

IG Taskforce

From: IG Taskforce </o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=819d8a3ad9d14e29a347972878475074-IG Taskforc>
Sent: Tuesday, 22 February 2022 2:44 PM
To: 'info@gcb.cw'
Subject: ACMA notification of Formal warnings for contravention of the Australian Interactive Gambling Act 2001 - Hollycorn N.V. and Libergos Limited [SEC=UNOFFICIAL]
Attachments: 2022.02.22 - Advice to Gaming Control Board Curacao re Formal Warning - Hollycorn N.V. and Libergos Limited.pdf; 2022.02.22 - ACMA Formal Warning - Hollycorn N.V..pdf; 2022.02.22 - ACMA Formal Warning - Libergos Limited.pdf

Dear Mr Coffi,

Please see attached a letter from the Australian Communications and Media Authority issuing Hollycorn N.V. and Libergos Limited with Formal Warnings for contravening the Australian *Interactive Gambling Act 2001*.

We would appreciate it if you could forward these Formal Warnings to Hollycorn N.V. and Libergos Limited to ensure that it has been brought to their attention.

Yours sincerely,

Interactive Gambling Taskforce

Australian Communications and Media Authority

T +61 2 9334 7700 F +61 2 9334 7799

E igtaskforce@acma.gov.au

www.acma.gov.au



22 February 2022

Mr Leonard Coffi
Chairman
Gaming Control Board Curacao
Emancipatie Boulevard Dominico F. Don Martina 23 Willemstad
Curacao

By email: info@gcb.cw

ACMA file reference: ACMA2018/141-87

Dear Mr Coffi

Contravention of the Australian *Interactive Gambling Act 2001* – Hollycorn N.V. and Libergos Limited

The Australian Communications and Media Authority (the ACMA) is responsible for investigating and taking enforcement action for contraventions of the Australian *Interactive Gambling Act 2001* (the IGA).

The ACMA has recently completed an investigation into services made available at <https://www.staycasino.com> and <https://www.goldencrowncasino.com>. The ACMA found that Hollycorn N.V. and Libergos Limited contravened subsection 15(2A) of the IGA by providing prohibited interactive gambling services to Australian customers.

On 16 November 2021, the ACMA advised Hollycorn N.V. and Libergos Limited of the ACMA's preliminary contravention findings. The ACMA received a response from Allyant Group B.V., the statutory director of Hollycorn N.V., on 4 December 2021, in which they advised they would request Hollycorn N.V., the operator of the contravening services to take the necessary steps and implement restrictions for Australian end users. To date, no restrictions have been implemented. No response was received from Libergos Limited.

The ACMA finalised the investigation on 2 December 2021. The ACMA has issued a Formal Warning to Hollycorn N.V. and Libergos Limited under section 64A of the IGA.

If Hollycorn N.V. and Libergos Limited continue to provide prohibited interactive gambling services to persons physically located in Australia, the ACMA may take further action.

I have attached a copy of the Formal Warnings issued to Hollycorn N.V. and Libergos Limited as well as the key provisions of the IGA.

We have brought this matter to your attention as we understand that there is an intention to expand the role of the Gaming Control Board Curaçao to the regulation of online gaming in Curaçao. We understand that findings of illegal activity may be relevant to your future consideration of the suitability of a licensee.

If you have any questions on the above, please contact [REDACTED] of the Interactive Gambling Team at [REDACTED]

Thank you for your engagement in this process.

Yours sincerely,



Rochelle Zurnamer

Executive Manager
Content Safeguards Branch

Attached: Formal Warnings, Relevant provisions of the IGA

22 February 2022

[REDACTED]

By Email: [REDACTED]

ACMA file reference: ACMA2018/141-87

Dear [REDACTED],

Formal warning for contravention of the Australian Interactive Gambling Act 2001 – Hollycorn N.V.

In September 2021, the ACMA commenced an investigation under section 21 of the Australian *Interactive Gambling Act 2001* (the IGA) into the Stay Casino and Golden Crown Casino services available at the URLs <https://www.staycasino.com> and <https://www.goldencrowncasino.com> respectively.

On 16 November 2021, the ACMA advised Hollycorn N.V. of the ACMA's preliminary contravention findings. The ACMA received a response from Allyant Group B.V., the statutory director of Hollycorn N.V., who the ACMA understands is involved in the provision of the Stay Casino and Golden Crown Casino services on 4 December 2021, in which you advised you would request Hollycorn N.V., the operator of the contravening services to take the necessary steps and implement restrictions for Australian end users.

