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The Parliament of the
Commonwealth of Australia

THE SENATE

As read a third time

Interactive Gambling Bill 2001

No. , 2001

**A Bill for an Act about interactive gambling, and
for related purposes**

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1 THIS bill originated in the Senate; and,
2 having this day passed, is now ready for
3 presentation to the House of
4 Representatives for its concurrence.

5 HARRY EVANS
6 *Clerk of the Senate*

7 The Senate
8 28 June 2001

9 **A Bill for an Act about interactive gambling, and**
10 **for related purposes**

11 The Parliament of Australia enacts:

12 **Part 1—Introduction**
13

14 **1 Short title**

15 This Act may be cited as the *Interactive Gambling Act 2001*.

16 **2 Commencement**

17 (1) Subject to this section, this Act commences on the day on which it
18 receives the Royal Assent.

Section 3

- 1 (2) Parts 2 and 7A commence on the 28th day after the day on which
2 this Act receives the Royal Assent.
- 3 (2A) Part 2A commences on the 28th day after the day on which this
4 Act receives the Royal Assent.
- 5 (3) The following provisions of this Act commence on a day to be
6 fixed by Proclamation:
- 7 (a) Part 3;
8 (b) section 42;
9 (c) section 43;
10 (d) section 48;
11 (e) section 49;
12 (f) Part 5.
- 13 (4) If the provisions referred to in subsection (3) do not commence
14 under that subsection within the period of 6 months after the day
15 on which this Act receives the Royal Assent, those provisions
16 commence on the first day after the end of that period.

17 **3 Simplified outline**

18 The following is a simplified outline of this Act:

- 19
- This Act regulates interactive gambling services by:
 - 20 (a) prohibiting interactive gambling services from
21 being provided to customers in Australia; and
 - 22 (aa) prohibiting Australian-based interactive gambling
23 services from being provided to customers in
24 designated countries; and
 - 25 (b) establishing a complaints-based system to deal
26 with Internet gambling services where the relevant
27 content (*prohibited Internet gambling content*) is
28 available for access by customers in Australia.

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- A person may complain to the ABA about *prohibited Internet gambling content*.
- If prohibited Internet gambling content is *hosted in Australia* and the ABA considers that the complaint should be referred to an Australian police force, the ABA must refer the complaint to a member of an Australian police force.
- If prohibited Internet gambling content is *hosted outside Australia*, the ABA must:
 - (a) if the ABA considers that the content should be referred to a law enforcement agency—notify the content to a member of an Australian police force; and
 - (b) notify the content to Internet service providers so that the providers can deal with the content in accordance with procedures specified in an industry code or industry standard (for example, procedures relating to the provision of regularly updated Internet content filtering software to subscribers).
- Bodies and associations that represent Internet service providers may develop an industry code.
- The ABA has a reserve power to make an industry standard if there is no industry code or if an industry code is deficient.
- This Act prohibits the advertising of interactive gambling services.

4 Definitions

In this Act, unless the contrary intention appears:

ABA means the Australian Broadcasting Authority.

Section 4

1 **access** has the same meaning as in Schedule 5 to the *Broadcasting*
2 *Services Act 1992*.

3 **Australia**, when used in a geographical sense, includes the external
4 Territories.

5 **Australian-customer link** has the meaning given by section 8.

6 **Australian police force** means:

- 7 (a) the Australian Federal Police; or
8 (b) the police force of a State or Territory.

9 **bet** includes wager.

10 **broadcasting service** means a broadcasting service (as defined by
11 the *Broadcasting Services Act 1992*) provided in Australia.

12 **business** includes a venture or concern in trade or commerce,
13 whether or not conducted on a regular, repetitive or continuous
14 basis. To avoid doubt, the fact that a club or association provides
15 services to its members does not prevent those services from being
16 services provided in the course of carrying on a business.

17 **business day** means a day that is not a Saturday, a Sunday or a
18 public holiday in the place concerned.

19 **Chapter 8 agreement** has the same meaning as in the Corporations
20 Law.

21 **civil proceeding** includes a civil action.

22 **content service** means a content service (as defined by the
23 *Telecommunications Act 1997*) provided using a listed carriage
24 service.

25 **datacasting licence** has the same meaning as in the *Broadcasting*
26 *Services Act 1992*.

27 **datacasting service** means a datacasting service (within the
28 meaning of the *Broadcasting Services Act 1992*) that is provided in
29 Australia under a datacasting licence.

1 ***designated broadcasting link*** has the meaning given by
2 section 8C.

3 ***designated country*** has the meaning given by section 9A.

4 ***designated country-customer link*** has the meaning given by
5 section 9B.

6 ***designated datacasting link*** has the meaning given by section 8C.

7 ***designated Internet gambling matter*** has the meaning given by
8 section 35.

9 ***designated notification scheme*** means a scheme:

- 10 (a) in the nature of a scheme for substituted service; and
11 (b) under which the ABA is taken, for the purposes of this Act,
12 to have notified each Internet service provider of a matter or
13 thing.

14 Note: For example, the ABA may make matters or things available on the
15 Internet (with or without security measures).

16 ***engage in conduct*** means:

- 17 (a) do an act; or
18 (b) omit to perform an act.

19 ***excluded gaming service*** has the meaning given by section 8B.

20 ***excluded lottery service*** has the meaning given by section 8D.

21 ***excluded wagering service*** has the meaning given by section 8A.

22 ***exempt service*** has the meaning given by section 10.

23 ***Federal Court*** means the Federal Court of Australia.

24 ***futures contract*** has the same meaning as in the Corporations Law.

25 ***gambling service*** means:

- 26 (a) a service for the placing, making, receiving or acceptance of
27 bets; or

Section 4

- 1 (b) a service the sole or dominant purpose of which is to
2 introduce individuals who wish to make or place bets to
3 individuals who are willing to receive or accept those bets; or
4 (c) a service for the conduct of a lottery; or
5 (d) a service for the supply of lottery tickets; or
6 (e) a service for the conduct of a game, where:
7 (i) the game is played for money or anything else of value;
8 and
9 (ii) the game is a game of chance or of mixed chance and
10 skill; and
11 (iii) a customer of the service gives or agrees to give
12 consideration to play or enter the game; or
13 (f) a gambling service (within the ordinary meaning of that
14 expression) that is not covered by any of the above
15 paragraphs.

16 **game** includes an electronic game.

17 **industry code** has the meaning given by section 33.

18 **industry standard** has the meaning given by section 34.

19 **interactive gambling service** has the meaning given by section 5.

20 Note: This definition relates to the offences created by section 15 and
21 Part 7A.

22 **Internet carriage service** means a listed carriage service that
23 enables end-users to access the Internet.

24 **Internet content** has the same meaning as in Schedule 5 to the
25 *Broadcasting Services Act 1992*.

26 **Internet service provider** has the same meaning as in Schedule 5 to
27 the *Broadcasting Services Act 1992*.

28 **listed carriage service** has the same meaning as in the
29 *Telecommunications Act 1997*.

30 **lottery** includes an electronic lottery.

31 **online provider rule** has the meaning given by section 54.

Section 4

1 **option contract** has the same meaning as in Chapter 7 of the
2 Corporations Law.

3 **prohibited Internet gambling content** means Internet content that
4 is accessed, or available for access, by an end-user in the capacity
5 of customer of a prohibited Internet gambling service.

6 Note: This definition relates to the complaints system.

7 **prohibited Internet gambling service** has the meaning given by
8 section 6.

9 Note: This definition relates to the complaints system.

10 **relevant agreement** has the same meaning as in the Corporations
11 Law.

12 **special access-prevention notice** means a notice under section 27.

13 **standard access-prevention notice** means a notice under paragraph
14 24(1)(c).

15 **standard telephone service** has the same meaning as in the
16 Telecommunications (Consumer Protection and Service Standards)
17 Act 1999.

18 **telephone betting service** means a gambling service provided on
19 the basis that dealings with customers are wholly by way of voice
20 calls made using a standard telephone service.

21 **ticket** includes an electronic ticket.

22 **voice call** means:

- 23 (a) a voice call within the ordinary meaning of that expression;
24 or
25 (b) a call that involves a recorded or synthetic voice; or
26 (c) if a call covered by paragraph (a) or (b) is not practical for a
27 particular customer with a disability (for example, because
28 the customer has a hearing impairment)—a call that is
29 equivalent to a call covered by either of those paragraphs;
30 whether or not the customer responds by way of pressing buttons
31 on a telephone handset or similar thing.

Section 5

1 **5 Interactive gambling services**

2 (1) For the purposes of this Act, an *interactive gambling service* is a
3 gambling service, where:

4 (a) the service is provided in the course of carrying on a
5 business; and

6 (b) the service is provided to customers using any of the
7 following:

8 (i) an Internet carriage service;

9 (ii) any other listed carriage service;

10 (iii) a broadcasting service;

11 (iv) any other content service;

12 (v) a datacasting service.

13 Note: This definition relates to the offences created by section 15 and
14 Part 7A.

15 (2) Subsection (1) has effect subject to subsection (3).

16 *Excluded services*

17 (3) For the purposes of this Act, none of the following services is an
18 *interactive gambling service*:

19 (a) a telephone betting service;

20 (aa) an excluded wagering service (see section 8A);

21 (ab) an excluded gaming service (see section 8B);

22 (ac) a service that has a designated broadcasting link (see
23 section 8C);

24 (ad) a service that has a designated datacasting link (see
25 section 8C);

26 (ae) an excluded lottery service (see section 8D);

27 (b) a service to the extent to which it relates to the entering into
28 of contracts that, under the Corporations Law, are exempt
29 from a law relating to gaming or wagering (see section 9);

30 (c) an exempt service (see section 10).

6 Prohibited Internet gambling services

1
2 (1) For the purposes of this Act, a *prohibited Internet gambling*
3 *service* is a gambling service, where:

4 (a) the service is provided in the course of carrying on a
5 business; and

6 (b) the service is provided to customers using an Internet
7 carriage service; and

8 (c) an individual who is physically present in Australia is
9 capable of becoming a customer of the service.

10 Note: This definition relates to the complaints system.

11 (1A) For the purposes of paragraph (1)(c), in determining whether an
12 individual who is physically present in Australia is capable of
13 becoming a customer of a service, it is to be assumed that the
14 individual will not falsify or conceal the individual's identity or
15 location.

16 (2) Subsection (1) has effect subject to subsection (3).

17 *Excluded services*

18 (3) For the purposes of this Act, none of the following services is a
19 *prohibited Internet gambling service*:

20 (aa) an excluded wagering service (see section 8A);

21 (ab) an excluded gaming service (see section 8B);

22 (ac) a service that has a designated broadcasting link (see
23 section 8C);

24 (ad) a service that has a designated datacasting link (see
25 section 8C);

26 (ae) an excluded lottery service (see section 8D);

27 (a) a service to the extent to which it relates to the entering into
28 of contracts that, under the Corporations Law, are exempt
29 from a law relating to gaming or wagering (see section 9);

30 (b) an exempt service (see section 10).

Section 8

1 **8 Australian-customer link**

2 For the purposes of this Act, a gambling service has an
3 ***Australian-customer link*** if, and only if, any or all of the
4 customers of the service are physically present in Australia.

5 **8A Excluded wagering service**

6 (1) For the purposes of this Act, an ***excluded wagering service*** is:

7 (a) a service to the extent to which it relates to betting on, or on a
8 series of, any or all of the following:

- 9 (i) a horse race;
10 (ii) a harness race;
11 (iii) a greyhound race;
12 (iv) a sporting event;

13 (b) a service to the extent to which it relates to betting on:

- 14 (i) an event; or
15 (ii) a series of events; or
16 (iii) a contingency;

17 that is not covered by paragraph (a).

18 (1A) Subsection (1) does not apply to a service unless such other
19 conditions (if any) as are specified in the regulations have been
20 satisfied.

