

CHAPTER 5

INTERNATIONAL

Australia is already experiencing difficulties as a result of leaving Internet gaming to regulation by each of its States because inevitably the States wind up competing against each other.¹

Introduction

5.1 In this Chapter the Committee discusses the regulatory models of a number of overseas jurisdictions. The discussion provides an overview of the different approaches taken to regulation across the world. It also gives an indication of the pace at which online gambling is developing in different jurisdictions.

5.2 Australia is a world leader in terms of regulating online gambling:

The Australians are market leaders in this area, and by the end of this year, the majority of jurisdictions in the country will have the appropriate regulations in place. Queensland and the Northern Territory have begun the licensing process, and have issued one licence each. Already Australia has IT suppliers and testing companies at the cutting edge of this industry internationally, and who are increasingly in demand, especially from Canadian and European regulators.²

5.3 In contrast, other countries are either beginning to consider regulation (for example South Africa), are facilitating, as opposed to regulating, online gambling (for example Antigua) or have put in place a regulatory model that bans it (the United States).

5.4 Mr Tony Clark, Acting Director, Legislative Services, Northern Territory Department of Industries and Business, stated that online gambling is international:

It is often suggested that online gambling seems to reside entirely in the Caribbean. I would suggest that this is, perhaps, a false premise and that it is wise to proceed on the basis that online gambling exists in one form or another in most countries in Europe. A number of industrialised countries have also signalled their intention to move into the area.³

1 *Project South Africa – Internet Gaming and South Africa: Implications, Costs and Opportunities*, Interim Report for the National Gambling Board, by the National Centre for Academic Research into Gaming, August 1999, p. 13.

2 *Project South Africa – Internet Gaming and South Africa: Implications, Costs and Opportunities*, Interim Report for the National Gambling Board, by the National Centre for Academic Research into Gaming, August 1999, p. 8.

3 *Official Committee Hansard*, Alice Springs, 10 November 1999, p. 156.

5.5 The discussion of the South African model is limited to policy and advisory papers of future intent, as opposed to a legislated regulatory model. The Minister for Gambling in South Africa is considering the range of proposals. In some countries where online gambling is currently being conducted, such as Antigua, the details of the regulatory models are not available.

5.6 In May 1998, the Gaming Regulators European Forum adopted a preliminary position on Internet gaming. Member countries include Denmark, Finland, Germany, the Netherlands, the United Kingdom and Spain.

5.7 The *National Gambling Impact Study Commission Final Report* states that many countries now have laws in place to extend Internet gambling licences.⁴

United States

Overview

5.8 The United States Congress has considered the issue of online gambling on three separate occasions. In 1961, it enacted the Wire Act, which prohibits a person from using 'wire communications' to conduct a gambling business. In 1997, it introduced the Internet Gambling Prohibition Act, which prohibits people from conducting a gambling business on the Internet. Finally, in 1999, Senate Bill 692 was introduced, which builds on the 1997 Act and is specifically tailored to enforce the prohibition of online gambling.

5.9 On 18 June 1999, the *National Gambling Impact Study Commission Final Report* was released.⁵ The report contained a chapter on Internet gambling. The recommendations of the chapter endorse the prohibition of Internet gambling in the United States.⁶

The Wire Act of 1961

5.10 The Wire Act of 1961 introduced new section 1084 of Item 18, United States Code. Its effect is to prohibit a person engaged in the business of betting or wagering from using a wire communication facility for the transmission of bets or wagers. Although the legislation was not developed with the Internet in mind, it nonetheless covers online gambling. However, the suitability of the Wire Act was called into question by the Committee on the Judiciary on 26 July 1999:

4 *National Gambling Impact Study Commission Final Report*, <http://www.ngisc.gov/>, as at 3 August 1999, p. 5-1. The study lists the countries: Australia, Antigua, Barbuda, Belgium, Cook Islands, Costa Rica, Curacao, Dominica, Dominican Republic, Finland, Germany, Grand Turk, Grenada, Honduras, the territory of Kalmykia in Russia, Liechtenstein, Mauritius, St Kitts and Nevis, St. Vincent, South Africa, Trinidad, Turks and Caicos Islands, the United Kingdom, Vanuatu and Venezuela.