The ACMA finalised the investigation on 2 December 2021, finding contraventions of the IGA.

The ACMA has a wide range of powers to deal with contraventions of the IGA, including:

- > referring principals and directors of companies involved in providing the Stay Casino and Golden Crown Casino services in Australia (including Hollycorn N.V.), to the Australian border protection agencies for inclusion on the movement alert list, which may disrupt future travel into Australia
- > notifying the Australian Federal Police for possible further action in respect of criminal offence provisions contained in the IGA
- > issuing one or more infringement notices to pay an amount of money specified in the notice, as an alternative to commencing court proceedings for contravention of the IGA (section 64C of the IGA)
- > seeking an order from the Federal Court of Australia to pay civil penalties (note that civil penalties for a contravention of the IGA range up to the amount of 7,500 penalty units (\$AUD1,665,000) per day for individuals and five times that amount per day for corporations (section 64B of the IGA), or for an injunction against further contraventions (section 64D of the IGA)

- > requesting Internet Service Providers (ISPs) to block access to the Stay Casino and Golden Crown Casino websites in Australia.

The ACMA can also issue a formal warning where it is satisfied that a person is contravening a civil penalty provision. There is no requirement for the ACMA to issue a formal warning before undertaking any of the above measures, nor does a formal warning prevent the ACMA taking later action in respect of the same contraventions. In this instance the ACMA has decided to issue Hollycorn N.V. with a formal warning as this is the first time the ACMA has made a finding in respect of the involvement of Hollycorn N.V. in the provision of the Stay Casino and Golden Crown Casino services. The formal warning is **attached** to this letter.

Further, the ACMA has notified the following regulatory authorities about the issuing of this formal warning:

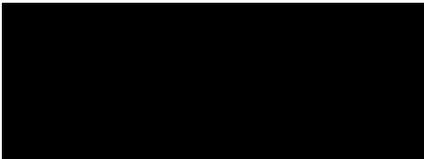
- > Antillephone N.V. — holder of master licence No. 8048/JAZ issued by the Government of Curaçao
- > Gaming Control Board Curaçao.

The ACMA will be monitoring the Stay Casino and Golden Crown Casino services and may consider further enforcement action, such as that listed above, if the services continue to allow play by persons physically present in Australia. To avoid any future investigation or enforcement action, you should immediately take steps to ensure that the Stay Casino and Golden Crown Casino services are not being provided in contravention of the IGA, and contact the ACMA to advise of the steps you have taken.

As previously noted, the ACMA will also publish details about its investigations into the Stay Casino and Golden Crown Casino services, and any enforcement action, on its website and other relevant websites. This will include details about Hollycorn N.V., Stay Casino and Golden Crown Casino, its agents and or affiliates.

If you have any questions about the above, or you wish to inform the ACMA of the steps you have taken to ensure future compliance with the IGA, then please contact the Interactive Gambling Team at igtaskforce@acma.gov.au.

Yours sincerely,



Rochelle Zurnamer

Executive Manager
Content Safeguards Branch

Attached: Formal Warning, Relevant provisions of the IGA

Formal Warning

under section 64A of the *Interactive Gambling Act 2001*

To: Hollycorn N.V.

Of: Julianaplein 36 Willemstad
Curacao

[REDACTED]

Attention: [REDACTED]

I, Rochelle Zurnamer, delegate of the Australian Communications and Media Authority (ACMA), being satisfied that Hollycorn N.V., has contravened subsection 15(2A) of the *Interactive Gambling Act 2001* (the IGA):

HEREBY issue Hollycorn N.V. a formal warning under section 64A of the IGA, for one or more contraventions of subsection 15(2A) of the IGA, being a civil penalty provision.

Details of the contravention/s

Obligations under the IGA

1. Subsection 15(2A) of the IGA provides that:
 - A person must not provide a prohibited interactive gambling service that has an Australian customer link (see section 8).
2. A 'prohibited interactive gambling service' is defined in section 5 of the IGA and 'gambling service' is defined in section 4 of the IGA. Under section 8 of the IGA, a gambling service has an Australian-customer link if, and only if, any or all of the customers of the service are physically present in Australia.

