately 5,000 persons throughout Australia. Jupiters provides a range of entertainment and electronic gaming and wagering products and gaming, wagering and hospitality services throughout Australia and overseas. These include:

- interests in land based casinos on the Gold Coast, in Brisbane and Townsville;
- Keno operated over wide-area networks throughout clubs, hotels and TABs in Queensland and clubs in New South Wales;

- gaming machine services;
- Centrebet's sports wagering services offered over the telephone and Internet to Australian and overseas customers from its base in Alice Springs, Northern Territory; and
- extensive interests in electronic gaming technology.

Jupiters also holds a licence in Norfolk Island to conduct interactive games.

Jupiters has a material interest in the contents of the Interactive Gambling Bill.

Jupiters supports a national regulatory approach to the implementation of player protection standards across all jurisdictions for interactive gambling as recommended by the Productivity Commission Report on Gambling Industries (November 1999). Jupiters supports the Australian Casino Association's submission to the Senate ECITA Legislation Committee.

Unintended Consequences

Stated policy of the Bill

Jupiters' understanding, based on Government media releases, press comments by Ministers and Explanatory Material to the Bill, is that the Bill has been proposed to stop Australian-based gambling providers from offering persons in Australia the opportunity to gamble using electronic equipment in private locations such as the home and office (referred to in this submission as "**Private Interactive Gambling Services**"). In the words of the former Senator Jocelyn Newman (at that time Chairwoman of the Ministerial Gambling Council) to prevent the existence of "a poker machine or casino in every home in Australia".

The Bill was not intended to restrict:

- the ability of Australian-based gambling providers to offer persons in Australia the opportunity to gamble using electronic equipment in locations such as clubs, hotels, casinos, racetracks, TABs etc (referred to in this submission as "**Traditional Gambling Premises**") or using the telephone to access gambling services; or
- the ability of Australian-based gambling providers to offer those services to persons located outside Australia.

Adverse impact on activities in Traditional Gambling Premises

The Bill prohibits a considerably wider scope of activity than this, in particular activities legitimately conducted in Traditional Gambling Premises. Jupiters' existing and future activities conducted in Traditional Gambling Premises will be seriously and adversely impacted by the Bill. Although the Bill refers to services provided to "customers" and to Internet access by "end users" it does not define these terms by making reference to the physical location of the end user when accessing the gambling service. The failure to focus on the location of the end user has the effect of prohibiting gambling services that are provided in Traditional Gambling Premises.

The type of communication service used to provide a gambling service is irrelevant and makes no practical difference to the end user. Rather, the place at which the service is accessed and the nature of the service (ie whether it is "interactive") is critical and should be used to limit the extended scope of the Bill.

The Bill (clause 15) prohibits Australian-based gambling providers (including Lottery Agencies, TABs, Jupiters etc) from conducting their existing businesses using a listed carriage service or any of the other delivery methods listed in the Bill (clause 5 and referred to in this submission as the “**Delivery Methods**”). Wide area networks (“**WANs**”) and other carriage services are Delivery Methods for the purposes of the Bill. Existing gambling services make extensive use of WANs and other carriage services to provide their services to the public in Traditional Gambling Premises. Gambling is commonly conducted in Traditional Gambling Premises under long standing licences granted by the various State and Territory Governments throughout Australia.

Adverse impact on small to medium sized businesses

It is common for gambling operators to use the services of agents to receive bets on their behalf, which are often small to medium businesses enterprises (“**SMEs**”) such as newsagencies and hotels. For example, newsagencies receive bets (lottery tickets like Gold Lotto and Power Ball) on behalf of lottery operators and clubs and hotels receive keno entries on behalf of keno operators. The newsagencies, clubs and hotels use a listed carriage service (currently most commonly a WAN, although there is no doubt new and alternative technologies will be used in the future to provide the same service) to transmit the betting information to the lottery or keno operator. These services will be prohibited under the Bill because they are provided to customers using a listed carriage service. Many more examples can be provided if required of the use of listed carriage services within the gambling industry in Australia in Traditional Gambling Premises.

These SMEs, like existing gambling operators, have invested in their businesses in the belief that the existing gambling services will continue to contribute business income. If enacted, the Bill will jeopardise the livelihood of these SMEs.

National Policy Inconsistency

The approach taken in the Bill is inconsistent with the Government’s approach to electronic transactions as reflected in the Electronic Transactions Act 1999. The Explanatory Memorandum to the Electronic Transactions Bill stated expressly that that Bill was based on two principles, being functional equivalence and technology neutrality. Of particular relevance are statements in the EM noting that:

- “functional equivalence means that transactions conducted using paper documents and transactions conducted using electronic communications should be treated equally by the law and not given an advantage or disadvantage against each other”; and
- “technology neutrality means that the law should not discriminate between different forms of technology - for example, by specifying technical requirements for the use of electronic communications that are based upon an understanding of the operation of a particular form of electronic communication technology.”

