



**Submission by
Free TV Australia Limited**

Department of Broadband, Communications
and the Digital Economy

*Interim Report - Review of the Interactive
Gambling Act 2001*

25 June 2012

TABLE OF CONTENTS

EXECUTIVE SUMMARY	1
1 INTRODUCTION	2
2 HARM MINIMISATION AND CONSUMER PROTECTION	2
3 CLARIFICATION OF DEFINITIONS IN THE ADVERTISING PROVISIONS	3
3.1 "ACCIDENTAL" OR "INCIDENTAL"	3
3.2 INTERACTIVE GAMBLING SERVICE ADVERTISEMENT	3
4 REGULATORY FRAMEWORK	3
4.1 INTRODUCTION OF CIVIL PENALTIES FOR ADVERTISING PROHIBITIONS	3
4.2 THE ACMA AS ADMINISTERING AGENCY	4
4.3 ADDITIONAL ADVERTISING RESTRICTIONS FOR TELEVISION FOR PILOT PROGRAM	5

EXECUTIVE SUMMARY

- Free TV supports the primary recommendations and approach of the Interim Report that the *Interactive Gambling Act 2001* (IGA) should be amended to implement a harm minimisation approach which allows regulated interactive gambling services and advertising of those services.
- Free TV welcomes the recommendation that the meaning of “accidental or incidental” in the advertising provisions is clarified to ensure that the broadcast of events taking place outside Australia (with signage or other sponsorship of interactive gambling services) is permitted, provided that the broadcaster has not added the message and/or received any additional consideration.
- Free TV also welcomes the recognition that the definition “interactive gambling advertisement” requires clarification. However, it is concerned that an amendment that would prohibit ‘free-play sites that are associated with prohibited ‘for money’ sites’ will be unreasonably broad in its application and will create uncertainty and significant compliance costs for broadcasters unless “associated” is given a very precise and limited meaning.
- Free TV is also concerned that the Interim Report recommends that no television advertising of licensed interactive gambling services be permitted during the pilot program (other than in programs that broadcast poker tournaments). There is no justification for applying such restrictions to just one advertising platform. In addition, the *Commercial Television Industry Code of Practice* (Code) already contains appropriate restrictions so that commercials for betting or gambling are not screened at times when children are most likely to be watching.
- The recommendation to introduce civil penalties for breaches of the advertising prohibition is not warranted, as the existing regime provides sufficient deterrence. To the extent that a different approach to enforcement is considered necessary, Free TV recommends the development of industry codes under existing legislative structures.
- If civil penalties are to be introduced, they should be part of a platform-neutral regime, to be administered by the Australian Communications and Media Authority (ACMA). Existing penalties and provisions that apply only to broadcasters should be removed. In addition it should be clarified that the ACMA is the sole body responsible for considering complaints under the advertising restrictions of the IGA.

1 Introduction

This submission is made by Free TV Australia (Free TV) which is the peak industry body representing all commercial free-to-air broadcasters in Australia.

Free TV appreciates the opportunity to comment on the *Interim Report - Review of the Interactive Gambling Act 2001* released by the Department of Broadband, Communications and the Digital Economy on 29 May 2012.

Free TV members are cognisant of the significant social issue of problem gambling, and support the Department investigating practical and constructive ways to minimise the harm that may be caused by online gambling services

This submission should be read in conjunction with our earlier submission of October 2011.

2 Harm minimisation and consumer protection

Free TV strongly supports the primary recommendations of the Interim Report that the IGA be amended to create a consistent national standard of harm minimisation and consumer protection measures.

The prohibitions in the IGA on offering and advertising interactive gambling have not been effective in reducing online gambling or problem gambling. As discussed in the Productivity Commission Report, a carefully regulated approach to interactive gambling will provide scope for the provision of consumer protection and effective harm minimisation measures.

