



COMMERCIAL TELEVISION AUSTRALIA

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Ms Rhyan Bloor
Manager
Broadcasting and Online Content
Licensed Broadcasting
Department of Communications, Information Technology and the Arts
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Dear Ms Bloor

Interactive Gambling Act Review

Commercial Television Australia Limited (**CTVA**) welcomes this opportunity to make submissions to the Interactive Gambling Act Review.

This submission is made by CTVA on behalf of its members, the Australian commercial television licensees.

Some members may be lodging their own submission which will be in addition to this submission.

CTVA supports the broadcasting exemption in section 8C of the Interactive Gambling Act 2001 (Cth) (the **Act**) on the basis that:

- The exemption is necessary to allow competitions, game shows and other services currently provided by broadcasters using a range of delivery mechanisms including 1900 phone calls, SMS and the internet. In the future these services may also be provided through digital set top boxes;
- An exemption is necessary to allow the development of new interactive services. The Minister has the power to regulate if it is considered that services provided in the future have adverse social consequences; and
- Competitions and other services provided by broadcasters are already heavily regulated under State and Territory laws.

The definition of “gambling service” and the broadcasting exemption

The definitions of “gambling service” as set out in the Act is broadly drafted and would, but for the broadcasting exemption in Section 8C, adversely affect the provision of:

- television programs and related services that involve an element of chance.

- information only programs which may be ancillary to gambling activities;
- television advertising for trade promotions.

This is because the Act defines a 'gambling service' to include a service for the conduct of a game where:

- The game is played for money or anything else of value;
- The game is a game of chance or of mixed chance and skill; and
- A customer of the service gives or agrees to give consideration to play or enter the game.

A 'gambling service' will be an 'interactive gambling services' where, inter alia, it is provided to customers using a broadcasting service.

Therefore, without the broadcasting exemption, television game shows such as *'Who Wants to be a Millionaire'* and *'Wheel of Fortune'* could come within the definition of an 'interactive gambling service' because:

- The service is provided using a broadcasting service;
- The contestant has a chance to win a prize;
- Being selected to be a contestant involves an element chance; and
- 'Customers' provide 'consideration' to enter the game, for example where registration to enter is via a 1900 phone call.

In the same way, competitions associated with television programs, such as *'Classic Catches'* and *'Video Hits'* could also come within the definition of an 'interactive gambling service'.

It is clear from the Explanatory Memorandum, the Regulation Impact Statement and the reports and studies leading to the introduction of the Act that these types of services provided by broadcasters were never intended to be prohibited under the Act.

Therefore, the Act provides for an exemption in section 8C(1) for services that have a 'designated broadcasting link', meaning:

- The service is expressly and exclusively associated with a particular program, or a series of programs, broadcast on a broadcasting service; or
- The sole purpose of the gambling service is to promote goods or services (other than gambling services) that are the subject of advertisements broadcast on a broadcasting service, and the gambling service is associated with those advertisements.

A similar exemption is provided in section 8C(2) for services that have a 'designated datacasting link.'

The services offered by the broadcasters

There is no evidence of any detrimental effect or any changed circumstance that would justify a variation to the existing exemption.

The types of services offered by broadcasters, both prior to and following the introduction of the Act, are not the types of services that this legislation is designed to address. Indeed the Supplementary Explanatory Memorandum explicitly recognised that any such effect would have been unintentional.

As discussed above, examples of the types of services offered by broadcasters that would, but for the exemption, fall within the definition of an 'gambling services', are competitions and game shows that involve an element of consideration, such as the cost of a 1900 phone call, the purchase of a product, or some other form of consideration.

The importance of an exemption

The broadcasters' exemption in section 8C of the Act is a generalised exemption, for any service expressly and exclusively associated with a television program. In CTVA's view, this type of approach is to be preferred over any attempt to limit or specify the range of services or programs falling within the exemption.

One of the primary drivers for the introduction of digital television was its ability to offer interactive television services to viewers. However, although digital television has been broadcast in metropolitan areas since January 2001, digital interactive television is still in an embryonic stage.

Broadcasters have spent large sums of money on digital conversion and are keen to develop new services to attract viewers to digital television. The full extent of the possibilities and opportunities offered by digital interactive television are still being explored by the broadcasters. However, it is clear from the success of programs such as *'Big Brother'*, *'Who wants to be a Millionaire'*, *'Popstars'* and *'The Mole'*, that viewers enjoy the opportunity to interactively participate in television programs. It is likely that the opportunity for increased interactivity will contribute to consumer uptake of digital television.

Therefore, at this stage in the development of digital television it would be detrimental to seek to define and limit the types of interactive services that may evolve over time.

Broadcasters are effectively regulated by the States & Territories

In addition, although the broadcasters' exemption in section 8C is a broad exemption from the provisions of the Act, it is not an exemption from compliance with other gambling regulation.

Any lotteries, games of chance or other 'gambling' services offered by broadcasters are subject to extensive regulation under State and Territory laws. Because broadcasting is largely conducted on a national basis, State and Territory based

regulation effectively means that the services offered by broadcasters will be designed to comply with the strictest set of State or Territory rules.

The requirement for State and Territory permits effectively ensures that any services provided by broadcasters are already appropriately regulated.

CTVA would be pleased to discuss these issues further with the Department during the course of the Review.

Yours faithfully

Julie Flynn
Chief Executive Officer