

Senate Select Committee on Information Technologies

Netbets: A Review of Online Gambling in Australia

Australian Democrats Supplementary Comments Senator Stott Despoja

The following comments reflect the consensus of the Australian Democrats' Party Room. We agree with the evidence as it is presented and primarily we agree with the Chair's recommendations as contained in the report *Netbets: A Review of Online Gambling in Australia*.

1. Executive Summary

- 1.1 The following supplementary comments to the Report are submitted in my capacity as the Australian Democrats (participating) member of the Senate Select Committee on Information Technologies. These comments reflect additional comments and the ascendancy of concerns of the Australian Democrats.
- 1.2 There is a need for a federally coordinated regulatory approach to address the varying concerns and issues surrounding online gambling operations in Australia.
- 1.3 Strong user privacy provisions are a principle regulatory priority of the Australian Democrats.
- 1.4 Access of minors to internet gambling, while of concern, is not considered a problem of the same gravity as access to other sensitive internet material. We support the Productivity Commission's observation that there is modest motivation and capacity for unsupervised and regular gambling by minors.
- 1.5 The Australian Democrats believe that the areas of main concern briefly outlined in these supplementary comments are best addressed by a multifaceted regulation option for domestic internet gambling operations. Regulation must take into account the diversity of the Internet, the global characteristics of the medium, and the legitimate and responsible use of the medium by adults.
- 1.6 The Australian Democrats register our concern regarding the transparency of online gambling licence applications. We recognise that accountability and transparency of licence applications, assessment and approval have not been extensively examined in this current inquiry. Transparent approval and review

mechanisms are needed to ensure user confidence and a fair and equitable domestic industry.

- 1.7 This committee has a wide range of interests. The Australian Democrats recognise the need for further examination of the wider relating issues surrounding the internet. The Australian Democrats support the further examination of transparency, privacy and finance issues in the global internet environment and the potential of e-commerce.

2. Areas of Issue

2.1 Access by minors and use of online gaming services

The impact of Internet gambling on minors appears to be a predominant concern. This is logical considering that the majority of Internet users are young people.¹

The Australian Democrats maintain that adult responsibility is the most crucial component in any attempt to control the way in which minors use the Internet.

The Australian Democrats have registered their concern regarding the reduced significance of adult responsibility under recent federal internet legislation, namely the Broadcast Services Amendment (Online Services) Bill 1999 and maintain, with respect to minor access to online gambling, that responsible adult supervision is paramount in effective and appropriate use of the internet by minors.

One of the positive features of Internet gambling, although having the possible application (with intranet gambling) in traditional gambling establishments, is its use in the home. Participation in online gaming in a grounded environment such as the home with family members may assist in discouraging problem behaviours and provide and promote responsible supervision by responsible adults, restricting access to minors.²

2.2 Privacy

The international Internet gaming market is estimated to be worth more than \$US7 billion by the year 2001. If Australia can effectively regulate internet gambling, attracting participants through guaranteed privacy and security as much as \$US2 billion could be generated from foreign investment, export opportunities, domestic employment growth and tax revenue.³

¹ New Zealand Department of Internal Affairs Policy Unit (1995), *The Impact of Technology on New and existing Forms of Gaming in New Zealand*, NZGP.

² Productivity Commission (July 1999) *Australia's Gambling Industries*, Draft Report Volume 1, Canberra.

³ Raysman & Brown, 'Cyber-casino: Gambling meets the Internet' *The New York Law Journal* (1999), <http://www.ljx.com/Internet/0812cycasinos>.

Privacy of both transactions and communications remain significant concerns to Internet users, though this is yet to be adequately addressed by Government.

Many users remain concerned that monitoring of their Internet use might be used against them in potentially discriminatory applications of such information.

It is central to positioning Australia as a market leader in the emerging online gambling industry to guarantee the privacy and security of users.

The failure to properly address issues of security and encryption had been one of the most serious impediments to the growth of the online economy worldwide. Users remain wary of using electronic commerce services in the absence of highly secure systems.

Internet users are wary of electronic transactions that are not protected by an appropriate legal regime. The Government's recent proposals only go part of the way towards the provision of this legal environment.

Privacy of player information, credit card details currently used to operate online gambling services must be protected. This is a primary concern of the Australian Democrats in regulation of this technology.

Whilst recognising that player databases are required for professional online gambling operations, use of player profile information, individual financial profiles, player behaviour and betting frequency, individual identity information must be approached with caution.

The use of player databases to identify and address problem players must be clearly outlined. There is a balance to be reached between players autonomy to undertake gambling activities and harm reduction mechanisms. Databases and authoritative intervention in individuals gaming behaviours should not be seen as a preferred mechanism to address problem behaviours.

Self-exclusionary mechanisms and practices may provide a more viable harm minimisation mechanism in an online environment than in traditional casino and gambling environments. The Australian Democrats do not discount self-exclusion as an option in a multifaceted harm minimisation approach, though hold reserves regarding the protection of databases developed for voluntary exclusion or extended 'cool off' periods.

