



To: The Chair,

House of Representatives Standing Committee on Social Policy and Legal Affairs

9 February, 2023

Dear Chair,

### **Inquiry into online gambling and its impacts on those experiencing gambling harm**

The Digital Industry Group Inc. (DIGI) thanks the House of Representatives Standing Committee on Social Policy and Legal Affairs for the opportunity to make a submission to support its Inquiry into online gambling and its impacts on those experiencing gambling harm (the Inquiry). Our submission relates to Part 7A of the *Interactive Gambling Act 2001* (IGA) which prohibits the advertising of prohibited and unlicensed regulated interactive gambling services, and imposes a regime of civil and criminal penalties.

By way of background, DIGI is a non-profit industry association that advocates for the interests of the digital industry in Australia. DIGI's founding members are Apple, eBay, Google, Linktree, Meta, TikTok, Twitter, Snap and Yahoo. DIGI's vision is a thriving Australian digitally-enabled economy that fosters innovation, a growing selection of digital products and services, and where online safety and privacy are protected.

**DIGI shares the Government's commitment to provide appropriate community safeguards in respect of the potential harms of online gambling, including through restrictions on advertising of prohibited and unlicensed services.** Relevant DIGI members have a range of policies in relation to the advertising of gambling services and are committed to complying with restrictions in the IGA. While approaches will vary by service, approaches to this issue can include:

- review of requests to advertise gambling and betting services to Australian users of their services;
- restrictions on advertisements for sports betting and lotteries from advertisers who hold licences or certificates from Australian authorities;
- restrictions to protect under 18s from being exposed to such advertising, either through targeting these advertisements to adult users or through requiring the advertiser to implement an age restriction on who can access their content; and
- review of complaints by Australian users or authorities about advertisements being run by an advertiser that is not licensed in that jurisdiction, trigger prompt corrective actions such as geo-blocking or blocking the ad itself if found to be in breach of these policies.

The IGA is a very complex piece of legislation, and the application of the advertising restrictions in Part 7A to the online activities digital platforms is unclear. **We support review of the existing regulatory framework to provide more certainty and support ongoing high levels of compliance by industry.**



We thank you for your consideration of the matters raised in this submission. Should you have any questions about the submission, please do not hesitate to contact me.

Best regards,

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## Advertising Restrictions in IGA

DIGI members are committed to responsible online advertising. Relevant DIGI members that enable advertising in regulated categories, such as gambling, have sophisticated tools in place to prevent illegal advertising on their services and ensure legal advertisements reach their intended audience and are viewed by the right demographic. Relevant DIGI members are committed to continuing to work with regulators to ensure there are appropriate safeguards in place for regulated advertising. As noted, DIGI supports review of the existing regulatory framework to provide more certainty and support ongoing high levels of compliance by industry. At the outset we note that the IGA should be clearer on the differences between the two concepts that the Act prohibits (1) 'provision' of prohibited or unlicensed regulated gambling services to customers in Australia and (2) 'publishing or causing to be published' designated interactive gambling service advertisements in Australia. On the face of it, these prohibitions seem to be very similar, given the very broad and uncertain scope of designated interactive gambling service advertisements, and the broad definition of gambling service. For example, a url link could be treated as a means of providing a designated interactive gambling service or as an designated interactive gambling service advertisement.

In relation to Part 7A of the IGA, which relates to the publication of designated interactive gambling service advertisements we have identified three key areas of concern:

1. The uncertain scope of the definition of 'designated interactive gambling advertisement';
2. The potential impact of the prohibitions in s 61EA on online intermediaries in circumstances where they have no knowledge of a 'designated interactive gambling service advertisement' on their service; and
3. The jurisdictional limits of s61EA.

### Definition of 'designated interactive gambling advertisement'

The relevant provisions in s61EA impose restrictions on the publication of 'designated interactive gambling service advertisements'. A 'designated interactive gambling service advertisement' is defined very broadly in s61BA, and creates considerable uncertainty about the application of the restrictions on publishing these advertisements in online environments, including to online content that is not paid for advertising. Under the IGA as it currently reads, it is open to interpretation that ads could include both paid ads and organic/user generated content that promotes certain interactive gambling services. We consider that these restrictions should be drafted to provide more clarity and be limited to paid advertising.