21 (2) Paragraphs (1)(a) and (b) do not apply to a service to the extent to
22 which:

23 (a) the service relates to betting on the outcome of a sporting
24 event, where the bets are placed, made, received or accepted
25 after the beginning of the event; or

26 (b) the service relates to betting on a contingency that may or
27 may not happen in the course of a sporting event, where the
28 bets are placed, made, received or accepted after the
29 beginning of the event.

30 (3) Paragraph (1)(b) does not apply to a service to the extent to which
31 the service is:

Section 8B

- 1 (a) a service for the conduct of a scratch lottery or other instant
2 lottery; or
- 3 (b) a service for the supply of tickets in a scratch lottery or other
4 instant lottery; or
- 5 (c) a service relating to betting on the outcome of a scratch
6 lottery or other instant lottery; or
- 7 (d) a service for the conduct of a game covered by paragraph (e)
8 of the definition of *gambling service* in section 4; or
- 9 (e) a service relating to betting on the outcome of a game of
10 chance or of mixed chance and skill.

11 **8B Excluded gaming service**

12 (1) For the purposes of this Act, an *excluded gaming service* is a
13 service for the conduct of a game covered by paragraph (e) of the
14 definition of *gambling service* in section 4, to the extent to which
15 the service is provided to customers who are in a public place.

16 (1A) Subsection (1) does not apply to a service unless such other
17 conditions (if any) as are specified in the regulations have been
18 satisfied.

19 (2) In this section:

20 *public place* means a place, or a part of a place, to which the
21 public, or a section of the public, ordinarily has access, whether or
22 not by payment or by invitation (including, for example, a shop,
23 casino, bar or club).

24 *section of the public* includes the members of a particular club,
25 society or organisation, but does not include a group consisting
26 only of persons with a common workplace or a common employer.

27 **8C Designated broadcasting link and designated datacasting link**

28 *Designated broadcasting link*

29 (1) For the purposes of this Act, a gambling service has a *designated*
30 *broadcasting link* if:

31 (a) either:

Section 8D

- 1 (i) the service is expressly and exclusively associated with
2 a particular program, or a particular series of programs,
3 broadcast on a broadcasting service; or
4 (ii) the sole purpose of the gambling service is to promote
5 goods or services (other than gambling services) that are
6 the subject of advertisements broadcast on a
7 broadcasting service, and the gambling service is
8 associated with those advertisements; and
9 (b) such other conditions (if any) as are specified in the
10 regulations have been satisfied.

11 *Designated datacasting link*

- 12 (2) For the purposes of this Act, a gambling service has a ***designated***
13 ***datacasting link*** if:
14 (a) either:
15 (i) the service is expressly and exclusively associated with
16 particular content, or a particular series of content,
17 transmitted on a datacasting service; or
18 (ii) the sole purpose of the gambling service is to promote
19 goods or services (other than gambling services) that are
20 the subject of advertisements transmitted on a
21 datacasting service, and the gambling service is
22 associated with those advertisements; and
23 (b) such other conditions (if any) as are specified in the
24 regulations have been satisfied.

- 25 (3) In this section:

26 ***content***, in relation to a datacasting service, does not include
27 advertising or sponsorship material.

28 ***program*** has the same meaning as in the *Broadcasting Services Act*
29 *1992*, but does not include advertising or sponsorship material.

30 **8D Excluded lottery service**

- 31 (1) For the purposes of this Act, an ***excluded lottery service*** is:
32 (a) a service for the conduct of a lottery; or

- 1 (b) a service for the supply of lottery tickets.
- 2 (1A) Subsection (1) does not apply to a service unless such other
3 conditions (if any) as are specified in the regulations have been
4 satisfied.
- 5 (1B) Without limiting subsection (1A), a condition specified in
6 regulations made for the purposes of that subsection may provide
7 that the lottery must not be:
- 8 (a) a highly repetitive or frequently drawn form of a keno-type
9 lottery; or
- 10 (b) a similar lottery.
- 11 (2) Subsection (1) does not apply to an electronic form of:
- 12 (a) scratch lottery; or
- 13 (b) other instant lottery.

14 **9 Contracts exempt under the Corporations Law**

15 A reference in this Act to *contracts that, under the Corporations*
16 *Law, are exempt from a law relating to gaming or wagering* is a
17 reference to any of the following:

- 18 (a) option contracts covered by subsection 778(1) of the
19 Corporations Law;
- 20 (b) relevant agreements covered by subsection 778(2) of the
21 Corporations Law;
- 22 (c) futures contracts covered by subsection 1141(1) of the
23 Corporations Law;
- 24 (d) Chapter 8 agreements covered by subsection 1141(2) of the
25 Corporations Law.

26 **9A Designated country**

- 27 (1) The Minister may, by writing, declare that a specified foreign
28 country is a *designated country* for the purposes of this Act.
- 29 (2) A declaration under subsection (1) has effect accordingly.

Section 9B

- 1 (3) The Minister must not declare a foreign country under
2 subsection (1) unless:
3 (a) the government of the country has requested the Minister to
4 make the declaration; and
5 (b) there is in force in that country legislation that corresponds to
6 section 15.
- 7 (4) At least 90 days before making a declaration under subsection (1),
8 the Minister must cause to be published a notice:
9 (a) in the *Gazette*; and
10 (b) in a newspaper circulating in each State, in the Northern
11 Territory and in the Australian Capital Territory;
12 setting out the Minister's intention to make the declaration.
- 13 (5) In deciding whether to declare a foreign country under
14 subsection (1), the Minister must have due regard to:
15 (a) any complaints; and
16 (b) any supporting statements;
17 made by the government of that country.
- 18 (6) An instrument under subsection (1) is a disallowable instrument for
19 the purposes of section 46A of the *Acts Interpretation Act 1901*.

20 **9B Designated country-customer link**

21 For the purposes of this Act, a gambling service has a *designated*
22 *country-customer link* if, and only if, any or all of the customers of
23 the service are physically present in a designated country.

24 **10 Exempt services**

- 25 (1) The Minister may, by writing, determine that each service included
26 in a specified class of services is an *exempt service* for the
27 purposes of this Act.
- 28 (2) A determination under subsection (1) has effect accordingly.
- 29 (3) A determination under subsection (1) is a disallowable instrument
30 for the purposes of section 46A of the *Acts Interpretation Act 1901*.

1 **11 Extended meaning of *use***

2 Unless the contrary intention appears, a reference in this Act to the
3 *use* of a thing is a reference to the use of the thing either:

- 4 (a) in isolation; or
5 (b) in conjunction with one or more other things.

6 **12 Crown to be bound**

- 7 (1) This Act binds the Crown in each of its capacities.
8 (2) This Act does not make the Crown liable to be prosecuted for an
9 offence.
10 (3) The protection in subsection (2) does not apply to an authority of
11 the Crown.

12 **13 Extension to external Territories**

13 This Act extends to every external Territory.

14 **14 Extra-territorial application**

15 Unless the contrary intention appears, this Act extends to acts,
16 omissions, matters and things outside Australia.

Section 15

1

2

Part 2—Offence of providing an interactive gambling service to customers in Australia

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4

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15 Offence of providing an interactive gambling service to customers in Australia

6

7

(1) A person is guilty of an offence if:

8

(a) the person intentionally provides an interactive gambling service; and

9

10

(b) the service has an Australian-customer link (see section 8).

11

Penalty: 2,000 penalty units.

12

(2) A person who contravenes subsection (1) is guilty of a separate offence in respect of each day (including a day of a conviction for the offence or any later day) during which the contravention continues.

13

14

15

16

(3) Subsection (1) does not apply if the person:

17

(a) did not know; and

18

(b) could not, with reasonable diligence, have ascertained;

19

that the service had an Australian-customer link.

20

Note: The defendant bears an evidential burden in relation to the matters in subsection (3) (see subsection 13.3(3) of the *Criminal Code*).

21

22

(4) For the purposes of subsection (3), in determining whether the person could, with reasonable diligence, have ascertained that the service had an Australian-customer link, the following matters are to be taken into account:

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25

26

(a) whether prospective customers were informed that Australian law prohibits the provision of the service to customers who are physically present in Australia;

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28

29

(b) whether customers were required to enter into contracts that were subject to an express condition that the customer was not to use the service if the customer was physically present in Australia;

30

31

32

- 1 (c) whether the person required customers to provide personal
2 details and, if so, whether those details suggested that the
3 customer was not physically present in Australia;
4 (d) whether the person has network data that indicates that
5 customers were physically present outside Australia:
6 (i) when the relevant customer account was opened; and
7 (ii) throughout the period when the service was provided to
8 the customer;
9 (e) any other relevant matters.
- 10 (5) Section 15.4 of the *Criminal Code* (extended geographical
11 jurisdiction—category D) applies to an offence against
12 subsection (1).

Section 15A

Part 2A—Offence of providing an Australian-based interactive gambling service to customers in designated countries

15A Offence of providing an Australian-based interactive gambling service to customers in designated countries

- (1) A person is guilty of an offence if:
- (a) the person intentionally provides an Australian-based interactive gambling service; and
 - (b) the service has a designated country-customer link (see section 9B).

Penalty: 2,000 penalty units.

- (2) A person who contravenes subsection (1) is guilty of a separate offence in respect of each day (including a day of conviction for the offence or any later day) during which the contravention continues.

- (3) Subsection (1) does not apply if the person:
- (a) did not know; and
 - (b) could not, with reasonable diligence, have ascertained; that the service had a designated country-customer link.

Note: The defendant bears an evidential burden in relation to the matters in subsection (3) (see subsection 13.3(3) of the *Criminal Code*).

- (4) For the purposes of subsection (3), in determining whether the person could, with reasonable diligence, have ascertained that the service had a designated country-customer link, the following matters are to be taken into account:
- (a) whether prospective customers were informed that Australian law prohibits the provision of the service to customers who are physically present in a designated country;
 - (b) whether customers were required to enter into contracts that were subject to an express condition that the customer was

Section 15A

-
- 1 not to use the service if the customer was physically present
2 in a designated country;
- 3 (c) whether the person required customers to provide personal
4 details and, if so, whether those details suggested that the
5 customer was not physically present in a designated country;
- 6 (d) whether the person has network data that indicates that
7 customers were physically present outside a designated
8 country:
- 9 (i) when the relevant customer account was opened; and
10 (ii) throughout the period when the service was provided to
11 the customer;
- 12 (e) any other relevant matters.
- 13 (5) Section 15.4 of the *Criminal Code* (extended geographical
14 jurisdiction—category D) applies to an offence against
15 subsection (1).
- 16 (6) For the purposes of this section, an ***Australian-based interactive***
17 ***gambling service*** is an interactive gambling service, where the
18 service has an Australian-provider link.
- 19 (7) For the purposes of this section, an interactive gambling service
20 has an ***Australian-provider link*** if, and only if:
- 21 (a) the service is provided in the course of carrying on a business
22 in Australia; or
- 23 (b) the central management and control of the service is in
24 Australia; or
- 25 (c) the service is provided through an agent in Australia; or
- 26 (d) the service is provided to customers using an Internet
27 carriage service, and any or all of the relevant Internet
28 content is hosted in Australia.
- 29 (8) For the purposes of this section, the ***relevant Internet content***, in
30 relation to an interactive gambling service, is Internet content that
31 is accessed, or available for access, by an end-user in the capacity
32 of customer of the service.

Section 16

1

2 **Part 3—Complaints system: prohibited Internet**
3 **gambling content**

4 **Division 1—Making of complaints to the ABA**

5 **16 Complaints about prohibited Internet gambling content**

- 6 (1) If a person has reason to believe that end-users in Australia can
7 access prohibited Internet gambling content using an Internet
8 carriage service, the person may make a complaint to the ABA
9 about the matter.

10 *Content of complaint*

- 11 (2) A complaint under subsection (1) about particular Internet content
12 must:
- 13 (a) identify the Internet content; and
 - 14 (b) set out how to access the Internet content (for example: set
15 out a URL or a password); and
 - 16 (c) if the complainant knows the country or countries in which
17 the Internet content is hosted—set out the name of that
18 country or those countries; and
 - 19 (d) set out the complainant's reasons for believing that the
20 Internet content is prohibited Internet gambling content; and
 - 21 (e) set out such other information (if any) as the ABA requires.