5 *National Gambling Impact Study Commission Final Report*, <http://www.ngisc.gov/>, as at 3 August 1999.

6 *National Gambling Impact Study Commission Final Report*, <http://www.ngisc.gov/>, as at 3 August 1999, p. 5-12.

Although Internet gambling, to the extent that it is carried over telephone lines may violate section 1084 and other Federal laws, these laws do not provide mechanisms for combating Internet gambling tailored specifically to this medium.⁷

5.11 The Committee on the Judiciary's report indicates that the Internet brings with it new and unique features that must be dealt with by specific legislation. To this end, the United States Congress has introduced the Internet Gambling Act of 1997, and Senate bill 692, which is sponsored by Senator Jon Kyl (Republican, Arizona). Senate bill 692 is also known as the 'Kyl bill'.

The Internet Gambling Prohibition Act of 1997

5.12 The Internet Gambling Prohibition Act of 1997 amends section 1084 of Title 18, the United States Code. It prohibits a person from using the Internet to conduct a gambling business on the Internet. Therefore, an online gambling operator will have committed an offence under this Act. In contrast, the person who places the bet or wager, does not commit an offence under section 1084.

5.13 The Internet Gambling Act of 1997 also makes provision for the United States Secretary of State to negotiate with foreign countries to help enforce the Act with respect to persons outside of the United States. This will assist the United States Government with the limitations imposed by its jurisdiction.

5.14 Section 1084 of Item 18 prohibits the use of the Internet for the purpose of conducting a gambling business. It does not, however, detail ways in which the prohibition can be enforced.

The effect of the Wire Act

5.15 The Committee heard conflicting evidence about the effect of section 1084. Mr James Colquhoun, Chairman of Canbet Pty Ltd, stated that his organisation was not in fact breaching United States law in accepting wagers from US residents:

... the person who receives the bet [commits a crime], and that is not expected to be changed by Senator Kyl in his bill. ... our window of opportunity was to offer American citizens a legal way of doing something that they had been doing illegally for years. The offer by that person in the US is a perfectly legal offer and the acceptance of that offer by Canbet under its licence in the ACT is perfectly legal and therefore both ends of the contract are legal.⁸

5.16 His view, however, was at odds with that of Mr Paul Crossin, Member, Australian Hotels Association:

7 Senate Rep No. 158, 106th Congress, 1st sess. 1999, p. 11.

8 *Official Committee Hansard*, Canberra, 1 October 1999, p. 3.

We are not targeting the United States market because it is against the law of that country. If we took a bet from a United States based person, then as general manager I could have legal action taken against me.⁹

5.17 Mr Steven Tonneguzzo, Managing Director and Principal Consultant, Global Gaming Services Pty Ltd, commented on the United States law:

America have their own laws and we have ours. I do not know that they have issued a warrant for Peter Bridge [Chief Executive Officer, Lasseters Casino], but the Justice Department has made a clear statement that he is not welcome in America; they have certainly made that very clear.¹⁰

5.18 The recent New York State Supreme Court case *People v World Interactive Gaming Corporation*¹¹, supports Mr Crossin's evidence, and suggests that section 1084 of Item 18 prohibits Australian online gambling service providers from taking bets from United States residents. In that case, the court said that an online casino operating from Antigua and offering gambling services to residents of New York, had breached US Federal laws and New York State laws.

5.19 The central issue was whether the State of New York could bring action against a foreign corporation legally licensed to operate a casino offshore that offered Internet gambling services to New York residents. The Defendant argued that the gambling had fallen outside of New York State gambling prohibitions, because it occurred outside of New York. The court held, however, that under New York Penal Law, if the person engaged in gambling is located in New York, then New York is the location where the gambling occurred. The court commented:

Wide range implications would arise if this Court adopted respondents' argument that activities or transactions which may be targeted at New York residents are beyond the state's jurisdiction. Not only would such an approach severely undermine this state's deep-rooted policy against unauthorised gambling, it also would immunise from liability anyone who engages in any activity over the Internet which is otherwise illegal in this state. A computer server cannot be permitted to function as a shield against liability, particularly in this case where respondents actively targeted New York as the location where they conducted many of their allegedly illegal activities.¹²

5.20 The court noted that United States federal law had also been breached:

9 *Official Committee Hansard*, Canberra, 1 October 1999, p. 32.