Investigation

1. Under section 21 of the IGA, on 22 September 2021, the ACMA commenced an investigation into whether the:
 - > Stay Casino and Golden Crown Casino services provided prohibited interactive gambling services in contravention of the IGA.
2. During the period of the investigation the Stay Casino and Golden Crown Casino services were available via the URLs <https://www.staycasino.com> and <https://www.goldencrowncasino.com>.
3. Hollycorn N.V. is the provider of the Stay Casino and Golden Crown Casino services.

Contravention of subsection 15(2A) of the IGA

4. The Stay Casino and Golden Crown Casino services offered 'gambling services', including casino-style games of chance or mixed chance and skill, played for money

where the customer gave consideration to play the game (paragraph (e) of the definition of 'gambling service' in section 4 of the IGA).

5. The gambling services were provided in the course of carrying on a business and were provided to customers using an internet carriage service (section 5 of the IGA).
6. The Stay Casino and Golden Crown Casino services had an Australian customer-link.
7. The ACMA found that, as the provider of the Stay Casino and Golden Crown Casino services, Hollycorn N.V. has contravened subsection 15(2A) of the IGA by providing prohibited interactive gambling services to customers physically present in Australia

Dated this 22 February 2022.



Rochelle Zuramer
Delegate of the Australian Communications and Media Authority

Key Provisions of the *Interactive Gambling Act 2001*

4 Definitions

designated interactive gambling service means:

- (a) a prohibited interactive gambling service; or
- (b) an unlicensed regulated interactive gambling service.

gambling service means:

- (a) a service for the placing, making, receiving or acceptance of bets; or
- (b) a service the sole or dominant purpose of which is to introduce individuals who wish to make or place bets to individuals who are willing to receive or accept those bets; or
- (c) a service for the conduct of a lottery; or
- (d) a service for the supply of lottery tickets; or
- (e) a service for the conduct of a game, where:
 - (i) the game is played for money or anything or else of value; and
 - (ii) the game is a game of chance or of mixed chance and skill; and
 - (iii) a customer of the service gives or agrees to give consideration to play or enter the game; or
- (f) a gambling service (within the ordinary meaning of that expression) that is not covered by any of the above paragraphs.

Unlicensed regulated interactive gambling service means a regulated interactive gambling service that is provided in contravention of subsection 15AA(3).

5 Prohibited interactive gambling services

(1) For the purposes of this Act, a **prohibited interactive gambling service** is a gambling service, where:

- (a) the service is provided in the course of carrying on a business; and
- (b) the service is provided to customers using any of the following:
 - (i) an internet carriage service;
 - (ii) any other listed carriage service;
 - (iii) a broadcasting service;
 - (iv) any other content service;
 - (v) a datacasting service

Note: This definition relates to the offence provisions and civil penalty provisions set out in section 15 and Part 7A.

(2) Subsection (1) has effect subject to subsection (3).

Excluded services

(3) For the purposes of this Act, none of the following services is a **prohibited interactive gambling service**:

- (a) a telephone betting service;
- (aa) an excluded wagering service (see section 8A);
- (ab) an excluded gaming service (see section 8B);
- (aba) a place-based betting service (see section 8BA);
- (ac) a service that has a designated broadcasting link (see section 8C);
- (ad) a service that has a designated datacasting link (see section 8C);
- (ae) an excluded lottery service (see section 8D);
- (b) a service to the extent to which it relates to the entering into of contracts that are financial products within the meaning of Chapter 7 of the *Corporations Act 2001*;
- (ba) a wholesale gambling service;
- (bb) a trade promotion gambling service (see section 8BB);
- (c) an exempt service (see section 10).

8 Australian-customer link

For the purposes of this Act, a gambling service has an Australian-customer link if, and only if, any or all of the customers of the service are physically present in Australia.

