

Australian Communications and Media Authority submission

House of Representatives Standing
Committee on Social Policy and Legal Affairs
Inquiry into online gambling and its impacts on
those experiencing gambling harm

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Executive summary

The Australian Communications and Media Authority (ACMA) is the independent statutory authority responsible for the regulation of broadcasting, radiocommunications and telecommunications in Australia. The ACMA's remit also includes aspects of online content regulation; relevantly, restrictions on gambling advertising in live-streamed sport and interactive gambling services.

The ACMA welcomes the opportunity to provide the Committee with a submission highlighting our areas of responsibility and observations on the application of current rules and emerging issues.

The ACMA regulates both interactive gambling and gambling advertising.

The ACMA enforces the *Interactive Gambling Act 2001* (IGA), which prohibits certain interactive gambling services from being offered or advertised to Australians. These include online casinos, slots and poker and sports betting or wagering services offered by entities that don't hold an Australian licence. The IGA also prohibits licensed wagering operators from providing 'in-play' betting and facilitating the provision of credit to customers.

Our role under the IGA also encompasses responsibility for the national self-exclusion register – to be known as BetStop – which sets up a national mechanism that enables individuals to exclude themselves from being provided with licensed interactive wagering services either online or by telephone. This is a significant consumer safeguard that will be available to the public soon.

Under the *Broadcasting Services Act 1992* (BSA), the ACMA regulates gambling advertising broadcast on television and radio services, and shown online in conjunction with live sport. In performing this role, we oversee compliance with rules about when gambling advertising can and cannot be shown and, to a relatively limited extent, the content of gambling advertising.

The ACMA's harm reduction activities under the IGA have contributed effectively to reducing harm and BetStop will provide a significant additional safeguard but there are opportunities for enhancement.

The ACMA was given additional powers under the IGA in 2017. Since then, the ACMA has undertaken more than 470 investigations under the IGA leading to a range of enforcement actions. As a result of ACMA's actions over 180 illegal services have withdrawn from the Australian market and 619 illegal gambling and affiliate marketing websites have been blocked.

However, the parameters of the current legislative framework are challenged by the dynamic digital market and constantly evolving technologies and products. There are opportunities to clarify and enhance the effectiveness of the protections under the IGA that the Committee may wish to consider, including to:

- > address emerging technology and products (for example fast or quick codes used for in-play betting) that were not contemplated when the IGA commenced, and explore whether they are consistent with the underlying policy intent of the IGA to minimise the harm of online gambling
- > remove limitations on the reach of advertising prohibitions to allow the ACMA to take action to address harms from advertising content targeted at Australians on websites with a global audience

- > assist the ACMA in its enforcement of the IGA through an amendment to the definition of 'credit'
- > provide the ACMA with additional administrative enforcement options to compel behavioural change and build a culture of compliance within the online gambling industry, such as enforceable undertakings relating to compliance with legislative provisions by licensed wagering operators or issuing a remedial direction.

It would also be timely to consider if the IGA should cover products which have become popular in the market since the introduction of the IGA, but may not be covered by the definition of a gambling service. Examples of such products include loot boxes and social casinos.

Although regulated entities are largely compliant with the gambling advertising rules during live sport, there is growing community concern about the overall volume of gambling advertising.

The ACMA's research, monitoring and compliance activities indicate that the policy intent of protecting children from gambling advertising during live sport between 5 am and 8.30 pm has been effective.

However, the ACMA is receiving increasing numbers of complaints about the number of gambling advertisements screened at all times, including in proximity to live sport and during other programming, indicating that community concerns about children's exposure remains high.

The gambling restrictions in the codes were last reviewed in 2018 and the Online Rules were introduced in 2018. The ACMA considers it timely to review broadcasting codes. To that end, we have strongly encouraged broadcasters to commence review processes and have indicated that it would be desirable to consider measures directed to addressing broader concerns about the volume of gambling advertising and its prevalence across content that may be consumed by children.

A best practice approach would involve considering children's contemporary viewing and listening behaviours, including what content they access, on which platforms, and audience expectations for certain safeguards on particular platforms.

Consistent with the approach we advocated in our 2022 [What audiences want](#) position paper, we are also strongly encouraging broadcasting industry bodies to consider voluntarily extending the application of broadcasting code safeguards to licensees' respective online services (even though online content regulation falls outside the ACMA's current remit). This would better reflect how contemporary audiences consume content and would mean that audiences across broadcasters' suite of platforms would benefit from similar protections.

The ACMA's role under the IGA

The primary objective of the IGA is to reduce the harmful effects of gambling on the Australian community. The IGA does this by prohibiting certain online services from being provided or advertised to Australians. The IGA gives the ACMA a suite of powers to investigate and take enforcement action against online gambling services that are found to be operating illegally. The ACMA has a key role in raising awareness in the Australian community about illegal gambling services and their risks to minimise the use of these services.

The ACMA also has responsibility under the IGA for key areas of the government's National Consumer Protection Framework for online wagering in Australia, which are intended to better protect consumers who participate in online wagering with Australian licensed operators. This includes:

- > enforcing the prohibitions on wagering services providing or facilitating the provision of credit to customers. These prohibitions are intended to reduce the risk that the availability of credit may present to individuals who gamble beyond their capacity to pay
- > establishing the national self-exclusion register, which will enable a person to self-exclude from all licensed interactive wagering services (online and telephone wagering) in a single process.

This part of the submission canvasses the ACMA's role in relation to:

- > illegal online gambling services
- > licensed online gambling services
- > the national self-exclusion register.

It also includes our observations about some of the challenges posed by the dynamic environment these services operate in, including technological developments that put pressure on some of the existing legislative definitions.

