

CHAPTER 2

SUMMARY OF INQUIRIES

Introduction

2.1 This chapter provides a summary of the terms of reference and recommendations of each of the Committee's inquiries, commencing with the most recent inquiry. In addition, a short summary of the outcomes of each report is discussed.

e-Privacy Inquiry

Terms of reference

2.2 On 11 May 2000, the Committee resolved to inquire into e-privacy in Australia under part (b) of its terms of reference, in order to examine:

- the protection of consumer information obtained through electronic transactions, including browsing on the Internet and 'EFTPOS' transactions;
- the privacy and disclosure obligations of organisations that have access to consumer databases; and
- the access by consumers to personal information held in consumer databases.

Report and recommendations

2.3 On 9 November 2000, the Committee tabled its report *Cookie Monsters? Privacy in the information society*. The report contained the following recommendations:

Recommendation 1

The Committee recommends that the Federal Privacy Commissioner develop and authorise for display a privacy webseal. The webseal will assure consumers at a glance of the privacy credentials of a particular organisation, and will offer at least the following information and services to consumers. It will:

- enable consumers to opt out of any direct marketing communication from the outset of the customer relationship;
- provide advice on how to obtain access to and correct one's personal records;
- facilitate the complaints process by identifying the code adjudicator and providing either a complaints form, or advice about how complaints should be submitted;
- provide details on the industry privacy code, if any, that applies to the organisation;

- provide the complaints statistics of the applicable code, including information about the average time taken to process complaints, and details of the number, nature and outcome of the complaints;
- provide clear and unambiguous advice about the information handling practices of the organisation; and
- provide a link to the website of the Federal Privacy Commissioner.

The privacy webseal will benefit both consumers and online businesses. It will assist consumers to protect their own privacy by informing them of their privacy rights and empowering them to take action to protect them. Online businesses will be able to demonstrate their commitment to consumer privacy, providing them with a valuable market advantage.

Recommendation 2

The Committee recommends that the Federal Privacy Commissioner review the August 1994 ‘Advice for Commonwealth agencies considering contracting out (outsourcing) information technology and other functions’, paying specific regard to security and privacy functions, including:

- risk assessment of privacy threats arising from outsourcing; and
- procedures for monitoring and ensuring the privacy compliance of an external service provider.

The Committee recommends that the Federal Privacy Commissioner issue similar guidelines for private sector organisations that are involved in outsourcing IT functions to external service providers.

Recommendation 3

The Committee recommends that the media exemption in the Privacy Amendment (Private Sector) Bill 2000 be amended to prevent media organisations from publishing bulk records about Australian citizens that include details of names and addresses, and to enable consumers to obtain access to information about themselves that is held by a media organisation.

Recommendation 4

The Committee recommends that information collected through the use of new technologies such as cookies and web bugs, which may indirectly identify consumers, be regulated by the *Privacy Act 1988*. In order to ensure this outcome, the Attorney-General could amend the definition of ‘personal data’ in the *Privacy Act 1988* or, alternatively, the Privacy Commissioner could issue guidelines to specify that the information is ‘personal data’ for the purposes of the *Privacy Act 1988*.

Recommendation 5

The Committee recommends that the Attorney-General report on whether the privacy regime established by the Privacy Amendment (Private Sector) Bill 2000 will be approved by the European Commission. If, in its current version, the Bill would fail to meet the Commission's standards, the Attorney-General should table in the Parliament a report outlining the necessary changes so that approval could be secured.

Recommendation 6

The Committee recommends that the exemption for small business in the Privacy Amendment (Private Sector) Bill 2000 be amended so that small businesses that accept payment for goods and services over the Internet are excluded from the small business exemption.

Recommendation 7

The Committee recommends that the Federal Privacy Commissioner be given the power to conduct random privacy audits of private sector organisations that are subject to the National Privacy Principles, in order to monitor their compliance with the Principles.

Outcomes

2.4 The Government should table its response within three months after the tabling of the report (ie February 2001).

2.5 The Committee notes that the Privacy Amendment (Private Sector) Bill 2000 was passed by the Senate with amendments on 6 December 2000. The House of Representatives disagreed with the amendments but the amendments made by the House in place of certain Senate amendments were agreed to by the Senate on 6 December 2000.

Internet Gambling Inquiry

Terms of reference

2.6 On 25 June 1999, the Committee resolved to inquire into online gambling in Australia under part (b) of its terms of reference, in order to examine:

- the nature, extent and impact of online gambling in Australia;
- the feasibility of controlling access to online gambling, especially by minors;
- the adequacy of State and Territory regulations in relation to online gambling;
and
- the need for federal legislation.

Report and recommendations

2.7 On 16 March 2000, the Committee tabled its report *Netbets: A review of online gambling in Australia*. The report contained the following recommendations:

Recommendation 1

The Committee recommends that Federal, State and Territory governments work together to develop uniform and strict regulatory controls on online gambling with a particular focus on consumer protection through the Ministerial Council on Gambling.