8E Regulated interactive gambling service

- (1) For the purposes of this Act, a **regulated interactive gambling service** is:
- (a) a telephone betting service (see section 8AA); or
 - (b) an excluded wagering service (see section 8A); or
 - (c) an excluded gaming service (see section 8B); or
 - (d) a place-based betting service (see section 8BA); or
 - (e) a service that has a designated broadcasting link (see section 8C); or
 - (f) a service that has a designated datacasting link (see section 8C); or
 - (g) an excluded lottery service (see section 8D); or
 - (h) an exempt service (see section 10);
- where:
- (i) the service is provided in the course of carrying on a business; and
 - (j) the service is provided to customers using any of the following:
 - (i) an internet carriage service;
 - (ii) any other listed carriage service;
 - (iii) a broadcasting service;
 - (iv) any other content service;
 - (v) a datacasting service; and
 - (k) in the case of an exempt service—a determination under subsection (2) is in force in relation to the service.
- (2) The Minister may, by legislative instrument, determine that each exempt service included in a specified class of exempt services is covered by paragraph (1)(k).
- (3) Subsection (1) has effect subject to subsection (4).
- (4) For the purposes of this Act, neither of the following services is a **regulated interactive gambling service**:
- (a) a wholesale gambling service;
 - (b) a trade promotion gambling service (see section 8BB).

15 Prohibited interactive gambling services not to be provided to customers in Australia

- (2A) A person must not provide a prohibited interactive gambling service that has an Australian-customer link (see section 8).
- Civil penalty: 7,500 penalty units.
- (3) Subsections (1) and (2A) do not apply if the person:
- (a) did not know; and
 - (b) could not, with reasonable diligence, have ascertained;
- that the service had an Australian-customer link.

Note: In the case of proceedings for an offence against subsection (1), the defendant bears an evidential burden in relation to the matters in subsection (3) (see subsection 13.3(3) of the *Criminal Code*).

15AA Unlicensed regulated interactive gambling services not to be provided to customers in Australia

- (3) A person must not provide a particular kind of regulated interactive gambling service if:
- (a) the service has an Australian-customer link (see section 8); and
 - (b) the person does not hold a licence (however described) under a law of a State or Territory that authorises the provision of that kind of service in the State or Territory.
- Civil penalty: 7,500 penalty units.
- (5) Subsections (1) and (3) do not apply if the person:
- (a) did not know; and
 - (b) could not, with reasonable diligence, have ascertained; that the service had an Australian-customer link.

Note: In the case of proceedings for an offence against subsection (1), the defendant bears an evidential burden in relation to the matters in subsection (5) (see subsection 13.3(3) of the *Criminal Code*).

22 February 2022



By Email: [Redacted]

ACMA file reference: ACMA2018/141-87

Dear [Redacted],

**Formal warning for contravention of the Australian Interactive Gambling Act 2001 –
Libergos Limited**

In September 2021, the ACMA commenced an investigation under section 21 of the Australian *Interactive Gambling Act 2001* (the IGA) into the Stay Casino and Golden Crown Casino services available at the URLs <https://www.staycasino.com> and <https://www.goldencrowncasino.com> respectively.

On 16 November 2021, the ACMA advised Libergos Limited of the ACMA's preliminary contravention findings. The ACMA has received no response from any person involved in the provision of the Stay Casino and Golden Crown Casino services.

The ACMA finalised the investigation on 2 December 2021, finding contraventions of the IGA.

The ACMA has a wide range of powers to deal with contraventions of the IGA, including:

- > referring principals and directors of companies involved in providing the Stay Casino and Golden Crown Casino services in Australia (including Libergos Limited), to the Australian border protection agencies for inclusion on the movement alert list, which may disrupt future travel into Australia
- > notifying the Australian Federal Police for possible further action in respect of criminal offence provisions contained in the IGA
- > issuing one or more infringement notices to pay an amount of money specified in the notice, as an alternative to commencing court proceedings for contravention of the IGA (section 64C of the IGA)
- > seeking an order from the Federal Court of Australia to pay civil penalties (note that civil penalties for a contravention of the IGA range up to the amount of 7,500 penalty units (\$AUD1,665,000) per day for individuals and five times that amount per day for corporations (section 64B of the IGA), or for an injunction against further contraventions (section 64D of the IGA)
- > requesting Internet Service Providers (ISPs) to block access to the Stay Casino and Golden Crown Casino websites in Australia.

The ACMA can also issue a formal warning where it is satisfied that a person is contravening a civil penalty provision. There is no requirement for the ACMA to issue a formal warning before undertaking any of the above measures, nor does a formal warning prevent the ACMA taking later action in respect of the same contraventions. In this instance the ACMA has decided to issue Libergos Limited with a formal warning as this is the first time the ACMA has made a finding in respect of the involvement of Libergos Limited in the provision of the Stay Casino and Golden Crown Casino services. The formal warning is **attached** to this letter.

