

Chapter 1

Introduction

1.1 On 7 December 2017, the Senate, on the recommendation of the Selection of Bills Committee, referred the Communications Legislation Amendment (Online Content Services and Other Measures) Bill 2017 to the Senate Environment and Communications Legislation Committee for inquiry and report by 12 February 2017.¹

Conduct of the inquiry

1.2 In accordance with its usual practice, the committee advertised the inquiry on its website and wrote to relevant individuals and organisations inviting submissions. The date for receipt of submissions was 12 January 2018.

1.3 The committee received 14 submissions, which are listed at Appendix 1. The public submissions are available on the committee's website at www.aph.gov.au/senate_ec.

1.4 The committee conducted a public hearing in Melbourne on 1 February 2018. A list of witnesses who gave evidence at that hearing is at Appendix 2.

1.5 The committee thanks all of the individuals and organisations that contributed to the inquiry.

Scope and structure of the report

1.6 This report comprises two chapters. The remaining sections of this chapter discuss the Scrutiny of Bills Committee review of the bill, the background and overview of bill. Chapter 2 outlines the principal issues raised in submissions and provides the committee's findings and recommendation.

Background to the bill

1.7 There is significant community concern about the scheduling and quantity of gambling advertising during the broadcast of live sporting events, particularly in the context of its impact on child audiences and the 'normalising' effect of gambling as an integral component of sporting events.

1.8 Data indicates that, on average, there are double the number of gambling advertisements shown during sports programs when compared to other types of programs, and that there are significant spikes in gambling advertising during times

1 *Journals of the Senate*, No. 79, 7 December 2017, pp. 2512–14.

traditionally associated with daytime television hours when children are more likely to be viewing.²

1.9 Since 2015, the proportion of Australians watching sports online has grown by an estimated 57 per cent.³ Unlike advertising over free-to-air or subscription television broadcasts, which is regulated through industry codes and backed by legislation, advertising during sports programming watched over the internet remains unregulated, and there is no recognised industry group or co-regulatory framework for online services.⁴

1.10 As part of its Broadcast and Content Reform Package, in May 2017, the Government announced additional restrictions on gambling promotions during live coverage of sporting events to protect children from exposure to gambling advertising. The additional restrictions would prohibit gambling promotions from five minutes before the scheduled start of the sporting event until five minutes after the conclusion of the sporting event, where the event occurs between the hours of 5:00 am and 8:30 pm. The restrictions would apply to broadcast, subscription and online platforms.

1.11 In announcing the reform package, the Minister explained that the new restrictions will 'provide a clear and practical zone for families and children to watch live sports', and that the Government will work with industry to introduce the new restrictions.⁵

1.12 The bill gives effect to the Government's announcement.

Overview of the bill

1.13 The purpose of the bill is to amend the *Broadcasting Services Act 1992* (BSA) to create a regulatory framework (online content service provider rules) that can be used by the Australian Communications and Media Authority (ACMA) to impose gambling promotions restrictions on online content service providers. The bill also provides the ACMA with the power to, if directed by the Minister, determine program standards about gambling promotional content which apply to certain broadcasters and subscription providers.⁶

1.14 The bill would establish a legislative framework for applying gambling promotions restrictions to online content services. This would be achieved by inserting a new Schedule 8 to the BSA to allow the ACMA to make online content service

2 Explanatory Memorandum (EM), pp. 5–9.

3 EM, pp. 11–12.

4 EM, pp. 11–12.

5 Senator the Hon Mitch Fifield, Minister for Communications, 'Major reforms to support Australian broadcasters', *Media release*, 6 May 2017.

6 EM, p. 2.

provider rules which set out the gambling promotions restrictions that apply to providers of these services.

1.15 For broadcasting services, it is intended that the new gambling promotions restrictions will be applied via amendments to relevant industry-developed codes of practice approved by the ACMA,⁷ with the amendments to commence by 30 March 2018.⁸ However, in the event that the codes of practice are not amended, the bill would establish a regulatory mechanism that can be used to apply the new restrictions. New section 125A of the BSA would enable the Minister to direct the ACMA to determine a program standard about the broadcasting of gambling promotional content.