10 *Official Committee Hansard*, Canberra, 15 October 1999, p. 106.

11 *People v World Interactive Gaming Corporation (1999)*, p. 4, <http://www.oag.state.ny.us/internet/litigation/wigc.html>, as at 21 October 1999.

12 *People v World Interactive Gaming Corporation (1999)*, p. 4, <http://www.oag.state.ny.us/internet/litigation/wigc.html>, as at 21 October 1999.

Respondents' interstate use of the Internet to conduct their illegal gambling business violates federal law. ... Like a prohibited telephone call from a gambling facility, the Internet is accessed by using a telephone wire. ... By hosting this casino and exchanging betting information with the user, an illegal communication in violation of the Wire Act and the Travel Act has occurred.¹³

5.21 In *Attorney-General of Minnesota v Granite Gate Resorts*, a consumer protection action was launched by the Attorney General of Minnesota against Granite Gate Resorts Inc. The action was brought on 8 July 1995. Granite Gate Resorts Inc operated an Internet gambling site that involved a service called 'Wagernet' – which purported to act as a broker for a fee between two punters who wish to back opposing teams in sporting events.¹⁴ While the Wagernet site was based in Belize, the evidence was that it was actually served from Nevada in the United States.

5.22 The basis of the action was that the defendant, by telling Wagernet customers based in Minnesota that the service was legal, was involved in false and misleading conduct and therefore violated Minnesota's consumer protection laws.

5.23 The Minnesota court commented on the issue of jurisdiction:

The Defendants attempt to hide behind the Internet and claim that they mailed nothing to Minnesota, sent nothing to Minnesota, and never advertised in Minnesota. This argument is not sound in the age of cyberspace. Once the Defendants place an advertisement on the Internet, that advertisement is available 24 hours a day, seven days a week, 365 days a year to any Internet user until the Defendants take it off the Internet.¹⁵

5.24 From this case, an Internet wagering operator who knowingly accepts wagers from a punter physically present in a US jurisdiction such as Minnesota, would technically be in breach of the laws of that jurisdiction.¹⁶

5.25 On 14 August 1999, an item in *The News and Observer*, a North Carolina newspaper, carried a story in which a United States resident had lost \$18 000 with an online casino based in the Netherlands Antilles.¹⁷ The resident, Mr Mark Eisele, was allowed to gamble on credit, and questioned whether the online casino had provided fair playing conditions. Mr Eisele's legal counsel argued that the debt is illegal

13 *People v World Interactive Gaming Corporation (1999)*, p. 6, <http://www.oag.state.ny.us/internet/litigation/wigc.html>, as at 21 October 1999.

14 *Report of the Officers' Working Party on Interactive Wagering*, presented to the Conference of Australian Racing Ministers on 10 October 1997, Appendix 3d.

15 *Report of the Officers' Working Party on Interactive Wagering*, presented to the Conference of Australian Racing Ministers on 10 October 1997, Appendix 3d.

16 *Report of the Officers' Working Party on Interactive Wagering*, presented to the Conference of Australian Racing Ministers on 10 October 1997, Appendix 3d.

17 *The News and Observer* (Raleigh, NC), 14 August 1999.

because the Wire Act prohibits gambling information from being transmitted over telephone lines.

5.26 Most recently, Jay Cohen, president and co-owner of World Sports Exchange, an interactive wagering site operating out of Antigua which takes bets from United States residents, was found guilty of having breached the Wire Act of 1961. Mr Cohen had appealed a previous conviction in 1999, but was found guilty by a New York jury on 28 February 2000.¹⁸ This case is significant as it provides definitively that the Wire Act in fact applies to Internet gambling operations.

5.27 Although it is difficult to state how effective the prohibition of online gambling will be, the Committee heard in evidence that the prohibition has impacted on at least two Australian based online gambling operators.

