

1.2 INTERACTIVE GAMBLING AND GAMBLING ADVERTISING

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The Australian Communications and Media Authority (ACMA) regulates gambling advertising on broadcasting and internet platforms under the *Broadcasting Services Act 1992*. The ACMA also takes action under the *Interactive Gambling Act 2001* (IGA) to disrupt illegal interactive gambling services.

KEY ISSUES – GAMBLING ADVERTISING

- The ACMA administers rules limiting gambling advertisements on TV, radio and online. These rules apply to live coverage of sporting events with stricter rules before 8.30 pm.
- Separate rules restrict gambling advertising on commercial television in G-rated or lower programs broadcast at certain times.
- The ACMA is aware of community concern regarding gambling advertising outside of the currently regulated times and programs.
- The ACMA's *What Audiences Want* position paper about audience expectations for contemporary content safeguards noted community concerns around existing advertising restrictions. The paper also outlined some best practice approaches including targeting restrictions around the quantity, repetition and concentration of advertising for specific products and services that may be harmful.
- The ACMA is strongly encouraging broadcasters to consider these concerns and whether amendments should be made to the various codes of practice in line with community expectations. A number of industry bodies have commenced code reviews this year.
- The ACMA responds to audience complaints and has also conducted discrete monitoring exercises.
- The ACMA has taken action on the small number of breaches it has found in its investigations.
- In October 2022 the ACMA took formal enforcement action against the Seven Network for breaches during the 2020 Olympic Games and Channel Nine for breaches during the 2021 NRL Grand Final.
- On 5 April 2023, the ACMA issued a Formal Warning to Streamotion Pty Ltd¹ for providing gambling advertising on Kayo Sport during an AFL game. The investigation report was published on 19 April 2023.

House of Representatives inquiry/report – Proposed gambling advertising reform

- On 26 June 2023, the House of Representatives Standing Committee on Social Policy and Legal Affairs released its Report of the Inquiry into online gambling and its impacts on those experiencing gambling harm. The Report included a recommendation to phase in a total ban on gambling advertising over 3 years.
- The ACMA made a submission to the Inquiry which canvassed our role in relation to both gambling advertising and interactive gambling and we appeared before the Committee on 30 November 2022 and 4 April 2023.
- The government is considering the Report of the Inquiry but has yet to respond to the Report. ACMA is currently working with the Department of Infrastructure, Transport,

¹ Streamotion is a wholly owned subsidiary of Foxtel Management Pty Ltd

Regional Development, Communications and the Arts (DITRDCA) as it develops options for gambling advertising reforms.

- Further questions about timing should be referred to DITRDCA and the Department of Social Services.

ACMA research – Gambling advertising placement data

- On 21 June 2023 the ACMA contracted the Nielsen Company (Australia) Pty Ltd to provide gambling advertising placement data. The cost of this research was \$37,115 (GST inclusive).
- The results were published on 17 October 2023. Key findings are:

Ads by online gambling providers are the most prolific of all gambling ads

- Over 1 million gambling ads aired on free-to-air TV (metro and regional) and metro radio, with 50% (502,800 spots) from gambling providers offering online gambling services (online gambling providers).
- 51% (256,200 spots) of the total gambling ads on metro free-to-air TV were ads by online gambling providers.
- 58% (196,400 spots) of the total gambling ads on regional free-to-air TV were by online gambling providers.
- \$238.63 million was spent on gambling advertising on free-to-air TV, metro radio and online (including social media) between May 2022 and April 2023.
- Compared with all gambling advertisers, online gambling providers spent the most on free-to-air TV, metro radio and online (including social media) advertising by far, with 64% of the total.

Free-to-air TV is the market with the greatest ad spend

- 68% was spent in free-to-air TV markets (\$133m on metro and \$29m on regional), 15% was spent on social media (\$34.6m), 9% in metro radio markets (\$22.4m) and 8% on other online platforms (websites and apps) (\$19.5m).

Gambling advertising spots on free-to-air TV peak in the evenings

- 22% of gambling ads shown on free-to-air TV were aired between 7 and 10 pm.
- Between 9 and 10 pm saw the highest number of ads airing in both metro (41,300) and regional (35,800) TV markets.

Gambling advertising spots on radio peak during commuter periods

- Metro radio's peak times for gambling advertising were during the morning and evening commuting hours (6 to 8 am and 5 to 6 pm)

ACMA actions available for breaches of the broadcasting rules

- There are a range of enforcement actions available when a broadcasting licensee breaches an industry code of practice. The ACMA will generally publish the report and a media release. It may also:
 - agree to informally accept measures by broadcasters to improve compliance – these could include educating staff or changing procedures to improve compliance (agreed measures)
 - accept court enforceable undertakings for the purposes of securing future compliance with the rules
 - impose an additional licence condition requiring the licensee to comply with the Code.

