



**Submission by
Free TV Australia Limited**

Department of Broadband,
Communications and the Digital Economy

Review of the Interactive Gambling Act

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1 EXECUTIVE SUMMARY

- Free TV supports amending the Interactive Gambling Act 2001 to implement a harm minimisation approach which allows regulated interactive gambling services and advertising of those services. Development of the approach should consider:
 - including appropriate safeguards consistent with existing industry regulatory practice; and
 - utilising existing regulatory structures such as the existing regimes for developing codes of practice to implement any new framework.
- Free TV supports a platform neutral approach to regulating interactive gambling services. A consistent and technology neutral approach to regulation across all mediums provides certainty and minimises the risk that gambling operators will simply move across to unregulated platforms to operate in breach of any legislative framework. Although there have been numerous instances where prohibited illegal gambling services have potentially been advertised in Australia, only Free TV broadcasters have faced any investigation and formal finding under the prohibition.
 - This is because broadcasters are subject to a licence condition enforced by the ACMA in addition to the general enforcement framework of the IGA.
 - Despite the fact the Australian Federal Police has chosen not to investigate alleged breaches by Free TV broadcasters of the advertising provisions of the IGA, the ACMA has undertaken its own investigations. This has led to a situation where broadcasters are being held to a higher standard than other Australian media entities.
- In order to ensure that the advertising prohibition in the IGA is certain and effective, the following issues must be addressed as a matter of urgency:
 - The meaning under the IGA of a prohibited "interactive gambling advertisement" must be clarified;
 - The meaning under the IGA of a permitted "accidental" or "incidental" broadcasting of an interactive gambling service advertisement must be clarified; and
 - The prohibition on advertising interactive gambling services should be removed and advertising of regulated services under a harm minimisation approach should be permitted. This approach would ensure that appropriate controls are in place around any advertising of gambling services.



2 Introduction

Free TV Australia represents all of Australia's commercial free-to-air television broadcasters. In 2011 commercial free-to-air television is the most popular source of entertainment and information for Australians, with our members providing nine channels of content across a broad range of genres, as well as rich online and mobile offerings, all at no cost to the public.

Free TV appreciates the opportunity to comment on the on the paper *Review of the Interactive Gambling Act 2001* released by the Department of Broadband, Communications and the Digital Economy on 24 August 2011.

Free TV supports a review of the effectiveness of the IGA and the consideration of alternate regulatory approaches. At the same time Free TV acknowledges the significant social issue of problem gambling and supports the Department investigating practical and constructive ways to address the contribution of online services to problem gambling while noting that there is little statistical evidence of the extent to which online gambling contributes to problem gambling. Broadcasters recognise that all media involved in advertising any form of gambling have a responsibility to ensure appropriate safeguards.

Free TV agrees with the main findings of the Productivity Commission's Inquiry Report on Gambling released in June 2010 in relation to the effectiveness of the IGA and proposals for reform.

For more than two years Free TV has been actively seeking to clarify the operation of advertising restrictions under the IGA with Departmental officers and others. Free TV has made previous submissions to the Department and other representatives of the government on these issues, particularly, in relation to sports broadcasts and advertising of interactive gambling services:

- (a) Free TV and its members have communicated with Department representatives on a number of occasions about Australian commercial broadcasters deciding not to broadcast sporting events (or only broadcasting after first editing at great difficulty and expense) because of concerns that the IGA may be breached by the prominent placement in the broadcast feeds of potential advertisements for interactive gambling services. The uncertainty over whether certain broadcasts will breach the IGA risks broadcasters making unnecessary decisions not to broadcast free-to-air sporting events or undertaking more extensive editing than needed.
- (b) Free TV has also sought to develop with its members an industry code that would clarify the meaning of "accidental" or "incidental" broadcast of an interactive gambling advertisement on commercial television. Free TV would welcome further development of a code as part of or alongside the reform process. This is a low-cost practical regulation measure. It can provide greater certainty for permitted broadcasting content.

This submission responds in detail to the specific questions posed by the paper and issues for discussion. Free TV has limited its responses to select questions and issues.

3 Growth of online gambling services and links to problem gambling**3.1 What impact has the IGA had on the prevalence of problem gambling in Australia?**

The prohibitions in the IGA on offering and advertising interactive gambling services have not been effective in reducing online gambling or problem gambling. Instead of the IGA performing the intended function of limiting online gambling among Australians, it appears the IGA has:

- been ineffective in limiting online gambling among Australians; and
- contributed to Australians using overseas providers of online gambling services.

As noted by the Productivity Commission, there is a growing prevalence of Australians using online gambling services.

3.2 What are the risks to the prevalence of problem gambling in Australia of maintaining or modifying the current prohibition of certain online gambling services? What are the risks in moving to a strongly regulated approach? How would these risks be best addressed?