5.28 Mr Crossin, Member, Australian Hotels Association, has stated that his organisation will not offer its services to United States residents, as this would contravene its laws.¹⁹

5.29 Similarly, Mr Piers Morgan, General Manager, Gaming and Wagering Development, Jupiters Ltd, advised the Committee:

Following Jupiters' acquisition of Centrebet, the United States clientele were informed that Centrebet would no longer accept bets from them due to our concerns regarding the uncertainty of USA legislation regulating Internet gaming and its applicability to offshore operators and their major shareholders.²⁰

Senate 692 - the 'Kyl bill'

5.30 The Kyl bill provides a scheme of prohibition for online gambling. Whereas section 1084 of Item 18, United States Code, prohibits some aspects of online gambling, the Kyl bill sets out a scheme that details the way that the prohibition is to be enforced.

5.31 The Committee on the Judiciary commented on the policy objectives of the Kyl bill:

Just as Congress enacted the Wire Act to prohibit the use of the telephone as an instrument of gambling, S. 692 prohibits the use of the Internet as an instrument of gambling. Just as the Wire Act provides a mechanism for terminating telephone service to gambling businesses, so S. 692 provides an appropriate and effective mechanism for terminating or blocking access to gambling material or activity on the Internet. ... S. 692 is a logical and appropriate extension of existing Federal law and policy. ... The Internet

18 *Sydney Morning Herald*, 1 March 2000, p. 25.

19 *Official Committee Hansard*, Canberra, 1 October 1999, p. 32.

20 *Official Committee Hansard*, Alice Springs, 10 November 1999, pp. 192-93.

Gambling Prohibition Act of 1999 reinforces this well-established Federal policy by, in Senator Kyl's phrase, 'ensur[ing] that the law keeps pace with technology'.²¹

5.32 The Committee on the Judiciary emphasised that simply prohibiting Internet gambling is not adequate. In order to address this problem, the Kyl Bill proposes to add new section 1085 to the United States Code.

Enforcing that prohibition against persons who violate section 1085, and using all of the means provided in section 1085 and other law to remedy violations, are essential.²²

5.33 The Kyl bill enforces the prohibition with a regulatory scheme that requires the participation of Internet service providers (ISPs), in which they may be required to terminate, remove, disable or block access to online gambling content.

5.34 The Attorney-General or an appropriate State official may petition a district court for an injunction to prevent an online gambling operator from engaging a United States resident. If the court determines that it is likely that a violation of a provision of the Kyl bill has or will have occurred, the court may provide injunctive relief.

5.35 If the court grants an injunction, a notice is issued to the relevant ISP. The notice must provide information that is reasonably sufficient to allow the provider to locate the material or activity.²³ The ISP is offered an incentive of immunity from prosecution if it upholds the notice.

Specifically, [an ISP] will receive immunity from liability ... if it maintains and implements a written policy requiring it to terminate the account of a subscriber following receipt by the provider of a notice issued by a Federal or State law enforcement agency that the subscriber has violated or is violating [S. 692].²⁴

5.36 People who access an online gambling site may have committed an offence under other State and Federal law. The Committee on the Judiciary commented on this aspect of the proposed bill:

The prohibitions of [the Kyl bill] apply only to persons engaged in a gambling business and not to 'casual bettors'. Casual bettors who engage in Internet gambling (as well as persons engaged in a gambling business using the Internet) continue to be fully subject to prosecution under applicable State and other Federal law.²⁵

21 Senate Rep No. 158, 106th Congress, 1st sess. 1999, p. 19.

22 Senate Rep No. 158, 106th Congress, 1st sess. 1999, p. 19.

23 Section 3(b)(4) of Senate 692, 106th Congress.

24 Senate Rep No. 158, 106th Congress, 1st sess. 1999, p. 24.

25 Senate Rep No. 158, 106th Congress, 1st sess. 1999, p. 23.

5.37 The Kyl bill suggests that there may be some cases where a request to an ISP to block may not be made. That is, if the court feels that the injunction would significantly burden either the provider or the operation of the system or network of the provider, it may not issue the injunction.²⁶

Progress of the Kyl bill

5.38 The Kyl bill has recently gained passage in the United States Senate:

With the clock running out on this year's Congressional session, [Senator Kyl] was successful for the second time in two years in getting the bill passed in the Senate on a voice vote.²⁷

5.39 It must now gain passage through the United States House of Representatives when Congress resumes in 2000.

South Africa

5.40 The National Centre for Academic Research into Gaming in South Africa presented its National Gambling Board with a report that details the implications for Internet gaming. The South African Government has yet to officially respond to the report.