Further, the ACMA has notified the following regulatory authorities about the issuing of this formal warning:

- > Antillephone N.V. — holder of master licence No. 8048/JAZ issued by the Government of Curaçao
- > Gaming Control Board Curaçao.

The ACMA will be monitoring the Stay Casino and Golden Crown Casino services and may consider further enforcement action, such as that listed above, if the services continue to allow play by persons physically present in Australia. To avoid any future investigation or enforcement action, you should immediately take steps to ensure that the Stay Casino and Golden Crown Casino services are not being provided in contravention of the IGA, and contact the ACMA to advise of the steps you have taken.

As previously noted, the ACMA will also publish details about its investigations into the Stay Casino and Golden Crown Casino services, and any enforcement action, on its website and other relevant websites. This will include details about Libergos Limited, Stay Casino and Golden Crown Casino, its agents and or affiliates.

If you have any questions about the above, or you wish to inform the ACMA of the steps you have taken to ensure future compliance with the IGA, then please contact the Interactive Gambling Team at igtaskforce@acma.gov.au.

Yours sincerely,



Rochelle Zurnamer

Executive Manager
Content Safeguards Branch

Attached: Formal Warning, Relevant provisions of the IGA

Formal Warning

under section 64A of the *Interactive Gambling Act 2001*

To: Libergos Limited

Of: Boumpoulinas, 1-3
Bouboulina Building
Flat/Office 42, 1060
Nicosia, Cyprus

Attention: [REDACTED]

I, Rochelle Zurnamer, delegate of the Australian Communications and Media Authority (ACMA), being satisfied that Libergos Limited, has contravened subsection 15(2A) of the *Interactive Gambling Act 2001* (the IGA):

HEREBY issue Libergos Limited a formal warning under section 64A of the IGA, for one or more contraventions of subsection 15(2A) of the IGA, being a civil penalty provision.

Details of the contravention/s

Obligations under the IGA

1. Subsection 15(2A) of the IGA provides that:
 - A person must not provide a prohibited interactive gambling service that has an Australian customer link (see section 8).
2. A 'prohibited interactive gambling service' is defined in section 5 of the IGA and 'gambling service' is defined in section 4 of the IGA. Under section 8 of the IGA, a gambling service has an Australian-customer link if, and only if, any or all of the customers of the service are physically present in Australia.

Investigation

1. Under section 21 of the IGA, on 22 September 2021, the ACMA commenced an investigation into whether the:
 - > Stay Casino and Golden Crown Casino services provided prohibited interactive gambling services in contravention of the IGA.
2. During the period of the investigation the Stay Casino and Golden Crown Casino services were available via the URLs <https://www.staycasino.com> and <https://www.goldencrowncasino.com>.
3. Libergos Limited is the provider of the Stay Casino and Golden Crown Casino services.

Contravention of subsection 15(2A) of the IGA

4. The Stay Casino and Golden Crown Casino services offered 'gambling services', including casino-style games of chance or mixed chance and skill, played for money

where the customer gave consideration to play the game (paragraph (e) of the definition of 'gambling service' in section 4 of the IGA).

5. The gambling services were provided in the course of carrying on a business and were provided to customers using an internet carriage service (section 5 of the IGA).
6. The Stay Casino and Golden Crown Casino services had an Australian customer-link.
7. The ACMA found that, as the provider of the Stay Casino and Golden Crown Casino services, Libergos Limited has contravened subsection 15(2A) of the IGA by providing prohibited interactive gambling services to customers physically present in Australia

Dated this 22 February 2022.



Rochelle Zurnamer
Delegate of the Australian Communications and Media Authority

Key Provisions of the *Interactive Gambling Act 2001*

4 Definitions

designated interactive gambling service means:

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gambling service means:

- (a) a service for the placing, making, receiving or acceptance of bets; or
- (b) a service the sole or dominant purpose of which is to introduce individuals who wish to make or place bets to individuals who are willing to receive or accept those bets; or
- (c) a service for the conduct of a lottery; or
- (d) a service for the supply of lottery tickets; or
- (e) a service for the conduct of a game, where:
 - (i) the game is played for money or anything or else of value; and
 - (ii) the game is a game of chance or of mixed chance and skill; and
 - (iii) a customer of the service gives or agrees to give consideration to play or enter the game; or
- (f) a gambling service (within the ordinary meaning of that expression) that is not covered by any of the above paragraphs.

