



**Australian Government**

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**Department of Broadband,  
Communications and the Digital Economy**

## **2009 REPORT**

**The operation of the prohibition of advertisements of  
interactive gambling services under the  
*Interactive Gambling Act 2001***

# Report on the operation of the prohibition on interactive gambling advertisements

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## Reporting requirement

Section 61 FE of the *Interactive Gambling Act 2001* (IGA) requires the Minister for Broadband, Communications and the Digital Economy to cause to be prepared a report of any contraventions of the prohibition on interactive gambling service advertisements. The prohibition is established under Part 7A of the IGA.

The report must detail the number and nature of any contraventions in the preceding 12 months and any action taken by the Minister or Commonwealth Agency in response to each contravention. The report is required to be prepared as soon as practicable after each 31 December. The current report details complaints that have been made in relation to the advertising prohibition within Part 7A of the IGA.

## Reporting period: 1 January 2009–31 December 2009

## Background

Part 7A of the IGA makes it an offence to publish, broadcast or datacast an interactive gambling service advertisement in Australia subject to certain exceptions. This offence, which carries a maximum penalty of \$13 200 for individuals and \$66 000 for corporations, extends to all forms of media, both electronic and non-electronic, including advertising via the internet, broadcast services, print media, billboards and hoardings. Some examples of advertising which are excluded from the offence provisions are set out below:

- Incidental or accidental advertising is permitted and is not covered by the offence provisions in Part 7A.
- Political advertising is excluded from the meaning of an interactive gambling service advertisement for the purposes of Part 7A and consequently is not included in the advertising ban.
- A number of gambling services are excluded from the definition of an 'interactive gambling service'—for example, excluded wagering and excluded lottery services. The advertising ban does not apply to such excluded services.

The regulatory framework established by the IGA also makes it an offence to provide certain interactive gambling services to customers physically located in Australia. This offence, which carries a maximum of \$220 000 per day for individuals and \$1.1 million per day for corporations, applies to all interactive gambling service providers, whether based in Australia or offshore.

In addition to the offence provisions, the IGA establishes a complaints scheme whereby Australian residents or companies trading in Australia are able to complain to the Australian Communications and Media Authority (ACMA) if they believe that Australians can access prohibited internet gambling content. The ACMA is required to investigate the complaint subject to certain exceptions and must

refer Australian-hosted prohibited internet gambling content to the Australian Federal Police (AFP) or a state or territory police force if it considers the complaint should be so referred. If the prohibited internet gambling content is hosted overseas, the ACMA is required to notify the suppliers of filters listed in Schedule 1 of the Interactive Gambling Industry Code (the Code) and internet service providers (ISPs).

The Code was developed by the Internet Industry Association, as provided for by the IGA, and deals specifically with the issue of overseas-sourced material. The Code requires ISPs to make available to their customers the approved filters listed in Schedule 1 of the Code. The ACMA may also refer overseas-hosted prohibited internet gambling content to the AFP or a state or territory police force where they believe it appropriate.

Unlike the complaints scheme for prohibited internet gambling content under Part 3 of the IGA, the Department of Broadband, Communications and the Digital Economy has responsibility for receiving and investigating complaints in relation to potential breaches of the prohibition relating to broadcasting, datacasting or publishing an interactive gambling service advertisement.

The department receives and coordinates complaints under Part 7A of the IGA about advertising and conducts initial investigations into the alleged breaches. Following an initial assessment of the complaint based on the information available, the department forms a view whether there is potentially a breach of the advertising prohibition within the IGA. If a potential breach is found, the matter is referred to the AFP for further investigation. The AFP determines its priorities in relation to the investigation of matters referred to it.

## Outcomes

The department has considered seven matters in relation to potential breaches of the advertising prohibition of interactive gambling services between the period of 1 January 2009 and 31 December 2009.

Of these, one matter was not pursued as the content being investigated was found to be no longer available, and six matters were referred to the AFP for further investigation. The AFP did not undertake investigations into these matters, resulting in no prosecutions or convictions under Part 7A of the Act. Two of these six matters were also referred to the ACMA. In a decision announced by on 11 November 2010, the ACMA found that a number of licensees of two commercial television networks had breached a condition of their commercial television broadcasting licences by broadcasting advertisements promoting interactive gambling services, in contravention of the IGA.

Table 1: Complaints received

Date complaint received	Nature of complaint	Details of the complaint	Action by Commonwealth Agencies
12 March 2009	Interactive gambling advertisement of an overseas-hosted gambling service on an Australian-hosted website.	That a website contained links to interactive gambling services as defined under section 5 of the <i>Interactive Gambling Act 2001</i> .	The AFP did not proceed with an investigation into this matter.

8 April 2009	ACMA referred a complaint about the advertising of an interactive gambling service on an Australian-hosted website.	That a website contained a link to an interactive gambling service as defined under section 5 of the <i>Interactive Gambling Act 2001</i> .	The AFP did not proceed with an investigation into this matter.
30 April 2009	Clarification sought in relation to the operation of Part 7A of the <i>Interactive Gambling Act 2001</i> , and advertisement of an overseas-hosted interactive gambling service on various Australian-hosted websites and on commercial television.	Advertisement of an overseas-hosted interactive gambling service on various Australian-hosted websites and on commercial television.	The AFP did not proceed with an investigation into this matter. The matter was also referred to the ACMA, which reported on 11 November 2010 that a number of licensees had breached a condition of their commercial broadcasting licences.
23 June 2009	ACMA referred a complaint about the advertising of an interactive gambling service on an Australian-hosted website.	That a website contained a link to an interactive gambling service as defined under section 5 of the <i>Interactive Gambling Act 2001</i> .	The department's investigation did not support the complaint as the investigated content was no longer available.
10 August 2009	ACMA referred a complaint about advertising of interactive gambling services contained within a press article.	That a publication contained an advertisement of an interactive gambling service as defined under section 5 of the <i>Interactive Gambling Act 2001</i> .	The AFP did not proceed with an investigation into this matter.
24 August 2009	ACMA referred a complaint about advertising of interactive gambling services contained within a press article.	That a publication contained an advertisement of an interactive gambling service as defined under section 5 of the <i>Interactive Gambling Act 2001</i> .	The AFP did not proceed with an investigation into this matter.
28 September 2009	Enquiry in relation to the broadcasting of a program on commercial television.	That a television program constituted an advertisement of an interactive gambling service.	The AFP did not proceed with an investigation into this matter. The matter was also referred to the ACMA, which reported on 11 November 2010 that the television program was not a prohibited advertisement under the IGA.