



**SENATE ENVIRONMENT, COMMUNICATIONS,
INFORMATION TECHNOLOGY AND THE ARTS
COMMITTEE INQUIRY INTO
THE *INTERACTIVE GAMBLING BILL 2001***

**SUBMISSION FROM THE
FEDERATION OF AUSTRALIAN
COMMERCIAL TELEVISION STATIONS**

27 APRIL 2001



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Secretary
Senate Environment, Communications, Information Technology
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S1.57 Parliament House
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Dear Madam

SUBMISSION ON THE INTERACTIVE GAMBLING BILL 2001

This submission is made by the Federation of Australian Commercial Television Stations (**FACTS**).

1. EXECUTIVE SUMMARY

FACTS members all hold commercial television broadcasting licences under the *Broadcasting Services Act (1992)*. The central concern in this submission is the broad and unintended scope of the *Interactive Gambling Bill 2001 (Bill)*. The Bill has the potential to detrimentally affect free to air broadcasting services when its purpose was to protect Australians from new interactive Internet gambling technology. This unintended effect will only be to the detriment of the Australian public.

In this submission, FACTS is only concerned with the adverse effects of the Bill, as drafted, on the commercial television broadcasting industry. This industry was not expected to be one of the impacted groups according to the Regulation Impact Statement (**RIS**). However, the impact of the Bill will be both substantial and adverse to the types of services offered by commercial television broadcasters. The effects on the commercial television broadcasting

industry are not consistent with Government policy on both interactive gambling and digital television.

FACTS considers that the Bill will have adverse unintended consequences on the material available to viewers via television. The range of material provided using the television is set to expand with the introduction of digital television and the related services of enhanced television and datacasting. One of the unintended consequences of the Bill is that this new range of services will be more extensively affected than intended by policy.

FACTS submits that the Bill should be redrafted to ensure that commercial television broadcasters can use permits granted by State and Territory Governments both now and in the future for the operation of lotteries and other games of combinations of skill and chance.

The definition of “gambling service”, as set out in the Bill is drafted too broadly, as it adversely affects the provision of television programs and services that are a mix of skill and chance but are not intended to be prohibited under the Bill. In particular, the development of new digital services such as enhanced programming and datacasting may be limited by the drafting of the Bill in a manner that is not consistent with the policy.

The definition may also affect information only programs which are not interactive but which may be ancillary to competitions or wagering activities.

FACTS considers that there should be a wagering exception, as provided in the *Interactive Gambling (Moratorium) Act, 2000*. FACTS members provide coverage of a range of sporting events including horse and harness racing which will be affected without a wagering exception.

2. GOVERNMENT POLICY

The policy intent of the Bill is to prohibit Australian-based interactive gambling services from being provided to customers in Australia. The Bill as described in its Explanatory Memorandum does not set out to limit the material and services that are available from licensed commercial television broadcasters as defined in the *Broadcasting Services Act, 1992* and permitted pursuant to State and Territory legislation.

It is FACTS contention that the Bill will adversely limit the services which FACTS members are able to provide and that this is an unintended consequence of the Bill as currently drafted.

The RIS is concerned with increased availability of gambling services, describing it as a “quantum leap”. FACTS is concerned that the Bill, as drafted, will unintentionally restrict the evolving range of services offered by its members. It is federal Government policy to introduce a broader range of services delivered using the television receiver. These include digital television, which was launched on 1 January this year and a range of enhanced programming and datacasting services that will be delivered by FACTS members over time. When the relevant legislation was announced, the Ministerial press release (12 December, 1999) included the comment:

“The Government is confident that its decisions will ensure that Australians enjoy the best broadcasting in the world while introducing new information and entertainment options ...”

Part of the delivery of this policy intent relies on the ability for broadcasters to offer innovative and interactive services. In fact, one of the primary drivers for the introduction of digital television was its ability to offer interactive services to viewers. FACTS submits that the policy intent of the Bill is not to inhibit its digital broadcasting policy or to restrict interactive services. However, the Bill has precisely this unintended consequence. That is, the Bill could restrict the viewer choice of new digital services.

The RIS does not identify commercial television broadcasters as an “impact group” further reinforcing the FACTS’ position that the consequences on its members are unintended and a result of the drafting of the Bill.