Unlicensed regulated interactive gambling service means a regulated interactive gambling service that is provided in contravention of subsection 15AA(3).

5 Prohibited interactive gambling services

(1) For the purposes of this Act, a **prohibited interactive gambling service** is a gambling service, where:

- (a) the service is provided in the course of carrying on a business; and
- (b) the service is provided to customers using any of the following:
 - (i) an internet carriage service;
 - (ii) any other listed carriage service;
 - (iii) a broadcasting service;
 - (iv) any other content service;
 - (v) a datacasting service

Note: This definition relates to the offence provisions and civil penalty provisions set out in section 15 and Part 7A.

(2) Subsection (1) has effect subject to subsection (3).

Excluded services

(3) For the purposes of this Act, none of the following services is a **prohibited interactive gambling service**:

- (a) a telephone betting service;
- (aa) an excluded wagering service (see section 8A);
- (ab) an excluded gaming service (see section 8B);
- (aba) a place-based betting service (see section 8BA);
- (ac) a service that has a designated broadcasting link (see section 8C);
- (ad) a service that has a designated datacasting link (see section 8C);
- (ae) an excluded lottery service (see section 8D);
- (b) a service to the extent to which it relates to the entering into of contracts that are financial products within the meaning of Chapter 7 of the *Corporations Act 2001*;
- (ba) a wholesale gambling service;
- (bb) a trade promotion gambling service (see section 8BB);
- (c) an exempt service (see section 10).

8 Australian-customer link

For the purposes of this Act, a gambling service has an Australian-customer link if, and only if, any or all of the customers of the service are physically present in Australia.

8E Regulated interactive gambling service

- (1) For the purposes of this Act, a **regulated interactive gambling service** is:
- (a) a telephone betting service (see section 8AA); or
 - (b) an excluded wagering service (see section 8A); or
 - (c) an excluded gaming service (see section 8B); or
 - (d) a place-based betting service (see section 8BA); or
 - (e) a service that has a designated broadcasting link (see section 8C); or
 - (f) a service that has a designated datacasting link (see section 8C); or
 - (g) an excluded lottery service (see section 8D); or
 - (h) an exempt service (see section 10);
- where:
- (i) the service is provided in the course of carrying on a business; and
 - (j) the service is provided to customers using any of the following:
 - (i) an internet carriage service;
 - (ii) any other listed carriage service;
 - (iii) a broadcasting service;
 - (iv) any other content service;
 - (v) a datacasting service; and
 - (k) in the case of an exempt service—a determination under subsection (2) is in force in relation to the service.
- (2) The Minister may, by legislative instrument, determine that each exempt service included in a specified class of exempt services is covered by paragraph (1)(k).
- (3) Subsection (1) has effect subject to subsection (4).
- (4) For the purposes of this Act, neither of the following services is a **regulated interactive gambling service**:
- (a) a wholesale gambling service;
 - (b) a trade promotion gambling service (see section 8BB).

15 Prohibited interactive gambling services not to be provided to customers in Australia

- (2A) A person must not provide a prohibited interactive gambling service that has an Australian-customer link (see section 8).
- Civil penalty: 7,500 penalty units.
- (3) Subsections (1) and (2A) do not apply if the person:
- (a) did not know; and
 - (b) could not, with reasonable diligence, have ascertained;
- that the service had an Australian-customer link.

Note: In the case of proceedings for an offence against subsection (1), the defendant bears an evidential burden in relation to the matters in subsection (3) (see subsection 13.3(3) of the *Criminal Code*).

15AA Unlicensed regulated interactive gambling services not to be provided to customers in Australia

- (3) A person must not provide a particular kind of regulated interactive gambling service if:
- (a) the service has an Australian-customer link (see section 8); and
 - (b) the person does not hold a licence (however described) under a law of a State or Territory that authorises the provision of that kind of service in the State or Territory.
- Civil penalty: 7,500 penalty units.
- (5) Subsections (1) and (3) do not apply if the person:
- (a) did not know; and
 - (b) could not, with reasonable diligence, have ascertained; that the service had an Australian-customer link.

Note: In the case of proceedings for an offence against subsection (1), the defendant bears an evidential burden in relation to the matters in subsection (5) (see subsection 13.3(3) of the *Criminal Code*).
