

Formal Warning

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

To: Mr Huxley Harris

[REDACTED]

I, [REDACTED], delegate of the Australian Communications and Media Authority (ACMA), being satisfied that you have contravened subsections 61EA(1A), 15(2A) and 15AA(3) of the *Interactive Gambling Act 2001* (the IGA):

HEREBY issue you a formal warning under section 64A of the IGA, for one or more contraventions of subsections 61EA(1A), 15(2A) and 15AA(3) of the IGA, being civil penalty provisions.

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.
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.
3. Subsection 5(3) of the IGA lists services that are not prohibited interactive gambling services, including an excluded wagering service (paragraph 5(3)(aa)).
4. An 'excluded wagering service' is defined in section 8A of the IGA and includes betting on a sporting event except to the extent it is an in-play betting service (subsection 8A(3) of the IGA). An excluded wagering service is a kind of regulated interactive gambling service (as defined in section 8E of the IGA).
5. Subsection 15AA(3) of the IGA provides that a person must not provide a particular kind of regulated interactive gambling service if:
 - (a) the service has an Australian customer link; 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.
6. 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.
7. Subsection 64B(1) of the IGA provides that each civil penalty provision under the IGA is enforceable under Part 4 of *Regulatory Powers (Standard Provisions) Act 2014* (the RPA). Paragraph 92(1)(d) of the RPA provides that a person must not 'be in any way, directly or indirectly, knowingly concerned in, or party to, a contravention of a civil penalty provision'.
8. Under subsection 92(2) of the RPA, an ancillary who contravenes subsection 92(1) in relation to a civil penalty provision is taken to have contravened the relevant civil penalty provision.
9. Subsection 61EA(1A) of the IGA provides that a person must not publish a designated interactive gambling service advertisement in Australia if the publication is not permitted by another specified section of the IGA (including sections 61EB, 61ED, 61EE or 61EF of the IGA).

Investigation

10. Under section 21 of the IGA, on 15 May 2024, the ACMA commenced an investigation into whether:
 - > Smart Pokies published, or authorised or caused the publication of, designated interactive gambling service advertisements in Australia, that publicise or otherwise promote online gambling services that are prohibited and or unlicensed regulated interactive gambling services, on the Smart Pokies website, in contravention of subsection 61EA(1A) of the IGA.
 - > Smart Pokies was an ancillary to the provision of prohibited interactive gambling services in contravention of the IGA by operation of section 92 of the RPA.
 - > Smart Pokies was an ancillary to the provision of unlicensed regulated interactive gambling services in contravention of the IGA by operation of section 92 of the RPA.
11. During the period of the investigation the Smart Pokies service was available via the URL <https://smartpokies.com>.
12. You are the provider of the Smart Pokies service.

Contravention of subsection 61EA(1A) of the IGA

13. The Smart Pokies service contains content that constitutes advertising in the form of writing and visual images on a website and includes:
 - > branding images and logos from interactive gambling services services, included as content in reviews and listings of online casino and wagering services
 - > direct hyperlinks to the websites that make available these interactive gambling services
 - > text that encourages use of the interactive gambling services, by referring to bonuses and statements about the trustworthiness of the services.
14. The ACMA has previously found that a number of the interactive gambling services advertised on the Smart Pokies service are prohibited and or unlicensed regulated interactive gambling services that have an Australian-customer link, which are provided in breach of subsections 15(2A) and 15AA(3) of the IGA.
15. The ACMA is satisfied that these advertisements were published in Australia as they were viewed by staff physically present in Australia using an Australian IP address. The advertising was also targeted to Australians, indicated by the following:
 - > the text of the website frequently refers to the service being targeted at Australians
 - > the text of the website includes Australian slang such as 'Aussies' and 'pokies'
 - > the advertisements refer to cash bonuses and prizes in Australian dollars.
16. The publication of these advertisements in Australia was not permitted by another specified section of the IGA, including sections 61EB, 61ED, 61EE or 61EF of the IGA.
17. Therefore, the ACMA is satisfied that you, as the provider of the Smart Pokies service, contravened the IGA by publishing designated interactive gambling service advertisements in Australia on the Smart Pokies service, that publicise or otherwise promote prohibited and unlicensed regulated interactive gambling services, in contravention of subsection 61EA(1A) of the IGA.

Contravention of subsection 15(2A) of the IGA

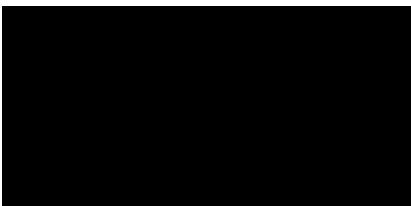
18. The ACMA has previously found that a number of the casino-style services advertised on Smart Pokies are prohibited interactive gambling services that have an Australian-customer link (prohibited services), which are provided in breach of subsection 15(2A) of the IGA.
19. The Smart Pokies service publishes information that is intentionally aimed at enabling customers to access and play on the prohibited services, including customers from Australia. By providing links on its website to the prohibited services, the Smart Pokies service assists the prohibited services to sign up Australian consumers to their gambling services.

20. The ACMA is satisfied that you, as the provider of the service, had actual knowledge of the essential matters constituting the contravention of subsection 15(2A) of the IGA by the prohibited services. Consequently, you are knowingly concerned in and is an intentional participant in, the contraventions of subsection 15(2A) of the IGA.

Contravention of subsection 15AA(3) of the IGA

21. The ACMA has previously found that a number of the gambling services advertised on Smart Pokies are unlicensed regulated interactive gambling services that have an Australian-customer link, which are provided in breach of subsection 15AA(3) of the IGA.
22. The Smart Pokies service publishes information that is intentionally aimed at enabling customers to access and play on the gambling services, including customers from Australia. By providing links on its website to these services, the Smart Pokies service assists the unlicensed regulated gambling services to sign up Australian consumers.
23. The ACMA is satisfied that you, as the provider of the Smart Pokies service, had actual knowledge of the essential matters constituting the contravention of subsection 15AA(3) of the IGA by the gambling services. Consequently, you are knowingly concerned in and is an intentional participant in, the contravention of subsection 15AA(3) of the IGA.

Dated this 9 July 2024



Delegate of the Australian Communications and Media Authority