UNINTENDED CONSEQUENCES

Intent

The Explanatory Memorandum, which accompanied the Bill and the first and second reading speeches in the Senate, clearly shows that television is not the type of service to which the Bill is intended to apply.

The Bill is intended to protect “Australian families from the further spread of problem gambling and the social and economic hardship that it brings to hundreds of thousands of Australians” (Second reading speech). The Government is concerned about increased accessibility of gambling primarily through the Internet and the social and economic impacts this will have on Australians.

The current threats posed by interactive gambling are the forms of gambling available through the Internet. All of the complaint mechanisms in the Bill relate to Internet gambling content. Research into community concerns conducted by Roy Morgan Research in March 2000 indicates that the main area of community concern in relation to gambling services is based around casino games for money on the Internet.

The rationale set out in the “impact analysis” of the Bill also confirms that impact on licensed commercial television broadcasters is unintended.

2.1 Consideration in services offered by FACTS members

When levels of interactivity are provided to an evolving range of broadcast material, there is usually an element of the process that requires a viewer to leave a name and address or telephone number.

This is normally done using a 1-900 telephone number. For the services offered by FACTS' members, such a service results in a per 1-900 call bill of \$0.55 (including GST) and a payment by the 1-900 service provider to the broadcaster. That is, the 1-900 call leads to the payment of a consideration (indirectly) by the viewer to the broadcaster. It is this consideration, and the limitation of the telephone betting exemption, that leads to some of the unintended consequences set out below.

In addition, it is often the case that there are alternative methods of interaction with particular content. For example, voting might be by way of a 1-900 call (where there is consideration), using a coupon in a magazine (where the existence of consideration is determined by State

and Territory Law) or by visiting a web site (where there may be no consideration). In future, the capabilities of digital television will allow more direct forms of interactivity through the set top box. The only difference in these evolving forms of audience participation is technology. The activity itself does not alter in character. It is FACTS submission that the Bill should not limit services offering interactivity with broadcast material rather than interactive gambling purely on the basis of the technology used to provide them.

Reports and studies leading to the introduction of the Bill

The following reports all identify the threats and problems posed by interactive gambling. None of the reports make any comment about social or economic problems arising from television programs and related services of licensed commercial television broadcasters.

- The Productivity Commission Report, “Australia’s Gambling Industries”;
- Senate ECITA Legislation Committee, “Report on Interactive Gambling Moratorium Bill 2000”;
- Former Senate Select Committee on Information Technologies, “Netbets: a review of online gambling in Australia”; and
- National Office of the Information Economy, “Report of the investigation into the feasibility and consequences of banning interactive gambling”.

The impact of the Bill as currently drafted has a series of unintended impacts on licensed commercial television broadcasters and the content and services that they provide. These reports focus on “interactive” forms of gambling facilitated by the Internet. There is no evidence in the reports that the services provided by commercial television broadcast licence holders are a source of harm to the Australian public.

2.2 Impact analysis of the Bill

No negative impacts are identified for holders of commercial television broadcasting licences and there are numerous indications in the Bill that any such implications are not intended.

For example, in the Explanatory Memorandum discussion of section 4(e) which contains a definition of an (Interactive) “gambling service”, the view is expressed that the definition of “gambling service” would be subject to an assessment that the service first be a “gambling” service within the “ordinary meaning of gambling” such as “can be obtained from the Encyclopaedia Britannica” (see page 22 of the Memorandum). Section 4 of the Bill, as drafted, contains no such limits and the comments in the explanatory memorandum do not

help to discern the true scope of the definition. There is no requirement in section 4(e) that the term “game” must be “gambling” within the ordinary meaning of that word.

Examples are provided in the Explanatory Memorandum of television programs that “should be regarded as a game of skill”. Our concern is that the definition is broader than this. Any game of skill which also involves the slightest element of chance would be caught by the broad definition.

In addition, information only services ancillary to competitions or wagering activities may be caught by the definition if they are provided in return for payment if they are regarded as services for the conduct of a game (which may be conducted extraneously to the broadcast).

