

The *Post Start Up Period* begins 2 days after the close of the Start-Up Period. This is a period of general registration where applications are processed on a "first come, first served" basis.

Registrations after the Sunrise Period are for a period of at least 2 years and there are no restrictions on transfer of the domain names. Disputes during this period are referred to the UDRP or the relevant courts.

Domain names registered during the Sunrise Period will become active 7 days after the beginning of the Start-Up Period. Domain names registered during the other periods can be used within 5 minutes of registration.

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### CONCLUSION

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Trademark owners who wish to apply for .biz and .info domain names in terms of their trademarks need to act quickly to protect their rights.

1 Claimants can elect to use the specified dispute providers or can proceed through ICANN's UDRP (Uniform Dispute Resolution Policy) through litigation. However, STOP proceedings are said to be more time sensitive and less costly than the other alternatives.

2 The exact dates for the .info registration process are still to be confirmed. The dates seen here are estimates only.

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## The Interactive Gambling Act 2001 – Is It Needed, Will It Work?

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**Lisa Vanderwal revisits her earlier article on this contentious Act in light of recent Federal Government concessions regarding interactive gambling.**

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In a previous edition<sup>1</sup> we commented on the essential provisions of what was then the *Interactive Gambling (Moratorium) Bill 2000*, and some of the issues surrounding the Senate's initial rejection of what has now become the *Interactive Gambling (Moratorium) Act 2000*. This article looks briefly at the lead-up to the *Interactive Gambling Bill 2001*, the legislation following on from the *Interactive Gambling (Moratorium) Act 2000*, and outlines some of the controversy surrounding this Bill.

The proposed ban of interactive gambling has been the subject of considerable public debate over the past couple of years. In 1996 State and Territory Gaming Ministers agreed to develop a model code for interactive gambling that called for a strict licensing regime. In the following years, little action was taken with only the Northern Territory, Queensland and the ACT passing legislation<sup>2</sup>. In January 2000 the Commonwealth Government, appearing to lose patience with their inability to reach agreement and develop a code, foreshadowed the likelihood of banning interactive gambling altogether.

On 17 August 2000 the Government introduced the *Interactive Gambling (Moratorium) Bill 2000* which proposed imposing a 12 month moratorium on the

development of the interactive gambling industry in Australia, beginning retrospectively on 19 May 2000 and ceasing at midnight on 18 May 2001. On 9 October 2000 the Bill was defeated in the Senate when the Government failed to obtain a majority by tied vote of 33:33.

On 8 November 2000 the Australian Casino Association released an updated and improved code of practice for on-line gambling, which was developed in conjunction with State and Territory regulators<sup>3</sup>. The code of practice aimed to achieve the highest levels of player protection standards and ensure the best and safest gambling environment. Amongst other measures, the code of practice ensured that players had to be identified with a PIN or password, minors were prevented from playing, security and privacy of players was to be strictly protected, gambling on credit was banned and information on gambling help lines and counselling services would be readily available. Despite the code of practice, and as a result of intense political manoeuvring, the *Interactive Gambling (Moratorium) Bill* was passed by both Houses in December 2000.

While the *Interactive Gambling (Moratorium) Act 2000* expired on 18 May 2001, the Government introduced the *Interactive Gambling Bill 2001 (Bill)*

which essentially made it an offence for an interactive gambling service to be provided to a person physically located in Australia, and established a complaints regime under which Australians could make complaints about interactive gambling services. The proposed legislation created as much controversy as the *Interactive Gambling (Moratorium) Act 2000* and invoked almost as much last minute manoeuvring in the Senate. The Bill was agreed by the Senate on 28 June 2001 and was approved by the Governor General on 11 July 2001. The purpose of this paper is to provide an overview of the Act and to examine some of the debate that has arisen.

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### INTERACTIVE GAMBLING ACT 2001

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The stated policy of the Act is to limit and discourage Australians from gambling on-line, rather than to stop it altogether<sup>4</sup>. To this end, there are essentially three new offences created under the Act, along with a complaints process. The three new offences are providing an interactive gambling service to Australians, providing an Australian-based interactive gambling service to designated overseas countries, and publishing interactive gambling advertisements.