By making artificial distinctions in the Bill between the different methods by which customers access the same gambling service, the Government would be disregarding the principles that formed the basis of the Electronic Transactions Act 1999 which was enacted to establish a regulatory regime for the use of electronic communications in transactions.

An artificial distinction is drawn between accessing gambling services over the telephone and accessing the same service using other delivery methods, particularly when a “voice call” includes a call that involves a recorded or synthetic voice. It is illogical to suggest that making a voice call to make a bet is legal, while at the same time prohibiting a person from sending a fax to make the same bet.

If a gambling service can be provided using a telephone, it should be able to be provided using any Delivery Method. This is the logic behind the Federal Government's policy of "technology neutrality". The Bill currently discriminates in favour of voice calls.

"Voice calls" can currently be provided over the Internet using the "Voice over Internet Protocol" (VoIP), as well as using a standard telephone service. Although accepting bets using a traditional telephone service would not be prohibited under the Bill, accepting a bet using VoIP would. In some cases, the gambling service provider may not know what service the voice call provider is using. If the Government's intention is to exclude "voice calls" from the prohibition, it should make no difference whether these calls are made using a standard telephone service, the Internet or any other form of technology. It will make no difference to the end user.

Likewise, there is no material difference to an end user using a telephone or computer keypad. A current example of this is telephone or Internet banking – end users regard them as alternate delivery methods of the same service. In both cases, users use a keypad to provide details of the transaction they are executing. There will be no material difference to an end user using telephone or Internet gambling where the service that is being provided to the end user is substantially the same.

The distinction that has been drawn is arbitrary and illogical. Applying the logic of the Government's policies of "functional equivalence" and "technology neutrality", the following conclusions follow in relation to the Bill:

- operators and SMEs should continue to be allowed to provide their existing gambling services in Traditional Gambling Premises using any technology (functional equivalence); and
- as operators can continue to provide their gambling services outside Traditional Gambling Premises using voice calls, they should be able to provide their services using any technology (technology neutrality).

The arbitrary distinctions between technologies made in the Bill will become more apparent (and more illogical) in the future as communication technologies converge.

Exclusion of Wagering

Jupiters owns Centrebet, the largest Australian based Internet sports betting operator. Centrebet offers its wagering services over the telephone and Internet to customers based in Australia and overseas.

Centrebet is based in Alice Springs in the Northern Territory and, with 60 full-time equivalent employees, is the largest non-Government employer in Alice Springs. Since Jupiters acquired Centrebet, it has continued to invest in the business and in the Alice Springs regional economy. The investment has had a flow on effect, which has resulted in other businesses investing in the economy and ultimately, the ability of residents of the region to access services at a lower cost than would otherwise be the case. For example, Centrebet's operations have required the installation by Telstra of additional Internet band width to the Alice Springs region.

There are strong grounds to support the exclusion of wagering from the Bill. Centrebet has made it's own submission to the Committee on this issue. Jupiters endorses the contents of that submission.

If the Bill is enacted without a wagering exclusion, Jupiters will be reluctant to invest further funds in Centrebet or the rural economy of Alice Springs and would be forced to give serious

consideration to relocating its operations to another jurisdiction with the resultant loss of jobs that will flow from this.

Inadequacy of “Reasonable Diligence Defence”

Although there is a “reasonable diligence defence” in the Bill (section 15(3)), the defence does not provide any guidance on what would amount to “reasonable diligence” in any given circumstance. The Explanatory Memorandum makes it clear that regard would need to be had to the technical and commercial viability of implementing appropriate systems. This should be specifically stated in the Bill, particularly given the serious daily penalties for non-compliance. An Australian gambling operator should not be forced to buy and implement systems monitoring access by Australian based persons if it is not technically or commercially viable for them to do so.

The global gambling industry is highly regulated and licences are cautiously issued by Governments only after completion of thorough probity investigations. Many Australian-based gambling providers, like Jupiters, are large companies listed on ASX with many Australian shareholders and hold licences, not only in various States and Territories in Australia, but in other countries. A breach of this Bill could seriously impact on their ability to obtain new licences both in Australian and in other countries and jeopardise the existing licences they hold.

It is unacceptable that Australian companies should be subjected to the uncertainty surrounding the drafting of the reasonable diligence defence, particularly when the Government has made it clear in the Explanatory Memorandum that it’s intention is to allow consideration to be given to the technical and commercial viability associated with implementing compliance systems.

Closing

Jupiters suggested amendments to the Bill are attached. If enacted, these amendments will eliminate the Bill’s unintended consequences and policy inconsistencies and exclude wagering services.

Jupiters is prepared to attend at a Committee hearing to speak to it’s submission and answer questions.