Overview of South African policy

5.41 From a policy perspective, Internet gaming allows the South African Government to develop an industry that is not compromised by its isolation from major commercial centres. In fact, the major requirements for Internet gaming – a quality information technology structure and a sound regulatory scheme – are two of South Africa's stronger points.

5.42 For South Africa, Internet gaming represents an export market. The report states that:

Estimates of a 25-33% share of a \$7-billion industry for South Africa-based Internet gaming business within two years are not unreasonable, given the right policies. It is also not unreasonable to expect these earnings to be sustainable, provided businesses operating out of South Africa establish themselves before those of other credible and competing countries.²⁸

5.43 The report cites a study by the consulting firm, Merrill Lynch, which states that there will be an exponential growth in the online gambling industry with the advent of digital television. When digital television is introduced on a global scale,

26 Section 3(C) of Senate 692, 106th Congress.

27 Internet Gaming News, <http://www.igamingnews.com/index.cfm>, as at 20 November 1999.

28 *Project South Africa – Internet Gaming and South Africa: Implications, Costs and Opportunities*, Interim Report for the National Gambling Board, by the National Centre for Academic Research into Gaming, August 1999, p. 3.

therefore improving access to the Internet, the online gambling market will become more competitive:

Because of this enormously improved access to Internet gaming, it is already clear that the major international gaming operators will enter the industry, forcing out the small players with their global brand names and multi-media links. Regulatory authorities in the world's bigger and more established economies will anticipate this gear change in the industry, and will introduce the appropriate probity, legal and compliance measures to regulate this increasingly profitable business.²⁹

5.44 The National Academic Centre for Academic Research into Gaming advises the South African Government to prepare itself to be a competitor in the year 2001. Until this date, it should lay the groundwork and create the brand presence that are necessary for a successful venture into the Internet gaming market.

5.45 South Africa has two policy objectives:

- First, it must position itself internationally as the most attractive jurisdiction for suppliers of Internet gaming services.
- Second, it must ensure that its regulations offer levels of player protection which are widely acceptable to foreign governments and which, in due course, may be expected to be incorporated in some form of international agreement.³⁰

Features proposed for the South African model for regulation

5.46 Some features that are proposed for the South African regulatory model for online gambling include:

- national regulatory body
- player protection
- problem gambling (self-exclusions)
- underage gambling
- taxation.

29 *Project South Africa – Internet Gaming and South Africa: Implications, Costs and Opportunities*, Interim Report for the National Gambling Board, by the National Centre for Academic Research into Gaming, August 1999, p. 8.

30 *Project South Africa – Internet Gaming and South Africa: Implications, Costs and Opportunities*, Interim Report for the National Gambling Board, by the National Centre for Academic Research into Gaming, August 1999, p. 10.

National regulatory body

5.47 The National Centre for Academic Research into Gaming advises that Internet gaming should be a national rather than a provincial competence, and, therefore, regulated by the National Gaming Board of South Africa. Arguments supporting a national regulatory board are as follows:

- A successful Internet gaming industry is primarily dependent on the generation of international trust;
- Regulations endorsed and administered by the South African Government will be perceived internationally as more authoritative than if the same regulations were administered by nine different Provinces;
- Australia is already experiencing difficulties as a result of leaving Internet gaming to regulation by each of its states because inevitably the states wind up competing against each other;
- Internet policy is really part of a project in international commerce aimed at securing significant export earnings for the South African economy, and as such should be governed by national policy; and
- The National Gambling Board is already established and is the repository of the collective South African experience and skill in the area of gaming regulation.³¹

Player protection

5.48 South African online gambling operators will need to ensure that their technical operations (that is, their 'control system') offer players a suitable level of protection. There will be minimum requirements for the control system:

- It must ensure that the games offer fair playing conditions for consumers. This includes ensuring that the online gambling operator cannot tamper with the result or outcomes of games and guaranteeing a minimum return for consumers.
- Government regulators must be able to audit the control system.

Problem gambling

5.49 Consumers will be able to exclude themselves from an online gambling site. They will be able to stipulate in advance a maximum amount that they are allowed to lose in any one 24-hour period.³²

31 *Project South Africa – Internet Gaming and South Africa: Implications, Costs and Opportunities*, Interim Report for the National Gambling Board, by the National Centre for Academic Research into Gaming, August 1999, p. 13.

