



Overview of gambling advertising laws in Australia



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The advertisement of gambling services in Australia, both online and conventional land-based, is heavily regulated. As a general rule, the advertisement of conventional land-based gambling services such as casinos and electronic gaming machines is regulated at a State/ Territory level.



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The advertisement of online gambling services is regulated primarily at a Federal level by the Interactive Gambling Act 2001 (Cth) (IGA). The IGA regulates the provision of 'interactive gambling services' in Australia. These are gambling services provided by an internet carriage service, broadcasting service, data-casting service or other content service. Most relevantly, the IGA includes a prohibition on the publication of interactive gambling service advertisements to Australians.

In addition to prohibitions under the IGA, the Australian Consumer Law (ACL) includes general prohibitions against misleading or deceptive conduct or conduct that is likely to mislead or deceive, which is applicable to gambling advertising. Any gambling advertisement in Australia, whether online or otherwise, and whether relating to an interactive gambling service or a conventional land-based gambling service, must comply with the ACL.

State/ Territory regulation

Gambling services (whether online or conventional land-based) and the advertisement of same are regulated at the State/ Territory level. There is a raft of legislation and accompanying codes of practice etc. which sets out the requirements for different gambling services and associated aspects, for example, and without limitation, gaming machines, casinos, gambling loyalty programs, bookmakers and lotteries. The laws vary between States and Territories. At a fundamental level, and uniform across all jurisdictions, it is prohibited to advertise a gambling service that the advertiser is not licensed or otherwise authorised to offer. Whilst we do not intend to canvass the nature of all prohibitions and requirements Australia-wide, below are some examples, variations of which are found in most States/ Territories:

- Prohibitions against gambling advertising which explicitly or implicitly misrepresents the likelihood of winning e.g. 'Winning is easy at the...' or 'More chances of winning'.

- Prohibitions against advertising which conveys the impression that gambling is a reasonable strategy for financial betterment e.g. a way of solving financial problems or a financial investment.
- Prohibitions against gambling advertising aimed at minors or certain classes of people.
- Prohibitions against certain sounds or images e.g. the sound of coins hitting a tray.
- Prohibitions against advertising which promotes the consumption of alcohol whilst gambling.
- The inclusion of prescribed responsible gambling messages in all gambling advertising.
- In addition to the Federal legislation, both Queensland and the Australian Capital Territory have State/ Territory legislation which regulates the advertisement of interactive gambling.
- State/Territory legislation is enforced by regulators in each jurisdiction.

National regulation

The IGA prohibits a person from publishing an 'interactive gambling service advertisement' in Australia or authorising or causing the publication of such an advertisement. The prohibitions are not restricted to the entity that creates or is the subject of the advertisement. An 'interactive gambling service' is a gambling service provided over the internet or relevant carriage service, in the course of carrying on a business. 'Gambling service' is defined broadly and includes, without limitation, a service for the: placing, making, receiving or acceptance of bets; conduct of a game where the game is played for money and the game is a game of chance or of mixed chance and skill; and conduct of a lottery or supply of lottery tickets, as well as any gambling service (within the ordinary meaning of that expression) that is not covered by any of the examples set out.

Excluded from the prohibition is betting on horse, harness or greyhound racing, sporting events and certain types of lotteries.

An 'interactive gambling service advertisement' is essentially any writing, visual image or audible message that promotes or is intended to promote, an interactive gambling service or associated aspects. This includes, for example, a domain name or URL or interactive gambling services generally. There are some exceptions to this prohibition.

The advertisement must be published to Australians to be prohibited. An advertisement that is included on a website is taken to be published in Australia if: the website is accessible by users in Australia; and if having regard to the content of the website and the way in which the website is promoted, it would be concluded that it is likely that a majority of persons who access the website are physically present in Australia.

Unless there is an applicable exception, the prohibition is absolute and there is no scope for an advertiser to obtain a licence or approval under the IGA. It is irrelevant whether the service is based in Australia or overseas.

The Australia Federal Police is responsible for enforcing any contravention of the IGA. Whilst there are significant penalties, it is widely accepted that there are practical difficulties with enforcement. To date, we are not aware of any enforcement action taken against advertisers for breach of the IGA.

Commercial television industry code of practice

The commercial television industry has a code of practice (Code) which regulates, amongst other things, gambling advertising on commercial television. The Code applies to all commercial television broadcasting services operated by a licensee under the Broadcasting Services Act 1992 (Cth). We note that there is currently a proposed 2015 Code which

has yet to be finalised and adopted. The deadline for public comments on the proposed 2015 Code was 3 April 2015. However, we note there are no material changes to the applicable section. In addition to some general prohibitions mirrored in State/ Territory legislation, the key prohibition under the Code is against the promotion of odds in a live sporting event. There are detailed restrictions as to the time periods during which odds can be promoted, and by whom, for example a commentator. The requirements differ for different types of live sporting events. It is important to note that this prohibition does not apply to live sporting events that consist of horse, harness or greyhound racing. Given the raft of legislation at both Federal and State/ Territory level and that laws in relation to gambling advertising across Australia are far from uniform, it is always prudent to confer with an expert in the field prior to advertising gambling services, particularly online where such services may be accessed by Australians. We will continue to monitor developments in this area.

*About the author

Tony Rein is a corporate partner at Thompson Geer with 23 years' experience in the gaming and leisure industry. He is a recognised expert in the industry, being ranked in Band 1 in Chambers Asia-Pacific. Tony works in all sectors of the industry with international and domestic clients, on the full spectrum of matters, from regulatory and strategic advice work to the largest and most complex projects and transactions.

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