As noted by the Interim Report, the current fragmented regulatory structure creates complexities and inconsistencies. Presently, harm minimisation and consumer protection measures vary between states and territories. Jurisdictional distinctions also exist between the type of gambling activity and the way in which the gambling activity is carried out (eg online vs telephone). Commercial free-to-air broadcasters are required to comply with multiple federal, state and territory regimes to meet the broadcasting and advertising rules for gambling services. This creates an onerous regulatory burden on broadcasters and provides little certainty for stakeholders or benefit for consumers.

Free TV is supportive of the Interim Report's recommendation that standardised gambling messages should form part of the proposed national code on harm minimisation and consumer protection. Free TV agrees that greater consistency between states and territories is required on the content, design and display requirements of gambling messages. Appropriate controls at a national level will lead to stronger harm minimisation and consumer protection messaging for consumers.

Free TV notes that, to the extent possible, platform neutrality should be fundamental objective of any national scheme. A national technology-neutral approach to both gambling regulation and to the regulation of gambling advertising will ensure consistent and robust consumer safeguards and controls. In addition, it will prevent 'jurisdiction shopping' and 'platform shopping' by gambling operators, which in turn only serves to undermine harm minimisation objectives.

3 Clarification of definitions in the advertising provisions

3.1 “Accidental” or “incidental”

Recommendation 18: The definition of an ‘accidental or incidental’ advertisement as used in section 61ED of the IGA should be clarified to permit the broadcast of events taking place outside of Australia where the broadcaster has not added the writing, still or moving picture, sign, symbol or other visual image or audible message and does not receive any direct or indirect benefit for the in-broadcast advertising in addition to any direct or indirect benefit that the person receives from broadcasting the event.

Free TV strongly supports this recommendation. As noted in our submission of October 2011, the coverage of overseas events involving sponsorship by interactive gambling services has been limited by concerns that any reference or on-screen appearance will breach the IGA or licence conditions. This has led to coverage of overseas events being withdrawn, or subject to extensive (and costly) editing prior to broadcast.

Clarifying the definition of ‘accidental or incidental’ for the broadcast of overseas events in line with the recommendation will provide certainty for broadcasters, and should be pursued as a priority. In addition to clarifying the operation of the provisions, this change will enable more complete coverage of overseas events for Australian viewers because broadcasters will no longer face being found in breach of the IGA or their licence conditions for broadcasting overseas events involving sponsorship by interactive gambling services.

Free TV looks forward to consulting with the Department on an appropriate amendment to give effect to this recommendation.

3.2 Interactive gambling service advertisement

Recommendation 19: Part 7A of the IGA should be amended to put beyond doubt that advertisements for ‘free-play’ sites that are associated with prohibited ‘for money’ sites are prohibited as they are promoting the prohibited service.

Free TV is pleased that the Interim Report recommends the clarification of the definition of *interactive gambling service advertisement* (at section 61BA of the IGA).

However, Free TV is concerned that an amendment that would prohibit ‘free-play sites that are associated with prohibited ‘for money’ sites’ could be unreasonably broad in its application and may create further uncertainty and significant compliance costs for broadcasters. In particular, it is not clear what level of “association” would be required to activate such a prohibition.

Further consultation with relevant stakeholders should be undertaken to establish a position that is effective and practical for all parties concerned.

4 Regulatory framework

4.1 Introduction of civil penalties for advertising prohibitions

Recommendation 17: The advertising provisions of the IGA should include civil penalties (including pecuniary penalties), in addition to the existing criminal provisions under the IGA, as part of the range of penalties available under Part 7A of the IGA. The civil penalties should be administered by the ACMA. If an advertiser fails to comply with these civil penalty provisions, the ACMA should be able to apply to the Federal Court for injunctive relief in accordance with the proposed express ‘injunctive relief’ provision, outlined above. This would provide clarity and certainty for the ACMA in exercising its powers.

Free TV does not support the introduction of civil penalties as an additional enforcement measure.

The very high levels of compliance by broadcasters with the existing provisions of the IGA means that there is no demonstrated need for additional enforcement options against broadcasters. As noted in our submission of October 2011, there has been only 1 occasion where the advertising prohibition in the IGA has been breached by commercial television broadcasting licensees. This breach was a result of uncertainty around the definition of “interactive gambling service advertisements” in the IGA and the way it applied to the promotion of free-play sites.