32 *Project South Africa – Internet Gaming and South Africa: Implications, Costs and Opportunities*, Interim Report for the National Gambling Board, by the National Centre for Academic Research into Gaming, August 1999, p. 18.

Underage gambling

5.50 A system will be devised and implemented for player registration prior to the player being entitled to gamble on the system. It should provide a reasonably adequate assurance of the identity of the player, but not be so impracticable as to render the system undesirable for participants.³³

Taxation

5.51 A competitive and attractive taxation regime for online gambling is likely to be put into place.

South Africa's opportunity ... is to make its tax regime more attractive than that of Australia, and European countries, relying rather on a large number of operators paying corporate tax to the local exchequer, rather than a small number of operators paying a high level of gaming levies.³⁴

Europe

Gaming Regulators European Forum

5.52 The Gaming Regulators Forum issued a 'Position Statement on Gambling On the Internet' at its meeting on 15 May 1998, in Helsinki. Representatives from 15 countries were present.

5.53 The Position Statement says that online gambling is the responsibility of each jurisdiction:

The Gaming Regulators European Forum regards the regulation of gambling (that is gaming, betting and lotteries) as a matter for the competence and jurisdiction of individual countries, in the light of their particular social, cultural and economic conditions. It therefore follows that it is a matter for individual Governments, either at national or at autonomous regional level, whether or not they wish to permit any forms of gambling to be offered on the Internet in their territories and, if they do, under what circumstances or conditions particular forms of gambling are to be allowed. Any such decisions should be respected by other jurisdictions.³⁵

5.54 The Position Statement also outlines the issues that must be considered by each jurisdiction, in order to ensure quality regulation:

33 *Project South Africa – Internet Gaming and South Africa: Implications, Costs and Opportunities*, Interim Report for the National Gambling Board, by the National Centre for Academic Research into Gaming, August 1999, p. 19.

34 *Project South Africa – Internet Gaming and South Africa: Implications, Costs and Opportunities*, Interim Report for the National Gambling Board, by the National Centre for Academic Research into Gaming, August 1999, p. 22.

35 Gaming Regulators European Forum Position Statement on Gambling on the Internet, <http://www.rivercitygroup.com/summit/audiofiles/regulatorspanel.cfm>, as at 25 November 1999, Helsinki, 15 May 1998, p. 1.

- The methods to be used to ensure that such operations are fairly conducted and the players are fully aware of the rules that apply.
- The methods of ensuring that such operations are not used as a means also of conducting any illegal activities, in particular for money laundering.
- The permitted arrangements for paying for wagers on the gambling offered, including restrictions on the granting of credit.
- The methods of protecting and guaranteeing the funds deposited and the monies won by the players.
- The means of ensuring that no players are under the legally permitted age for the appropriate form of gambling in the jurisdiction concerned.
- The means and level of protection to be offered to compulsive gamblers and others who have difficulty in controlling their gambling.
- The controls to be placed on advertising, particularly in respect of jurisdictions which do not permit such gambling or do not welcome such advertising.
- The methods to be used to protect the privacy of the players and the confidentiality of the information provided by them.
- The methods to be used to ensure data protection and security of transmission.
- The methods to be used to ensure that tests and checks are conducted regarding the randomness of the games and, including EDP-audits, regarding the electronic gaming systems used by the operators.³⁶

Great Britain

5.55 In Great Britain, online gaming and interactive wagering are permissible, but are subject to various limitations.

Online gaming

5.56 The Gaming Board for Great Britain outlined its position in its 1998-99 Annual Report. It stated that the licensing requirements for conducting a gaming business (online or land based) require the player to be present at the gaming venue:

Casino, bingo and machine gaming can only be conducted on licensed or registered premises and players have to be present on the premises. Hence

36 Gaming Regulators European Forum Position Statement on Gambling on the Internet, <http://www.rivercitygroup.com/summit/audiofiles/regulatorspanel.cfm>, as at 25 November 1999, Helsinki, 15 May 1998, pp. 1-2.

for instance no licence could be granted in Britain to an Internet casino and it would be illegal to operate one here.³⁷

5.57 Consequently, new legislation must be introduced before an online gambling operator can set up their operations in Great Britain. There has not yet been any indication that online gambling legislation will be introduced in the near future.