## Providing an interactive gambling service to Australians

Section 15(1) of the Act makes it a criminal offence to intentionally provide to people who are physically present in Australia<sup>5</sup> interactive:

*services for placing, making, receiving or acceptance of bets or wagers, or whose sole or dominant purpose is to facilitate the placement of bets;*

*games of chance or mixed chance and skill played for anything of value where the player pays, directly or indirectly, to enter the game; or*

*gambling services not covered by the above paragraphs<sup>6</sup>.*

The above services must be provided in the course of a venture or concern in trade or commerce, whether or not conducted on a regular, repetitive or continuous basis<sup>7</sup>. The service must also be provided using:

- an internet carriage service;
- a datacasting service;
- a broadcasting service; or
- any other content or listed carriage service<sup>8</sup>.

## Providing an Australian-based interactive gambling service to designated overseas countries

This second offence, contained in section 15A of the Act, was included as a last minute amendment in response to criticisms of the Act, which claimed it was being hypocritical. In particular, the Greens Senator Brown has commented that "we have an ethical consideration in this age of globalisation to people outside our borders as well as those inside. Welcoming the establishment of these facilities in our country through a regulatory system so that they can sell their wares externally while prohibiting that inside the country is hypocritical"<sup>9</sup>. The Australian Institute for Gambling Research echoed this point, claiming that "it is morally indefensible to imply that Australians should be protected from this form of gambling yet Australian operators can profit from the harm created in other countries"<sup>10</sup>.

Section 15A of the Bill now provides that

it is a criminal offence to intentionally provide interactive:

- services for placing, making, receiving or acceptance of bets or wagers, or whose sole or dominant purpose is to facilitate the placement of bets; lotteries or the supply of lottery tickets;
- games of chance or mixed chance and skill played for anything of value where the player pays, directly or indirectly, to enter the game; or
- gambling services not covered by the above paragraphs<sup>11</sup>

where those interactive services are provided:

- in the course of carrying on a business in Australia;
- where the central management and control of the service is in Australia;
- through an agent in Australia; or
- to customers where the relevant internet content is hosted in Australia<sup>12</sup>.

In addition, in order for this to be an offence the service must be provided to customers who are physically present in a country declared by the Minister as being a "designated country"<sup>13</sup>. The Minister will only designate countries where those countries have legislation similar to the Act, and that country's government has requested the Minister to make the Declaration<sup>14</sup>.

A fine of \$1.1 million per day will apply to bodies corporate, and \$220,000 per day to natural persons for a breach of the above provisions. However, it is not an offence if the provider of the service did not know, and could not have determined with reasonable diligence, that any of the customers of the interactive gambling service were physically present in Australia<sup>15</sup> or a designated country<sup>16</sup>. In determining whether a person could have known or ascertained that there was an Australian or designated country customer link, the following are to be taken into account:

- were prospective customers told that Australian law prohibits the provision of the service to customers physically

present in Australia or a designated country;

- were customers required to enter into contracts that were subject to an express condition that the customer was not to use the service if he or she was physically present in Australia or a designated country;
- were customers required to provide personal details which would suggest that the customer was not physically present in either Australia or a designated country; or
- whether the person providing the services has network data that indicates the customer was physically located outside Australia or a designated country when the relevant account was opened and throughout the period the service is provided to the customer<sup>17</sup>.

While the above sections appear to be quite broad, there are a number of specified excluded services under the Act. These include telephone betting, betting on horse races, harness races, greyhound races or other sporting events<sup>18</sup>, provided such bets are not made once the event has begun<sup>19</sup>. In addition, the Act will not cover services provided in a public place, for example a shop, casino, bar or club<sup>20</sup>. There are also some exclusions in relation to broadcast and datacast services, and of course the Minister may determine that certain services are exempt services for the purposes of the Act<sup>21</sup>.

## Publication of interactive gambling advertisements

A new Part 7A, modelled on the *Tobacco Advertising Prohibition Act 1992 (Cth)*, has also been inserted into the Act as a result of the Senate amendments, under which a person is guilty of an offence if that person publishes an interactive gambling service advertisement in Australia<sup>22</sup>. This includes any promotion in writing, still or moving pictures, signs, symbols, visual images, audible messages or any combination of the above that publicises or promotes a particular interactive gambling service, interactive gambling services in general, the whole or part of a trademark in respect of an interactive gambling service, the domain name or URL that relates to an interactive

gambling service, or any words that are closely associated with an interactive gambling service<sup>23</sup>.