ACMA actions for breaches of the Online Rules

- There are a range of enforcement actions available where an online content service provider breaches the Online Rules:
 - acceptance of agreed measures (informal)
 - accept court enforceable undertakings for the purposes of securing future compliance with the rules
 - application to the Federal Court for a civil penalty order
 - give a written direction to the provider
 - issue an infringement notice.

Gambling advertising investigations and compliance and enforcement activity

Investigations finalised since 2018

- Since 2018, the ACMA has finalised 16 investigations in relation to gambling advertising.²

Recent enforcement actions

Seven Network (Olympic games) and Nine Network 2021 NRL Grand Final

The issue

- The ACMA, including through its own monitoring activities and complaints received, became aware that gambling advertising may have been broadcast or streamed during live coverage of these sporting events.

The investigations

- In November and December 2021, the ACMA commenced investigations into the live coverage of the Olympic Games and the NRL Grand Final.
- In June 2022, the ACMA found that Seven, 7plus and Nine had each breached the relevant provisions governing the broadcast or streaming of gambling advertisements during live sports.
- The ACMA's investigation found that 7plus had streamed 1.25 million 'impressions'³ of gambling advertising during the Olympic Games in contravention of the Online Rules. Information on gambling impressions was provided by 7plus in response to ACMA enquiries.

Enforcement action taken

- On 21 September 2022, the ACMA agreed to accept an enforceable undertaking (the Seven EU) from the 5 Seven Network metropolitan commercial broadcasting licensees with respect to 49 breaches of Appendix 3 of the FreeTV code during coverage of the Olympic Games.
- On 21 September 2022, the ACMA agreed to accept an enforceable undertaking (the Nine EU) from TCN Channel Nine Pty Limited with respect to the breach of Appendix 3 of the FreeTV code during coverage of the 2021 NRL Grand Final.
- Both the Seven EU and the Nine EU require the relevant licensees to:
 - by 19 March 2023, provide and report to the ACMA on specific FreeTV code training for staff involved in the sale, scheduling, and playout of gambling promotional material

² For the period commencing 1 July 2018 until 31 August 2023.

³ Impressions are the number of times an advertisement is served to a user's screen regardless of whether it was viewed or clicked

- by 19 March 2023, develop and report to the ACMA on systems, policies and practices that will ensure compliance with the relevant provisions of the FreeTV code
- by 19 October 2023, report to the ACMA on complaints received concerning the broadcast of gambling advertising during live sport and action taken with respect to any breaches identified by the licensees.
- In March 2023, both Seven and Nine submitted their respective first reports, as required. The ACMA considered these reports and found they complied with the requirements of the respective EUs. The licensees were advised accordingly.
- The respective final reports are due from both Seven and Nine by 19 October 2023.

Online content breaches – Olympic Games (7plus)

- On 1 July 2022, the ACMA issued a formal warning to Seven Network (Operations) Pty Limited, the provider of 7plus, for contravening the prohibitions on providing gambling promotional content and the requirement to retain adequate written records in the Online Rules.
- The investigation reports and agreed Enforceable Undertakings were published late October 2022.

Online Content breach – AFL (Kayo Sports App)

The issue

- The ACMA received 2 complaints alleging gambling ads were streamed just before the start of an AFL Match between Fremantle v Collingwood and during quarter and half-time breaks on 22 May 2022 between the hours of 5:00 am and 8:30 pm.

The investigation

- On 28 July 2022, the ACMA commenced an investigation into whether, during its live coverage of the AFL match, the Kayo Sports service provided gambling promotional content in contravention of the Online Rules.
- On 11 January 2023, the ACMA found that Streamotion Pty Ltd provided gambling promotional content to end-users of Kayo Sports in contravention of section 12 of the Online Rules.

Enforcement action taken

- On 5 April 2023, the ACMA issued a formal warning to Streamotion Pty Ltd the provider of Kayo Sports, for contravening the prohibitions on providing gambling promotional content.
- The investigation report and formal warning were published on 19 April 2023.

Gambling matters under way

- As at 31 August 2023, the ACMA had has 6 investigations under way:
 - of these, the ACMA has made findings in relation to 4 matters but they are not yet finalised⁴
 - 2 remain under investigation.