SUGGESTED AMENDMENTS TO THE INTERACTIVE GAMBLING BILL

Amendments to simplified outline

1. Amend section 3 as marked:

“3 Simplified outline

The following is a simplified outline of the Act:

- This Act regulates interactive gambling services by:
 - (a) prohibiting Australian-based interactive gambling services from being provided to customers in Australia [in non-public places](#); and
 - (b) establishing a complaints-based system to deal with Internet gambling services where the relevant content (*prohibited Internet gambling content*) is available for access by customers in Australia [in non-public places](#).
- A person may complain to the ABA about *prohibited Internet gambling content*.
- If prohibited Internet gambling content is *hosted in Australia* and the ABA considers that the complaint should be referred to an Australian police force, the ABA must refer the complaint to a member of an Australian police force.
- If prohibited Internet gambling content is *hosted outside Australia*, the ABA must:
 - (a) if the ABA considers that the content should be referred to a law enforcement agency – notify the content to a member of an Australian police force; and
 - (b) 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 industry standard (for example, procedures relating to the provision of regularly updated Internet content filtering software to subscribers).
- Bodies and associations that represent Internet service providers may develop an industry code.
- The ABA has a reserve power to make an industry standard if there is no industry code or if an industry code is deficient.

Amendments to remove unintended consequences and clarify scope of reasonable diligence defence

2. Amend section 15 as marked:

“15 Offence of providing an Australian-based interactive gambling service to customers in Australia while they are situated in a non-public place

- (1) A person is guilty of an offence if:
 - (a) the person intentionally provides an Australian-based interactive gambling service; and
 - (b) the service has an Australian-customer link (see section 8); and
 - (c) the service **is accessed** by a person in a non-public place.
- (2) A person who contravenes subsection (1) is guilty of a separate offence in respect of each day (including a day of a conviction for the offence or any later day) during which the contravention continues.
- (3) Subsection (1) does not apply if the person:
 - (a) did not know that the service was ; and
 - (b) could not, with reasonable diligence, have ascertained; that the service had an Australian-customer link.
- (4) **Subsection (1) does not apply if the person:**
 - (a) **did not know that the service was being accessed by a person in a non-public place; and**
 - (b) **could have taken reasonable steps aimed at ensuring that the service was only accessed in a public place and took those steps.**

3. (5) In determining whether a person has exercised reasonable diligence under subsection (3)(b) or taken reasonable steps under subsection 4(b), regard shall be had to the technical and commercial viability to the person or business concerned of implementing procedures or systems aimed at ascertaining whether the service had an Australian–customer link or was accessible by a person in a non-public place.”Insert the following definitions:

“non-public place means a place that is not a public place.

public place includes any place that:

- (a) the public is entitled to use as of right; or
- (b) for the time being is open to, or used by, the public, whether or not:
 - (i) the place is ordinarily open to or used by the public; or
 - (ii) by the express, tacit or implied consent or permission of the owner or occupier of the place; or

(iii) on payment of money,

(including, for example, a shop, restaurant, hotel, cinema or club); or

(c) is declared by regulation to be a public place.”

4. Amend subsection 6(1) as marked:

“6 Prohibited Internet gambling services

(1) For the purposes of this Act, a *prohibited Internet gambling service* is a gambling service, where:

- (a) the service is provided in the course of carrying on a business; and
- (b) the service is provided to customers using an Internet carriage service; and
- (c) the service has an Australian-customer link (see section 8); and
- (d) the service is accessible by a person in a non-public place.

Amendments to remove policy inconsistency and exclude wagering

5. Amend sub-section 5(3) as marked:

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

- (a) a service to the extent to which it relates to betting on, or on a series of, any or all of the following:
 - (i) a horse race;
 - (ii) a harness race;
 - (ii) a greyhound race;
 - (iv) a sporting event;
- (b) a service to the extent to which it relates to the entering into of contracts that, under the Corporations Law, are exempt from a law relating to gaming or wagering (see section 9);
- (c) an exempt service (see section 10);
- (d) a service to the extent to which it relates to betting on:
 - (i) an event;
 - (ii) a series of events; or
 - (iii) a contingency,

that is not covered by paragraph (a).”

6. Insert new subsections 5(4) and (5):

“(4) Subsections (3)(a) and (d) do not apply to a service to the extent to which:

- (a) the service relates to betting on the outcome of a sporting event, where the bets are placed, made, received or accepted after the beginning of the event; or
- (b) the service relates to betting on a contingency that may or may not happen in the course of a sporting event, where the bets are placed, made, received or accepted after the beginning of the event.

(5) Subsection (3)(d) does not apply to a service to the extent to which the service is:

- (a) a service for the conduct of a lottery;
- (b) a service for the supply of lottery tickets;
- (c) a service relating to betting on the outcome of a lottery;
- (d) a service for the conduct of a game, where:

- (i) the game is played for money or anything else of value;
 - (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 of enter the game; or
- (e) a service relating to betting on the outcome of a game of chance or of mixed chance and skill.”

7. Delete the definitions of “*telephone betting service*”, “*voice call*” and “*standard telephone service*”.