The research and analysis referenced in the paper and by the Productivity Commission suggests that the IGA in its present form is not expected to be effective in reducing the amount of online gambling activity. Free TV expects a consequence of maintaining the current regime to be that Australians wishing to gamble online will still be able to easily do so using overseas providers. This carries the risk of overseas providers operating without appropriate restrictions on their activities or harm minimisation measures.

Allowing regulated interactive gambling services in Australia would provide Australians with the opportunity to choose to use Australian operators who are operating under a regulated and monitored regime.

Moving to an approach of allowing regulated interactive gambling services in Australia may raise concerns that this will make online gambling even more accessible to Australians and risk increasing problem gambling. However, the analysis in the paper suggests there are already few obstacles to accessing online gambling services using overseas providers. Free TV also contends that any potential risk is out-weighed by the opportunity through a regulated regime to apply appropriate harm minimisation measures to mitigate problem gambling risks.

A strongly regulated approach (as opposed to a prohibition approach) raises the risk of an increased compliance burden for businesses wishing to engage in the regulated activities. The permitted activities under the regulated regime will also need to be clearly defined. Neither of these issues should be a significant obstacle to an effective regulated approach. Detailed industry engagement on defining requirements and identifying practical measures that are aligned with existing industry regulation will assist to address these issues.

Free TV supports the mitigation proposed by the Productivity Commission of a gradual adjustment (or phased-in approach) to the treatment of online

gambling allowing progressive assessment of effectiveness as permitted gambling activities are expanded.

4 The impact of platform neutrality, developing technologies and convergence on the regulation of gambling services

4.1 Are there circumstances where different approaches to regulation of gambling between different platforms/technologies should be retained?

Overall, Free TV supports applying a consistent regulatory approach to all platforms and technologies, including advertising mediums. This lessens the risk of operators choosing the least regulated forum to conduct their activities.

As indicated by the paper, the disparity in regulation is broader than just across different platforms and technologies. There are different regulatory approaches for:

- different ways to gamble (eg, online gambling prohibitions versus permitted regulated telephone betting);
- different types of gambling; and
- regulating gambling across federal, state and territory jurisdictions.

Free-to-air television broadcasters are required to comply with multiple federal, state and territory regimes in order to meet broadcasting and advertising rules for gambling services. Free TV appreciates that a national harmonised approach to gambling regulation is beyond the scope of review of the IGA. However, the regulatory burden of the current multiple regulatory regimes should be considered in weighing up whether any further regulation is warranted and the least invasive effective regulatory measures.

At present there is a regulatory disparity whereby broadcasters are subject to a commercial television licence condition set out at subsection 61FD(1) of the IGA, enforced by the ACMA in addition to the general enforcement framework of the IGA. This has led to a situation where broadcasters are being held to a higher standard than other Australian media entities.

If different approaches to regulation were to be considered, a relevant consideration should be whether there is an existing regulatory regime that would allow appropriate harm minimisation safeguards to be implemented and compliance monitored. Greater regulation should be considered where there is no suitable existing regime.

In particular, Free TV supports considering development of industry codes under existing legislative structures before any more invasive regulatory regime.

Part 4 of the IGA already provides a mechanism for developing industry codes registered by the ACMA.

The *Broadcasting Services Act 1992* (Cth) (**BSA**) also contains a regime allowing creation of an industry code. Broadcasters can be required to comply with the code as a condition of their broadcasting licence. The

Commercial Television Industry Code of Practice under that regime already provides a mechanism for effective regulation of:

- Program classifications;
- Accuracy, fairness and respect for privacy in news and current affairs;
- Advertising time on television;
- Placement of commercials and programs promotions; and
- Complaints handling.

The subject-matter of the Commercial Television Industry Code of Practice already addresses a number of the issues raised in the paper as applicable to free-to-air television broadcasters or with minimal changes the code could be further tailored to address matters contemplated for regulation (such as broadening complaints handling processes to take account of IGA complaints or addressing advertising requirements for permit interactive gambling services).

For free-to-air television broadcasters, regulation of advertising for interactive gambling services should first consider utilising the existing BSA and/or IGA code regimes rather than establishing any new regulatory regime.

4.2 If a platform neutral approach was adopted, what would the impacts be? How should this deal with future forms of gambling?

Impact of a platform neutral approach

A platform-neutral approach provides the opportunity to give greater industry regulatory certainty by applying a consistent approach across all platforms and technologies. This will reduce regulatory complexity.