Working with its expert advisory body of community and gambling representatives and resourced by the National Office for the Information Economy, the Council should develop a range of policies that reflect existing community standards, and which will be applied by all States and Territories.

These policy initiatives should include:

- clear procedures to assist problem gamblers such as outlawing direct credit card online gambling, self and third party exclusion, pre determined betting amounts, limited gambling times with a regular ‘cooling off’ period and a permanent screen display of financial losses and gains.
- the prohibition of any form of game manipulation, specifically the ‘near miss’ signal, which gives gamblers the perception that they have just missed out on a jackpot, thereby inducing them to continue gambling.
- the provision of personal electronic security passwords, ‘challenge’ questions and PIN numbers to ensure that gambling sites cannot be accessed by any other family member.
- strict privacy arrangements to protect consumers’ financial details including gambling accounts, credit card identification and exclusion arrangements.
- legislation to ensure that all online winnings are paid by non-negotiable cheques posted to the registered gambling account holder. Credit card accounts should not be used to receive automatic payment from online gambling wins.
- the need to work with international agencies, the National Crime Authority (NCA) and the Australian Transaction Reports and Analysis Centre (AUSTRAC) to stop Australian online gambling sites being used to ‘launder’ large amounts of illegally acquired money.

Pending the implementation of these consumer protection policies the Committee recommends that no further online gambling licences be granted in Australia for a limited period of time. This moratorium should be implemented by the Ministerial Council on Gambling with the assistance of Federal, State and Territory governments, or through the Commonwealth’s power to regulate telecommunications.

Recommendation 2

The Committee recommends that all registered online gambling operators be required to impose on individuals a secure electronic pathway before access is given to gambling sites. This access should detail information on assistance available for problem gambling and contact numbers for immediate telephone counselling.

Additionally, each online casino must establish a 'chat room' so that players can speak directly with a casino employee to obtain information on odds applying to games on offer.

Recommendation 3

The Committee recommends that State and Territory governments contribute a fixed percentage of their gambling revenue to a national education campaign on gambling and to agencies that assist and rehabilitate problem gamblers. The education campaign should be approved by the Advertising Standards Board, and include a particular emphasis on the potential dangers posed by regular gambling.

Recommendation 4

A national Code of Conduct for advertising should be developed with the approval of the Advertising Standards Board in conjunction with the gambling industry. This Code of Conduct should impose limitations on the advertising of online gambling, and include warnings about the potential financial impact of problem gambling using material similar to those used in smoking, alcohol and road safety campaigns.

Recommendation 5

Because of the potential dangers to consumers of this rapidly expanding industry, the Senate should again promptly review the recommended policy changes in the sector to measure the effectiveness of these recommendations and to examine the effect on the community of any new online gambling opportunities including interactive television.

Outcomes

2.8 Whilst there has been no formal Government response to the report to date, the Interactive Gambling (Moratorium) Bill 2000 was introduced into the Senate on 17 August 2000 and referred to the Environment, Communications, Information Technology and the Arts (ECITA) Legislation Committee for inquiry and report by 4 September 2000.

2.9 The Bill imposes a 12-month moratorium on the development of the interactive gambling industry in Australia by creating a new criminal offence, the provision of an 'interactive gambling service'. The new offence prohibits a person from providing an interactive gambling service unless the person was already

providing the service when the moratorium commenced on 19 May 2000. The offence ceases to have effect at midnight on 18 May 2001.¹

2.10 Government members of the ECITA Legislation Committee recommended that the Bill proceed without amendment. The Opposition members and the Australian Democrats member of the Committee opposed the bill in its present form.

2.11 The bill was debated in the Senate on 5 and 9 October and due to a tied vote at the third reading stage, the bill was defeated.

2.12 The Senate agreed to a recommittal of the Interactive Gambling (Moratorium) Bill 2000 on 5 December 2000. The Government proposed amendments to the original bill to:

specifically exclude an additional category of services from the definition of interactive gambling services, namely certain types of wagering services. The effect of these amendments is that certain types of wagering services are excluded from the moratorium.²

2.13 Wagering services excluded from the moratorium include:

betting on a horse race, harness race, greyhound race or sporting event or series of these races and events... However, wagering services relating to a sporting event after the event has begun, will not be excluded from the moratorium.³

2.14 The Senate agreed to the amendments and the bill was passed on 6 December 2000.

Self-regulation

Terms of reference

2.15 On 31 March 1999, the Committee resolved to complete the inquiry commenced by the former Committee in the 38th Parliament, under part (a) of its term of references, namely:

- to evaluate the appropriateness, effectiveness and privacy implications of the existing self-regulatory framework in relation to the information and communications industries and, in particular, the adequacy of the complaints regime.

1 Senate Environment, Communications, Information Technology and the Arts Legislation Committee, *Report on the Interactive Gambling (Moratorium) Bill 2000*, September 2000, p 1.