22 **17 Complaints about breaches of online provider rules etc.**

- 23 If a person has reason to believe that:
- 24 (a) an Internet service provider has contravened a code
25 registered under Part 4 that is applicable to the provider; or
 - 26 (b) an Internet service provider has contravened an online
27 provider rule that is applicable to the provider;
- 28 the person may make a complaint to the ABA about the matter.

1 **18 Form of complaint**

- 2 (1) A complaint under this Division is to be in writing.
- 3 (2) However, the ABA may permit complaints to be given, in
4 accordance with specified software requirements, by way of a
5 specified kind of electronic transmission.

6 **19 Residency etc. of complainant**

- 7 A person is not entitled to make a complaint under this Division
8 unless the person is:
- 9 (a) an individual who resides in Australia; or
10 (b) a body corporate that carries on activities in Australia; or
11 (c) the Commonwealth, a State or a Territory.

Section 20

1

2 **Division 2—Investigations by the ABA**

3 **20 Investigation of complaints by the ABA**

4 (1) The ABA must investigate a complaint made under Division 1.

5 (2) Subsection (1) has effect subject to subsections (3) and (4).

6 *Internet content hosted in Australia—referral of complaint to an*
7 *Australian police force*

8 (3) If a complaint relates to Internet content hosted in Australia:

9 (a) the ABA must not investigate the complaint; and

10 (b) if the ABA considers that the complaint should be referred to
11 an Australian police force—the ABA must:

12 (i) refer the complaint to a member of an Australian police
13 force; and

14 (ii) give written notice to the complainant stating that the
15 complaint has been so referred.

16 *Frivolous or vexatious complaints*

17 (4) The ABA need not investigate a complaint if:

18 (a) the ABA is satisfied that the complaint is:

19 (i) frivolous; or

20 (ii) vexatious; or

21 (iii) not made in good faith; or

22 (b) the ABA has reason to believe that the complaint was made
23 for the purpose, or for purposes that include the purpose, of
24 frustrating or undermining the effective administration of this
25 Part.

26 *Notification of the results of an investigation*

27 (5) The ABA must notify the complainant of the results of an
28 investigation under this section.

1 *Termination of investigation*

- 2 (6) The ABA may terminate an investigation under this section if the
3 ABA is of the opinion that it does not have sufficient information
4 to conclude the investigation.

5 *Referral to Australian police force*

- 6 (7) The manner in which a complaint may be referred under
7 subsection (3) to a member of an Australian police force includes
8 (but is not limited to) a manner ascertained in accordance with an
9 arrangement between the ABA and the chief (however described)
10 of the police force concerned.
- 11 (8) If a complaint is referred to a member of an Australian police force
12 under subsection (3), the member may refer the complaint to a
13 member of another Australian police force.
- 14 (9) This section does not, by implication, limit the ABA's powers to
15 refer other matters to a member of an Australian police force.

16 **21 ABA may investigate matters on its own initiative**

17 The ABA may investigate any of the following matters if the ABA
18 thinks that it is desirable to do so:

- 19 (a) whether an Internet service provider is supplying an Internet
20 carriage service that enables end-users to access prohibited
21 Internet gambling content hosted outside Australia;
- 22 (b) whether:
- 23 (i) an Internet service provider has contravened a code
24 registered under Part 4 that is applicable to the provider;
25 or
- 26 (ii) an Internet service provider has contravened an online
27 provider rule that is applicable to the provider.

28 **22 Conduct of investigations**

- 29 (1) An investigation under this Division is to be conducted as the ABA
30 thinks fit.

Section 23

- 1 (2) The ABA may, for the purposes of an investigation, obtain
2 information from such persons, and make such inquiries, as it
3 thinks fit.
- 4 (3) This section has effect subject to Part 13 of the *Broadcasting*
5 *Services Act 1992* (which confers certain investigative powers on
6 the ABA).

7 **23 Protection from civil proceedings**

- 8 Civil proceedings do not lie against a person in respect of loss,
9 damage or injury of any kind suffered by another person because
10 of any of the following acts done in good faith:
- 11 (a) the making of a complaint under Division 1;
- 12 (b) the making of a statement to, or the giving of a document or
13 information to, the ABA in connection with an investigation
14 under this Division.

**Division 3—Action to be taken in relation to a complaint
about prohibited Internet gambling content
hosted outside Australia**

**24 Action to be taken in relation to a complaint about prohibited
Internet gambling content hosted outside Australia**

(1) If, in the course of an investigation under Division 2, the ABA is satisfied that Internet content hosted outside Australia is prohibited Internet gambling content, the ABA must:

- (a) if the ABA considers the content should be referred to a law enforcement agency (whether in or outside Australia)—notify the content to:
 - (i) a member of an Australian police force; or
 - (ii) if there is an arrangement between the ABA and the chief (however described) of an Australian police force under which the ABA is authorised to notify the content to another person or body (whether in or outside Australia)—that other person or body; and
- (b) if a code registered, and/or a standard determined, under Part 4 deals exclusively with the designated Internet gambling matters—notify the content to Internet service providers under the designated notification scheme set out in the code or standard, as the case may be; and
- (c) if paragraph (b) does not apply—give each Internet service provider known to the ABA a written notice (a ***standard access-prevention notice***) directing the provider to take all reasonable steps to prevent end-users from accessing the content.

Note 1: For Internet content hosted in Australia, see subsection 20(3).

Note 2: The ABA may be taken to have given a notice under paragraph (c)—see section 31.

(2) For the purposes of paragraph (1)(c), in determining whether particular steps are reasonable, regard must be had to:

Part 3 Complaints system: prohibited Internet gambling content

Division 3 Action to be taken in relation to a complaint about prohibited Internet gambling content hosted outside Australia

Section 24

- 1 (a) the technical and commercial feasibility of taking the steps;
2 and
3 (b) the matters set out in subsection 4(3) of the *Broadcasting*
4 *Services Act 1992*.
- 5 (3) Subsection (2) does not, by implication, limit the matters to which
6 regard must be had.
- 7 *Recognised alternative access-prevention arrangements*
- 8 (4) An Internet service provider is not required to comply with a
9 standard access-prevention notice in relation to a particular
10 end-user if access by the end-user is subject to a recognised
11 alternative access-prevention arrangement (as defined by
12 subsection (5)) that is applicable to the end-user.
- 13 (5) The ABA may, by written instrument, declare that a specified
14 arrangement is a ***recognised alternative access-prevention***
15 ***arrangement*** for the purposes of the application of this Division to
16 one or more specified end-users if the ABA is satisfied that the
17 arrangement is likely to provide a reasonably effective means of
18 preventing access by those end-users to prohibited Internet
19 gambling content.
- 20 Note: For specification by class, see subsection 46(2) of the *Acts*
21 *Interpretation Act 1901*.
- 22 (6) The following are examples of arrangements that could be declared
23 to be recognised alternative access-prevention arrangements under
24 subsection (5):
- 25 (a) an arrangement that involves the use of regularly updated
26 Internet content filtering software;
27 (b) an arrangement that involves the use of a filtered Internet
28 carriage service.
- 29 (7) An instrument under subsection (5) is a disallowable instrument for
30 the purposes of section 46A of the *Acts Interpretation Act 1901*.

Referral to law enforcement agency

- 1
- 2 (8) The manner in which Internet content may be notified under
3 paragraph (1)(a) to a member of an Australian police force includes
4 (but is not limited to) a manner ascertained in accordance with an
5 arrangement between the ABA and the chief (however described)
6 of the police force concerned.
- 7 (9) If a member of an Australian police force is notified of particular
8 Internet content under this section, the member may notify the
9 content to a member of another law enforcement agency (whether
10 in or outside Australia).
- 11 (10) This section does not, by implication, limit the ABA's powers to
12 refer other matters to a member of an Australian police force.

13 **25 Deferral of action in order to avoid prejudicing a criminal**
14 **investigation**

- 15 (1) If:
- 16 (a) in the course of an investigation under Division 2, the ABA
17 is satisfied that Internet content hosted outside Australia is
18 prohibited Internet gambling content; and
- 19 (b) apart from this subsection, the ABA would be required to
20 take action under subsection 24(1) in relation to the content;
21 and
- 22 (c) a member of an Australian police force satisfies the ABA that
23 the taking of that action should be deferred until the end of a
24 particular period in order to avoid prejudicing a criminal
25 investigation;
- 26 the ABA may defer taking that action until the end of that period.
- 27 (2) Subsection (1) has effect despite anything in section 24.

28 **26 Anti-avoidance—notified Internet content**

- 29 If:
- 30 (a) particular Internet content has been notified to Internet
31 service providers as mentioned in paragraph 24(1)(b); and

Part 3 Complaints system: prohibited Internet gambling content

Division 3 Action to be taken in relation to a complaint about prohibited Internet gambling content hosted outside Australia

Section 27

- 1 (b) the ABA is satisfied that Internet content (the *similar*
2 *Internet content*) that is the same as, or substantially similar
3 to, the first-mentioned Internet content is being hosted
4 outside Australia; and
5 (c) the ABA is satisfied that the similar Internet content is
6 prohibited Internet gambling content; and
7 (d) a code registered, and/or standard determined, under Part 4
8 deals exclusively with the designated Internet gambling
9 matters;
10 the ABA must notify the similar Internet content to Internet service
11 providers under the designated notification scheme set out in the
12 code or standard, as the case may be.

27 Anti-avoidance—special access-prevention notice

- 13
14 (1) If:
15 (a) a standard access-prevention notice relating to particular
16 Internet content is applicable to a particular Internet service
17 provider; and
18 (b) the ABA is satisfied that the Internet service provider is
19 supplying an Internet carriage service that enables end-users
20 to access Internet content (the *similar Internet content*) that
21 is the same as, or substantially similar to, the Internet content
22 identified in the standard access-prevention notice; and
23 (c) the ABA is satisfied that the similar Internet content is
24 prohibited Internet gambling content;
25 the ABA may give the provider a written notice (*special*
26 *access-prevention notice*) directing the provider to take all
27 reasonable steps to prevent end-users from accessing the similar
28 Internet content at any time when the standard access-prevention
29 notice is in force.
30 Note: The ABA may be taken to have given a notice under this section—see
31 section 31.
32 (2) For the purposes of subsection (1), in determining whether
33 particular steps are reasonable, regard must be had to:
34 (a) the technical and commercial feasibility of taking the steps;
35 and

1 (b) the matters set out in subsection 4(3) of the *Broadcasting*
2 *Services Act 1992*.

3 (3) Subsection (2) does not, by implication, limit the matters to which
4 regard must be had.

5 *Recognised alternative access-prevention arrangements*

6 (4) An Internet service provider is not required to comply with a
7 special access-prevention notice in relation to a particular end-user
8 if access by the end-user is subject to a recognised alternative
9 access-prevention arrangement (as defined by subsection 24(5))
10 that is applicable to the end-user.

11 **28 Compliance with access-prevention notices**

12 *Standard access-prevention notice*

13 (1) An Internet service provider must comply with a standard
14 access-prevention notice that applies to the provider as soon as
15 practicable, and in any event by 6 pm on the next business day,
16 after the notice was given to the provider.

17 *Special access-prevention notice*

18 (2) An Internet service provider must comply with a special
19 access-prevention notice that applies to the provider as soon as
20 practicable, and in any event by 6 pm on the next business day,
21 after the notice was given to the provider.

22 Note: For enforcement, see Part 5.

23 **29 Notification of Internet content**

24 Internet content may be notified in accordance with this Division
25 by:

- 26 (a) setting out the content; or
27 (b) describing the content; or
28 (c) in any other way.