The Australian Democrats support the requirement of encryption, firewalls and security to protect player information and ensure secure database storage in an online operating environment.

While recognising the scheme of protection that section 14 of the *Privacy Act 1988* provides for ensuring privacy of player information in addition to the *OECD Guidelines of the Protection of Privacy and Transborder Data Flow of*

Personal Data, the online environment provides unique privacy issues and challenges which require further consideration and protection.

2.3 *Licensing*

The Australian Democrats have concerns regarding some current State and Territory based licensing practices and the questionable transparency of the granting of these licences.

It is recommended that a nationally coordinated transparent application and grant system is investigated and undertaken, in a coordinated approach providing a uniform and accountable mechanism to grant licences.

2.4 *E-commerce*

Development of online services and the exchange of information via online electronic means are providing a medium for innovation and economic opportunity and a means of information, education and self-development.

The Australian Democrats maintain that online technology has enormous potential in all areas of our lives. Our task as law-makers is to ensure that we adopt regulatory measures where necessary. Areas of economic commerce must balance consumer and customer interests carefully, ensuring consumer confidence and industry viability simultaneously.

Laws should not be passed which will stifle innovation and development which have the potential to result in wealth, jobs and improved lifestyles.

The Australian Democrats do however see the generation of government revenue as a secondary consideration in the regulation of this industry.

Regulation therefore of the online environment must strike a balance, acknowledging the potential of this dynamic innovative medium and its economic opportunities but also the public interest.

3. Regulation options

3.1 *Prohibition*

The Australian Democrats do not support prohibition as a viable regulatory option for the Internet.

The Internet distributes information in the way of 'packets' which once sent, disperse through the network to find the fastest and most efficient route and reunites to form the original message. The prohibition of internet content

therefore is ineffective as the Internet ‘interprets censorship as damage and routes around it’.⁴

Prohibition of unlicensed Australian sites is a possibly more effective application of such regulation. Though, prohibition measures will not have any impact on unlicensed sites based overseas.

3.2 *Non-regulatory measures*

The Australian Democrats support a multifaceted harm minimisation and education campaign to complement a ‘managed liberalisation’ (see below) regulative system.

Education, information provision, support and counselling services are essential to the responsible operation of the Australian online gambling industry. The Australian Democrats support the use of tax revenue to fund non-regulatory provisions including education, information and counselling/support services.

3.3 *‘Managed Liberalisation’ approaches*

The Australian Democrats support the argument that over time consumers will gravitate toward online gambling sites with reputations for quality and fairness. In this capacity consumers are the most effective regulators of all, being initially cautious of new technologies such as Internet gambling services. The potential for fraud and money laundering however disallows self-regulation as a viable option for online gambling.⁵

The Australian Democrats support a multifaceted regulatory approach to online gambling including ‘managed liberalisation’ regulatory measures (as advocated by the Productivity Commission’s *Australia’s Gambling Industries* report) as it is committed to harm minimisation and consumer protection.

Acceptance of the global nature of this technology requires a managed and multifaceted approach. Content labelling and onsite warning labelling are welcomed and needed measures to inform and educate responsible adult users.

Probity requirements of regulated gambling sites provide a vehicle to impose harm minimisation strategies including time reminders, maximum betting limits and self-exclusion capabilities.

3.4 *Bilateral and Multilateral Agreements*

⁴ Gilmore in Greanleaf G (1998) *An endnote on regulating cyberspace: architecture vs law?*, University of NSW Law Journal, vol 21 no 2. <http://www.austlii.edu.au/au/other/...atic/1998/vol21no2/greanleaf.html> at page 2.

⁵ Australian Council of Social Security (1997) *Young People Gambling and the Internet*, no 88 ACOSS

The Australian Democrats support bilateral and multilateral understandings on internet operation and to protect consumer and industry interests in keeping with the Internet's disregard for jurisdictional boundaries.

National and international jurisdictions should encourage internet gambling operators to identify themselves, their licence details and the regulations of all the jurisdictions in which they operate.

3.5 *Uniform national regulatory framework.*

The Australian Democrats recognise the need to consolidate and simplify online gambling regulations and to ensure adequate standards of consumer protection. A standard national approach to regulation of internet gambling operations is noted to have support by both user and operator interests.

National regulatory framework needed as the internet does not respect jurisdictional laws or boundaries, government and regulatory must be conscious of the global implications of their rules in order for a regulatory framework to be effective

The Australian Democrats support uniform multifaceted regulation of the online gambling industry incorporating non-regulatory harm minimisation and 'managed liberalisation' measures for an online gambling regulatory framework. A middle ground between prohibition and self-regulation which commits to harm minimisation and consumer protection while promoting the responsible operation of the domestic online gambling industry.

Natasha Stott Despoja

Senator for South Australia

Deputy Leader of the Australian Democrats

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