Increasing complaints about gambling advertising since 2018

- While broadcast and online gambling advertising restrictions are achieving their intended objectives around live sport, the high number of complaints that the ACMA receives about gambling advertising indicates concerns remain that children are exposed to too much gambling advertising.
- Since 2018, the ACMA has received a total of 619 complaints and enquiries about gambling ads and noted a steady increase, albeit from a low starting base and noting a slight drop off in 2022–23.
- Concerns expressed by complainants include:
 - excessive gambling advertising
 - gambling ads shown at inappropriate times, often with reference to family viewing times or children watching
 - gambling ads being shown during or adjacent to live sports broadcasts.
- Some complainants are of the view that gambling advertising should be banned altogether.
- Complaints data by financial year is at Table 1.

Table 1: Complaints and enquiries about gambling advertising, by financial year

Complaints and enquiries about gambling advertising				
Financial Year	Enquiries**	Complaints***	Total	% of total content complaints & enquiries
2018–2019*	47	0	47	3.3%
2019–2020	46	6	52	3.1%
2020–2021	118	2	120	5.7%
2021–2022	197	11	208	11.6%
2022–2023	165	15	180	12.6%
1 July to 31 Aug 2023	12	0	12	7.1%
Total	585	34	619	

* The new restrictions were introduced in March 2018.

** Enquiries included matters where we referred the complainant to the broadcaster in the first instance, while other enquiries raised matters that are not generally covered by the rules, such as the number of gambling ads during inappropriate times (usually with reference to family viewing).

⁴ The matter may still be going through procedural fairness or publication related steps or compliance and enforcement actions have not been settled

*** Complaints are those matters that were assessed by the ACMA to decide whether to formally investigate.

KEY ISSUES – INTERACTIVE GAMBLING

- The ACMA's actions under the IGA have contributed effectively to reducing harm.
- Since the ACMA was given additional powers in 2017, and up to 31 August 2023, the ACMA has undertaken 550 investigations under the IGA leading to a range of enforcement actions.
- As a result of ACMA's actions, as at 31 August 2023 over 210 illegal services have withdrawn from the Australian market and 823 illegal gambling and affiliate marketing websites have been blocked.
- However, the current legislative framework is challenged by a dynamic digital market and constantly evolving technologies and products. Consequently, there are opportunities to clarify and enhance the effectiveness of the protections under the IGA.

Use of credit cards for online gambling

- The government announced on 28 April 2023 that it will ban the use of credit cards for online wagering. In August 2023 it consulted with stakeholders on draft legislation, and the technical implementation of the ban and legislation to amend the IGA was introduced on 13 September.
- On 14 September 2023 the Senate referred an inquiry into the Interactive Gambling Amendment (Credit and Other Measures) Bill 2023 to the Environment and Communications Legislation Committee for inquiry. The ACMA did not make a submission. The report was published on 12 October 2023, recommending the Bill be passed. It also recommended the Minister undertake a review over the next 12 months into the regulation of keno-type lotteries under the IGA, considering the potential for how credit and digital payments bans and other harm reduction policies be applied to these services.
- The Bill includes enhanced enforcement powers for the ACMA to enforce the ban, being powers to receive and issue enforceable undertakings and remedial directions.

Website blocking

- Between November 2019 (when the first request to block was made) and 31 August 2023, the ACMA requested Internet Service Providers (ISPs) to block access to a total of 823 websites. These relate to 249 illegal gambling services and include 574 alternate sites that have been set up to circumvent the blocks.
- 7 websites have been unblocked following reviews by staff which indicated that those services have now implemented measures bringing them into compliance with the IGA.
- Website blocking is effective in disrupting (although not preventing) the illegal gambling services being provided into the Australian market. Of the 249 illegal gambling services that have been the subject of blocking requests:
 - 143 (57%) have either withdrawn of their own accord or have not taken any action to circumvent the blocks (as far as the ACMA is aware)
 - 106 (43%) have sought to circumvent the blocks by launching mirror sites. The ACMA continues to monitor and block the mirror sites.
- In general, the ACMA has seen a significant reduction in Australian traffic to the websites that have been blocked, even where the services seek to circumvent the blocks.

- According to data from Similarweb (a digital intelligence provider of web traffic), Australian traffic to the majority of the top 10 illegal offshore gambling services which have caused the greatest harm (based on complaints received) decreased by at least 70% by 31 August 2023, following the blocking of their primary and mirror websites in prior months, with 3 services decreasing by over 98%.