The attachment sets out a range of material provided by FACTS members. This shows that there are already a large range of existing entertainment services which could be adversely affected by the passage of the Bill. The examples, however, only describe television programs already broadcast by the holders of commercial television licences. The table does not attempt to describe the types of services that holders of commercial television licences may, in the future, provide to viewers to enhance their television experience by way of digital television, enhancements and datacasting. It is impossible at this time to identify such a proscriptive list. As with other types of services, the nature of television programs and related services evolve over time and with changing consumer tastes. For example, only a couple of years ago no one had contemplated the genre of programs known as ‘reality’ television that exists today and which are so popular with viewers. Negative effects on the range of content available to the Australian viewing public and on those involved in the creation of the content are not identified in the impact analysis. These negative effects will include job losses, as well as the broader damage to maintenance of an Australian culture through television.

Workable revenue models for digital television are in the early stage of development. The opportunity for enhanced audience participation has a clear potential as a revenue source. Broadcasters have spent huge sums on digital conversion and are concerned that possible legitimate areas for new business activities which were clearly contemplated in the development of digital television policy will be denied to them as a result of the Bill.

3. STATE AND TERRITORY PERMITS

The holders of commercial television broadcasting licences are subject to a comprehensive range of regulation such as the various State and Territory laws prohibiting the offering of unlicensed gambling. FACTS submits that the Bill should be redrafted to ensure that

commercial television broadcasters can use permits granted by State and Territory Governments, both now and in the future, for the operation of lotteries and other games of skill and chance. The provisions of the Bill should not override the grant of licences and permits pursuant to State and Territory legislation.

Broadcasting is primarily a national activity. The economics of offering programs or services on a state by state basis are difficult to justify. The effect of this is that the strictest set of State or Territory rules will determine the nature of the service which can be offered by a broadcaster on a national basis.

FACTS believes that the activities of broadcasters are sufficiently regulated in the public interest under these existing State and Territory permit schemes.

The current activities of FACTS members represent a continuing revenue stream for the States and Territories. FACTS submits that the current Bill would adversely affect the potential revenue paid by its members to State and Territory Governments for permission to operate games. Clearly, this consequence was not foreseen by the drafters of the Bill, as it is not noted in the Regulation Impact Statement. Indeed, the RIS considers that there will be a moderately beneficial aggregate impact on State and Territory revenues.

For example, in the case of racing services provided by FACTS members, this is a means of disseminating wagering odds on behalf of State and Territory Government entities. Where those entities have been privatised, the State revenue is dependent on continued dissemination of this information as are the industries themselves.

In addition to revenues paid to State and Territory Governments, FACTS members pay substantial revenues to the Federal Government via licence fees on the basis of advertising revenue. This revenue stream is dependent on providing compelling material to viewers.

Many of the marketing and entertainment methods used by the holders of commercial television broadcasting licences are commonplace in our community and are not a source of social and economic hardship. The true intent of the Bill is to address “interactive” gambling of the type facilitated by the Internet. There is no reason to further regulate existing well-regulated entertainment and marketing practices.

Convergence of different forms of media is not the reality of communications in Australia. It is still desirable and meaningful to distinguish between broadcasting by holders of commercial television broadcasting licences under the *Broadcasting Services Act (1992)* and other communication mediums. The all-inclusive approach of the present Bill suggests that

one approach will fit all. The reality is far from this. It may be desirable to regulate the largely unregulated new technologies of the Internet, but to apply the same legislation to other well-regulated and longstanding media is not appropriate.

The commercial television broadcasting industry has demonstrated the ability to provide increasingly interactive material. A few years ago, the major interaction with infotainment shows was the request for a stamped self-addressed envelope for further information. Over time, this has developed into a fax-back service and associated web-based content. Shows which have a high level of audience participation, particularly programs such as “Weakest Link”, “Millionaire” and “Big Brother” are popular largely because of the level of interaction that they provide. In addition, the music genre also offers a level of interactivity in shows such as “Video Hits”. The level of interactivity that FACTS members can provide, and which the Australian viewing audience enjoys, runs the risk of being severely curtailed by the Bill as it is currently drafted.

The range of services that can be offered using digital television, enhanced programming and datacasting offers a substantial scope for the development of interactive services. It is important that these services are not limited by the unintended effects of the Bill.