Illegal online gambling services

The IGA makes it illegal for gambling operators to provide or advertise some online services to customers in Australia. These include:

- > casino-style services, slot machines and poker
- > wagering services that accept in-play betting on sporting events
- > betting on the outcome of a lottery
- > wagering services provided without a licence issued by an Australian state or territory.

The majority of the complaints to the ACMA are about online casinos. Consumers consistently raise issues about poor treatment including unfair play, non-payment of winnings, inability to contact the operator, and the lack of regulatory oversight. Illegal services use strategies aimed at convincing Australians that they are reputable and well-regulated, including publishing testimonials by 'Australian' customers that refer to big wins, fast withdrawals and excellent customer service to draw customers in. These illegal services are typically licensed in jurisdictions with minimal, if any, regulatory oversight and consumer protections.

The ACMA's approach to disrupting illegal online gambling

The ACMA has deliberately taken a very active, multi-pronged approach to disrupt the supply of and demand for illegal online gambling. This includes a combination of investigation and enforcement activities, engagement with industry and other regulators, and consumer education.

The ACMA was given additional powers under the IGA in September 2017. Since then, we have conducted over 470 investigations resulting in a variety of enforcement actions. These include issuing formal warnings (which are published on our website and communicated to licensing authorities in overseas jurisdictions), frequent requests to ISPs to block access to offending websites, action in the Federal Court for civil penalties¹ and the referral of principals of offending services to the Department of Home Affairs for inclusion on the Movement Alert List.² We also notify providers of internet filters of the offending services to add to their list of content to be filtered.³

We have engaged with gambling regulators and government agencies, both domestically and internationally, including in key jurisdictions such as the United Kingdom, New Jersey, Isle of Man, Malta, New Jersey and the Netherlands, and we use this network to assist in our enforcement and disruption efforts against illegal services.

We also run regular consumer awareness campaigns on digital platforms that highlight the risks Australians face when using illegal and unlicensed gambling services.

Impact of the ACMA's activities

We have seen notable disruption in the supply of illegal services since the ACMA started enforcing illegal offshore gambling rules in 2017.

The majority of services investigated by the ACMA have either withdrawn their services or, if they continue to operate illegally, have access to their websites blocked by internet service providers at the request of the ACMA.

Over 180 illegal services have withdrawn from the Australian market in this period and, since the ACMA made its first blocking request in November 2019, 619 illegal gambling and affiliate websites have been blocked.⁴

Website blocking

Website blocking has been effective in disrupting (although not preventing) the illegal gambling services being provided into the Australian market. Of the 619 sites blocked to 11 November 2022, 197 relate to illegal gambling services and 422 are mirror alternate sites that have been set up to circumvent the blocks.

Of the 197 illegal gambling services that have been the subject of blocking requests:

- > 103 (52%) have either withdrawn of their own accord or have not taken any action to circumvent the blocks (as far as the ACMA is aware)

¹ The ACMA can apply to the Federal Court of Australia for an injunction or imposition of a civil penalty order of up to A\$8.325 million per day for corporations.

² The Movement Alert List (MAL), administered by the Department of Home Affairs, is a computer database that stores biographic details of identities and travel documents of immigration concern to Australia. It governs the entry to and presence in Australia of non-citizens who are of concern for character or other reasons. Inclusion on the MAL may affect a person's travel to Australia.

³ Other enforcement actions not yet taken include issuing an infringement notice and notifying the Australian Federal Police as there are similar criminal offence provisions relevant to the same conduct.

⁴ As at 11 November 2022.

- > 94 (48%) have sought to circumvent the blocks by launching mirror sites. The ACMA continues to monitor and block the mirror sites.

When the ACMA blocks websites, we have observed a significant reduction in Australian traffic to the blocked websites, even where the services seek to circumvent the blocks. According to data from Similarweb (a digital intelligence provider of web traffic), Australian traffic to the majority of the top 10 illegal offshore gambling services that cause the greatest harm (based on complaints received) decreased by at least 60% by August 2022, following the blocking of their primary and mirror websites in prior months, with 4 services decreasing by over 90%.

Website blocking is also an effective means of educating consumers in Australia about the risks of using illegal online gambling services, using the pop-up messaging that consumers see when they attempt to access blocked sites, and via news articles we publish.

Expenditure on illegal services

There has also been an overall downward trend in offshore gambling expenditure, according to the dataset provided by H2 Gambling Capital. The dataset released in October 2022 shows that Australian expenditure on offshore gambling services has decreased since 2016 (the year before the ACMA assumed its expanded responsibilities). The expenditure forecast for 2022 is A\$1.63 billion, compared to A\$1.71 billion in 2016.

This is to be distinguished from estimates of total Australian expenditure on both legal online gambling and illegal offshore gambling, which increased over the same period and, notably, during the COVID-19 lockdowns. H2 Gambling Capital data estimates total Australian expenditure on online gambling services increasing from \$A5.57 billion in 2019 to \$A9.56 billion in 2022 – an increase of A\$3.99 billion (72%).

Engagement and outreach

The ACMA has also had success in disrupting illegal online gambling services through engagement with gambling regulators and government agencies, both domestically and internationally. This network of regulators has been used to assist with investigation activities, particularly with the identification of offenders and with our disruption and enforcement activities. We have established information-sharing arrangements, notably with the Australian Taxation Office, the New Jersey Division of Gaming Enforcement and the Netherlands Gaming Authority, which has allowed us to share details of matters of common interest. We also note that the ACMA is an active member of the International Association of Gambling Regulators (IAGR), which provides a platform to consolidate these relationships and promote further collaborative efforts.

Engagement with third parties that provide essential services to the gambling operators, like games suppliers and payment processors, has also resulted in a number withdrawing their products. This has reduced the games and payment options available to Australian customers on these sites, and consequently the attraction of these services to Australians.