There are certain exceptions to this prohibition, which include advertising in periodicals distributed outside Australia<sup>24</sup> and advertising in relation to Australian sporting and cultural events of international significance<sup>25</sup>. Penalties of \$13,200 apply to individuals and \$66,000 to bodies corporate for contravention of these provisions. There are also similar prohibitions on the broadcasting or datacasting of interacting gambling service advertisements in Australia<sup>26</sup>.

#### Complaints process

The Act provides that an Australian resident, a body corporate that carries on activities in Australia, or the Commonwealth, a State or Territory<sup>27</sup> may make a complaint to the Australian Broadcasting Authority (ABA) if they believe Australians can access a prohibited gambling service<sup>28</sup>. If the complaint relates to internet content hosted in Australia, the ABA may refer the matter to the police for investigation<sup>29</sup>.

If the complaint relates to internet content hosted outside Australia, the ABA may issue a standard access prevention notice to the relevant internet service provider (ISP) directing the relevant ISP to take all reasonable steps to prevent Australians from accessing the content<sup>30</sup>. The ISP must comply with the notice by 6pm on the next business day after the notice was given to that ISP<sup>31</sup>.

The Act does not specify any particular prevention mechanisms so as not to preclude any potential technological advances. Nonetheless, an ISP is not necessarily required to prevent Australians from accessing the content if it is not technically or commercially feasible to do so<sup>32</sup>. In addition, an ISP will not be required to comply with the standard access prevention notice in relation to a particular Australian user if access by that user is subject to a recognised alternative access prevention arrangement eg regularly updated content filtering software<sup>33</sup>. Any ISP who is obliged to comply with a standard access prevention notice and does not do so is guilty of an offence under the Act.



punishable by a penalty of \$5,500.

The Act also anticipates that an industry code and industry standard will be developed, and gives the ABA power to require an industry body to develop such codes or standards if the industry does not do so voluntarily<sup>34</sup>. Where any codes or standards exist, Australian residents, bodies corporate conducting business in Australia and the Commonwealth, a State or Territory may make complaints to the ABA in relation to breaches of those codes or standards, and any breaches will be dealt with in accordance with those codes or standards<sup>35</sup>.

#### CRITICISMS

Criticism of the Act has been vociferous and from a wide range of sources. The Internet Industry Association (IIA) has labelled the Act as "a backward step for the safe internet usage in Australia that will not achieve any defensible public policy outcomes at all"<sup>36</sup>. It has said that

Australia is flying in the face of world trends to introduce tough regulation of the industry, but not ban it all together, on the reasoning that strict local controls will better protect their citizens.

Indeed, the IIA claims that the approach that the Australian States and Territories have taken is widely regarded by overseas players as being without question the world's best practice<sup>37</sup>, so much so that countries such as the UK and South Africa are likely to adopt standards similar to that proposed by the Australian Casino Association as outlined above. In addition, the IIA claims that by effectively banning the development of gambling-related technology such as encryption and security technologies which could have application in mainstream commerce on the internet will be lost as companies relocate from Australia, taking their skill base and intellectual property with them.

The Australian Labor Party was also critical of the Act, with Labor Senators

Mark Bishop and Kate Lundy pointing out perceived fundamental flaws in the policy approach behind the Act and finding fault with the implementation of the policy<sup>38</sup>. In particular, the Senators considered that the Act potentially exacerbates Australia's gambling problem by effectively removing a regulated service with in-built safeguards while still allowing access to unregulated and unlicensed off-shore sites (until such time as a complaint is made in respect of that particular service).

The Senators also noted that while investigations of potential offences were to be referred mainly to the Australian Federal Police (AFP) there is to be no additional funding, and the AFP is expected to fulfil this additional role from existing resources. The Labor senators consider that the AFP will be unable to effectively fulfil its role under the Act, thereby compromising implementation of the Act<sup>39</sup>. While the Government has allocated \$10 million over 4 years for research and an education program into social problems associated with gambling<sup>40</sup>, it will still not address the enforcement issues raised above.