Part 3 Complaints system: prohibited Internet gambling content

Division 3 Action to be taken in relation to a complaint about prohibited Internet gambling content hosted outside Australia

Section 30

1 **30 Application of notifications under this Division**

2 A notification under this Division applies to particular Internet
3 content only to the extent to which the content is accessed, or
4 available for access, from an Internet site, or a distinct part of an
5 Internet site, specified in the notification.

6 Note: For specification by class, see subsection 46(2) of the *Acts*
7 *Interpretation Act 1901*.

8 **31 ABA may be taken to have issued access-prevention notices**

- 9 (1) Subject to subsection (2), the ABA may, by written instrument,
10 formulate a scheme:
11 (a) in the nature of a scheme for substituted service; and
12 (b) under which the ABA is taken, for the purposes of this Act,
13 to have done any or all of the following:
14 (i) given each Internet service provider a standard
15 access-prevention notice under paragraph 24(1)(c);
16 (ii) given each Internet service provider a special
17 access-prevention notice under section 27.

- 18 (2) It is a minimum requirement for a scheme formulated under
19 subsection (1) that each Internet service provider be alerted by
20 electronic means to the existence of a notice.

21 Note: For example, it is not sufficient for the ABA to make notices available
22 on the Internet (with or without security measures) without notifying
23 Internet service providers that a notice has been issued.

- 24 (3) Paragraph 24(1)(c) has effect, in relation to a scheme under
25 subsection (1), as if the reference in that paragraph to each Internet
26 service provider known to the ABA were a reference to each
27 Internet service provider.

- 28 (4) An instrument under subsection (1) is a disallowable instrument for
29 the purposes of section 46A of the *Acts Interpretation Act 1901*.

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Part 4—Complaints system: industry code and industry standard

Division 1—Simplified outline

32 Simplified outline

The following is a simplified outline of this Part.

- A body or association that represents Internet service providers may develop an industry code that deals with the *designated Internet gambling matters* (see section 35).
- An industry code may be registered by the ABA.
- Compliance with an industry code is voluntary unless the ABA directs a particular Internet service provider to comply with the code.
- The ABA has a reserve power to make an industry standard if there is no industry code or if an industry code is deficient.
- Compliance with an industry standard is mandatory.

Section 33

1

2 **Division 2—Interpretation**

3 **33 Industry code**

4 For the purposes of this Act, an *industry code* is a code developed
5 under this Part (whether or not in response to a request under this
6 Part).

7 **34 Industry standard**

8 For the purposes of this Act, an *industry standard* is a standard
9 determined under this Part.

10 **35 Designated Internet gambling matters**

11 For the purposes of this Act, the following matters are *designated*
12 *Internet gambling matters*:

- 13 (a) the formulation of a designated notification scheme;
14 (b) procedures to be followed by Internet service providers in
15 dealing with Internet content notified under paragraph
16 24(1)(b) or section 26 (for example, procedures relating to
17 the provision of regularly updated Internet content filtering
18 software to subscribers).

1

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Division 3—General principles relating to industry code and industry standard

3

4

36 Statement of regulatory policy

5

(1) The Parliament intends that a body or association that the ABA is satisfied represents Internet service providers should develop a single code (*industry code*) that:

6

7

8

(a) is to apply to Internet service providers; and

9

(b) deals exclusively with the designated Internet gambling matters.

10

11

(2) The Parliament intends that an industry code developed, or industry standard determined, under this Part is to be in addition to any codes developed, or standards determined, under Schedule 5 to the *Broadcasting Services Act 1992*.

12

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14

15

(3) The Parliament intends that this Part does not, by implication, limit the matters that may be dealt with by any codes developed, or standards determined, under Schedule 5 to the *Broadcasting Services Act 1992*.

16

17

18

19

(4) The Parliament intends that the ABA should make reasonable efforts to ensure that either:

20

21

(a) an industry code is registered under this Part before Part 3 commences; or

22

23

(b) an industry standard is registered under this Part before Part 3 commences.

24

25

37 Matters that must be dealt with by industry code and industry standard

26

27

Object

28

(1) The object of this section is to set out the matters to be dealt with by an industry code or industry standard.

29

Section 37

1 *Matters that must be dealt with by industry code or industry*
2 *standard*

- 3 (2) The Parliament intends that, for Internet service providers, there
4 should be:
5 (a) an industry code or an industry standard that deals with; or
6 (b) an industry code and an industry standard that together deal
7 with;
8 the designated Internet gambling matters.

9 *Designated alternative access-prevention arrangements*

- 10 (3) An industry code or an industry standard may provide that an
11 Internet service provider is not required to deal with Internet
12 content notified under paragraph 24(1)(b) or section 26 by taking
13 steps to prevent particular end-users from accessing the content if
14 access by the end-users is subject to an arrangement that is
15 declared by the code or standard to be a designated alternative
16 access-prevention arrangement for the purposes of the application
17 of this section to those end-users.
- 18 (4) An industry code developed by a body or association must not
19 declare that a specified arrangement is a designated alternative
20 access-prevention arrangement for the purposes of the application
21 of this section to one or more specified end-users unless the body
22 or association is satisfied that the arrangement is likely to provide a
23 reasonably effective means of preventing access by those end-users
24 to prohibited Internet gambling content.

25 Note: For specification by class, see subsection 46(2) of the *Acts*
26 *Interpretation Act 1901.*

- 27 (5) An industry standard determined by the ABA must not declare that
28 a specified arrangement is a designated alternative
29 access-prevention arrangement for the purposes of the application
30 of this section to one or more specified end-users unless the ABA
31 is satisfied that the arrangement is likely to provide a reasonably
32 effective means of preventing access by those end-users to
33 prohibited Internet gambling content.

34 Note: For specification by class, see subsection 46(2) of the *Acts*
35 *Interpretation Act 1901.*

- 1 (6) The following are examples of arrangements that could be declared
2 to be designated alternative access-prevention arrangements:
3 (a) an arrangement that involves the use of regularly updated
4 Internet content filtering software;
5 (b) an arrangement that involves the use of a filtered Internet
6 carriage service.
- 7 (7) For the purposes of this Act, if an industry code:
8 (a) deals to any extent with procedures to be followed by
9 Internet service providers in dealing with Internet content
10 notified under paragraph 24(1)(b) or section 26; and
11 (b) makes provision as mentioned in subsection (3);
12 then:
13 (c) the code is taken to deal with the matter set out in paragraph
14 35(b); and
15 (d) the code is taken to be consistent with subsection (2).
- 16 (8) For the purposes of this Act, if an industry standard:
17 (a) deals to any extent with procedures to be followed by
18 Internet service providers in dealing with Internet content
19 notified under paragraph 24(1)(b) or section 26; and
20 (b) makes provision as mentioned in subsection (3);
21 then:
22 (c) the standard is taken to deal with the matter set out in
23 paragraph 35(b); and
24 (d) the standard is taken to be consistent with subsection (2).

Section 38

1

2 **Division 4—Industry code**

3 **38 Registration of industry code**

4

(1) This section applies if:

5

(a) the ABA is satisfied that a body or association represents
Internet service providers; and

6

7

(b) that body or association develops an industry code that
applies to Internet service providers and deals exclusively
with the designated Internet gambling matters; and

8

9

(c) the body or association gives a copy of the code to the ABA;
and

10

11

(d) the ABA is satisfied that the code provides appropriate
community safeguards for the designated Internet gambling
matters; and

12

13

14

(e) the ABA is satisfied that, before giving the copy of the code
to the ABA:

15

16

17

(i) the body or association published a draft of the code and
invited members of the public to make submissions to
the body or association about the draft within a
specified period; and

18

19

20

(ii) the body or association gave consideration to any
submissions that were received from members of the
public within that period; and

21

22

23

(f) the ABA is satisfied that, before giving the copy of the code
to the ABA:

24

25

26

(i) the body or association published a draft of the code and
invited Internet service providers to make submissions
to the body or association about the draft within a
specified period; and

27

28

29

(ii) the body or association gave consideration to any
submissions that were received from Internet service
providers within that period.

30

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32

(2) The ABA must register the code by including it in the Register of
industry codes kept under section 53.

33

34

- 1 (3) A period specified under subparagraph (1)(e)(i) or (1)(f)(i) must
2 run for at least 30 days.
- 3 (4) If:
4 (a) an industry code (the *new code*) is registered under this Part;
5 and
6 (b) the new code is expressed to replace another industry code;
7 the other code ceases to be registered under this Part when the new
8 code is registered.

9 **39 ABA may request code**

- 10 (1) If the ABA is satisfied that a body or association represents
11 Internet service providers, the ABA may, by written notice given to
12 the body or association, request the body or association to:
13 (a) develop an industry code that applies to Internet service
14 providers and deals exclusively with the designated Internet
15 gambling matters; and
16 (b) give the ABA a copy of the code within the period specified
17 in the notice.
- 18 (2) The period specified in a notice under subsection (1) must run for
19 at least 120 days.
- 20 (3) The ABA must not make a request under subsection (1) unless the
21 ABA is satisfied that, in the absence of the request, it is unlikely
22 that an industry code would be developed within a reasonable
23 period.
- 24 (4) The ABA may vary a notice under subsection (1) by extending the
25 period specified in the notice.
- 26 (5) Subsection (4) does not, by implication, limit the application of
27 subsection 33(3) of the *Acts Interpretation Act 1901*.
- 28 (6) A notice under subsection (1) may specify indicative targets for
29 achieving progress in the development of the code (for example, a
30 target of 60 days to develop a preliminary draft of the code).

Section 40

1 **40 Publication of notice where no body or association represents**
2 **Internet service providers**

3 (1) If the ABA is satisfied that Internet service providers are not
4 represented by a body or association, the ABA may publish a
5 notice in the *Gazette* stating that, if such a body or association were
6 to come into existence within a specified period, the ABA would
7 be likely to give a notice to that body or association under
8 subsection 39(1).

9 (2) The period specified in a notice under subsection (1) must run for
10 at least 60 days.

11 **41 Replacement of industry code**

12 (1) Changes to an industry code are to be achieved by replacing the
13 code instead of varying the code.

14 (2) If the replacement code differs only in minor respects from the
15 original code, section 38 has effect, in relation to the registration of
16 the code, as if paragraphs 38(1)(e) and (f) had not been enacted.

17 Note: Paragraphs 38(1)(e) and (f) deal with submissions about draft codes.

18 **42 Compliance with industry code**

19 (1) If:
20 (a) a person is an Internet service provider; and
21 (b) the ABA is satisfied that the person has contravened, or is
22 contravening, an industry code that is registered under this
23 Part;

24 the ABA may, by written notice given to the person, direct the
25 person to comply with the industry code.

26 (2) A person must comply with a direction under subsection (1).

27 Note: For enforcement, see Part 5.

1 **43 Formal warnings—breach of industry code**

2 The ABA may issue a formal warning if an Internet service
3 provider contravenes an industry code registered under this Part.

Section 44

1

2 **Division 5—Industry standard**

3 **44 ABA may determine an industry standard if a request for an**
4 **industry code is not complied with**

5

(1) This section applies if:

6

(a) the ABA has made a request under subsection 39(1) in
7 relation to the development of a code that is to:

8

(i) apply to Internet service providers; and

9

(ii) deal exclusively with the designated Internet gambling
10 matters; and

11

(b) any of the following conditions is satisfied:

12

(i) the request is not complied with;

13

(ii) if indicative targets for achieving progress in the
14 development of the code were specified in the notice of
15 request—any of those indicative targets were not met;

16

(iii) the request is complied with, but the ABA subsequently
17 refuses to register the code.

18

(2) The ABA may, by written instrument, determine a standard that
19 applies to Internet service providers in relation to the designated
20 Internet gambling matters. A standard under this subsection is to be
21 known as an *industry standard*.

22

(3) Before determining an industry standard under this section, the
23 ABA must consult the body or association to whom the request
24 mentioned in paragraph (1)(a) was made.

25

Note: See also section 52.

26

(4) A standard under subsection (2) is a disallowable instrument for
27 the purposes of section 46A of the *Acts Interpretation Act 1901*.

28

(5) The Minister may give the ABA a written direction as to the
29 exercise of its powers under this section.

