

PRODUCTIVITY COMMISSION SUBMISSION

GAMBLING INQUIRY

THE AUSTRALIAN CONSTITUTION

INTRODUCTION

The purpose of this submission is to call for research to be conducted into constitutional aspects of gambling. I am not a constitutional lawyer, so I dare not attempt a detailed analysis, but rather raise the questions for referral to one with more wisdom. The conduct of research and professional opinion might have implications on:

- Internet Gambling (and global e-commerce, generally).
- A Federal Regulatory Body for Gambling (perhaps only communications based).
- State gambling practices.

THE CONSTITUTION OF THE COMMONWEALTH OF AUSTRALIA

S.51 Gives the Commonwealth power over:

(i) Trade and Commerce with other countries and amongst the States (c.f. e-commerce and cross border gaming including telephone betting or lottery, perhaps).

(ii) Taxation.

(v) Postal, telegraphic, telephonic, and other like services (c.f. e-commerce or perhaps where the gambling operations of a business in one state are controlled from another state via communications).

(xi) Census and statistics (c.f. National approach to Gambling Research which does not exist, but Southern Cross University is proposing).

(xii) Currency, coinage and legal tender (c.f. how are tickets or points or credits not a form of currency?)

(xiii) Banking. (c.f. Indeed if a gambling machine displays a credit meter in dollars or cents, keeps accounts or converts cash to a ticket, should it be captured by federal banking legislation as a credit or banking device or similar, as would an internet gaming terminal? If I convert cash for a check, how is this different to converting cash to a ticket and possibly using the ticket to pay debts?

(xv) Weights and Measures. To my knowledge the only National Standard controlled by the States is for gambling, but it is not a “standard” as such, as it does not follow the typical process for the setting of standards. My submission to the Productivity Commission “Control Through Technology” refers to this issue in more detail.

(xvi) Bills of exchange and promissory notes. Please see my comments on xii and xiii.

(xxix) External Affairs (c.f. Internet gambling and e-commerce, generally).

S.85 Would appear to provide for the transfer of powers from State to Commonwealth. For example, could QOLGR transfer their gaming testing lab (for a fee) to the Commonwealth to nationalize testing of gaming machines against a common standard, reducing domestic costs for gaming manufacturers, thereby enabling Australian industry to be more competitive internationally? Would a national gambling standard and consistent interpretation of that standard between the States offer a greater consistency and protection for players?

S.91 Would it be unconstitutional for a State government to offer Internet Gambling, as the exemption only applies to “goods” not services?

S.92 Trade within the Commonwealth is to be free. However, there is a cost to gaming machine vendors to do business from state to state as one must be licensed in each State and one must have a machine approval “transferred” at a cost from one state to the next. See also S.85.

S.109 The law of the Commonwealth prevails over the laws of a State. A federal law related to or ancillary to gambling would be an interesting development. Where do indigenous Australian’s rights stand in relation to the constitution and laws of the Commonwealth or States? What jurisdiction would gambling on aboriginal land come under?

Yours sincerely,

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