The definition of designated interactive gambling service advertisement is broad and applies to 'any writing, still or moving picture, sign, symbol or other visual image, or any audible message, or any combination of 2 or more of those things, that gives publicity to, or otherwise promotes or is intended to promote:

- (a) a designated interactive gambling service; or
- (b) designated interactive gambling services in general; or
- (c) the whole or part of a trade mark in respect of a designated interactive gambling service; or
- (d) a domain name or URL that relates to a designated interactive gambling service; or

*(e) any words that are closely associated with a designated interactive gambling service (whether also closely associated with other kinds of services or products).'*

As drafted, it is unclear as to how this scope would impact on the activities of online intermediaries that host user-generated content. For example, it is unclear if an interactive gambling service advertisement includes the sharing of an advertisement or a link to a gambling service by an end user of a social media service with other users. We suggest that the scope of the definition of interactive gambling advertising be amended to make clear that unpaid content shared by users of online services is not an advertisement, limiting the definition to paid for marketing and advertising of designated interactive gambling services i.e. materials which:

- are placed and paid for by or on behalf of a designated interactive gambling service;
- are so placed for the purpose of advertising the designated interactive gambling service;
- the content of which is provided or is under the reasonable control of a designated interactive gambling service.

We also note that the types of services that should be treated as prohibited interactive gambling services under the IGA could benefit from greater clarity. It is currently difficult for online service providers to classify different types of online activity under the IGA, in order to deter prohibited interactive gambling services or as designated interactive advertising or otherwise. This difficulty stems from the definition of 'gambling service' in section 4 of the IGA (particularly the lack of clarity around how 'played for money or **anything else of value**' should be interpreted when games such as social casinos, for example, can offer credits and bonuses to users, which could be interpreted as something of 'value'. For example, it is unclear under the IGA as it currently reads whether a game of chance played for non-transferable game credits would be a regulated interactive gambling service because whether non-transferable game credits constitute 'anything else of value' is unclear. Similarly, if a player used game credits to play a game of chance, it is unclear if such game credits constitute consideration to play the game, and therefore fall within the scope of interactive gambling services.

## Application of advertising restrictions to online intermediaries that have no knowledge of the relevant content on their service

The second issue concerns the scope of the prohibitions in s 61EA that impose civil and criminal penalties on persons that 'publish' a designated interactive gambling service advertisement in Australia and criminal penalties on persons that 'authorise or cause' a designated interactive gambling service advertisement to be published in Australia. It is not clear how this prohibition applies to online intermediaries in circumstances where they have no knowledge that users may have uploaded content on their service that falls within the definition of 'interactive gambling services advertisement', particularly for unpaid/organic content which is not subject to a review process. However, given the definition of 'publishing' includes 'bringing the ad or something that contains the ad to the notice of, or disseminating the ad or something that contains the ad to, the public or a section of the public by any means', there is a potential high risk that online intermediaries face direct liability for users uploading offending ads.

We would recommend that consideration be given to amending s 61EA so that these provisions apply to online intermediaries, only in circumstances where the online intermediary knows that a designated interactive gambling service advertisement has been published on their service, and they have failed to act upon it within a reasonable timeframe e.g. in circumstances where the intermediary has received a

properly substantiated notice by a user or the ACMA that allows an intermediary to identify that the advertisement is in scope.

## Jurisdictional limits of Part 7A of the IGA

Currently, section 61EA applies to the publication of an advertisement of a designated interactive gambling service on a website accessible by Australians, but only if the ACMA is satisfied that the majority of persons who access the website are physically present in Australia. In its submission to the Committee, the ACMA has proposed that s61EA be revised so that it applies to publication of content on websites that are accessible by Australians i.e. removing the requirement that the majority of persons who access the website are physically present in Australia<sup>1</sup>. The ACMA notes in its submission that it would intend to take action to address harms from the advertising content targeted at 'Australians'<sup>2</sup>. Consistent with that intention, we would recommend that at a minimum, any change to the reach of section 61EA must include a requirement that advertisements be specifically targeted at and accessible to Australians i.e. persons ordinarily resident in this jurisdiction. While we appreciate that ACMA has stated it would not seek to use its enforcement powers against offshore websites that do not target Australians, we think this should be entrenched in the terms of the IGA, consistent with the policy aim of protecting Australians from the potential harm of illegal and unlicensed interactive online gambling.

### Summary

- A. The definition of advertisement of designated interactive gambling service be limited to paid for advertising for or on behalf of designated interactive gambling services to provide greater clarity about the type of content that is prohibited under Part 7A of the IGA.
- B. Consideration should be given to limiting the application of section 61EA to online intermediaries to situations where online intermediaries have knowledge of content that contravenes the relevant advertising restrictions.
- C. Section 61EA should at a minimum be limited by an express requirement that the advertisements of designated interactive gambling services be specifically targeted at Australians i.e persons ordinarily resident in this jurisdiction.

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<sup>1</sup> Australian Communications and Media Authority, *Submission to Inquiry into online gambling and its impacts on those experiencing gambling harm* Submission 96.

<sup>2</sup> Ibid, p12.