29

1 **45 ABA may determine industry standard where no industry body**
2 **or association formed**

- 3 (1) This section applies if:
- 4 (a) the ABA is satisfied that Internet service providers are not
 - 5 represented by a body or association; and
 - 6 (b) the ABA has published a notice under subsection 40(1); and
 - 7 (c) that notice states that, if such a body or association were to
 - 8 come into existence within a particular period, the ABA
 - 9 would be likely to give a notice to that body or association
 - 10 under subsection 39(1); and
 - 11 (d) no such body or association comes into existence within that
 - 12 period.
- 13 (2) The ABA may, by written instrument, determine a standard that
- 14 applies to Internet service providers and deals exclusively with the
- 15 designated Internet gambling matters. A standard under this
- 16 subsection is to be known as an *industry standard*.
- 17 Note: See also section 52.
- 18 (3) A standard under subsection (2) is a disallowable instrument for
- 19 the purposes of section 46A of the *Acts Interpretation Act 1901*.
- 20 (4) The Minister may give the ABA a written direction as to the
- 21 exercise of its powers under this section.

22 **46 ABA may determine industry standard—total failure of industry**
23 **code**

- 24 (1) This section applies if:
- 25 (a) an industry code that:
 - 26 (i) applies to Internet service providers; and
 - 27 (ii) deals exclusively with the designated Internet gambling
 - 28 matters;
 - 29 has been registered under this Part for at least 180 days; and
 - 30 (b) the ABA is satisfied that the code is totally deficient (as
 - 31 defined by subsection (7)); and

Section 47

- 1 (c) the ABA has given the body or association that developed the
2 code a written notice requesting that deficiencies in the code
3 be addressed within a specified period; and
4 (d) that period ends and the ABA is satisfied that it is necessary
5 or convenient for the ABA to determine a standard that
6 applies to Internet service providers and deals exclusively
7 with the designated Internet gambling matters.
- 8 (2) The period specified in a notice under paragraph (1)(c) must run
9 for at least 30 days.
- 10 (3) The ABA may, by written instrument, determine a standard that
11 applies to Internet service providers and deals exclusively with the
12 designated Internet gambling matters. A standard under this
13 subsection is to be known as an *industry standard*.
- 14 (4) If the ABA is satisfied that a body or association represents
15 Internet service providers, the ABA must consult the body or
16 association before determining an industry standard under
17 subsection (3).
- 18 Note: See also section 52.
- 19 (5) A standard under subsection (3) is a disallowable instrument for
20 the purposes of section 46A of the *Acts Interpretation Act 1901*.
- 21 (6) The industry code ceases to be registered under this Part on the day
22 on which the industry standard comes into force.
- 23 (7) For the purposes of this section, an industry code that applies to
24 Internet service providers and deals exclusively with the designated
25 Internet gambling matters is *totally deficient* if, and only if, the
26 code is not operating to provide appropriate community safeguards
27 in relation to the designated Internet gambling matters.
- 28 (8) The Minister may give the ABA a written direction as to the
29 exercise of its powers under this section.

30 **47 ABA may determine industry standard—partial failure of**
31 **industry code**

- 32 (1) This section applies if:
-

- 1 (a) an industry code that:
2 (i) applies to Internet service providers; and
3 (ii) deals exclusively with the designated Internet gambling
4 matters; and
5 has been registered under this Part for at least 180 days; and
6 (b) section 46 does not apply to the code; and
7 (c) the ABA is satisfied that the code is deficient (as defined by
8 subsection (7)) to the extent to which the code deals with one
9 of the designated Internet gambling matters (the *deficient*
10 *matter*); and
11 (d) the ABA has given the body or association that developed the
12 code a written notice requesting that deficiencies in the code
13 be addressed within a specified period; and
14 (e) that period ends and the ABA is satisfied that it is necessary
15 or convenient for the ABA to determine a standard that
16 applies to Internet service providers and deals with the
17 deficient matter.
- 18 (2) The period specified in a notice under paragraph (1)(c) must run
19 for at least 30 days.
- 20 (3) The ABA may, by written instrument, determine a standard that
21 applies to Internet service providers and deals with the deficient
22 matter. A standard under this subsection is to be known as an
23 *industry standard*.
- 24 (4) If the ABA is satisfied that a body or association represents
25 Internet service providers, the ABA must consult the body or
26 association before determining an industry standard under
27 subsection (3).
- 28 Note: See also section 52.
- 29 (5) A standard under subsection (3) is a disallowable instrument for
30 the purposes of section 46A of the *Acts Interpretation Act 1901*.
- 31 (6) On and after the day on which the industry standard comes into
32 force, the industry code has no effect to the extent to which it deals
33 with the deficient matter. However, this subsection does not affect:

Section 48

- 1 (a) the continuing registration of the remainder of the industry
2 code; or
3 (b) any investigation, proceeding or remedy in respect of a
4 contravention of the industry code or section 42 that occurred
5 before that day.
- 6 (7) For the purposes of this section, an industry code that applies to
7 Internet service providers and deals exclusively with the designated
8 Internet gambling matters is *deficient* to the extent to which it
9 deals with a particular one of the designated Internet gambling
10 matters if, and only if, the code is not operating to provide
11 appropriate community safeguards in relation to that matter.
- 12 (8) The Minister may give the ABA a written direction as to the
13 exercise of its powers under this section.

14 **48 Compliance with industry standard**

15 If:

- 16 (a) an industry standard that applies to Internet service providers
17 is registered under this Part; and
18 (b) a person is an Internet service provider;
19 the person must comply with the industry standard.

20 Note: For enforcement, see Part 5.

21 **49 Formal warnings—breach of industry standard**

22 The ABA may issue a formal warning if an Internet service
23 provider contravenes an industry standard registered under this
24 Part.

25 **50 Variation of industry standard**

- 26 (1) The ABA may, by written instrument, vary an industry standard
27 that applies to Internet service providers if it is satisfied that it is
28 necessary or convenient to do so to provide appropriate community
29 safeguards in relation to either or both of the designated Internet
30 gambling matters.

31 Note: See also section 52.

- 1 (2) An instrument under subsection (1) is a disallowable instrument for
2 the purposes of section 46A of the *Acts Interpretation Act 1901*.

3 **51 Revocation of industry standard**

- 4 (1) The ABA may, by written instrument, revoke an industry standard.
- 5 (2) If:
- 6 (a) an industry code is registered under this Part; and
- 7 (b) the code is expressed to replace an industry standard;
- 8 the industry standard is revoked when the code is registered.
- 9 (3) An instrument under subsection (1) is a disallowable instrument for
10 the purposes of section 46A of the *Acts Interpretation Act 1901*.

11 **52 Public consultation on industry standard**

- 12 (1) Before determining or varying an industry standard, the ABA
13 must:
- 14 (a) cause to be published in a newspaper circulating in each State
15 a notice:
- 16 (i) stating that the ABA has prepared a draft of the industry
17 standard or variation; and
- 18 (ii) stating that free copies of the draft will be made
19 available to members of the public during normal office
20 hours throughout the period specified in the notice; and
- 21 (iii) specifying the place or places where the copies will be
22 available; and
- 23 (iv) inviting interested persons to give written comments
24 about the draft to the ABA within the period specified
25 under subparagraph (ii); and
- 26 (b) make copies of the draft available in accordance with the
27 notice.
- 28 (2) The period specified under subparagraph (1)(a)(ii) must run for at
29 least 30 days after the publication of the notice.
- 30 (3) Subsection (1) does not apply to a variation if the variation is of a
31 minor nature.
-

Part 4 Complaints system: industry code and industry standard

Division 5 Industry standard

Section 52

- 1 (4) If interested persons have given comments in accordance with a
2 notice under subsection (1), the ABA must have due regard to
3 those comments in determining or varying the industry standard, as
4 the case may be.
- 5 (5) In this section:
- 6 ***State*** includes the Northern Territory and the Australian Capital
7 Territory.

1

2 **Division 6—Industry code and industry standard to be**
3 **included on a Register**

4 **53 Industry code and industry standard to be included on a Register**

- 5 (1) The ABA is to maintain a Register in which the ABA includes:
6 (a) all industry codes required to be registered under this Part;
7 and
8 (b) all industry standards; and
9 (c) all requests made under section 39; and
10 (d) all notices under section 40; and
11 (e) all directions under section 42.
- 12 (2) The Register may be maintained by electronic means.
- 13 (3) The Register is to be made available for inspection on the Internet.

Section 54

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Part 5—Complaints system: online provider rules

4

54 Online provider rules

5
6

For the purposes of this Act, each of the following is an *online provider rule*:

7
8
9
10

- (a) the rule set out in subsection 28(1);
- (b) the rule set out in subsection 28(2);
- (c) the rule set out in subsection 42(2);
- (d) the rule set out in section 48.

11

55 Compliance with online provider rules

12

A person is guilty of an offence if:

13
14
15

- (a) an online provider rule is applicable to the person; and
- (b) the person engages in conduct; and
- (c) the person's conduct contravenes the rule.

16

Penalty: 50 penalty units.

17

Note: See also section 57.

18

56 Remedial directions—breach of online provider rules

19
20

(1) This section applies if an Internet service provider has contravened, or is contravening, an online provider rule.

21
22
23
24

(2) The ABA may give the provider a written direction requiring the provider to take specified action directed towards ensuring that the provider does not contravene the rule, or is unlikely to contravene the rule, in the future.

25
26

(3) The following are examples of the kinds of direction that may be given to an Internet service provider under subsection (2):

27
28
29

- (a) a direction that the provider implement effective administrative systems for monitoring compliance with an online provider rule;

Section 57

1 (b) a direction that the provider implement a system designed to
2 give the provider's employees, agents and contractors a
3 reasonable knowledge and understanding of the requirements
4 of an online provider rule, in so far as those requirements
5 affect the employees, agents or contractors concerned.

6 (4) A person is guilty of an offence if:
7 (a) the person is subject to a direction under subsection (2); and
8 (b) the person engages in conduct; and
9 (c) the person's conduct contravenes the direction.

10 Penalty for contravention of this subsection: 50 penalty units.

11 Note: See also section 57.

12 **57 Continuing offences**

13 (1) A person who contravenes section 55 or subsection 56(4) is guilty
14 of a separate offence in respect of each day (including a day of
15 conviction for the offence or any later day) during which the
16 contravention continues.

17 (2) If an offence against this Part is a continuing offence, the
18 maximum penalty for each day that the offence continues is 10%
19 of the maximum penalty that could be imposed in respect of the
20 principal offence.

21 **58 Formal warnings—breach of online provider rules**

22 The ABA may issue a formal warning if a person contravenes an
23 online provider rule.

24 **59 Federal Court may order a person to cease supplying Internet
25 carriage services**

26 (1) If the ABA is satisfied that a person who is an Internet service
27 provider is supplying an Internet carriage service otherwise than in
28 accordance with an online provider rule, the ABA may apply to the
29 Federal Court for an order that the person cease supplying that
30 Internet carriage service.

Section 59

- 1 (2) If the Federal Court is satisfied, on such an application, that the
2 person is supplying an Internet carriage service otherwise than in
3 accordance with the online provider rule, the Federal Court may
4 order the person to cease supplying that Internet carriage service.

1

2

Part 6—Complaints system: protection from civil proceedings

3

4

5

60 Protection from civil proceedings

6

(1) Civil proceedings do not lie against an Internet service provider in respect of anything done by the provider in compliance with:

7

8

(a) a code registered under Part 4 of this Act; or

9

(b) a standard determined under Part 4 of this Act;

10

in so far as the code or standard deals with the procedures referred to in paragraph 35(b).

11

12

(2) Civil proceedings do not lie against an Internet service provider in respect of anything done by the provider in compliance with section 28.