Consumer awareness

The ACMA's digital advertising campaigns have been successful in raising awareness of the risks of using illegal gambling websites. The advertisements link to information on our webpages about the types of services that are illegal and those which are legal in Australia, and the experiences of consumers who use these services.

We ran digital advertising campaigns in 2020, twice in 2021 in response to concerns about increased gambling during the COVID-19 lockdown period, and again in 2022.

These campaigns performed strongly, with over 32,000 views to the ACMA's webpage during the campaign periods.⁵

The ACMA continues to run social media campaigns to coincide with major sporting events where there is a high focus on gambling. These events include the Australian Open tennis tournament, football finals and the spring racing carnival. The campaigns inform Australians that some online wagering services operate illegally and directs them to further information or the ACMA's register of licensed interactive wagering providers if they choose to bet.

In addition to the register of licensed interactive wagering providers, the ACMA publishes lists of illegal websites that it has blocked and issues media releases about these blocks and any significant or novel enforcement action that the ACMA takes.

Challenges posed by a constantly evolving environment

The ACMA regulates in a dynamic digital market, which by its nature crosses international borders. Many of the illegal services that the ACMA investigates are based overseas and in jurisdictions with minimal, if any, regulatory oversight. This can present particular challenges for enforcement.

The providers of illegal services also find ways to operate under high levels of anonymity and illegal operators seek to mask their identities by having their website domain privacy protected or otherwise anonymised, making it difficult to identify the ownership domains.

The digital environment also provides opportunities for offshore operators to avoid enforcement actions including circumventing website blocks by launching mirror sites, and for consumers to access blocked sites through the use of virtual private networks (VPNs) and other tools.

Illegal operators continue to find new and innovative ways to market their products to Australian consumers. The use of Australian imagery on websites is common and can lead consumers to inadvertently use prohibited or unlicensed online gambling services. It is also common for illegal operators to align themselves to affiliate services that appear to provide independent reviews of the illegal services, with direct links to the sites. The ACMA focused on investigating 20 affiliate marketing services in 2021-22 as a compliance priority, all of which had a contravention finding⁶. More recently, the ACMA has seen the use of social media and streaming services becoming popular ways for affiliates to target gamblers. This raises an additional concern as these types of services provide a dynamic and accessible platform for influencers and are typically accessed by younger demographics.

In addition, the ACMA has observed a number of developments in technology and payment methods, including using facilities outside of the traditional banking and payment-processing environments. This includes a move away from credit card deposits for Australian players in favour of encouraging deposits through vouchers or cryptocurrencies, or via payID. This provides a further opportunity for providers of illegal services to mask their identities.

In such a fluid and challenging environment, the ACMA takes a proactive, vigilant, agile, multi-faceted approach on deterrence and disruption to ensure we are effective and efficient in minimising harm to the Australian community. This includes ongoing

⁵ 12,821 in May to June 2020, 607 in March to April 2021, 5,795 in June 2021 and 12,857 in March to April 2022.

⁶ The majority of services investigated have either withdrawn from the Australian market or have been blocked

monitoring, continuing consumer education, engagement with industry and regulatory agencies and enforcement, including frequent and repeated website blocking. We continue to explore further opportunities for regulatory collaboration and disruption options, particularly focusing on financial transactions.

Licensed online gambling services

The ACMA's responsibilities under the IGA extend to licensed wagering services and include key measures to protect Australians and reduce the harm of online wagering under the government's National Consumer Protection Framework for online wagering.

The ACMA maintains a [register of Australian licensed interactive wagering providers](#) on its website.

The ACMA enforces the prohibitions on in-play betting and on licensed wagering service providers from providing or facilitating the provision of credit to their customers.

The ACMA is also overseeing the implementation of the national self-exclusion register, BetStop.

Prohibition on in-play betting

Online in-play sports betting services allow bets to be placed after the commencement of the sporting event on such things as the next point in a tennis match or who will score the next try in a football match. These services are prohibited under the IGA, recognising the high risk they can pose to people at risk of gambling harm through the rapid-style betting during play.

However, in-play betting can be provided in certain circumstances. This includes as part of a 'place-based betting service' (section 8BA), such as an electronic betting terminal (EBT) in retail outlets or other premises, or a 'telephone betting service' (section 8AA). These exclusions from the prohibition recognise that these services have a level of supervision or personal interaction that reduces the risks associated with in-play betting. The in-play betting prohibition does not apply to horse, harness or greyhound races as these shorter events do not provide the same opportunity for rapid-style betting.

In 2021, following the ACMA's first finding of non-compliance by a licensed wagering operator in relation to in-play betting, the ACMA issued a [media release](#) that put the industry on notice that regardless of whether non-compliance results from changes to the scheduled times of sporting events, operators must have robust systems to prevent in-play bets and that the ACMA will investigate evidence of non-compliance with these important consumer safeguards.

Prohibition on credit betting

The credit betting prohibitions commenced in February 2018 and prohibit licensed wagering operators:

- > providing, or offering to provide, credit to customers (other than by way of an independently-issued credit card) or;
- > using third parties, such as pay day lenders, to facilitate or promote the provision of credit.

Exceptions to the credit-related prohibitions apply to:

- > a provider of a telephone betting service where the service provider (or related company group) had wagering turnover of less than \$30 million in the previous financial year or, in the absence of data for the previous year, is reasonably likely to have turnover less than \$30 million in the current financial year⁷
- > an operator that also provided wagering services at a racecourse in Australia during the whole or part of the previous financial year⁸
- > a customer that is a gambling service provider.⁹

The credit betting prohibitions do not extend to the use of independently-issued credit cards as they are explicitly excluded from the offence provisions in section 15C of the IGA.