The IIA, ALP and other opposers of the Act have also pointed out what appear to be glaring inconsistencies. While poker machines have created increasingly large problems as a result of their expansion, there is no complimentary legislation that could address this issue. In addition, while the Act attempts to prohibit most gambling services provided over the internet, it expressly excludes telephone betting. It is difficult to see the difference between placing a bet over the telephone, and placing a bet over the internet. This inconsistency is exacerbated by the exclusion of betting on horse, harness and greyhound races, and bets placed in public places. While this approach is consistent with the aim of the Act as set out earlier in this article, whether this artificial distinction is actually workable remains to be seen.

The removal of the requirement for an interactive gambling operator to have an Australian link may also create some difficulties for the Government. The removal was intended to be a strong deterrent to foreign operators soliciting Australian customers<sup>41</sup>, but raises jurisdictional as well as enforcement issues – even if a country in which the

interactive gambling organisation was operating, or in which the content is hosted, recognised Australia's right to enforce the legislation, the question remains as to how, or how effectively, Australia would recover the hefty fines under the Act.

## CONCLUSION

The Government appears at first glance to be bravely attempting to address community concerns in relation to a number of on-line issues. While some of its initiatives which are clearly responding to community concern, such as the offensive internet content amendments set out in the *Broadcasting Services Amendment (Online Services) Act 1999*, appear to have been successful, others such as the *Electronic Transactions Act 1999* do not appear to have had much of an impact at all, despite the fanfare preceding that legislation.

However, the Government's legislative efforts tend to fail where it is responding to what appears to be blatant political and economic pressure and disguising it as a response to community concern.

This certainly does not bode well for this Act, which also appears to be a response to a political agenda, and which may not have been as well thought out as the Government would like to claim. Whether the Act will actually work, or will be the subject of a very public failure à la datacasting, remains to be seen. Still, like it or not, workable or not, Australia now leads the world in enacting legislation prohibiting on-line gambling.

1 Volume 19, No 3, 2000.

2 The Gaming Control Amendment Act 1998 (NT); the Interactive Gambling (Player Protection) Act (Qld); the Interactive Gambling Act 1998 (ACT); the Interactive Gaming (Player Protection) Bill 1999 (Vic).

3 See the media releases at [aca.asn.au](http://aca.asn.au)

4 Report of the Senate Environment, Communications, Information Technology and the Arts Legislation Committee on the Interactive Gambling Bill 2000, May 2001, page 33.

5 Section 8 of the Act

6 Section 4 of the Act, definition of "gambling service".

7 Section 4 of the Act, definition of "business".

8 Section 5(1)(b) of the Act.

9 23 May 2001, Senate Hansard: Interactive Gambling Bill 2001 - Report of Environment, Communications, Information Technology and the Arts Legislation Committee, page 05/23841

10 Report of the Senate Environment, Communications, Information Technology and the Arts Legislation Committee on the Interactive

Gambling Bill 2000, May 2001, page 36.

11 Section 4 of the Act, definition of "gambling service".

12 Section 15A(7) of the Act.

13 Section 9B of the Act.

14 Section 9A of the Act.

15 Section 15(3) of the Act.

16 Section 15A(3) of the Act

17 Sections 15(4) and 15A(4) of the Act.

18 Section 8A(1) of the Act.

19 Section 8A(2) of the Act.

20 Section 8B of the Act.

21 Section 10 of the Act.

22 Section 61EA(1) of the Act.

23 Section 61BA(1) of the Act.

24 Section 61EB of the Act.

25 Section 61EC of the Act.

26 Section 61DA of the Act.

27 Section 19 of the Act.

28 Section 16 of the Act.

29 Section 20 of the Act.

30 Section 24(1) of the Act.

31 Section 28 of the Act.

32 Section 24(2) of the Act.

33 Section 24(4) of the Act.

34 Part 4 of the Act.

35 Section 17 of the Act.

36 Internet Industry Association News Release, 29 March 2001.

37 Report of the Senate Environment, Communications, Information Technology and the Arts Legislation Committee on the Interactive Gambling Bill 2000, May 2001, page 54.

38 Labor's Response to Interactive Gambling Bill, 23 May 2001.

39 23 May 2001, Senate Hansard: Interactive Gambling Bill 2001 - Report of Environment, Communications, Information Technology and the Arts Legislation Committee, page 05/23839

40 Media release, Senators Meg Lees, John Woodley and Lyn Allison, 28 June 2001.

41 Supplementary Explanatory Memorandum to the Interactive Gambling Bill 2001, Amendment (15).

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