



Australian Government

Department of Communications

2013 report

**The operation of the Prohibition of Advertisements of
Interactive Gambling Services under the *Interactive Gambling
Act 2001***

September 2014

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REPORT ON THE OPERATION OF THE PROHIBITION ON INTERACTIVE GAMBLING ADVERTISEMENTS

Reporting Requirement

Section 61 FE of the *Interactive Gambling Act 2001* (IGA) requires the Minister for Communications 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 current report details complaints that have been made in relation to the advertising prohibition under Part 7A of the IGA.

Reporting Period

1 January 2013 - 31 December 2013.

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 \$20,400 for individuals and \$102,000 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 \$340,000 per day for individuals and \$1.7 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 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 Communications has undertaken 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 considered 36 matters in relation to potential breaches of the advertising prohibition of interactive gambling services between the period of 1 January 2013 and 31 December 2013.

Of these matters, 32 were referred to the AFP for further investigation (three complaints were not accepted for investigation due to other operational priorities and 29 complaints are still under consideration by the AFP).

The nature and outcome of these 36 matters are listed in Table 1.

Table 1 – Complaints received – 1 January 2013 to 31 December 2013

	Date complaint received	Nature of complaint	Details of the complaint	Action by Commonwealth Agencies
1	13-Mar-13	Interactive gambling advertisement of overseas-hosted online gambling services accessed through links on a website.	That a website contained links to interactive gambling services in contravention of Part 7A of the <i>Interactive Gambling Act 2001</i> .	The Department concluded that the advertisement was not published in Australia and therefore not a prohibited advertisement, and proceeded no further with the investigation.
2	27-Mar-13	Interactive gambling advertisement of overseas-hosted online gambling services accessed through links on a social media website.	That a website contained links to interactive gambling services in contravention of Part 7A of the <i>Interactive Gambling Act 2001</i> .	The Department concluded that the advertisement was not published in Australia and therefore not a prohibited advertisement, and proceeded no further with the investigation.
3	2-Apr-13	Interactive gambling advertisement of overseas-hosted online poker service through an application (app).	That an application constituted a prohibited interactive gambling advertisement in contravention of Part 7A of the <i>Interactive Gambling Act 2001</i> .	The Department wrote to the application store requesting the app be removed. The app was removed from the Australian application store.
4	2-Apr-13	Interactive gambling advertisement of overseas-hosted online poker service accessed through an application (app).	That an application constituted a prohibited interactive gambling advertisement in contravention of Part 7A of the <i>Interactive Gambling Act 2001</i> .	The Department wrote to the application store requesting the app be removed. The store argued the advertisement was not 'published in Australia' for the purposes of the IGA. Although not formally referred, the matter was provided to the AFP for information.
5	5-Jul-13	Interactive gambling advertisement of Australian-hosted online gambling services accessed through links on a website.	That a website contained links to interactive gambling services in contravention of Part 7A of the <i>Interactive Gambling Act 2001</i> .	The Department referred the matter to the AFP. The AFP advised that the referral had not been accepted for investigation due to other priorities.

6	31-Jul-13	Interactive gambling advertisement of gambling services via a letter, scratch card and CD-ROM received in the mail.	That a letter, scratch card and CD-ROM contained material that may be interactive gambling service advertisements in contravention of Part 7A of the <i>Interactive Gambling Act 2001</i> .	The Department referred the matter to the AFP. The AFP advised that the referral had not been accepted for investigation due to other priorities.
7	14-Aug-13	Interactive gambling advertisement of gambling services via a letter/pamphlet and CD-ROM) received in the mail.	That a letter/pamphlet and CD-ROM contained material that may be interactive gambling service advertisements in contravention of Part 7A of the <i>Interactive Gambling Act 2001</i> .	The Department referred the matter to the AFP. The AFP advised that the referral had not been accepted for investigation due to other priorities.
8-11	20-Sep-13	Four matters regarding interactive gambling advertisements of Australian-hosted online gambling services accessed through links on multiple websites.	That multiple websites contained links to interactive gambling services in contravention of Part 7A of the <i>Interactive Gambling Act 2001</i> .	The Department referred the four matters to the AFP.
12-16	20-Sep-13	Five matters regarding interactive gambling advertisements of overseas-hosted online gambling services accessed through links on multiple websites.	That multiple websites contained links to interactive gambling services in contravention of Part 7A of the <i>Interactive Gambling Act 2001</i> .	The Department referred the five matters to the AFP.
17-30	18-Oct-13	Fourteen matters regarding interactive gambling advertisements of Australian-hosted online gambling services accessed through links on multiple websites.	That multiple websites contained links to interactive gambling services in contravention of Part 7A of the <i>Interactive Gambling Act 2001</i> .	The Department referred the 14 matters to the AFP.
31-36	18-Oct-13	Six matters regarding interactive gambling advertisements of overseas-hosted online gambling services accessed through links on multiple websites.	That multiple websites contained links to interactive gambling services in contravention of Part 7A of the <i>Interactive Gambling Act 2001</i> .	The Department referred the six matters to the AFP.

Correction to the 2012 report - the operation of the Prohibition of Advertisements of Interactive Gambling Services under the Interactive Gambling Act 2001 (March 2013)

The 2012 report - *The operation of the Prohibition of Advertisements of Interactive Gambling Services under the Interactive Gambling Act 2001* (IGA) was tabled on 12 March 2013. The report detailed complaints that had been made between 1 January 2012 and 31 December 2012 in relation to the advertising prohibition under Part 7A of the IGA.

The report stated the total number of complaints for the reporting period was 12. The correct number is 14. The consequential changes to the 2012 report are as follows:

1. On page 4 of the report, the section titled *Outcomes* should read (changes in bolded text):

The department considered **fourteen** complaints in relation to potential breaches of the advertising prohibition of interactive gambling services between the period of 1 January 2012 and 31 December 2012.

Of these matters, **eight** were referred to the AFP for further investigation; four were not deemed to be breaches of the IGA and were not investigated further; **one mirrored a complaint previously referred to the AFP and no further action was taken**; and one was closed due to insufficient information being available.

Of the complaints referred to the AFP, the AFP advised that five complaints regarding overseas-hosted websites were provided to the relevant law enforcement authorities via the Interpol Network for their consideration, and one was not accepted for investigation due to other priorities. **Two** complaints are still under consideration by the AFP.

The nature and outcome of these **fourteen** matters are listed in Table 1.

2. On page 5 of the report, Table 1 *Complaints Received* should include the two additional complaints as shown in the table below:

Date complaint received	Nature of complaint	Details of the complaint	Action by Commonwealth Agencies
25-May-12	Interactive gambling advertisement of gambling services via a letter and CD-ROM received in the mail.	That a letter and CD-ROM contained material that may be interactive gambling service advertisements in contravention of Part 7A of the Interactive Gambling Act 2001.	This complaint mirrored an identical complaint that was referred to the AFP in December 2011. Given this previous referral, no further action was taken by the Department.
12-Jun-12	Interactive gambling advertisement of online gambling services contained in emails.	That emails contained material that may be interactive gambling service advertisements in contravention of Part 7A of the Interactive Gambling Act 2001.	The Department determined that the website appeared to still be advertising prohibited services, and the Department referred the matter to the AFP in August 2014.