Reports of other committees

1.16 When examining a bill or draft bill, the committee takes into account any relevant comments published by the Senate Standing Committee for the Scrutiny of Bills. The Scrutiny of Bills Committee assesses legislative proposals against a set of accountability standards that focus on the effect of proposed legislation on individual rights, liberties and obligations, and on parliamentary propriety.

1.17 The Scrutiny Committee examined the bill in its *Scrutiny Digest, No. 1 of 2018* and sought the Minister's response in relation to three issues.

1.18 First, the Scrutiny Committee noted that the effect of proposed item 23 of the bill would allow for the delegation of the ACMA's administrative powers to issue and extend the time for compliance with notices under proposed Schedule 8 of the BSA and related provisions, to a broad range of persons. This includes any member of staff of the ACMA – which can be any APS level of employee. The Scrutiny Committee stated that where broad delegations are provided for, an explanation as to the necessity of this measure should be provided. Further, it noted that a 'desire for administrative convenience' has not generally been accepted as a sufficient justification for the broad delegation of administrative powers.⁹

1.19 As such, the Scrutiny Committee has sought a more detailed justification for this proposal from the Minister, and has indicated that it considers that it may be appropriate to amend the bill to require that persons authorised to issue notices under proposed Schedule 8 to the BSA and related provisions hold special attributes,

7 Current Codes include the Commercial Television Industry Code of Practice, the Subscription Television Industry Codes of Practice and the Commercial Radio Codes of Practice.

8 'Gambling Advertising', Department of Communications and the Arts, October 2017 (published 13 December 2017), <https://www.communications.gov.au/documents/gambling-advertising> (accessed 12 January 2018).

9 Senate Standing Committee for the Scrutiny of Bills, *Alert Digest*, No. 1 of 2018, 7 February 2018, pp. 8–9.

qualifications or qualities. The Scrutiny Committee seeks the Minister's advice in relation to this matter.¹⁰

1.20 Secondly, it was noted that in relation to the proposal to empower the ACMA to determine gambling promotion program standards and making online content provider rules, it is proposed that the ACMA would be empowered to determine which of its decisions under those instruments are subject to merits review. The Scrutiny Committee expressed concern that this would confer on the ACMA a 'significant discretion' to determine which of its decisions will be reviewable. It noted that the bill does not set limits on the ACMA's power to determine which decisions will be subject to merits review, nor does it establish any matters which the ACMA must consider in making such a determination.¹¹

1.21 The Scrutiny Committee has sought the Minister's more detailed justification for the proposal and advice on the appropriateness of amending the bill to prescribe classes of decisions that must be subject to review or to prescribe matters which the ACMA must take into account when determining whether decisions are reviewable.¹²

1.22 Thirdly, in relation to the proposal to empower the ACMA to exempt individual online content services and service providers from all or specific provisions of the rules, the Scrutiny Committee commented that this appears to confer a broad administrative power on the ACMA. The Scrutiny Committee expressed concern about the breadth of the proposed power in the relevant clauses and its potential impact on parliamentary scrutiny. The Scrutiny Committee has sought the Minister's more detailed justification for the proposal and whether it would be appropriate to amend the bill to insert guidance concerning the exercise of the ACMA's power in relation to the matter.¹³

10 Senate Standing Committee for the Scrutiny of Bills, *Alert Digest*, No. 1 of 2018, 7 February 2018, p. 9.

11 Senate Standing Committee for the Scrutiny of Bills, *Alert Digest*, No. 1 of 2018, 7 February 2018, p. 10–11.

12 Senate Standing Committee for the Scrutiny of Bills, *Alert Digest*, No. 1 of 2018, 7 February 2018, pp. 10–11.

13 Senate Standing Committee for the Scrutiny of Bills, *Alert Digest*, No. 1 of 2018, 7 February 2018, pp. 11–13.