13

14

Section 61

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2
3

Part 7—Complaints system: review of decisions

4

61 Review of decisions

5
6

(1) An application may be made to the Tribunal for a review of any of the following decisions made by the ABA:

7

(a) a decision to give an Internet service provider a standard access-prevention notice;

8

9

(b) a decision to give an Internet service provider a special access-prevention notice;

10

11

(c) a decision under section 42 or 56 to:

12

(i) give a direction to an Internet service provider; or

13

(ii) vary a direction that is applicable to an Internet service provider; or

14

15

(iii) refuse to revoke a direction that is applicable to an Internet service provider.

16

17

(2) An application under subsection (1) may only be made by the Internet service provider concerned.

18

19

(3) An application may be made to the Tribunal for a review of a decision of the ABA under section 38 to refuse to register a code.

20

21

(4) An application under subsection (3) may only be made by the body or association that developed the code.

22

23

(5) If the ABA makes a decision that is reviewable under this section, the ABA is to include in the document by which the decision is notified:

24

25

26

(a) a statement setting out the reasons for the decision; and

27

(b) a statement to the effect that an application may be made to the Tribunal for a review of the decision.

28

29

(6) In this section:

30

Tribunal means:

Section 61

- 1 (a) before the commencement of Parts 4 to 10 of the
2 *Administrative Review Tribunal Act 2001*—the
3 Administrative Appeals Tribunal; and
4 (b) after the commencement of Parts 4 to 10 of the
5 *Administrative Review Tribunal Act 2001*—the
6 Administrative Review Tribunal.

Section 61AA

1

2 **Part 7A—Prohibition of advertising of interactive**
3 **gambling services**

4 **Division 1—Interpretation: definitions**

5 **61AA Definitions**

6 In this Part, unless the contrary intention appears:

7 *broadcast* means transmit by means of a broadcasting service.

8 *broadcasting service* means a service that delivers television
9 programs or radio programs to persons having equipment
10 appropriate for receiving that service, whether the delivery uses the
11 radiofrequency spectrum, cable, optical fibre, satellite or any other
12 means or a combination of those means, but does not include:

- 13 (a) a datacasting service; or
14 (b) a service that delivers programs using the Internet, where the
15 delivery does not use the broadcasting services bands.

16 *broadcasting services bands* has the same meaning as in the
17 *Broadcasting Services Act 1992*.

18 *datacast* means transmit by means of a datacasting service.

19 *display* includes continue to display.

20 *exempt library* means:

- 21 (a) a public library; or
22 (b) a library of a tertiary educational institution; or
23 (c) a library of an authority of the Commonwealth or of a State
24 or Territory.

25 *government or political matters* means government or political
26 matters relating to any level of government in Australia, and
27 includes any of the following matters:

- 28 (a) participation in, association with and communications in
29 relation to any election or appointment to public office;

Section 61AA

- 1 (b) political views or public conduct relating to activities that
2 have become the subject of political debate;
3 (c) the performance, conduct, capacity or fitness for office of a
4 person elected or appointed to, or seeking election or
5 appointment to, any public office;
6 (d) the actions or policies, or proposed actions or policies, of any
7 government in Australia or any Australian political party.

8 ***interactive gambling service advertisement*** has the meaning given
9 by Division 2.

10 ***interactive gambling service provider*** means a person who
11 provides an interactive gambling service.

12 ***periodical*** means an issue (however described) of a newspaper,
13 magazine, journal, newsletter, or other similar publication, issues
14 of which are published at regular or irregular intervals.

15 ***program*** has the same meaning as in the *Broadcasting Services Act*
16 *1992*.

17 ***public place*** means a place, or a part of a place, to which the
18 public, or a section of the public, ordinarily has access, whether or
19 not by payment or by invitation (including, for example, a shop,
20 restaurant, hotel, cinema or club).

21 ***publish:***

- 22 (a) in relation to an interactive gambling service advertisement,
23 has the meaning given by Division 3; and
24 (b) in relation to something other than an interactive gambling
25 service advertisement, has a meaning equally as broad as it
26 has in relation to an interactive gambling service
27 advertisement.

28 ***section of the public*** includes:

- 29 (a) the members of a particular club, society or organisation; and
30 (b) a group consisting only of persons with a common workplace
31 or a common employer.

Section 61BA

1 *workplace* means premises in which employees or contractors
2 work, other than any part of such premises that is primarily used as
3 a private dwelling.

4 **Division 2—Interpretation: interactive gambling service**
5 **advertisement**

6 **61BA Basic meaning of *interactive gambling service advertisement***

- 7 (1) For the purposes of this Part, an *interactive gambling service*
8 *advertisement* is any writing, still or moving picture, sign,
9 symbol or other visual image, or any audible message, or any
10 combination of 2 or more of those things, that gives publicity to,
11 or otherwise promotes or is intended to promote:
12 (a) an interactive gambling service; or
13 (b) interactive gambling services in general; or
14 (c) the whole or part of a trade mark in respect of an interactive
15 gambling service; or
16 (d) a domain name or URL that relates to an interactive
17 gambling service; or
18 (e) any words that are closely associated with an interactive
19 gambling service (whether also closely associated with other
20 kinds of services or products).
- 21 (2) This section has effect subject to sections 61BB, 61BC, 61BD,
22 61BE, 61BF and 61BG.

23 **61BB Exception—political communication**

- 24 (1) To avoid doubt, if:
25 (a) something (the *advertisement*) does not promote, and is not
26 intended to promote, any particular interactive gambling
27 service or services; and
28 (b) the advertisement relates solely to government or political
29 matters;
30 the advertisement is not an interactive gambling service
31 advertisement for the purposes of this Part.

Section 61BC

- 1 (2) Without limiting paragraph (1)(a), the use in an advertisement of
2 the whole name of an interactive gambling service provider does
3 not, of itself, constitute promotion of an interactive gambling
4 service or interactive gambling services for the purposes of
5 paragraph (1)(a).
- 6 (3) Subsection (2) does not apply in relation to the use of a name
7 referred to in that subsection in a way prohibited by regulations
8 made for the purposes of this subsection.
- 9 (4) Section 61BA does not apply to the extent (if any) that it would
10 infringe any doctrine of implied freedom of political
11 communication.

12 **61BC Exception—Internet sites etc. and business documents**

13 Words, signs or symbols that appear:

- 14 (a) on the Internet site of an interactive gambling service that is
15 provided to customers using an Internet carriage service, or
16 on or at an equivalent point of provision of any other
17 interactive gambling service; or
- 18 (b) as part of the standard wording of an invoice, statement,
19 order form, letterhead, business card, cheque, manual, or
20 other document ordinarily used in the normal course of the
21 business of an interactive gambling service provider (whether
22 or not the document is in electronic form);

23 do not, when so appearing, constitute an interactive gambling
24 service advertisement (but this does not prevent a still or moving
25 screen shot of an Internet site or equivalent point of provision
26 referred to in paragraph (a), or a still or moving picture or other
27 visual image of a document referred to in paragraph (b), from
28 being an interactive gambling service advertisement).

29 **61BD Exception—premises of providers**

30 Words, signs or symbols that appear in or on land or buildings
31 occupied by an interactive gambling service provider do not, when
32 so appearing, constitute an interactive gambling service
33 advertisement (but this does not prevent a still or moving picture,

Section 61BE

1 or other visual image, of words, signs or symbols that so appear
2 from being an interactive gambling service advertisement).

3 **61BE Exceptions—management advertisements etc.**

4 To avoid doubt, none of the following constitutes an interactive
5 gambling service advertisement:

- 6 (a) the doing of anything that is, or apart from this Part would
7 be, required to be done by any other law of the
8 Commonwealth or by any law of a State or Territory;
- 9 (b) an advertisement (for example, an advertisement for staff or
10 calling for tenders), relating to the internal management of
11 the business of an interactive gambling service provider, that
12 does not promote an interactive gambling service;
- 13 (c) the taking of any action to prevent persons becoming victims
14 of fraud or any other dishonest or unethical conduct.

15 **61BF Exception—products or services having the same name as an**
16 **interactive gambling service**

17 (1) If:

- 18 (a) apart from this section, something (the *advertisement*) that
19 relates to a product, or a service, that is not an interactive
20 gambling service would, technically, be an interactive
21 gambling service advertisement because the name, or part of
22 the name, of the product or service is the same as, or
23 substantially similar to, the name, or part of the name, of:
24 (i) an interactive gambling service; or
25 (ii) an interactive gambling service provider; and
26 (b) the manufacturer, distributor or retailer of the product, or the
27 provider of the service, is not associated in any way with the
28 interactive gambling service provider concerned;

29 then, despite section 61BA, the advertisement is not an interactive
30 gambling service advertisement for the purposes of this Part.

Section 61BG

1 *Related bodies corporate taken to be associated with each other*

2 (2) Without limiting the circumstances in which 2 persons would,
3 apart from this subsection, be taken to be associated with each
4 other for the purposes of subsection (1), 2 bodies corporate that are
5 related to each other are taken to be associated with each other for
6 the purposes of that subsection.

7 (3) For the purposes of subsection (2), the question whether 2 bodies
8 corporate are related to each other is to be determined in the same
9 way as the question would be determined under the Corporations
10 Law.

11 **61BG Exception—anti-gambling advertisements**

12 If:

13 (a) apart from this section, something (the *advertisement*)
14 would, technically, be an interactive gambling service
15 advertisement; and

16 (b) it is clear from the advertisement that its sole or principal
17 purpose is to discourage the use of gambling services or
18 particular kinds of gambling services;

19 then, despite section 61BA, the advertisement is not an interactive
20 gambling service advertisement for the purposes of this Part.

21 **61BH Definition**

22 In this Division:

23 *words* includes abbreviations, initials and numbers.

Section 61CA

1 **Division 3—Interpretation: publication of interactive**
2 **gambling service advertisement**

3 **61CA Basic meaning of *publish* an interactive gambling service**
4 **advertisement**

- 5 (1) For the purposes of this Part, a person *publishes* an interactive
6 gambling service advertisement if the person does any of the
7 following things:
- 8 (a) the person includes the advertisement, or something that
9 contains the advertisement, on an Internet site;
 - 10 (b) the person includes the advertisement in a document
11 (including, for example, a newspaper, magazine, program,
12 leaflet or ticket) that is available, or distributed, to the public
13 or a section of the public;
 - 14 (c) the person includes the advertisement in a film, video,
15 television program or radio program that is, or is intended to
16 be, seen or heard by the public or a section of the public;
 - 17 (d) the person:
 - 18 (i) sells, hires or supplies the advertisement, or something
19 containing the advertisement, to the public or a section
20 of the public; or
 - 21 (ii) offers the advertisement, or something containing the
22 advertisement, for sale or supply to, or hire by, the
23 public or a section of the public;
 - 24 (e) the person displays, screens or plays the advertisement, or
25 something that contains the advertisement, so that it can be
26 seen or heard in or from:
 - 27 (i) a public place; or
 - 28 (ii) public transport; or
 - 29 (iii) a workplace;
 - 30 (f) the person otherwise:
 - 31 (i) brings the advertisement, or something that contains the
32 advertisement, to the notice of; or
 - 33 (ii) disseminates the advertisement, or something that
34 contains the advertisement, to;

Section 61CB

1 the public, or a section of the public, by any means
2 (including, for example, by means of a film, video, computer
3 disk or electronic medium).

4 (2) This section has effect subject to sections 61CB, 61CC, 61CD,
5 61CE and 61CF.

6 **61CB Publish does not include broadcast or datacast**

7 For the purposes of this Part, the broadcasting or datacasting of an
8 interactive gambling service advertisement by a person does not
9 amount to the publication of the advertisement by the person.

10 **61CC Exception—trade communications**

11 For the purposes of this Part, the communication of information
12 that is or includes an interactive gambling service advertisement to
13 a group of people all of whom are involved in the provision of
14 interactive gambling services, does not, of itself, amount to a
15 publication of the interactive gambling service advertisement.

16 **61CD Exception—advertisements in telephone directories**

17 (1) For the purposes of this Part, the publication of the name of an
18 interactive gambling service provider in a telephone directory does
19 not, of itself, amount to the publication of an interactive gambling
20 service advertisement.