Adopting a platform-neutral approach is expected to lessen the likelihood of operators moving their activities to the least visible or regulated form of gambling activity or advertising. It could also encourage development of consistent standards of acceptable behaviour across all forms of gambling, platforms and technologies. This can assist with:

- giving the public consistent messages from all industry participants on important issues such as problem gambling; and
- be advantageous for implementing harm minimisation measures in a consistent and coordinated way to enhance their effectiveness.

Dealing with future forms of gambling

Adopting an effective platform-neutral approach could also create efficiencies when dealing with future forms of gambling. The current inconsistent regulatory approach means that any new form of gambling needs to be considered across different platforms and technologies and their varied regulatory regimes.



5 The effectiveness of the existing provisions of the IGA

5.1 Are there sections of the IGA that could operate more clearly?

Free TV's primary concerns with the current provisions of the IGA are the lack of clarity of what is:

- a permitted "accidental" or "incidental" broadcast of an interactive gambling service advertisement. Confusion over the meaning of these terms is causing cost and harm to free-to-air television broadcasters, particularly when considering whether to broadcast a sporting event; and
- an "interactive gambling service advertisement". The IGA fails to provide clear guidance on what this term means. Free TV sets out a case study below to illustrate this concern.

Guidelines and clear criteria on these issues would assist to give certainty to broadcasters.

"Accidental" or "incidental" broadcast of an interactive gambling service advertisement

Overseas operators of interactive gambling services are large sponsors of sporting events. Footage of these sporting events will include significant signage, naming rights and other materials placed by the sponsors. The current IGA creates uncertainty for free-to-air television broadcasters as to whether broadcasts of these sporting events risks placing the broadcaster in breach of the IGA or their licence conditions.

Measures taken by the free-to-air television broadcasters to address this uncertainty include:

- deciding not to broadcast the event (eg, if there is no viable measures of editing the sponsored references); and
- where editing can be done, to applying substantial and sometimes costly editing before broadcasting the event.

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Examples of where these measures have been taken in practice include:

- the 2010 World Snooker Championships final, won by an Australian for the first time in decades, which featured Betfred.com signage. Network Ten had replay rights but decided not to broadcast it because they felt the risk of an ACMA breach finding was too great.
- the 2010 Isle of Man TT (time trial) superbike races featured Pokerstars' signage which was sufficiently prominent that Network Ten felt compelled to heavily edit the event. This required approximately 72 hours of editing, with nine of the eleven races effectively required a full day's editing each on a very short turn-around before broadcast, including editing over a weekend.
- Network Ten has also in the past withdrawn the World's Strongest Man program and edited Transworld Sport due to the presence of online gambling sponsorship.

Sporting teams and events we understand are currently sponsored (including jersey and stadium branding) by interactive gambling services include the following:

- Betfair sponsors the Australian Open, the football teams Manchester United and Barcelona FC, AFL team the Geelong Cats, NRL team the West Tigers, Cricket Australia and the English and Wales Cricket Board, which means their logos appear on jerseys and the stadium at the Ashes.
- Centrebet sponsors the Australian National Basketball League, NRL's Manly Football Club, and Soccer team the Newcastle Jets.
- 888.com sponsors (with relevant quotes from their annual report):
 - the World Snooker Championships – "The event was televised for nearly three weeks by the BBC resulting in over 140 hours of primetime 888sport branding on every player's waistcoat and on all advertising boards in the Crucible arena;"
 - Shane Warne – "Shane competed in the World Series, the European World Series, the Aussie Millions and the 888.com Open always wearing 888.com branded clothing generating notable media coverage wherever he went, including a significant number of national and International television, radio and press interviews."
 - Sevilla FC, from the Spanish La Liga football league – "Our shirt sponsorship with one of Spain's biggest football clubs, Sevilla FC, has also seen 888 achieve a significant amount of global media exposure, as Sevilla competed in tournaments against high profile European football teams."
 - Jeff Fenech, current World Snooker Champion Ronnie O'Sullivan and former champion John Higgins, and former German football star, Thomas Brodrick.

- Pokerstars sponsors the English Rugby Football Union governing body, RFU, with branding at all games.
- Full Tilt Poker sponsors the Virgin F1 car/team, the Sydney Roosters NRL, as well as Irish and UK professional boxing.
- Betfred sponsors Wembley Stadium and the World Snooker Championship.
- Bet365 sponsors the UK Horse racing event, the Bet365 Gold Cup.
- Sportingbet sponsors the NRL's Brisbane Broncos and English football teams Tottenham and the Wolverhampton Wanderers.

Greater clarity on the meaning of "accidental" and "incidental" broadcasting will assist broadcasters with making the decision on when the broadcast needs to be withheld or the extent of editing required. Another benefit that the industry hopes will result from clarification is an increase in the range and choice of programs available for viewing.

One option to address this concern being considered by Free TV with its members is development of a code setting out criteria for "accidental" and "incidental" broadcasting.