In 2021, 3 years after its commencement, the ACMA conducted a statutory review of the operation of the credit betting prohibitions in Part 2B of the IGA and published a report in 2021. The ACMA's review focused on the operational effectiveness and efficiency of the prohibitions and how they support the harm minimisation objectives of the IGA. The review found that the credit betting prohibitions in the IGA are generally operating effectively. However, we identified potential opportunities to reduce the risks for individuals who gamble beyond their capacity to pay.

The review makes 6 recommendations aimed at further supporting the harm minimisation objectives of the IGA and which would assist with the enforcement of the prohibitions. These included:

- > amending the evidentiary requirements, thereby providing clarity to industry, consumers and the ACMA (discussed further below)
- > clarifying the way in which a deposit can be made to a customer's betting account and how withdrawals are to be managed
- > identifying, for review, certain exclusions and exceptions in the IGA that could be strengthened or removed.

The use of credit cards for online gambling was the subject of 2 inquiries in 2021.¹⁰ In our submissions, the ACMA indicated we support measures that address harms and provide protections for Australians who choose to gamble online. However, we noted that the potential benefits of banning the use of credit cards for online gambling with domestic-licensed operators need to be balanced against the risk of consumers moving their gambling activities to offshore providers that pose significant additional risks to the consumers.

BetStop – the national self-exclusion register

BetStop is a key measure of the National Consumer Protection Framework for online wagering. For the first time, Australians will have access to a national exclusion register for licensed online and phone wagering services. Currently, Australians need to navigate complex arrangements, including self-exclusion programs offered by states, territories and individual providers.

Through BetStop, consumers will be able to self-exclude from all licensed interactive wagering services (online and telephone wagering) in a single process for a minimum

⁷ Paragraphs 15D(1)(a) – (g) of the IGA.

⁸ Paragraphs 15D(1)(h) and (i) of the IGA.

⁹ Section 15E of the IGA.

¹⁰ Parliamentary Joint Committee on Corporations and Financial Services (PJCCFS) – inquiry into the use of financial services such as credit cards and digital wallets for online gambling, and the Inquiry into the Interactive Gambling Amendment (Prohibition on credit card use) Bill 2020.

of 3 months to a maximum of a lifetime. They will receive reminders about their self-exclusion and will be able to nominate people to support them.

The ACMA has appointed a register operator to develop and operate BetStop. We have engaged extensively with industry, state and territory regulators, consumers and advocacy and consumer support groups to inform the development of BetStop.

BetStop will cover around 150 licensed interactive wagering providers, ranging from large corporates to small bookmakers. The register is established under Part 7B of the IGA. The legislative framework requires that licensed interactive wagering providers have a system that can connect to BetStop but is otherwise outcomes-based in that it does not specify when and how frequently a provider must check the exclusion status of a customer. Rather, once a person registers with BetStop, wagering providers must not:

- > let the person place a bet
- > let the person open a new account
- > send the person marketing messages.

If the person is an existing customer of a wagering provider, the provider must close their betting accounts and refund any credit. To enable this, the provider must therefore check its customers against BetStop. The system has been designed to cater for high-demand occasions such as Melbourne Cup Day and respond in fractions of a second.

Delivery of a safe and secure register is a priority for the ACMA. The register is subject to a comprehensive security assessment under the Australian Government's Information Security Registered Assessors Program (IRAP) to ensure that highly sensitive personal information about registrants will be secure.

In parallel to the development of the register, the ACMA has also made new rules for BetStop, including:

- > the [Interactive Gambling \(National Self-exclusion Register\) Register Rules 2022](#), which details the administrative and operational arrangements for BetStop, including how the industry must promote it
- > the [National Self-exclusion Register \(Cost Recovery Levy\) Determination 2022](#), which details how the costs for the provision of BetStop will be recovered from the industry.

As we get closer to the launch of BetStop, we will engage with stakeholders, including state and territory bodies, advocacy groups and gambling support professionals, to coordinate the promotion of the new service.

BetStop does not replace existing gambling supports, including exclusion registers operated by state and territory governments or industry (some of which also cover land-based services). The continuation of these registers once BetStop launches is a matter for states and territories. We note that there is no legal mechanism to automatically transfer people on other exclusion registers to BetStop. As such, we will work with the stakeholders to communicate the launch of BetStop with their current clients.

We note that a review of the Part 7B of the IGA will be conducted after 12-months of BetStop operating. This will be the appropriate time to consider the regulatory arrangements for BetStop.

Legislative pressure points

Definition of 'credit'

The ACMA's review of the credit betting provisions in the IGA recommended that the definition of credit in the IGA be amended to remove the requirement to prove the existence of a contract, arrangement or understanding between the parties.

The definition of credit in the IGA is in similar terms to that in subsection 3(1) of the National Credit Code, which applies to credit contracts entered into on or after 1 July 2010 where the lender is in the business of providing credit and a charge is made for the provision of credit. However, an arrangement, in whatever form, for the provision of credit through a credit contract is likely to be substantially different to an arrangement between a wagering operator and a customer. The credit contract is a formal, transparent contract, around which there are a range of related regulatory protections for consumers.

In contrast, a credit arrangement between a wagering operator and a customer may be contrary to the law and is most likely to be achieved informally, generally through a telephone conversation or face-to-face meeting. Importantly, the prohibition on the provision of credit is the substance of the protection for online gambling consumers.

Any informality in an arrangement between a wagering operator and customer creates uncertainty in the scope of the regulatory prohibition and may make it more difficult to administer. It is the ACMA's view that the removal of this requirement will enhance the regulation of the prohibition, thus providing further safeguards for vulnerable consumers.

Definition of gambling – social casinos and loot boxes in video games

The majority of complaints to the ACMA are about online casinos and the negative experiences of the consumers of the services. However, the ACMA is aware of community concerns about products with gambling-like features, such as social casinos and loot boxes.¹¹

Social casinos provide online games that are played for 'fun'. While there may be a charge to play the games or to purchase items within the game, the game is not 'played for money or anything else of value' as required in subparagraph (e)(i) of the definition of 'gambling service'. Consequently, social casino games fall outside the jurisdiction of the ACMA.