21 (2) Subsection (1) does not apply if:

- 22 (a) the publication is on the Internet; and
23 (b) the entry for the provider contains a link to an Internet site
24 for the provider that relates to an interactive gambling
25 service.

26 **61CE Exception—ordinary activities of exempt libraries**

27 Nothing that a person does for the purposes of the ordinary
28 activities of an exempt library amounts, for the purposes of this
29 Part, to a publication of an interactive gambling service
30 advertisement.

Part 7A Prohibition of advertising of interactive gambling services

Division 4 Broadcasting or datacasting of interactive gambling service advertisements in Australia

Section 61CF

1 **61CF Exception—acknowledgments of assistance or support**

2 For the purposes of this Part, the publication of an
3 acknowledgment of assistance or support does not amount to the
4 publication of an interactive gambling service advertisement if it
5 complies with regulations made for the purposes of this section that
6 permit the publication of such acknowledgments.

7 **Division 4—Broadcasting or datacasting of interactive**
8 **gambling service advertisements in Australia**

9 **61DA Interactive gambling service advertisements not to be**
10 **broadcast or datacast in Australia**

- 11 (1) A person is guilty of an offence if:
- 12 (a) the person broadcasts or datacasts an interactive gambling
13 service advertisement in Australia; and
 - 14 (b) the broadcast or datacast is not permitted by section 61DB;
15 and
 - 16 (c) the broadcast or datacast is not permitted by section 61DC.

17 Penalty: 120 penalty units.

- 18 (2) A person is guilty of an offence if:
- 19 (a) the person authorises or causes an interactive gambling
20 service advertisement to be broadcast or datacast in
21 Australia; and
 - 22 (b) the broadcast or datacast is not permitted by section 61DB;
23 and
 - 24 (c) the broadcast or datacast is not permitted by section 61DC.

25 Penalty for contravention of this subsection: 120 penalty units.

26 **61DB Accidental or incidental broadcast or datacast permitted**

- 27 (1) A person may broadcast or datacast an interactive gambling service
28 advertisement if:

- 1 (a) the person broadcasts or datacasts the advertisement as an
2 accidental or incidental accompaniment to the broadcasting
3 or datacasting of other matter; and
4 (b) the person does not receive any direct or indirect benefit
5 (whether financial or not) for broadcasting or datacasting the
6 advertisement (in addition to any direct or indirect benefit
7 that the person receives for broadcasting or datacasting the
8 other matter).
- 9 (2) Subsection (1) only has effect for the purposes of this Part.

10 **61DC Broadcast or datacast of advertisements during flights of**
11 **aircraft**

- 12 (1) A person may broadcast or datacast an interactive gambling service
13 advertisement in an aircraft during a flight of the aircraft unless the
14 flight begins at a place in Australia and is intended to end at
15 another place in Australia.
- 16 (2) For the purposes of subsection (1), each sector of a flight of an
17 aircraft is taken to be a separate flight.
- 18 (3) Subsection (1) only has effect for the purposes of this Part.

19 **Division 5—Publication of interactive gambling service**
20 **advertisements in Australia**

21 **61EA Interactive gambling service advertisements not to be**
22 **published in Australia**

- 23 (1) A person is guilty of an offence if:
24 (a) the person publishes an interactive gambling service
25 advertisement in Australia; and
26 (b) the publication is not permitted by section 61EB; and
27 (c) the publication is not permitted by section 61EC; and
28 (d) the publication is not permitted by section 61ED; and
29 (e) the publication is not permitted by section 61EE; and
30 (f) the publication is not permitted by section 61EF.

Section 61EB

1 Penalty: 120 penalty units.

2 (2) A person is guilty of an offence if:

3 (a) the person authorises or causes an interactive gambling
4 service advertisement to be published in Australia; and

5 (b) the publication is not permitted by section 61EB; and

6 (c) the publication is not permitted by section 61EC; and

7 (d) the publication is not permitted by section 61ED; and

8 (e) the publication is not permitted by section 61EE; and

9 (f) the publication is not permitted by section 61EF.

10 Penalty: 120 penalty units.

11 (3) For the purposes of this section, an interactive gambling service
12 advertisement that is included on an Internet site is taken to be
13 published *in Australia* if, and only if:

14 (a) the site is accessed, or is available for access, by end-users in
15 Australia; and

16 (b) having regard to:

17 (i) the content of the site; and

18 (ii) the way the site is advertised or promoted;

19 it would be concluded that it is likely that a majority of
20 persons who access the site are physically present in
21 Australia.

22 **61EB Periodicals distributed outside Australia—acts of publication**
23 **permitted**

24 (1) A person may do, with a periodical that contains an interactive
25 gambling service advertisement, something that amounts to
26 publishing the advertisement if the periodical is not principally
27 intended for distribution or use in Australia.

28 (2) Subsection (1) only has effect for the purposes of this Part.

1 **61EC Australian sporting and cultural events of international**
2 **significance—acts of publication permitted**

- 3 (1) A person may publish an interactive gambling service
4 advertisement if:
5 (a) the advertisement is published in connection with a sporting
6 or cultural event held, or to be held, in Australia; and
7 (b) the event is specified in a notice in force under
8 subsection (2); and
9 (c) the publication of the advertisement complies with the
10 conditions (if any) specified in the notice in accordance with
11 subsection (3).

- 12 (2) For the purposes of subsection (1), the Minister may, by notice
13 published in the *Gazette*, specify a sporting or cultural event to be
14 held in Australia if, and only if:
15 (a) the Minister is satisfied that the event will be completed
16 before 1 October 2003; and
17 (b) in a case where the event is to be held on or after 1 October
18 2001:
19 (i) a similar event held before that date (the *earlier event*)
20 was specified in a notice under this subsection; and
21 (ii) no application to have another similar event specified in
22 a notice under this subsection has been rejected since
23 the earlier event; and
24 (c) the Minister is satisfied, having regard to the guidelines in
25 force under subsection (5), that:
26 (i) the event is of international significance; and
27 (ii) failure to specify the event would be likely to result in
28 the event not being held in Australia.

29 Note: Section 61FB provides for the making of applications to have events
30 specified in notices under this subsection.

- 31 (3) In a notice under subsection (2) specifying an event, the Minister
32 may also, having regard to the guidelines in force under
33 subsection (5), specify conditions to be complied with in relation to
34 the publication of interactive gambling service advertisements in
35 connection with the event, being conditions related to:

Section 61ED

- 1 (a) the content of the advertisements that may be published; or
2 (b) the number of advertisements, or the number of
3 advertisements of a particular kind, that may be published, or
4 that may be published in a particular way; or
5 (c) the way in which advertisements may be published.
- 6 (4) A notice under subsection (2):
7 (a) comes into force:
8 (i) on the day when it is published in the *Gazette*; or
9 (ii) if a later day is specified in the notice as the day when it
10 is to come into force—on that later day; and
11 (b) stops being in force (unless it is revoked earlier):
12 (i) at the end of 3 years after it came into force; or
13 (ii) if an earlier day is specified in the notice as the day
14 when it stops being in force—on that earlier day.
- 15 (5) The Minister may, by writing, determine guidelines for the
16 purposes of subsections (2) and (3).
- 17 (6) An instrument under subsection (5) determining guidelines is a
18 disallowable instrument for the purposes of section 46A of the *Acts*
19 *Interpretation Act 1901*.
- 20 (7) Subsection (1) only has effect for the purposes of this Part.

61ED Accidental or incidental publication permitted

- 22 (1) A person may publish an interactive gambling service
23 advertisement if:
24 (a) the person publishes the advertisement as an accidental or
25 incidental accompaniment to the publication of other matter;
26 and
27 (b) the person does not receive any direct or indirect benefit
28 (whether financial or not) for publishing the advertisement
29 (in addition to any direct or indirect benefit that the person
30 receives for publishing the other matter).
- 31 (2) Subsection (1) only has effect for the purposes of this Part.

1 **61EE Publication by person not receiving any benefit permitted**

- 2 (1) A person may publish an interactive gambling service
3 advertisement if:
- 4 (a) the publication is not in the course of the provision of
5 interactive gambling services; and
 - 6 (b) the person publishes the advertisement on the person's own
7 initiative; and
 - 8 (c) the person does not receive any direct or indirect benefit
9 (whether financial or not) for publishing the advertisement.
- 10 (2) Subsection (1) only has effect for the purposes of this Part.

11 **61EF Publication of advertisements during flights of aircraft**

- 12 (1) A person may publish an interactive gambling service
13 advertisement in an aircraft during a flight of the aircraft unless the
14 flight begins at a place in Australia and is intended to end at
15 another place in Australia.
- 16 (2) For the purposes of subsection (1), each sector of a flight of an
17 aircraft is taken to be a separate flight.
- 18 (3) Subsection (1) only has effect for the purposes of this Part.

19 **61EG Defence—advertising under existing contracts or**
20 **arrangements**

- 21 (1) Subsections 61EA(1) and (2) do not apply to the publication of an
22 interactive gambling service advertisement if:
- 23 (a) the publication was under a contract or arrangement that was:
 - 24 (i) entered into before the commencement of section 1; and
 - 25 (ii) for the sponsorship of an event, activity or service; and
 - 26 (b) if the terms of the contract or arrangement, in so far as they
27 relate to things other than the period to which it applies, were
28 varied on or after the commencement of section 1 and before
29 the publication—if the contract or arrangement had not been
30 so varied, the publication could still be said to have been
31 under the contract or arrangement; and

Section 61EH

- 1 (c) the advertisement was published before 1 July 2003; and
2 (d) before the publication of the advertisement, each of the
3 parties to the contract or arrangement notified the Minister, in
4 writing, of:
5 (i) the date on which the contract or arrangement was
6 entered into; and
7 (ii) particulars of the contract or arrangement in so far as it
8 relates to the publication of interactive gambling service
9 advertisements, including the circumstances of
10 publication of the advertisements and the nature of the
11 advertisements.

12 Note: The defendant bears an evidential burden in relation to the matters in
13 subsection (1). See subsection 13.3(3) of the *Criminal Code*.

- 14 (2) For the purposes of this section, if:
15 (a) a party to a contract or arrangement of a kind referred to in
16 paragraph (1)(a), for the purposes of publishing an interactive
17 gambling service advertisement under the contract or
18 arrangement, engaged (whether before or after the
19 commencement of section 1) another person to do something
20 that amounted to publishing the advertisement; and
21 (b) the other person did that thing and, consequently, published
22 the advertisement;
23 the other person is taken to have published the advertisement under
24 the contract or arrangement.

25 **61EH Defence—display of signs before 1 July 2003**

- 26 (1) Subsections 61EA(1) and (2) do not apply to the display of an
27 interactive gambling service advertising sign if:
28 (a) the sign was displayed under a contract or arrangement
29 entered into before the commencement of section 1; and
30 (b) if the terms of the contract or arrangement were varied on or
31 after the commencement of section 1—if the contract or
32 arrangement had not been so varied, the display of the sign
33 could still be said to have been under the contract or
34 arrangement; and

Section 61FA

1 (c) the display of the sign was permitted by regulations made for
2 the purposes of subsection (2).

3 Note: The defendant bears an evidential burden in relation to the matters in
4 subsection (1). See subsection 13.3(3) of the *Criminal Code*.

5 (2) The regulations may permit the display, in specified circumstances,
6 and before a specified date that is earlier than 1 July 2003, of
7 interactive gambling service advertising signs of a specified size
8 and composition.

9 (3) In this section:

10 *interactive gambling service advertising sign* means a sign that is
11 or contains an interactive gambling service advertisement.

12 *sign* includes an electronic installation used to display
13 advertisements.

14 **Division 6—Miscellaneous**

15 **61FA Failure to broadcast, datacast or publish advertisement not**
16 **actionable if this Part would be contravened**

17 Civil proceedings do not lie against a person for refusing or failing
18 to broadcast, datacast or publish an interactive gambling service
19 advertisement if the broadcast, datacast or publication is prohibited
20 by this Part.