Meaning of "interactive gambling service advertisement"

The meaning of "interactive gambling service advertisement" for the purposes of the advertising prohibition is defined in s61BA of the IGA. "Interactive gambling service" is defined in s5 of the IGA utilising the definition of "gambling service" in s4 of the IGA. A key question causing uncertainty for broadcasters in compliance with the advertising prohibition is whether it is inherent in the definition of "gambling service" that the service must be for monetary or non-monetary consideration. This problem is illustrated by the below case study.

Case study

In December 2010, the ACMA found that certain licensees had breached the IGA by broadcasting interactive gambling service advertisements. The broadcasts concerned advertisements of "PokerStars.net" and were related to broadcast of a reality television program The Poker Star, where two episodes directed viewers to www.thepokerstar.com.au.

It was submitted by the licensees that the broadcasts were not interactive gambling service announcements as the PokerStars trade mark was used in relation to free services, including a free tour and free site and not just online gambling services. Furthermore, it was submitted that the website URL PokerStars.net was not a domain name for an interactive gambling service, but rather hosted a free poker program.

By broadcasting advertisements of PokerStars.net, a website with free online games, the licensees were found to have breached the IGA and were found to have breached the conditions of their commercial television licenses. This was an onerous outcome for the licensees, although no monetary penalties were imposed. This decision indicates just how little guidance is provided under the IGA in relation to prohibited advertisements and how broadly the provisions can be interpreted.

As noted in the paper "a sponsored advertising may be a prohibited interactive gambling service advertisement". However, the difficulty broadcasters face is, without guidance on the above two issues, that there is not clear criteria to apply to distinguish broadcasting a sponsored prohibited interactive gambling service advertisement from an accidental or incidental broadcast of an interactive gambling service advertisement.

5.2 Are the current regulatory arrangements under the IGA the most effective way in which to limit the provision of prohibited interactive gambling services to Australians?

Free TV concurs with the Productivity Commission's conclusion that the IGA is not well designed to prevent Australians using online casino-style gambling services. Alternate overseas operated services are easily accessible. Given there does not appear to be a clearly effective and practical means of preventing provision of prohibited interactive gambling services to Australians, Free TV endorses reviewing a regulated harm minimisation approach.

5.3 Are there more effective means of enforcing the advertising prohibition? What role should sports bodies and broadcasters play regarding such advertising? What role should State and Territory Governments play?

As explained above, the best way to make the current advertising prohibition more effective is to clarify the meaning of "interactive gambling service advertisement". Please see our comments on 5.1 on this issue.

The relatively small number of complaints about advertising prohibited interactive services reported for the July 2010 to June 2011 period does not support there is a need to provide a greater deterrent by increasing the available enforcement or penalty options. Of the 9 complaints received, only 7 were referred to the Australian Federal Police (**AFP**).

Free TV understands there has been only a single finding of a breach of the advertising prohibition (as described in the above case study). Free TV is not aware of any evidence supporting that the current enforcement regime under the IGA (requiring complaints to be referred to the AFP) is a relevant factor in the low amount of enforcement action. However, we acknowledge that it is a relevant point to consider in deciding whether to make a change. Just as relevant (if not more so), is whether the existing regime already provides a sufficient deterrent to breach. Free TV's view is that it does.

Free TV recommends considering if it would be efficient to reduce the number of government bodies involved in handling a suspected breach of the advertising prohibition. We recommend considering a structure where the ACMA is the sole body responsible for investigating alleged breaches (rather than also involving the Department and the AFP). The ACMA is the logical choice as the broadcasting licence regulator.

Free TV supports specifying a process that must be followed for complaints about advertising prohibited interactive gambling services. In addition to facilitating handling complaints effectively and effectively, a specified process will provide broadcasters with greater certainty and transparency that complaints will be handles in a consistent manner against consistent criteria.

Role of sports bodies and broadcasters regarding enforcement of advertising prohibition

If other enforcement means are to be considered, Free TV supports referring complaints about potential breaches of the advertising prohibition to an industry-managed complaints handling mechanism such as the regime already provided for under the Commercial Television Industry Code of Practice. This applies the rigour of an existing complaints handling framework to complaints and facilitates further investigation of the complaint. It also provides a level of timeliness.

As noted above, Free TV would also welcome the opportunity for industry to contribute to developing guidelines or a code to clarify the meaning of what is:

- a permitted "accidental" or "incidental" broadcast of an interactive gambling service advertisement; and
- an "interactive gambling service advertisement".

Role of State and Territory Governments

Free TV does not support having a dual federal and state/territory regulatory approach for enforcement of the advertising prohibition. The potential for different requirements and approaches adds further complexity to gambling and gambling advertisement regulation.