PPPfish – commencement of civil penalty proceedings

- In April 2022, the ACMA commenced civil penalty proceedings in the Federal Court alleging contraventions of s15(2A) of the IGA by parties who provided prohibited online gambling services to Australians or were involved in promoting and referring customer to those services.
- This action follows a detailed ACMA investigation into services that originally operated under the name 'PPPfish' but subsequently rebranded to 'Shuffle Gaming' and later 'Redraw Poker'. The ACMA alleges that these were online poker services which are prohibited under the IGA.
- The ACMA alleges that, since 2 March 2020, the services were provided by Brisbane Poker Pty Ltd and Rhys Jones, and then Diverse Link Pty Ltd. The ACMA also alleges Brenton Buttigieg was involved in promoting and referring customers to those services.
- For the alleged contraventions, the maximum penalties payable by an individual is up to \$1.665 million per contravention, and five times that amount for companies.
- On 23 March 2023, the Federal Court gave a default judgement against Diverse Link Pty Ltd, imposing a pecuniary penalty of \$5 million. The judgement marks the first time a Federal Court has ordered a civil penalty for contraventions of the IGA.
- The judgment noted that there is virtually no likelihood of recovery. Steps had been taken to de-register the company when proceedings were instituted, which were deferred by ASIC at the ACMA's request, to enable the ACMA's proceedings against Diverse Link Pty Ltd to be concluded.
- As the proceedings against the 3 remaining respondents are ongoing the ACMA cannot provide any further comment.

BACKGROUND

Gambling advertising rules – Live sport

- The ACMA registered additional gambling advertising restrictions in broadcasting codes of practice on 30 March 2018 and made the Broadcasting Services (Online Content Service Provider Rules) 2018 (the Online Rules) on 28 September 2018. These rules impose stricter limitations between 5:00 am and 8:30 pm, with less strict conditions in place after 8:30 pm.
- The restrictions prohibit gambling advertising during live sport broadcast and streamed online between 5.00 am and 8.30 pm, from 5 minutes from the scheduled start of the event until 5 minutes after play.
- When the rules start depends on what the *scheduled start* of the sporting event is. If the broadcaster advertises a 'kick-off' time at least 24 hours before the game, then the rules start 5 minutes before that advertised time.
- If the broadcaster does not advertise the 'kick-off' time 24 hours beforehand, the rules start 5 minutes before the start of the first program that includes the live sporting event (this could include the pre-game entertainment).

- These restrictions supplement existing broadcasting code rules about gambling advertising during live sport and enhance community safeguards during times when children are most likely to be part of the broadcast and streaming audience.

Gambling advertising during times that children may be watching

- Clause 6.5.1 of the FreeTV code prohibits a commercial relating to betting and gambling:
 - in any Program classified G or lower between:
 - 6.00 am and 8.30 am
 - 4.00 pm and 7.00 pm.
 - during any Program that is broadcast between 5.00 am and 8.30 pm and principally directed to Children.
- For the avoidance of doubt, the restrictions in clause 6.5.1 do not apply during news, Current Affairs or Sports Programs.
- The restrictions at clause 6.5.1 do not apply to the following:
 - a commercial relating to such things as government lotteries, lotto, keno or contests
 - a commercial relating to entertainment or dining facilities at places where betting or gambling take place, or a tourism commercial which incidentally depicts betting or gambling, provided in each case that the contents do not draw attention to betting or gambling in a manner calculated to directly promote their use.

House of Representatives inquiry

- The House of Representatives Standing Committee on Social Policy and Legal Affairs Report of the Inquiry into online gambling and its impacts on those experiencing gambling harm made a number 31 recommendations. Three were directly relevant to the ACMA's remit, including to:
 - develop and implement:
 - technological solutions and resources to quickly and more effectively block offshore gambling websites (Rec 7)
 - a protocols for blocking financial transactions to illegal operators, in cooperation with Australian banks and other payment system providers (Rec 7)
 - stronger sanctions for those who profit from illegal gambling (Rec 7)
 - lead the development of multilateral agreements that:
 - improve international co-operation to combat illegal services
 - aim to reduce gambling harm and protect public policy and research from gambling industry interference (Rec 8)
 - implement a ban on gambling advertising to be phased in over 3 years (Rec 26).

Social casinos / lootboxes in video games

- Under the IGA, social casinos and video games with simulated gambling or chance-based components such as loot boxes are not typically regarded as gambling services. This is because they are not 'played for money or anything else of value', which is a required element for a game to be regarded as a gambling service.
- There may be cases where the position is not so clear, for example, where there is a secondary market that provides the ability to convert virtual items into money or something of value.