It is important to note that the impact of the Bill will be on Australian content. The shows with the highest level of interactivity (and at highest risk under the Bill) are Australian made and feature Australians. The RIS does not set out that an impact of the Bill will be an adverse effect on the Australian television production industry. However, this is likely to be the case unless there are amendments made to the current draft of the Bill.

4. BROAD DEFINITION OF INTERACTIVE GAMBLING

Section 15 of the Bill makes it an offence to intentionally provide an “Australian-based interactive gambling service” with an “Australian-customer link”.

- FACTS members all provide services with an “Australian-customer link”. Viewers of the material provided by the commercial television broadcasters are physically present in Australia.
- Section 5 defines an “Australian-based interactive gambling service” as a “gambling service” provided to customers using:
 - “(i) an Internet carriage service;
 - (iii) **a broadcasting service;**

- (iv) any other content service;
- (v) **a datacasting service**".

FACTS members all provide services to customers using a "broadcasting service" and will provide enhanced programming and datacasting services in the future.

- An (interactive) "gambling service" is (relevantly) defined in section 4(e) to include:
 - "a service for the conduct of a game 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."

Existing and future television programs, ancillary services such as telephone competitions and other material may fall within the broad definition of an (interactive) "gambling service" in section 4(e) of the Bill.

FACTS submits that the definition of "Australian-based interactive gambling service" and "gambling service" should be amended to ensure that the range of television services is not captured by the Bill. The services offered by licensed commercial television broadcasters do not fall within any natural definition of "interactive gambling services".

For example, consider an educational interactive product that is designed to meet a particular State's curriculum requirement. This service would be a combination of a broadcasting service and a datacasting service under a commercial television broadcaster's licence. The users of this service interact through television using a remote control or wireless keyboard and answer questions. The final program in the product series might be a subscription datacast with the ability for schools to demonstrate their attainment of knowledge by taking part in an interactive quiz. Those schools without access to datacasting services would also be able to take part in the interactive quiz by using the Internet or by telephoning their answers to an interactive voice response unit. Consider also, that all schools, which achieve a mark of greater than 95% are entered into a draw to win a personal computer for the school. In this case, the Bill would eliminate those schools that use the interactive technology of either datacasting or the Internet from being eligible for the prize. That is, the impact of the Bill is to discourage the use of technologies, which have already been adopted by our international competitors.

This illustration is but one example of the types of new services the Federal Government contemplated could be provided to Australians using the television with the introduction of digital television and related services of enhanced television and datacasting.

5. WAGERING

FACTS considers that there should be a wagering exception, along the lines provided in the *Interactive Gambling (Moratorium) Act, 2000*. However, we believe the exception should be widened to permit “betting in the run” as opposed to micro-event wagering. Wagering has traditionally been a State and Territory issue and as the explanatory memorandum for the *Interactive Gambling (Moratorium) Act, 2000* states:

“Wagering services are different to gaming services. Wagering is focused on a bet on an event or contingency while gaming is focused on playing games of chance for money or something else of value. In a wager, the bettor usually does not participate in the actual event or contingency. In contrast, interactive gaming involves the bettor in the game.”

and

“ ... certain wagering services are not an interactive gambling service and consequently not subject to the moratorium.”

FACTS concurs with these views and consequently supports a wagering exception. FACTS submits that the telephone betting exemption should be extended to an interactive datacasting service.

6. TREATMENT OF BROADCASTERS

The viewing public of Australia will suffer if many of the existing and familiar forms of entertainment are prohibited.

If the Bill is not amended it may no longer be possible to run a “catch of the series” or “stroke of the season” contest. The absence of these contests may also affect the ratings and the extent of coverage of cricket. This would be as a direct result of the Bill. Many viewers would find this an unacceptable intrusion into what they see as their right to long established and harmless forms of entertainment which they consider enhances the television viewing experience.

If much of the existing Australian content, such as our diverse range of game shows, are classed as “interactive gambling services” holders of commercial television broadcasting licences will need to find alternative content. It is unlikely in the short term that this new content would be Australian, or could make the same contribution to Australian culture as the existing popular entertainment. This will be damaging to the development and maintenance of Australian cultural values through our commercial television broadcasters.