In general, online video games, including games that involve loot box features, have not to date been regarded as gambling services under the IGA, also because they are not 'played for money or anything else of value'.

For example, a video game is typically played for recreational purposes, rather than with the object of winning money or other valuable items. Loot boxes in turn are generally not used for the object of winning money or other valuable items, but for other reasons, such as to aid progression through a game or enhance aesthetic characteristics of the gameplay.

In addition, in many cases, the items that may be redeemed from loot boxes do not have any monetary or other value. In those circumstances, the loot box clearly cannot meet the definition of 'gambling service'. That said, there may be cases where the position may not be so clear, particularly where there is a secondary market for items.

¹¹ Of the 177 complaints received by the ACMA between 1 July 2021 and 30 June 2022, only 6 complaints related to loot boxes and there were no complaints about social casinos.

The ACMA is currently undertaking desktop research including a market analysis of social casinos that will be published in 2023.

Clarification for emerging technologies and products

Gambling is a dynamic sector, with emerging technologies and products challenging the parameters of the current framework. Given these emerging products were not contemplated when the IGA commenced or when the 2017 amendments to the IGA were implemented, there may be occasion where it is appropriate to clarify the application of the IGA through legislative amendment or other guidance.

An example was the introduction of 'synthetic lotteries', which allowed customers to bet on the outcome of an overseas lotteries. Amendments were made to the IGA (commencing in January 2019) to prohibit this practice of betting on the outcome of a lottery and also clarify that keno-type lottery is considered an example of a lottery and therefore included in the prohibition on lottery betting services.

Recent engagement with licensed wagering providers has raised issues about whether the provisions relating to in-play betting adequately cover the use of products that streamline or speed up the process for placing in-play bets. Such products include fast or quick codes. This has raised questions about whether the use of these products is consistent with the intention of the IGA, which is to minimise the harm of online gambling and, relevantly, the risks associated with in-play betting.

Enforcement powers

The IGA gives the ACMA a range of powers to investigate and take enforcement action against those that do not comply with the Australia's interactive gambling laws. The ACMA's administrative enforcement powers are limited to formal warnings and infringement notices, which are only useful if the provider and/or ultimate beneficial owner of the contravening service has been identified. As the ACMA's remit has expanded, there is a question as to whether the enforcement options are unduly limited. In particular, the ACMA does not have administrative powers to compel behavioural change, such as enforceable undertakings relating to compliance with legislative provisions by an operator, or issuing a remedial direction to an operator. The addition of these administrative powers would enable the ACMA to achieve efficient administrative outcomes and address potential consumer harm, particularly in relation to wagering operators licensed in an Australian state or territory. They would be less effective for offshore entities as there are additional jurisdictional challenges.

An example of the beneficial use of these types of administrative powers is the [enforcement action](#) that the ACMA took against Sportsbet in February 2022 under the *Spam Act 2003*. Sportsbet was found to have sent more than 150,000 marketing text messages and emails to over 37,000 consumers who had tried to unsubscribe. It also sent messages that had no unsubscribe function.

The enforcement action included an infringement notice of \$2.5 million, and a 3-year court-enforceable undertaking, which included the appointment of an independent arbiter to oversee a compensation program to customers that was expected to total around \$1.2 million.

While enforceable undertakings are one of the administrative powers the ACMA has under the Spam Act, such an administrative action is not possible under the IGA. Granting such powers through amendments to the IGA would expand the enforcement options available to the ACMA to take action against non-compliant entities based in Australia, and build a culture of compliance within the industry.

Advertising provisions in the IGA

Part 7A of the IGA prohibits the advertising of prohibited and unlicensed regulated interactive gambling services, subject to certain exceptions. This prohibition includes the publication of these advertisements on a website accessible by Australians, but *if and only if* the ACMA is satisfied that the majority of persons who access the content are physically present in Australia.¹² By adding this qualification, the legislation potentially limits the reach of the IGA's advertising prohibitions to exclude some websites accessible by Australians.

This includes websites that have a global audience (for example, Facebook, YouTube, Twitch and Google) as well as smaller websites that advertise prohibited or unlicensed regulated interactive gambling services to Australians but also to a number of other countries.

This qualification was added to exclude websites with an international focus and little or no mention of matters specific to Australia.¹³ However, it potentially has the effect of unduly limiting the application of the advertising prohibitions.

It is unlikely that removing the requirement that the majority of persons who access the content are physically present in Australia would result in a high volume of additional complaints or in complaints about advertising content not targeted at Australians. In any event, this risk is mitigated by the broad discretion given to the ACMA under the IGA to decide on what matters it wishes to investigate. The benefit is that it would allow the ACMA to take action to address harms from the advertising content targeted at Australians in the circumstances outlined above.

Knowing the customer

Under the National Consumer Protection Framework for online wagering, the period wagering providers have to verify their customers under Australia's anti-money laundering laws has been reduced from 90 days to 72 hours. The provision of consumer safeguards is also reliant on wagering providers knowing their customers. However, where this verification is not undertaken prior to opening a customer's account, unverified customers, including potentially self-excluded customers, are able to deposit money and make bets before they are verified. They are, however, prevented from withdrawing any funds.

The [National Policy Statement](#) that accompanied the National Consumer Protection Framework states that the 'verification period will change to a customer pre-verification measure after the National Self Exclusion Register is operational'. The Committee may wish to consider whether wagering providers should be required to verify customers before allowing them to open accounts, which will increase quality of customer data and limit the ability for consumers to provide false information to wagering providers to circumvent their exclusion with BetStop.

¹² See paragraph 61EA(3)(b) of the IGA.