- The ACMA is acutely aware of concerns about these types of services. The ACMA continues to monitor relevant developments and has recently published a market snapshot of social casinos.
- On 29 March 2023, the government announced proposed reforms to the National Classification Scheme including a mandatory minimum classification of for games which contain simulated gambling and contain paid loot boxes:
 - in September 2023 the Government's Classification Amendment Bill passed Parliament. Amongst other things the Bill expands options for industry to self-classify content including computer games using either in-house or third-party classifiers trained and accredited by government
 - on 23 September 2023 the government announced that mandatory minimum classifications for computer games containing gambling-like content would be introduced from September 2024⁵. The changes mean that computer games that contain in-game purchases linked to elements of chance, such as paid loot boxes, will receive a minimum classification of M (Mature- not recommended for children under 15 years of age). Computer games containing simulated gambling, such as social casinos, will be legally restricted to adults only with a minimum classification of R18+.

Social Casinos – market snapshot

- In March 2023, the ACMA published a market snapshot of social casinos which provides:
 - an analysis of the global and domestic market including key players
 - insight into the demographics of Australia users and consumer habits.
- Key findings:
 - the size of the global social casino market in 2021 was US\$7.3bn. According to the industry data platform data.ai, Australia is in the top 5 markets by consumer spend (as of the first half of 2022)
 - social casinos are among the most popular genres of mobile games. Slots are the most popular type of casino game, as well as the main source of revenue. Australian spending on mobile slots games was US\$302 million in 2021
 - some research indicates that players of social casino games tend to be older, with a close-to-even proportion of male and females. Separate research indicates younger males are more likely to spend money in social casino games
 - studies suggest there are several motivations for playing social casino games. These include for entertainment, to avoid or substitute for 'real' gambling, to cope with negative emotions like stress, and also to learn, practice or improve skills for real gambling.

⁵ This followed a meeting, on 22 September 2023, of the Standing Council of Attorneys-General, where all states and territories agreed to updated Guidelines for the Classification of Computer Games, 2023.

ATTACHMENTS

Attachment A

QoN – Senate Estimates Hearing 24 May 2023 – ACMA research
into gambling advertising on broadcasting

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Environment and Communications
QUESTION ON NOTICE
Supplementary Budget Estimates 2022 - 2023
Infrastructure, Transport, Regional Development, Communications and the Arts

Departmental Question Number: SQ23-003950

Division/Agency Name: Australian Communications and Media Authority

Hansard Reference: Spoken, Page No. 96 (24 May 2023)

Topic: ACMA - ACMA research into gambling advertising on broadcasting

Ms O'Loughlin: No. We continue to deliver on compliance with the current rules, but, that said, we are doing some more research around gambling advertising, particularly on broadcasting, to better inform ourselves about how much is actually going on out there. We are doing some additional research to inform ourselves.

Senator RICE: Has that research been completed?

Ms O'Loughlin: Not as yet, no.

Senator RICE: Could we get a copy of that research?

Ms O'Loughlin: It has not been completed. It's not in the field at the moment. I'm happy to take that on notice and let you know when that might be completed.

Senator RICE: When do you expect it to be completed?

Ms Chapman: We expect it at the end of the month or by the middle of June. I can also add that there's a natural course. When there are major sporting events, we do actually monitor those events. We did that for the last Olympics, and we will also be looking at monitoring the upcoming FIFA Women's World Cup. When there are high-profile events, we actually do extra monitoring.

Senator RICE: Are the results of that monitoring made public?

Ms O'Loughlin: Where there have been breaches, they are made public.

Ms Chapman: When we find breaches, we then investigate. We had some in relation to the Tokyo Olympics last year. Then they would be published. We have our normal monitoring, we respond to complaints that come in to us and we do investigations. We have a number of investigations on the go at the moment.

Senator RICE: When your research is finished, will that be made public? Can it be provided to us as soon as it's done?

Ms O'Loughlin: I'm not sure there is any reason why it wouldn't be made public, but we can certainly take that on notice. I would just go back to say that our responsibilities at this stage for gambling advertising are really about compliance and enforcement of the existing rules. In broadcasting, that's set out in the code of practice for the industry. Online rules are set in legislation, so those rules would need to be amended by the parliament. We are focused very much on compliance with the current rules, but doing our own research to inform ourselves about what else is happening in the broadcasting space.

Answer:

The Australian Communications and Media Authority (ACMA) is currently procuring gambling advertising placement data. We anticipate publishing our analysis of the data once it is completed.