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Attn: Senator David Bushby
Chair
Senate Standing Committee on Environment and Communications
C/- Committee Secretary
Senate Standing Committees on Environment and Communications
PO Box 6100
Parliament House
Canberra ACT 2600

By email: seniorclerk.committees@aph.gov.au

Dear Senator Bushby,

Interactive Gambling Amendment Bill 2016

Free TV Australia (Free TV) welcomes the opportunity to provide this submission on the *Interactive Gambling Amendment Bill 2016* (the Bill) to the Senate Standing Committee on Environment and Communications.

Free TV is the peak industry body representing Australia's commercial free-to-air television broadcasting licensees. At no cost to the public, our members provide fifteen channels of content across a broad range of genres, as well as rich online and mobile offerings. On any given day, free-to-air television is watched by more than 13 million Australians.

Our comments focus on those aspects of the Bill most relevant to Free TV members.

In summary, our key concerns with the Bill are:

- The new regulation of "unlicensed regulated interactive gambling services" should not extend the scope of the advertising ban. These services, such as foreign licensed totalisators, bookmakers and lotteries, may appear in news or sports coverage or other foreign content, for example as sponsors/signage at foreign racing and sporting events or other foreign content that is broadcast in Australia. Such references are very unlikely to cause any harm and certainly no significant harm to Australians sufficient to justify the scope of the proposed advertising ban and regulatory burden on broadcasters;
- In addition, the prohibitions expressed in the *Interactive Gambling Act 2001* (IGA) should not be enforced under a broadcast licence condition and the extended powers of the *Regulatory Powers (Standard Provisions) Act 2014*;
- These amendments significantly increase the risks and regulatory burden on broadcasters and are unnecessary. The imposition of the new restriction as a broadcast licence condition is inconsistent with a move to platform neutral regulation and should be removed;
- The power of the Minister to determine what constitutes a "sporting event" by legislative instrument leaves a core regulatory obligation to be determined by the Minister, creates



significant uncertainty regarding the impact of the Bill and exposes regulated parties to potentially significant regulatory change on short notice. The Bill should be amended to include a definition of sporting event or alternatively, the proposed legislative instrument should accompany the Bill;

- The language of the Bill should be amended to accommodate betting on a series of contingencies as well as a series of events in line with available state licensing of Australian bookmakers;
- The Bill should be amended so that it is clear that existing policy on in-play betting on horse, harness and greyhound racing is maintained.

We expand on these issues as follows.

Expanded scope of advertising ban and broadcasting licence condition and Application of Regulatory Powers (Standard Provisions) Act 2014

The Bill substantially expands the prohibition on 'interactive gambling services' so that 'unlicensed regulated interactive gambling services' are also banned. The services constituting unlicensed regulated interactive gambling services include foreign state operated or licensed totalisators, lotto and lotteries as well as foreign bookmakers. It appears that very many of these operations are well regulated in their home jurisdictions, many dedicated to special public purpose fund raising and some likely to appear as sponsors of racing and sporting events broadcast in Australia.

The ban on unlicensed regulated interactive gambling services providing services to Australians is supported by a ban on advertising in Part 7A Division 4: The ban on advertising interactive gambling advertisements in Part 7A Division 4 will be extended to advertising of unlicensed regulated interactive gambling services; and enforced by the commercial television broadcasting licence condition imposed by 61FD(1).

These changes significantly expand the list of services that can give rise to a penalty, including suspension and cancellation of broadcasters' licences in some circumstances, which in turn means that broadcasting of foreign content and live coverage of overseas sport will carry substantial increased risk.

While we note the exceptions in relation to accidental or incidental publication and publication by persons not receiving any benefit (at ss 61ED and 61EE), the expanded advertising prohibition and licence condition significantly increases the number of brands and sponsors made subject to the ban that must be recognised by broadcasters, and will potentially prohibit content for which no consideration has been received by the broadcasters, if the content does not fall within the narrow confines of 'accidental or incidental'. For example, bona fide news and sports coverage could potentially be captured if it includes a direct intentional reference to a lottery or bookmaker that was licensed in the relevant country of origin. There is also a significantly increased burden on broadcasters in reviewing and identifying potentially regulated entities and increased risk of investigation and potential prosecution by the regulator. This risk arises even where the foreign operator is in compliance with the IGA and not accepting transactions from Australians and no consideration has been received by the broadcaster. For these reasons the advertising ban in the IGA should not extend to regulated interactive gambling services.

Free TV has previously called for the removal of the existing licence condition (s61FD), which overlaps with existing obligations under the *Broadcasting Services Act 1992*. It should be removed, not expanded.

The Bill also introduces a civil penalty regime to be enforced by the ACMA. It will trigger the *Regulatory Powers (Standard Provisions) Act 2014* and allow the ACMA to issue infringement notices and apply to the Federal Court or Federal Circuit Court for a civil penalty order or injunction for contraventions of the IGA (Schedule 1, Item 139).