¹³ See the Supplementary Explanatory Memorandum to the Interactive Gambling Bill 2001.

The ACMA's role under the BSA

The *Broadcasting Services Act 1992* (BSA) empowers the ACMA to enforce compliance with gambling advertising rules set out in codes of practice that apply to licensed free-to-air and subscription television and radio broadcasting services.¹⁴ It also enables the ACMA to make online content service provider rules about gambling advertising provided on an online content service in conjunction with the live coverage of a sporting event.¹⁵

This part of the submission canvasses the ACMA's role in relation to:

- > gambling advertising on broadcasting services
- > gambling advertising during live-streamed sport
- > compliance with the rules.

It also includes our observations on the application of the rules, and audience and consumer concerns and expectations.

Gambling advertising on broadcasting services

The BSA establishes a co-regulatory framework under which broadcasting sectors develop their own codes of practice. The ACMA registers these codes once satisfied of certain criteria, including that the codes provide appropriate community safeguards.¹⁶

The framework contemplates that audience complaints about compliance with the codes be made with the relevant broadcaster in the first instance. If the complaint is not resolved, complainants can approach the ACMA and we may investigate if it is desirable to do so.

All registered [industry codes of practice](#) are available on the ACMA website. Codes that include gambling advertising rules are the:

- > Commercial Television Industry Code of Practice 2015
- > Subscription Broadcast Television Codes of Practice 2013
- > Commercial Radio Code of Practice 2017
- > Subscription Narrowcast Television Codes of Practice 2013
- > Subscription Narrowcast Radio Codes of Practice 2013
- > SBS Code of Practice 2021.

The rules in broadcasting codes that apply to the *scheduling* of gambling advertising during live sport were supplemented in 2018 at the request of government. These rules are limited to live sport and during certain programs directed at children. In general, the ACMA's remit does not cover the *content* of gambling ads, with the exception that gambling ads that are permitted during live sport, must be socially responsible and include a responsible gambling message.

¹⁴ Part 9 of the BSA

¹⁵ Schedule 8 to the BSA

¹⁶ Part 9 of the BSA

Live sport

The rules for live sport differ depending whether the broadcast coverage of the sport is provided between 5.00 am and 8.30 pm or between 8.30 pm and 5.00 am.

Between 5.00 am and 8.30 pm:

- > gambling advertising¹⁷ is prohibited from 5 minutes before the scheduled start of play¹⁸ until 5 minutes after the conclusion of live coverage of play
- > the promotion of betting odds is prohibited from 5 minutes before play until 5 minutes after play
- > the promotion of betting odds by commentators is prohibited from 30 minutes before play until 30 minutes after play.

Between 8.30 pm and 5.00 am:

- > gambling advertising and the promotion of odds is not permitted during play
- > gambling advertising is permitted *before* and *after* play and during scheduled¹⁹ and unscheduled breaks²⁰
- > the promotion of betting odds is permitted only before and after play, not in scheduled breaks
- > the promotion of betting odds by commentators is prohibited from 30 minutes before play until 30 minutes after play.

At all times:

- > gambling advertising and promotion of betting odds during a live sporting event must be accompanied by a responsible gambling message²¹
- > gambling advertising must be socially responsible and not mislead the audience; not be directed to children, portray children as participating in betting or gambling; portray betting or gambling as a family activity; make exaggerated claims; promote betting or gambling as a way to success or achievement; or associate betting or gambling with alcohol.

Long-form live sporting events:

- > broadcasters must not show gambling advertising from 5 minutes before the start of the first event of the day until 8.30 pm when airing a long-form live sporting event²²
- > after 8.30 pm, *gambling ads* are permitted in accordance with rules applicable to the long-form event, for example during the Olympics, between each day, twilight

¹⁷ A commercial relating to betting or gambling means a distinct promotional reference to a gambling or betting service or to a gambling or betting organisation that provides generic information about the organisation's brand, business or service [...].

¹⁸ Scheduled start of play means the scheduled commencement of live-to-air coverage of play as listed in the broadcaster's electronic program guide or published on its website at least 24 hours prior to the broadcast.

¹⁹ Scheduled break means a scheduled stoppage in a sporting event applicable to that sporting event, for example, half time in a rugby league or rugby union fixture or a lunch break during test cricket.

²⁰ Unscheduled break means an unscheduled stoppage when play is suspended or delayed due to weather or other uncontrollable events.

²¹ For example, under the Commercial Television Industry Code of Practice, a responsible gambling message means 'a short statement designed to encourage the listener and/or viewer to gamble responsibly', for example 'Gamble responsibly', 'Bet within your limits' or 'Stay in control when gambling'. Under the Online Rules, it is defined as 'a short statement that can reasonably be taken to encourage responsible gambling in order to minimise the harm caused by problem gambling'.

²² A long-form sporting event includes sporting events of extended duration such as golf, cricket, and motor sports, tournaments of single sports that involve concurrent games or matches such as tennis championships, and multi-sport events such as the Olympic and Commonwealth Games.

and night session, and not more than once every 2 hours as part of a distinct break of at least 90 seconds

- > after 8.30 pm, a *promotion of betting odds* by persons other than commentators is permitted during play as part of a distinct break of 90 seconds and in accordance with rules applicable to the long-form event, for example, during the Olympic Games not more than once every 3 hours on each day of competition.

During children's programs

The Commercial Television Industry Code of Practice 2015 prohibits gambling advertisements:

- > in any program classified G or lower between 6.00 am and 8.30 am; and between 4.00 pm and 7.00 pm
- > during programs principally directed to children between 5 am and 8.30 pm.

The SBS Code of Practice 2021 (amended April 2022) adopts the provisions of the Commercial Television Industry Code of Practice 2015 in relation to advertising on SBS television broadcasting services. This includes the gambling advertising restrictions directed at children.