7. CONCLUSION

The provisions of the Bill, which make television content “prohibited interactive gambling”, are unintended. Damage that will be caused if the Bill is not amended includes:

- risking inhibiting the form and incidence of popular Australian entertainment;
- restriction of possible revenue sources for the growth of digital television;
- potential job loss in the Australian television production industry and other damaging economic impacts which have not been considered in the Explanatory Memorandum which accompanied the Bill; and
- the damaging precedent of a “one size fits all” approach to all of Australia’s communications media, when longstanding and well regulated forms of media need quite different treatment to new, evolving and unregulated media.

Our proposed amendment, in addition to definitional and other amendments, will leave the provisions of the Bill intact and the definitions broad enough to cope with evolving media, whilst removing the unintended effects on Australian television.

FACTS would welcome the opportunity to give supporting evidence at any public hearing in relation to this matter.

Yours faithfully

JULIE FLYNN
Chief Executive Officer

**TABLE OF PROGRAMS WHICH MAY BE AFFECTED BY THE DEFINITION OF “GAMBLING SERVICE” IN THE INTERACTIVE GAMBLING BILL 2001.
THIS LIST DOES NOT CONSTITUTE A COMPLETE REVIEW OF PROGRAMS, NOR A STATEMENT THAT ANY PROGRAM WOULD NECESSARILY OFFEND
THE PROVISIONS OF THE BILL.**

Program	Channel	“Conduct of a Game “	“Played for money or anything else of value”	“Game of Chance or Mixed Chance and Skill”	“Customer gives or agrees to give Consideration to the play or enter the game”
Home and Away Pop Stars – home viewer hotline	7	Participants must watch the program and then call a hotline where they are asked a question in relation to what happened on the program. To qualify they need to answer the question correctly and they are then able to lodge their personal details by telephone. The winner is picked at random.	Often product prizes	It is with a certain degree of skill that the participant answers the question correctly but it is by chance that the winner is pickled from the qualifying contestants.	The cost of the phone call, often at a elevated price through use of a 1900 number could constitute consideration.
Wheel of Fortune	7	Contestants are asked a series of questions and given skill based challenges like trying to guess the whole of a proverb when only given a few letters of the sentence. Prizes are won when the contestant gains the most points for answering questions.	Money and Product* prizes are available prizes.	Selection of contestants involves chance. It is with skill that the contestants answer the knowledge questions correctly but includes chance when contestants have to spin the wheel of fortune to attain a prize.	Entry process involves contestants calling in on a contestant line to lodge their application to be on the show. This may constitute consideration.
The Weakest Link	7	There are 10 participants who are asked knowledge questions, and depending on their success contestants are voted off as the “weakest link” by the other contestants.	Monetary prize	Selection of the contestants involves chance. It requires the skill of the contestant to avoid being voted off as the weakest link. It is by chance that they are not voted off by the group or they are chosen to perform a certain task or asked a certain question.	Contestants apply through lodging an application form with a self stamped addressed and stamped envelope or call a contestant line to register their details. This would constitute consideration
Adopt a Dot Promotion	7	Contestants obtain a “Red Dot” from BP Service Stations or by registering on the	Monetary and product prizes.	It is by chance that the winners are selected.	Contestants must purchase the Red Dot

		Channel Seven website. They place the Red Dot on their television screens so that it monitors the particular TV show being watched and the duration of viewing. The Dot is then sent back to the Television Station to have a winner selected at random from the qualifying contestants.			from a BP Service Station or register on the Channel Seven Web site to enter the competition. This may constitute consideration.
Lotto, Oz Lotto and Powerball	7 & 9	Numbers are placed in a vacuum and selected at random. Participants win money when the numbers they have selected match those that are selected.	Monetary prize	It is by pure chance that the numbers randomly selected match those selected by the participant.	Participants pay money for a lottery ticket which allows them to play in the game. This would constitute consideration.
The Mole Survivor Scream Test	7 & 9	Contestants are required to overcome many physical and mental challenges to avoid being voted out by their peers. The remaining contestant is the winner.	Monetary Prize	It is by knowledge, skill and physical ability that the contestants complete their tasks and win money. However it is with chance that they are not voted off by the group and with chance that they are selected for each individual task.	Participants must apply to the TV station for participation on the program, by telephone or sending an application form. This may constitute consideration.
Cricket Broadcasts	9	“Catch of the Season” or “Stroke of the Tour”	Money and product prizes* are available prizes.	There is skill involved in selecting the winning catch a stroke. Thereafter it is a matter of chance to win a prize.	Customers telephone using a 1900 number thus paying to enter the contest.
Who Wants To Be a Millionaire	9	Contestants are asked a series of questions whereby they have four options to choose from to attain the correct answer. They score points for each correct answer. The contestant with the highest amount of points wins. Home viewers may also call up the TV Show and participate.	Money and product prizes* are available prizes.	The contestants skill is required to a certain degree to give a right answer to the questions, however should they not know the correct answer or be unsure of the correct answer, then it is by chance that they choose	Home viewers telephone and pay a consideration being the cost of the call. Additionally the selection process involves lodgment of an application to appear on the show by a 1900