Section 92(1)(b) of the *Regulatory Powers (Standard Provisions) Act* provides that a person must not 'aid, abet, counsel or procure a contravention of a civil penalty provision' and s 92(1)(d) says that a person must not 'be in any way, directly or indirectly, knowingly concerned in, or party to, a contravention of a civil penalty provision'.

These changes represent an unnecessary and significant material increase in the regulatory burden on broadcasters.

Free TV's is concerned that in practice, this may mean that any person involved with the publication of footage which contains a reference to an unlicensed gambling service, may find themselves in breach of the relevant civil penalty provision under the IGA. This adds to the regulatory overreach.

Recommendation: The Bill should be amended to:

- remove the expanded licence condition in s 61FD;
- expressly exclude Part 7A of the IGA from the operation of s 92(1) of the *Regulatory Powers (Standard Provisions) Act*; and
- either:
 - remove the expanded advertising prohibition from Part 7A Division 4; or
 - add a broad exception to Part 7A that covers the broadcast of news and current affairs, foreign sport/racing coverage and other international events and content produced internationally (in addition to the accidental/incidental exception).

Drafting ambiguity regarding in-play betting during horse, harness and greyhound racing

Currently, section 8A of the IGA distinguishes between 'sporting events' and horse, harness and greyhound races. Horse, harness and greyhound races are 'excluded wagering services' for the purposes of the Act and the existing ban on in-play betting does not apply to these events.

At clause 10A the Bill empowers the Minister to determine the meaning of 'sporting event' by legislative instrument. Clause 10A(b) mentions "a race" and "a series of races" as examples of things that may be specified as a "sporting event". The Bill inserts a new clause 8A(5)(b) which provides that a service is not an 'Excluded Wagering Service' if it is an 'in-play betting service' and the definition of "in-play betting service" applies to sporting events as defined by the legislative instrument made under 10A. Accordingly, if the Minister lists horse, harness or greyhound races as "sporting events" the Bill will have the effect of introducing a new ban on bets taken after a horse race, harness race or greyhound race have commenced.

The uncertain status of bets taken after a horse race, harness race or greyhound race has commenced is an example of the uncertainty created by the use of a Ministerial declaration to determine the meaning of "sporting event" and highlights the need for the meaning of sporting event to be determined in the statute or, at least, for proposed legislative instrument to be published before the Bill is passed.

Free TV seeks clarification on the government's intended approach to in-play betting on horse, harness and greyhound races. As mentioned in our submission to the Department, a change in this area was not canvassed in the Review of the Impact of Illegal Offshore Wagering or the Government response to that review.

Recommendation: The Bill should be amended to make it clear that horse, harness and greyhound races are not and cannot be sporting events and, therefore, continue to be excluded from the ban on in-play betting.



Excluded wagering services - other events or contingencies

Under the Bill, advertisements for betting on 'events or contingencies' other than horse, harness, greyhound racing and other sporting events are lawful only if those events or contingencies fit within the definition of 'excluded wagering service' under s8A. This requires amongst other things that the conditions at s8A(5) first be met.

As currently drafted, s 8A(5)(a) refers to 'an event, series of events or a contingency'.

The language used indicates a difference in meaning between "event" and "contingency". It also suggests that betting on a series of events is permitted but betting on a series of contingencies is not.

Relevantly, the Oxford English dictionary contains the following definitions:

Event, ' n. The (actual or contemplated) fact of anything happening; the occurrence of.'

Contingency, 'n. The quality or condition of being contingent. a. The condition of being liable to happen or not in the future; uncertainty of occurrence or incidence.'

Based on these definitions the Bill seems to permit betting on the outcome of a series of events that are "actual or contemplated" but does not permit betting on whether or not particular events will happen (i.e. contingencies). Accordingly, it appears unclear how the provision applies to services which relate to betting on a series of contingencies, for example, such as commonly occur in fantasy sports and novelty bets. Fantasy sport and novelty betting are recognised forms of wagering.

The selection of a successful fantasy sports team requires a close familiarity with players and relative player performance. It involves betting on a combination of events and contingencies but does not involve impulsive or in-play betting. This form of wagering is very popular in the United States and the UK and of increasing popularity in Australia. The amended law and EM should make clearer that Australian licensed fantasy wagering services and novelty bets are excluded wagering services for the purposes of the Act.

Recommendation: The Bill should be amended so that s 8A(5)(a) also includes in the definition of 'excluded wagering service', 'a series of contingencies', and permits betting on events and contingencies, or a series of either 'individually or in combination, including as may occur in a sporting event or series of sporting events'.

Contact

If you have any queries or wish to discuss any of the matters raised in this letter, please contact me on

We look forward to engaging with you further on these issues.

Yours sincerely,

Brett Savill
CEO of Free TV Australia