Further, in addition to being a criminal offence under section 61DA of the IGA, compliance with the advertising restrictions in the IGA by broadcasters is a condition of their broadcasting licence issued under the *Broadcasting Services Act 1992* (BSA).¹ Existing penalties for such a licence condition breach include:

- the issue of a remedial direction under section 141 of the BSA (which carries very serious penalties if contravened); or
- suspension or cancellation of a broadcasting licence.

Given the high level of compliance and the range of enforcement options already available to the ACMA, Free TV does not support any additional powers or penalties in relation to the advertising prohibitions in the IGA, at least in relation to broadcasters.

To the extent that a different approach to enforcement is considered necessary, Free TV recommends the development of industry codes under existing legislative structures.

However, if the introduction of civil penalties is to be pursued, the regulatory framework should be amended so that it is applied consistently across platforms. This lessens the risk of operators choosing the least regulated forum to conduct their activities. Broadcasters should face the same regulatory regime as outdoor, print and online publishers. It is not equitable to have the same rules applying across the board, but with different penalty options for different platforms.

To implement a consistent approach across all media platforms, any introduction of civil penalties should also involve the removal of current provisions that are specific to broadcasters. In particular, section 61FD of the IGA should be repealed and the additional enforcement measures available to the ACMA that are only applicable to broadcasting services should be removed. This will create a technology neutral framework for the regulation of interactive gambling service advertisements. A platform-neutral civil penalty regime can then be applied consistently by the ACMA.

4.2 The ACMA as administering agency

Recommendation 20: The strengthened regulatory framework for the prohibition against the advertising of prohibited interactive gambling services, as provided by the recommendations in this chapter, should continue to operate at the federal level and be administered by the ACMA.

Consistent with our earlier submission, Free TV supports a regime that is administered by the ACMA at a federal level. The current system, involving investigation by up to three agencies, is unwieldy and creates an additional regulatory burden for industry. It can also lead to inefficiencies and inconsistencies across government.

¹ See section 61FD of the IGA

It is not clear from the Interim Report whether the AFP and the Department will continue to be involved in the management of complaints under the IGA. Free TV recommends that the ACMA take sole responsibility for complaints management.

4.3 Additional advertising restrictions for television for pilot program

Recommendation 22: To test that such an approach would be effective in reducing problem gambling risks, this amendment to the IGA should be introduced on the basis of a five-year trial where:

- *a player can only participate in one tournament at a time with any one regulated provider*
- *the 'return to players' from each tournament should be transparent to players before they enter the tournament, and*
- *no television advertising of these services should be permitted other than on programs that broadcast poker tournaments; all other types of advertising should be permitted subject to the standard restrictions.*

Free TV does not support the third bullet point of this recommendation. There is no rationale for limiting advertising for regulated services on just one platform, particularly when that platform already contains some restrictions on the placement of gambling and betting advertisements.

It is relevant to note that while that Productivity Commission Report recommends managed liberalisation of certain online gambling services, it does not recommend that any additional or platform-specific advertising restrictions be placed on the promotion of such services. There is no justification for restricting advertising only on television, particularly in an increasingly competitive converged media environment with a fragmenting audience. Such platform specific restrictions simply move advertising from one medium to another and have no impact on harm minimisation. Therefore Free TV advocates a platform-neutral approach to regulation across all mediums.

Commercial television broadcasters already have restrictions in place regarding the placement of commercials that relate to betting or gambling as part of the Code. These protections (at clause 6.14 of the Code) mean that commercials for betting or gambling are not screened at times when children are most likely to be watching. Therefore, there is even less justification for applying advertising restrictions solely to television.

No evidence has been cited in the Interim Report or the Productivity Commission Report to suggest that television advertising for online gambling services is more harmful than other forms of advertising. This limitation should be removed from the terms of the proposed pilot program.