



## Australian Government

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### Department of Communications, Information Technology and the Arts

# Summary of Reports on the operation of the prohibition on interactive gambling advertisements 2003, 2004, 2005

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## Operation of the Prohibition on Interactive Gambling Advertisements REPORT 2003, 2004, 2005

### Reporting requirement

Section 61 FE of the *Interactive Gambling Act 2001* (IGA) requires the Minister 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 following summary details complaints that have been made in relation to the advertising prohibition within Part 7A of the IGA.

**REPORTING PERIODS:** January 2002—December 2002; January 2003—December 2004; January 2005—December 2005

### 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 prohibition does not extend to advertisements published in overseas media outside of Australia, such as overseas magazines that are not principally intended for distribution or use in Australia, or websites that are aimed at non-Australian audiences.

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 provide their customers with one of 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 against Part 7A of the IGA 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 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 received six formal complaints (three in 2003 and two in 2004 and one in 2005) in relation to potential breaches of the advertising prohibition of interactive gambling services between the period of 1 January 2003 and 31 December 2005. The nature and outcomes of these complaints are listed in Table 1.

Further investigation was carried out in relation to each of the received complaints. There were no findings of contravention against Part 7A of the IGA during the reported periods.

TABLE 1: COMPLAINTS RECEIVED			
Date of complaint	Nature of complaint	Detail of complaint	Action taken
15 March 2003	Email received within Australia, containing promotion and links to an interactive gambling service offering betting exchange products.	The complainant wrote in response to a number of emails that had been received containing details of an online wagering service.  It was alleged that advertisement for this service contained references to in-the-run betting, which is prohibited by the IGA.	The complaint was referred to the AFP on 28 March 2003.  The AFP has advised that as of 2 March 2005 this matter is still under investigation.
24 April	The unsolicited distribution of	The complainant wrote in response to the receipt	Upon carrying out an initial

2003	emails containing advertising and links for an offshore interactive casino.	of a number of unsolicited emails containing promotions for an online casino.	<p>investigation into the alleged breach, DCITA referred this matter to the AFP.</p> <p>The AFP responded on 2 October 2003, advising that it would not proceed with an investigation into this matter.</p>
9 May 2003	The use of an online advertising banner to promote an interactive gambling service on a website purported to be Australian-hosted.	The complainant alleged that the website had continually featured an advertisement for interactive gambling products.	<p>Upon carrying out an initial investigation into the alleged breach, DCITA referred this matter to the AFP.</p> <p>The AFP responded on 12 June 2003, advising that it would not proceed with an investigation into this matter.</p>
22 March 2004	The television broadcast of a boxing match where one	The complainant wrote in response to the televised broadcast of a boxing match in which one	Upon carrying out an initial investigation, DCITA referred

	<p>fighter displayed a promotion for an online casino across his back.</p>	<p>participant had a URL for an offshore online casino tattooed on his back. The URL was clear to viewers throughout the match.</p>	<p>this matter to the AFP.</p> <p>The AFP responded on 27 April 2004, advising that it would not proceed with an investigation into this matter.</p>
<p>31 March 2004</p>	<p>A CD-ROM containing a link and promotion for an online casino was distributed with a cereal product within Australia.</p>	<p>The complainant wrote in relation to a promotional CD-ROM that was distributed with certain cereal products in early 2003. The manufacturer responded to this complaint with a media statement dated 31 March 2004.</p>	<p>Upon carrying out an initial investigation, DCITA concluded that this matter was unlikely to be a breach of the provisions of Section 7A of the IGA.</p> <p>Following discussions with the manufacturer, the Department was satisfied that the link was accidental and the manufacturer had no intention to promote the website. The product was recalled</p>

			immediately.
12 August 2005	Search engines contain sponsored links from online gambling organisations when a misspelled search term is entered into the search engine.	<p>The complainant wrote that a number of search engines contain sponsored links to online gambling sites.</p> <p>It was alleged that these links appear when a search term is misspelled, for example using "online gambling" instead of "online gambling".</p>	The Department investigated the matter.