

23 November 2015

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The Hon. Barry O'Farrell  
Illegal Offshore Wagering Review  
c/- Gambling Section  
Department of Social Services  
Tuggeranong Office Park  
Soward Way (cnr Athllon Drive)  
Greenway ACT 2900

Dear Mr O'Farrell,

### **Review into Illegal Offshore Wagering**

I am writing to you on behalf of Free TV Australia (Free TV) in relation to the *Review into Illegal Offshore Wagering*. Free TV is the industry body which represents Australia's commercial free-to-air television broadcasters. We note that television advertising is not a matter covered by the terms of reference, however there are a number of issues which may be relevant to your consideration of the broader issues.

### **Existing protections**

As you will be aware, broadcasting is legislated and regulated federally.

Under the Commercial Television Industry Code of Practice (Code) there are extensive restrictions on the placement of gambling advertising on commercial free-to-air television. On 10 November 2015 the Australian Communications and Media Authority (ACMA) registered a new Commercial Television Industry Code of Practice, which will take effect on 1 December 2015.

Under the new Code, gambling and betting advertisements are prohibited:

- In any P, C, or G classified Program between the hours of 6.00 am to 8.30 am, and 4.00 pm to 7 pm; and
- In any program directed principally to children between the hours of 5.00 am and 8.30 pm.

Additional restrictions apply to gambling advertisements during live sporting events.

Generally, once play has commenced:

- promotion of odds is completely prohibited; and
- commercials for betting and gambling that do not mention odds are only permitted during scheduled breaks, or unscheduled breaks where players are not on the field.

Some exceptions apply for long form sports such as cricket, tennis, golf, or the Olympics, where limited promotions of odds are permitted during play, subject to strict requirements.

The Code also contains a series of harm minimisation measures directed to the content of gambling advertising.

These robust protections in the Code provide a consistent national regime which incorporates appropriate community safeguards and limits the exposure of children to gambling advertising.

Broadcasters also comply with the requirements of the Commonwealth's *Interactive Gambling Act 2001* (IGA). In addition to the general offence provisions of the IGA which apply in relation to advertising a prohibited service,<sup>1</sup> commercial free-to-air broadcasters are subject to two separate licence conditions<sup>2</sup>, which fall under a different investigation and enforcement framework. The issues arising out of this duplication are discussed further below.

Broadcasters take these rules seriously and compliance is very high. Broadcasters recognise that all media involved in advertising any form of gambling have a responsibility to ensure appropriate safeguards are in place and adhered to. However, it is imperative that the relevant framework be consistent, clear and practical.

### **Regulatory inconsistency**

In addition to the federal rules set out above, commercial free-to-air broadcasters are required to comply with multiple state and territory regimes concerning advertisements for gambling services. Harm minimisation measures (such as warning messages and restrictions on the content of advertisements) also vary between states and territories, and 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).

Overall, Free TV supports applying a consistent regulatory approach to all platforms and technologies (including advertising mediums), as well as a national approach to the regulation of wagering. 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 (regulatory bypass). Such an approach would also ensure a clear and consistent regime of oversight, regulation and harm minimisation for consumers, providers and publishers.

This issue has been raised more broadly by Free TV in its letter of December 2013, in relation to the Government's de-regulation agenda.

### **Operational Issues - IGA**

Free TV is also concerned about the existing framework for investigation and complaints, and in particular the duplication between the broadcasting licence conditions (subsection 61FD(1) of the IGA and section 7(1)(h) of Schedule 2 to the *Broadcasting Services Act 1992*) and the offence provisions at section 61DA of the IGA.

Presently, complaints about each of these matters are directed to different agencies, and there is an inconsistent approach to investigation and enforcement – depending on which

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<sup>1</sup> Section 61DA of the IGA

<sup>2</sup> Subsection 61FD(1) of the IGA, and section 7(1)(h) of Schedule 2 to the *Broadcasting Services Act 1992*

provision is being examined, and whether the person being investigated is a publisher or a gambling service provider. The Australian Federal Police is responsible for prosecutions of the offence provisions under the IGA, while the ACMA is responsible for investigation and enforcement in relation to the broadcasters' licence conditions.

#### **CASE STUDY**

*A gambling service provider advertises a service in Australia. The ACMA advises the both the service provider and broadcasters that it considers the service may be in breach of the IGA and the service will be referred to the Federal Police. The service is not advertised further on television pending the outcome of the investigation and consideration. The Federal Police consider the materials and advise that they will not prosecute the service provider. However, the ACMA indicates to broadcasters that it still considers the service to be in contravention of the IGA and the advertisements should not be broadcast. If the ACMA were to take action against a broadcaster for publishing the advertisement, they would only need to be satisfied of the contravention on the balance of probabilities to find broadcasters in breach of their licence conditions. No further action is available against the gambling service provider who provides the service.*

This case study demonstrates the uncertain and inconsistent enforcement regime currently in place.

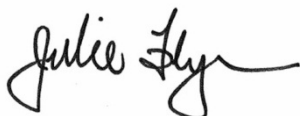
This is also a matter raised by Free TV in its December 2013 submission to the Government's de-regulation program. Broadcasters should not be held to a higher standard than other publishers, or gambling service providers. The substantive offence provisions alone should be retained, and the broadcasting licence conditions which duplicate this rule should be removed.

It would be efficient to reduce the number of government bodies involved in handling a suspected breach of the advertising prohibition. 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.

#### **Contact**

Please contact me if you would like to discuss any of the issues addressed in this letter, or the position of the commercial television broadcasting industry generally.

Yours sincerely,



**Julie Flynn**  
**CEO**