2 Interactive Gambling (Moratorium) Bill 2000, Supplementary Explanatory Memorandum, p 1.

3 Interactive Gambling (Moratorium) Bill 2000, Supplementary Explanatory Memorandum, p 1.

Report and recommendations

2.16 On 13 April 2000, the Committee tabled its report *In the Public Interest: Monitoring Australia's media*. The report contained the following recommendations:

Recommendation 1

The Committee recommends that an independent statutory body, known as the Media Complaints Commission (MCC), be established to more effectively protect the right to privacy and empower individuals in lodging a complaint against Australia's information and communications industries.

Recommendation 2

The Committee recommends that the MCC provide a single reference point for all complaints, regardless of which information or communications industry is involved. As a one-stop-shop, the MCC will also assist individuals with the complaints process.

Recommendation 3

The Committee recommends that the MCC function as a final adjudicatory body for complaints. In this capacity, it will be able to impose sanctions in addition to those that currently exist.

Recommendation 4

The Committee recommends that, in the MCC's annual report to the Parliament, the MCC show how it has contributed to the better and more proactive enforcement of the self-regulatory codes. It should also include comprehensive data about the complaints that it has recorded throughout the year and the way in which they have been resolved.

Recommendation 5

The Committee recommends that section 148(c)(i) of the *Broadcasting Services Act 1992* be amended so that complaints about a broadcast can be addressed to the Australian Broadcasting Authority 30 days after the original complaint to the broadcasting service operator.

Outcomes

2.17 The Minister for Communications, Information Technology and the Arts, Senator the Hon Richard Alston, advised the Committee on 26 October 2000, that because the IT Select Committee report raises a number of issues that have also been identified in the Productivity Commission's Inquiry Report into Broadcasting and in the Australian Broadcasting Authority's Final Report on the Commercial Radio Inquiry; it would be appropriate that the Government Response to the IT Committee report be delayed so that its recommendations are considered in the context of these

related reports. The Government expects to be able to respond to all three reports ‘in the near future’.⁴

Broadcasting Service Amendment (Online Services) Bill 1999

Terms of reference

2.18 On 31 March 1999, the committee resolved to inquire into part (c) of its terms of reference, namely:

- examine the Government’s decision to establish a regulatory framework relating to illegal or offensive material published and transmitted through online services such as the Internet.

2.19 On 23 April 1999, the Senate referred the Broadcasting Service Amendment (Online Services) Bill 1999 for inquiry and report by 11 May 1999.

2.20 The bill proposed to amend the *Broadcasting Services Act 1992* to provide for the regulation of online services by:

- establishing a complaints mechanism to enable complaints to be made to the Australian Broadcasting Authority (ABA) about offensive material online;
- defining material that will trigger action by the ABA, on the basis of current National Classification Board guidelines for film, as material Refused Classification and rated X, and material rated R that is not protected by adult verification procedures;
- giving powers to the ABA to issue notices to service providers aimed at preventing access to prohibited material which is subject to a complaint if it is hosted in Australia or, if the material is sourced overseas, to take reasonable steps to prevent access if technically feasible;
- providing indemnities for service providers to protect them from litigation by customers affected by ABA notices;
- providing a graduated scale of sanctions against service providers breaching ABA notices or the legislation;
- providing that the framework will not apply to private or restricted distribution communications such as e-mail (subject to the ability of the Minister to declare that a specified person who supplies, or proposes to supply, a specified Internet carriage service is an Internet service provider) – however, current provisions of the *Crimes Act 1914* (Cth) in relation to

4 Letter from Senator the Hon Richard Alston, Minister for Communications, Information Technology and the Arts, to Senator Jeannie Ferris, Chair, Senate Select Committee on Information Technologies, dated 26 October 2000.

offensive or harassing use of a telecommunications service will apply in this context;

- establishing a community advisory body to monitor material, operate a ‘hotline’ to receive complaints about illegal material and pass relevant information to the ABA and police authorities, and also advise the public about options such as filtering software that are available to address concerns about online content;
- giving the Commonwealth responsibility for regulating the activities of Internet service providers and Internet content hosts, and providing that the Attorney-General is to encourage the development of uniform State and Territory offence provisions complementing the Commonwealth legislation that creates offences for the publication and transmission of proscribed material by users and content creators; and

makes a consequential amendment to the *Crimes Act 1914*.⁵

Report and recommendations

2.21 The Committee tabled its report on 11 May 1999. The majority of the Committee supported the passage of the bill without amendment.

Outcomes

2.22 The bill was subsequently debated and agreed to, with amendments, in the Senate on 26 May 1999, and agreed to in the House of Representatives on 30 June 1999 (Act No. 90 of 1999).

2.23 Before 1 January 2003, the Minister must conduct a review on the general development of Internet content filtering technologies; whether Internet filtering technologies have developed to the point where it is practicable to use those technologies to prevent end-users from accessing R-rated information hosted outside Australia that is not subject to the restricted access system; and any other relevant matters. The Minister’s report must be tabled in each House of the Parliament.⁶

5 Senate Standing Committee for the Scrutiny of Bills, Ninth Report of 1999, dated 26 May 1999.

6 *Broadcasting Services Amendment (Online Services) Act 1999*, Schedule 1, clause 95.