Interactive wagering

5.58 Certain instances of interactive wagering are legal. The policy position for interactive wagering is that the Internet, like the telephone, is allowed to be used to facilitate wagering activity:

Bookmakers have for many years been able to accept telephone bets from clients with credit accounts. There is therefore nothing to prevent them accepting such bets by e-mail. Likewise, football pools have always been able to accept entries by post and could therefore also use e-mail.³⁸

5.59 There are, however, restrictions to the scope of interactive wagering in Great Britain. Mr Tony Coles, a British lawyer specialising in gambling legislation, has stated that:

A provider of commercial Internet betting cannot bring himself within the legislation by conducting operations through a licensed betting office but if he operates from premises to which the public do not have access, the operator can lawfully act as a bookmaker so long as he is the holder of a Bookmaker's Permit. ... so long as the person bets with a bookmaker holding a Bookmaker's Permit ... the use of the Internet is only a communication medium and no different than using the mail or telephone.³⁹

The Caribbean

5.60 Information on the regulation of online gambling in the Caribbean is not readily available. From evidence provided to the Committee it appears that many jurisdictions in the Caribbean offer little or no regulation.

5.61 Mr James Colquhoun, Chairman, Canbet Pty Ltd and Mr Derk Swieringa, General Manager, Canbet Pty Ltd, commented on the type of online gambling operations found in the Caribbean:

Mr Colquhoun: If you want to start a cyberspace casino or sports betting business in the Caribbean, you go down to one of the islands such as Dominica, Grenada, Antigua, Dutch Antilles and you walk up to the...

37 *Gaming Board for Britain Annual Report 1998-99*, London, 1999, p. 9.

38 *Gaming Board for Britain Annual Report 1998-99*, London, 1999, p. 9.

39 Tony Coles, 'United Kingdom Laws and Reaction to Internet Gambling' in Anthony Cabot (ed.), *The Internet Gambling Report*, third edition, Las Vegas, 1999, p. 220-24.

Mr Swieringa: Police chief.

Mr Colquhoun: ... and he takes \$100,000 and says, 'Go for it.'

Senator Mark Bishop: And you just create all the necessary processes to achieve bets then?

Mr Colquhoun: You have to put it on the Internet and you have to have the right bandwidth and the lines and those sorts of things, but they can do it, and they do do it.

Senator Mark Bishop: So you pay a fee to the local authorities and then you are in business.

Mr Colquhoun: Yes, you are away. They do not care who you are, what your name is and whether you are a goodie or a baddie.⁴⁰

5.62 Mr Colquhoun also added, however, that there are reputable online gambling operators in the Caribbean, despite the relaxed regulatory environment:

There are some reputable ones there that are well operated. Intertops is one. They originally started in Austria and went over there. They seem to be doing very well but they have been going since 1985. What happens in the Caribbean is that you can walk in there and buy a turn-key operation which gives you all the software and all that is needed if you have some customers. You pay the man who is the commissioner of police, if you have to, and then you can start straightaway as long as you have the bandwidth.

A lot of them do that but they do not last very long. Where they do not last very long, that is because they pick up all the money and put it in a suitcase and go away and do not pay the people or they lose. I do not really know, but I know that they do not last. Here the four licences were all granted in 1996 and they have all lasted, and they are doing quite well.⁴¹

Conclusion

5.63 The global interest in online gambling indicates that this is an industry that has the potential to be profitable for both governments and the gambling industry.

5.64 The proposed South African regulatory model identifies the e-commerce and information technology benefits associated with online gambling. The United States regulatory model responds to the negative impacts of online gambling, with the United States Government moving to ban various aspects of it.

5.65 The Committee notes that the United States model indicates that the Internet is capable of regulation in so far as it applies to online gambling. This is evidenced by

40 *Official Committee Hansard*, Canberra, 1 October 1999, p. 7.

41 *Official Committee Hansard*, Canberra, 1 October 1999, p. 15.

the impact that the United States model has had on some the business practices and services offered by online gambling operators.

5.66 Australia must take into account the benefits and problems that online gambling can bring, and must seek to ensure a regulatory model that provides an appropriate balance between the positive and negative impacts of online gambling.