Gambling advertising during live-streamed sport

The Broadcasting Services (Online Content Service Provider Rules) 2018 commenced in October 2018.

A person may make a complaint to the ACMA that an online content service provider has failed to comply with the Online Rules. The complaints process under the Online Rules differs from the industry codes of practice as a complaint may be made directly to the ACMA in the first instance.

The Online Rules apply to any online content service that provides live coverage of sporting events.²³ This includes:

- > broadcaster's online services or broadcast video on demand (BVODs) providing online streamed content relating to their broadcast content
- > subscription video on demand services (SVODs) providing streaming services for a range of sports
- > social networking services providing live coverage of sporting events.

The Online Rules replicate the restrictions on gambling advertising during live sport in the broadcasting codes and include requirements for the keeping of records that must be provided to the ACMA upon request.

Compliance with the restrictions

ACMA monitoring activities

Following implementation of supplementary gambling advertising rules (during live sport) in 2018, the ACMA conducted 2 formal monitoring programs.

²³ Online content services that are an Australian licensed wagering service have an exemption to the rules prohibiting the promotion of gambling odds and other gambling content. A company that is not a licensed wagering service may make an application to the ACMA for an exemption. If an online service streams identical content of a live sporting event at the same time to a broadcast, the online service must follow the relevant industry code of practice.

We monitored operation of both the new broadcasting codes and the Online Rules for an initial 12 months. We found no significant issues around broadcasting obligations but observed some inconsistencies around the application of the Online Rules.

Accordingly, the ACMA extended monitoring of the Online Rules for a further 12 months, concluding in October 2020. The monitoring period did not identify further issues of concern and we noticed an overall improvement in the information to consumers about the scheduled start of events. However, as with the earlier monitoring, we observed some inconsistencies in how providers interpreted the rules, in particular, the use of exemptions:

- > The BSA allows for an identical online simulcast of a live sporting event to be exempt from the Online Rules because the live sporting event would be subject to broadcasting codes of practice. We found this exemption is being widely used, and sometimes combined with an exemption for low audience share subscription television channels from the broadcasting codes of practice restrictions.
- > As the size of online audiences for live sporting events continues to grow in Australia, it may be relevant to also consider the potential online audience share for live sporting events broadcast on television. This would allow exemptions to continue to apply as intended, where there are genuinely small audiences.

Complaints and enquiries received by the ACMA

Since July 2018, the ACMA has received a total of 466 complaints and enquiries about gambling advertising.²⁴

In the 2021–22 financial year, we received 208 complaints and enquiries about gambling advertising. This was almost double the 120 previously received in 2020–21.

Table 1: Complaints and enquiries about gambling advertising

Financial year	Enquiries	Complaints	Total
2018–19	47	0	47
2019–20	46	6	52
2020–21	118	2	120
2021–22	197	11	208
1 July to 30 Sept 2022	38	1	39
Total	446	20	466

The 466 complaints and enquiries included 55 enquiries and 19 complaints about gambling ads during live sport.

The majority of the enquiries about gambling advertising received by the ACMA concern issues that are not covered by the current rules. These include concerns that there is excessive gambling advertising, or gambling ads are shown at inappropriate times, often with reference to family viewing times or children watching and some complainants are of the view that gambling advertising should be banned altogether. In these cases, we provide complainants with information about what is and what is not covered.

²⁴ Complaints are those matters that were assessed by the ACMA to decide whether to formally investigate. Enquiries include where we refer the complainant to the broadcaster in the first instance under the co-regulatory code complaints framework, or where matters are raised that are not generally covered by the rules such as the frequency of gambling advertisements.

Investigations and outcomes

Since July 2018, the ACMA finalised 11 investigations into compliance with the restrictions on gambling advertising:

- > 3 investigations found a breach of the Online Rules. Following these breaches, the ACMA issued 2 remedial directions and 1 formal warning.
- > 4 investigations found a breach of an industry code of practice. Following these breaches, the ACMA accepted an enforceable undertaking for 3 of the breaches and agreed measures for the fourth breach.
- > 1 investigation found no breach into the Online Rules.
- > 3 investigations found no breach of an industry code of practice.

We publish our investigations on the ACMA's website [Broadcasting compliance and investigations | ACMA](#).

Potential enforcement actions – broadcasting services

Consistent with the ACMA's Compliance and Enforcement policy, we adopt a graduated and strategic risk-based approach to compliance and enforcement.

There are a range of enforcement actions available when a broadcasting licensee breaches an industry code of practice. The ACMA will generally publish an investigation report and a media release. We may also:

- > agree to informally accept measures by broadcasters to improve compliance – these could include educating staff or changing procedures to improve compliance (agreed measures)
- > accept court enforceable undertakings to secure future compliance with the rules (subsection 205W(1) of the BSA)
- > impose an additional licence condition requiring the licensee to comply with the code of practice (subsection 43(1) of the BSA).

When the ACMA accepts an enforceable undertaking from a licensee to carry out a set of specified actions, if the licensee fails to carry out those actions, the ACMA may apply to the Federal Court to enforce the undertaking (section 205X of the BSA). If the Federal Court is satisfied that a licensee had breached the undertaking, the court could make any or all of the following orders:

- > an order directing the licensee to comply with the undertaking
- > an order directing the licensee to pay to the ACMA, on behalf of the Commonwealth, an amount up to the amount of any financial benefit that the licensee had obtained directly or indirectly and that was reasonably attributable to the breach
- > any order that the court considered appropriate directing the licensee to compensate any other person who has suffered loss or damage as a result of the breach
- > any other order that the court considered appropriate.

If the ACMA imposes an additional licence condition requiring a licensee to comply with the requirements of a code of practice, and the licensee fails to do so, the ACMA could take a number of actions, including issuing a remedial direction to comply, or suspending or cancelling the relevant broadcast licence.