21 **61FB Applications for the purposes of section 61EC**

22 (1) A person may apply to the Minister to have a particular event
23 specified in a notice under subsection 61EC(2).

24 (2) An application must be in writing and must set out the grounds on
25 which the applicant thinks the Minister should grant it.

26 (3) If the Minister needs further information to decide an application,
27 the Minister may ask the applicant to provide the information.

Section 61FC

- 1 (4) The Minister must decide an application within 60 days after
2 receiving it. This subsection has effect subject to subsections (5) to
3 (7).
- 4 (5) If the Minister thinks that it will take longer to decide an
5 application, the Minister may extend, by up to 60 days, the period
6 for deciding it.
- 7 (6) An extension must be made by written notice given to the applicant
8 within 60 days after the Minister receives the application
9 concerned.
- 10 (7) If the Minister makes an extension, the Minister must decide the
11 application concerned within the extended period.
- 12 (8) If the Minister has not decided an application before the end of the
13 day by which the Minister is required to decide it, the Minister is
14 taken to have decided, under section 61EC, to refuse the
15 application at the end of that day.
- 16 (9) This section does not limit the power of the Minister to make a
17 decision under section 61EC otherwise than because of an
18 application under this section.

19 **61FC Review of decisions**

- 20 (1) An application may be made to the Tribunal for a review of a
21 decision made under subsection 61EC(2) or 61EC(3).
- 22 (2) In this section:
- 23 ***Tribunal*** means:
- 24 (a) before the commencement of Parts 4 to 10 of the
25 *Administrative Review Tribunal Act 2001*—the
26 Administrative Appeals Tribunal; and
- 27 (b) after the commencement of Parts 4 to 10 of the
28 *Administrative Review Tribunal Act 2001*—the
29 Administrative Review Tribunal.

1 **61FD Additional conditions for licences under the *Broadcasting***
2 ***Services Act 1992***

3 *Commercial television broadcasting licence*

- 4 (1) Each commercial television broadcasting licence is subject to the
5 condition that the licensee will not, in contravention of this Part,
6 broadcast an interactive gambling service advertisement.

7 *Commercial radio broadcasting licence*

- 8 (2) Each commercial radio broadcasting licence is subject to the
9 condition that the licensee will not, in contravention of this Part,
10 broadcast an interactive gambling service advertisement.

11 *Community broadcasting licence*

- 12 (3) Each community broadcasting licence is subject to the condition
13 that the licensee will not, in contravention of this Part, broadcast an
14 interactive gambling service advertisement.

15 *Subscription television broadcasting licence*

- 16 (4) Each subscription television broadcasting licence is subject to the
17 condition that the licensee will not, in contravention of this Part,
18 broadcast an interactive gambling service advertisement.

19 *Provision of a broadcasting service under a class licence*

- 20 (5) The provision by a person of a broadcasting service under a class
21 licence is subject to the condition that the licensee will not, in
22 contravention of this Part, broadcast an interactive gambling
23 service advertisement.

24 *Datacasting licence*

- 25 (6) Each datacasting licence is subject to the condition that the licensee
26 will not, in contravention of this Part, datacast an interactive
27 gambling service advertisement.

Section 61FE

1

Definitions

2

(7) In this section:

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class licence has the same meaning as in the *Broadcasting Services Act 1992*.

4

5

commercial radio broadcasting licence has the same meaning as in the *Broadcasting Services Act 1992*.

6

7

commercial television broadcasting licence has the same meaning as in the *Broadcasting Services Act 1992*.

8

9

community broadcasting licence has the same meaning as in the *Broadcasting Services Act 1992*.

10

11

subscription television broadcasting licence has same meaning as in the *Broadcasting Services Act 1992*.

12

61FE Reports to Parliament

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(1) As soon as practicable after each 31 December, the Minister must cause to be prepared a report on:

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15

(a) the number and nature of any contraventions of this Part occurring in the preceding 12 months; and

16

17

(b) any action taken by the Minister or a Commonwealth agency in response to each contravention.

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19

(2) A person who prepares a report under subsection (1) must give a copy to the Minister.

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(3) The Minister must cause copies of the report to be laid before each House of the Parliament within 15 sitting days of that House after its receipt by the Minister.

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Part 8—Miscellaneous

3

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62 Application of *Criminal Code*

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Chapter 2 of the *Criminal Code* (except Part 2.5) applies to an offence against this Act.

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63 Conduct by directors, employees and agents

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Body corporate

9

(1) If, in proceedings for:

10

(a) an offence against this Act; or

11

(b) an ancillary offence relating to this Act;

12

it is necessary to establish the state of mind of a body corporate in relation to particular conduct, it is sufficient to show:

13

14

(c) that the conduct was engaged in by a director, employee or agent of the body corporate within the scope of his or her actual or apparent authority; and

15

16

17

(d) that the director, employee or agent had the state of mind.

18

(2) Any conduct engaged in on behalf of a body corporate by a

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director, employee or agent of the body corporate within the scope of his or her actual or apparent authority is taken, for the purposes of a prosecution for:

20

21

22

(a) an offence against this Act; or

23

(b) an ancillary offence relating to this Act;

24

to have been engaged in also by the body corporate unless the body corporate establishes that the body corporate took reasonable precautions and exercised due diligence to avoid the conduct.

25

26

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Person other than a body corporate

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(3) If, in proceedings for:

29

(a) an offence against this Act; or

30

(b) an ancillary offence relating to this Act;

Section 63

1 it is necessary to establish the state of mind of a person other than a
2 body corporate in relation to particular conduct, it is sufficient to
3 show:

- 4 (c) that the conduct was engaged in by an employee or agent of
5 the person within the scope of his or her actual or apparent
6 authority; and
7 (d) that the employee or agent had the state of mind.

8 (4) Any conduct engaged in on behalf of a person other than a body
9 corporate by an employee or agent of the person within the scope
10 of his or her actual or apparent authority is taken, for the purposes
11 of a prosecution for:

- 12 (a) an offence against this Act; or
13 (b) an ancillary offence relating to this Act;
14 to have been engaged in also by the first-mentioned person unless
15 the first-mentioned person establishes that the first-mentioned
16 person took reasonable precautions and exercised due diligence to
17 avoid the conduct.

18 (5) If:

- 19 (a) a person other than a body corporate is convicted of an
20 offence; and
21 (b) the person would not have been convicted of the offence if
22 subsections (3) and (4) had not been enacted;
23 the person is not liable to be punished by imprisonment for that
24 offence.

25 *State of mind*

26 (6) A reference in subsection (1) or (3) to the *state of mind* of a person
27 includes a reference to:

- 28 (a) the knowledge, intention, opinion, belief or purpose of the
29 person; and
30 (b) the person's reasons for the intention, opinion, belief or
31 purpose.

Director

- (7) A reference in this section to a *director* of a body corporate includes a reference to a constituent member of a body corporate incorporated for a public purpose by a law of the Commonwealth, a State or a Territory.

Ancillary offence relating to this Act

- (8) A reference in this section to an *ancillary offence relating to this Act* is a reference to an offence created by section 6 of the *Crimes Act 1914* or Part 2.4 of the *Criminal Code* that relates to this Act.

64 Service of summons or process on foreign corporations—criminal proceedings

- (1) This section applies to a summons or process in any criminal proceedings under this Act, where:
- (a) the summons or process is required to be served on a body corporate incorporated outside Australia; and
 - (b) the body corporate does not have a registered office or a principal office in Australia; and
 - (c) the body corporate has an agent in Australia.
- (2) Service of the summons or process may be effected by serving it on the agent.
- (3) Subsection (2) has effect in addition to section 28A of the *Acts Interpretation Act 1901*.

Note: Section 28A of the *Acts Interpretation Act 1901* deals with the service of documents.

- (4) In this section:

criminal proceeding includes a proceeding to determine whether a person should be tried for an offence.

Section 65

1 **65 Service of notices**

2 In addition to other methods of giving a notice, a notice under this
3 Act may be given by facsimile transmission.

4 **66 Application of the *Broadcasting Services Act 1992***

5 (1) The following provisions of the *Broadcasting Services Act 1992*
6 have effect as if each reference in those provisions to that Act
7 included a reference to this Act:

- 8 (a) section 3;
- 9 (b) subparagraph 5(1)(b)(ii);
- 10 (c) subsection 5(2);
- 11 (d) paragraph 158(n);
- 12 (e) paragraph 160(c);
- 13 (f) subsection 162(1);
- 14 (g) paragraph 168(2)(b);
- 15 (h) paragraph 171(2)(a);
- 16 (i) section 183;
- 17 (j) paragraph 187(2)(b).

18 (2) Paragraph 18(2)(j) of Schedule 3 to the *Broadcasting Services Act*
19 1992 does not apply to a notice given under this Act.

20 **67 Additional ABA function—monitoring compliance with codes
21 and standards**

22 The ABA's functions include monitoring compliance with codes
23 and standards registered under Part 4.

24 **68 Review before 1 July 2003**

25 (1) Before 1 July 2003, the Minister must cause to be conducted a
26 review of the following matters:

- 27 (a) the operation of this Act;
- 28 (b) the growth of interactive gambling services;
- 29 (c) the social and commercial impact of interactive gambling
30 services;

- 1 (d) the effect of the following provisions:
2 (i) paragraphs 5(3)(aa) and 6(3)(aa) and section 8A
3 (excluded wagering services);
4 (ii) paragraphs 5(3)(ab) and 6(3)(ab) and section 8B
5 (excluded gaming services);
6 (iii) paragraphs 5(3)(ac) and 6(3)(ac) and section 8C
7 (services that have a designated broadcasting link);
8 (iv) paragraphs 5(3)(ad) and 6(3)(ad) and section 8C
9 (services that have a designated datacasting link);
10 (v) paragraphs 5(3)(ae) and 6(3)(ae) and section 8D
11 (excluded lottery services);
12 (e) the effectiveness of this Act in dealing with the social and
13 commercial impact of interactive gambling services;
14 (f) technological developments that are relevant to the regulation
15 of interactive gambling services;
16 (g) technological developments that may assist in dealing with
17 problem gambling.
- 18 (2) The Minister must cause to be prepared a report of a review under
19 subsection (1).
- 20 (3) The Minister must cause copies of the report to be laid before each
21 House of the Parliament within 15 sitting days of that House after
22 the completion of the preparation of the report.
- 23 (4) For the purposes of subsection (1), in determining whether a
24 service is an interactive gambling service, subsection 5(3) is to be
25 disregarded.

26 **69 Operation of State and Territory laws**

27 This Act is not intended to exclude or limit the operation of a law
28 of a State or Territory to the extent that that law is capable of
29 operating concurrently with this Act.

Section 69A

1 **69A Regulations about unenforceability of agreements relating to**
2 **illegal interactive gambling services**

3 *Agreements*

- 4 (1) The regulations may provide:
- 5 (a) that an agreement has no effect to the extent to which it
- 6 provides for the payment of money for the supply of an
- 7 illegal interactive gambling service; and
- 8 (b) that civil proceedings do not lie against a person to recover
- 9 money alleged to have been won from, or paid in connection
- 10 with, an illegal interactive gambling service.

11 *Deadline for making regulations*

- 12 (2) The Minister must take all reasonable steps to ensure that
- 13 regulations are made for the purposes of this section within 6
- 14 months after the commencement of Part 2.

15 *Illegal interactive gambling service*

- 16 (3) For the purposes of this section, an interactive gambling service is
- 17 an ***illegal interactive gambling service*** if, and only if, the provision
- 18 of the service contravenes a provision of this Act that creates an
- 19 offence.

20 *Definition*

- 21 (4) In this section:
- 22 ***agreement*** means an agreement, whether made orally or in writing.

23 **70 Regulations**

- 24 The Governor-General may make regulations prescribing matters:
- 25 (a) required or permitted to be prescribed by this Act; or
- 26 (b) necessary or convenient to be prescribed for carrying out or
- 27 giving effect to this Act.