				the correct answer.	telephone call which constitute consideration.
Greed	10	Contestants are selected from the audience and are asked questions. They are made part of a team if these questions are answered correctly. They earn points for answering 4 out of 6 questions correctly and their team gets voted out if they answer a question incorrectly. Team members can be voted out and the winner is determined by the person who has the most points.	Monetary prize	It is by skill that the contestants answer the questions correctly and by chance that they are chosen from the audience to compete.	In order to be part of the audience, and hence be a potential contestant (as they are chosen randomly from the audience) the applicant must lodge their details with a 1900 phone line.
Video Hits	10	Participants are required to watch the program and then call a 1902 phone number. Participants are then required to leave their name and contact details to be entered in the prize draw. The winner is randomly drawn from all callers to the 1902 number.	Product Prizes	It is by chance that winners are selected by way of a computerised random generated draw.	Entrants must call a 1902 number at an elevated rate to enter the competition
Cheez TV	10	Participants are required to watch the program and call a 190 number. They are then required to answer a question relating to an aspect of the program. This question must be answered correctly to qualify them to be entered into the competition. Participants are also required to leave their name and contact details. The winner is picked at random.	Product Prizes	Participants must enter the question correctly to entitle them to be placed in the random draw for winner selection.	Entrants must call a 190 number at an elevated rate to enter the competition and answer the question correctly
Sales Promotions Eg "Say it isn't So Promotion"	10	Participants are directed / pointed to call a 1900 number by in program TVC's. Callers are then required to leave their contact details to be entered in to the prize draw. The winner is picked at random.	Product Prizes	It is by chance that winner/s are selected. Winners are selected by way of a computerised random generated draw.	Entrants must call a 190 number at an elevated rate to enter the competition

<p>Sport Promotions Eg: Shell Helix Promotion</p>	<p>10</p>	<p>Participants are required to watch the program and call a 190 number. They are then required to answer a question relating to an aspect of the program. This question must be answered correctly to qualify them to be entered into the competition. Participants are also required to leave their name and contact details. The winner is picked at random.</p>	<p>Product Prizes</p>	<p>Participants must enter the question correctly to entitle them to be placed in the random draw for winner selection.</p>	<p>Entrants must call a 190 number at an elevated rate to enter the competition and answer the question correctly.</p>
<p>Local Promotions Eg: Adelaide Clipsal 500 Promotion</p>	<p>10</p>	<p>Participants are directed / pointed to call a 1900 number during an in program segment. Callers are required to correctly answer a question based around the program to qualify callers as entrants in the major prize draw. Entrants are then required to leave their contact details. The winner is picked at random from all participants that have answered the question correctly.</p>	<p>Product Prizes</p>	<p>Participants must enter the question correctly to entitle them to be placed in the random draw for winner selection</p>	<p>Entrants must call a 190 number at an elevated rate to enter the competition and answer the question correctly.</p>

* Product prizes are inclusive of holidays, cars, white goods, recreational equipment, house and garden equipment and includes all prizes that it is in the nature of a Game show to give away. This list is not by any means exhaustive.

It should be Noted with all the above programs that *consideration* to participate in the contest or program could be in the form of paying an application fee or submitting an application form with a self addressed and stamped envelope, or calling up a phone line and lodging interest in that form.