Potential enforcement actions – online content services

Consistent with the ACMA's Compliance and Enforcement policy, we adopt a graduated and strategic risk-based approach to compliance and enforcement.

There are a range of enforcement actions available if an online content service provider breaches Schedule 8 to the BSA (including the requirement under subclause 25(1) that an online content service provider must not contravene the Online Rules):

- > acceptance of agreed measures (informal)
- > acceptance of an enforceable undertaking under subsection 205W(1) of the BSA
- > an application to the Federal Court for a civil penalty order under section 205F of the BSA
- > a written direction under subclause 26(2) of Schedule 8 to the BSA
- > an infringement notice under section 205Y of the BSA, with a penalty payable of 60 penalty units per contravention. As the value of a penalty unit is currently \$222, this equates to a penalty of \$13,320.

Actions for breach of undertakings given in an enforceable undertaking has been addressed in the preceding section.

If the Federal Court is satisfied that a person has contravened a civil penalty provision, the Federal Court may order the person to pay the Commonwealth a pecuniary penalty. For contravention of subclause 25(1) of Schedule 8 to the BSA by a body corporate, the penalty payable must not exceed 300 penalty units. This equates to a maximum penalty of \$66,600 per contravention.

The ACMA can give a written direction that requires the provider of an online content service to take specified action directed towards ensuring that the provider does not contravene the Online Rules, or is unlikely to contravene the Online Rules, in the future. Subclause 26(4) of Schedule 8 provides that an online content service provider must not contravene a direction given under subclause 26(2). Subclause 26(4) is a civil penalty provision. The civil penalty for contravention of such a direction, by a body corporate, must not exceed 2,000 penalty units, equating to \$444,000 (subsection 205F(5D) of the BSA).

Subclause 25(1) of Schedule 8 is a designated infringement notice provision. An infringement notice, which must include brief details relating to the alleged contravention of a designated infringement notice provision, including the date of the alleged contravention, must be given within 12 months to the day of the relevant contravention having taken place. The penalty specified on the notice must be equal to 60 penalty units, equating to \$13,320, (paragraph 205ZA(1)(aa)).

Observations about application of the rules and audience expectations

Research and advertising data

In 2018, the ACMA commissioned the Social Research Centre (SRC) and Nielsen Ad Intel to examine community attitudes and exposure to gambling advertising in the context of the new restrictions in relation to live sport that had been introduced earlier in the year. Consisting of qualitative and quantitative research, our key findings were published in November 2019 as our gambling advertising research report. The key findings were:

- > that the government's policy to create a "safe zone" between 5 am and 8.30 pm in live sport, to protect children from gambling ads has been effective on broadcasting platforms
- > broadcasters are following the rules, evidenced by a marked decrease in the volume of gambling ads broadcast during live sport as well as pre- and post-game coverage

- > there was an observed shift in gambling ads to after the 8.30 pm watershed and an increase in gambling ads in non-sports content
- > parents remain concerned about exposure of children to gambling advertising, particularly parents of older children
- > more than half of parents perceived there to be an increase in gambling ads during live sport, despite ad placement data revealing an overall decrease.

The ACMA is acutely aware of community concerns about gambling advertising and has observed a steady increase of gambling enquiries and complaints since 2018.

Effectiveness of the rules

The gambling restrictions in the codes were last reviewed and rules relating to live sport supplemented in 2018. The Online Rules were introduced in 2018. The limited framing of Schedule 8 means that the ACMA does not have legal powers to amend existing restrictions or impose additional gambling advertising restrictions that apply to online content service providers.

However, we consider it is timely to review broadcasting codes and their scope taking into account the importance of maintaining consistency between the rules that apply to broadcasts and online streams.

To that end, the ACMA is currently in discussions with broadcasting sector industry bodies about reviews of their respective codes. We also released a position paper in June 2022, [What audiences want – Audience expectations for content safeguards](#). This paper articulates our current views on contemporary audiences' expectations across a number of focus areas. One of these is gambling advertising restrictions.

We note that while the latest broadcast and online gambling advertising restrictions are achieving their intended objectives around live sport, the high number of complaints we receive indicate that concerns remain that children and other vulnerable Australians are exposed to too much gambling advertising.

In the *What audiences want* paper, the ACMA recommended a best practice approach for content providers would be to:

- > seek to minimise children's exposure to advertising for products and services that are legally restricted to adults such as gambling services
- > be cognisant of contemporary evidence including public health advice around the potential harms that may be caused by advertising certain products and services to vulnerable groups or communities
- > target restrictions around the quantity, repetition and concentration of advertising for specific products and services
- > consider platform-specific scheduling and placement measures when developing advertising restrictions, for example: needing to take account of multiple time zones across platforms operating nationally, or content-based limits when the nature of audiences or viewing might differ markedly between different services.

Assessments about the effectiveness of the gambling advertising rules, particularly for protecting children, should also take into account the changed viewing behaviours of children. We know that children are increasingly watching content online (including subscription streaming services and user-generated content) in preference to broadcast television.²⁵ In the Department of Infrastructure, Transport, Regional Development, Communications and the Arts' 2021 Media Content Consumption Survey, parents/guardians cited online subscription services (51%) and free video streaming services (50%) as the most popular ways for their child to watch screen

²⁵ ACMA and Screen Australia, *Supporting Australian Stories on Our Screens*, March 2020, p. 21.

content.²⁶ Only 22% of parents/guardians reported that their child watched commercial free-to-air broadcast television.²⁷ These shifts highlight the importance of applying rules across platforms and having appropriate mechanisms in place to review and update the rules so that they adequately protect audiences.

²⁶ See [2021 Media content consumption survey | key results, accessed on 1 November 2022](#).

²⁷ Ibid.