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The Parliament of the
Commonwealth of Australia¹

SENATE

Presented and read a first time

Advertising Prohibitions Bill 2021

No. , 2021

(The Hon. Senator later_slater1407_)
(Written By: later_slater1407_ & NGSpy)

**A Bill for an Act to prohibit certain advertisements,
and for related purposes**

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**A Bill for an Act prohibit certain advertisements,
and for related purposes**

The Parliament of Australia enacts:

Part 1—Preliminary

1 Short title

This Act is the *Advertising Prohibitions Act 2021*.

Part 1 Preliminary

Section 1

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. The whole of this Act	3 months after this Bill receives the Presidential Assent.	

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Repeals

The *Alcohol Advertising Prohibition Act 2020* is hereby repealed.

Note: The provisions of the *Alcohol Advertising Prohibition Act 2020* is now in Division 1 of Part 3 of this Act.

4 Simplified Outline of the Act

This Act sets out provisions relating to the prohibition of certain types of advertising, including:

- (a) alcohol advertisements; and
- (b) unhealthy food advertisements; and

- (c) gambling service advertisements; and
- (d) pleasurable service advertisements.

Part 2 set out provisions relating to the interaction with the *Competition and Consumer Act 2010*, including the regulation of the prohibitions by the Australian Competition and Consumer Commission.

Part 3 sets out provisions for the prohibition of advertisements, and the conditions of the prohibition, which include the offences related to the contravention of the prohibitions.

5 Definitions

In this Act:

Advertising Prohibitions means Part 3 of this Act.

Australia includes its external territories.

Commission has the same meaning as in the Competition and Consumer Act.

Commonwealth Minister means the Minister.

Competition and Consumer Act means the *Competition and Consumer Act 2010*.

proposed prohibition notice has the meaning given by section 13(1).

6 Extension to application in a similar manner to the Competition and Consumer Act

- (1) This Act extends to all external outside Australia in accordance with section 5 of the Competition and Consumer Act.
- (2) This Act extends to persons who are not corporations in accordance with section 6 of the Competition and Consumer Act.

Part 2—Administration

Division 1—Simplified outline of this Part

7 Simplified outline of this Part

This Part concerns the administration of the Advertising Prohibitions.

The administration of the Act falls under the responsibility of the Australian Competition and Consumer Commission, which they are tasked with the enforcement of the Advertising Prohibitions.

Division 2 concerns the application of the Advertising Prohibitions as a law of the Commonwealth.

Division 3 concerns the use of interim prohibitions of advertising, and the rules concerning conferences, etc.

Division 4 concerns jurisdictional matters, including the precedence and rules regarding the referring of cases to other courts.

Division 5 has miscellaneous matters.

Division 2—Application of Advertising Prohibitions as a law of the Commonwealth

8 Application of prohibitions as a law of the Commonwealth

The Advertising Prohibitions apply as a law of the Commonwealth to the conduct of corporations, and in relation to any Divisions under the Advertising Prohibitions by corporations.

Note: Sections 5 and 5 of the Competition and Consumer Act extend the application of this Part (and therefore extend the application of Advertising Prohibitions as a law of the Commonwealth).

9 Part does not apply to interim bans imposed by State or Territory Ministers

Despite section 8, this Division does not apply to an interim prohibition that is not imposed by the Commonwealth Minister.

10 Saving of other laws and remedies

- (1) This Part is not intended to exclude or limit the concurrent operation of any law, whether written or unwritten, of a State or a Territory.
- (2) Despite subsection (1):
 - (a) if an act or omission of a person is both:
 - (i) an offence against this Part or the Advertising Prohibitions; and
 - (ii) an offence against a law of a State or a Territory; and
 - (b) the person is convicted of either of those offences; he or she is not liable to be convicted of the other of those offences.

- (3) Except as expressly provided by this Part or Advertising Prohibitions, nothing in this Part or the Advertising Prohibitions is taken to limit, restrict or otherwise affect any right or remedy a person would have had if this Part and the Advertising Prohibitions had not been enacted.

11 Section 4AB of the Crimes Act does not apply

Section 4AB of the *Crimes Act 1914* does not apply to any provision of this Part or the Advertising Prohibitions.

12 Application of the *Criminal Code*

Part 2.5 of the *Criminal Code* does not apply to an offence against this Part or the Advertising Prohibitions.

Division 3—Conferences for proposed advertising prohibitions

Subdivision A—Conference requirements before a prohibition

13 Commonwealth Minister must issue a proposed prohibition notice

- (1) The Commonwealth Minister must issue a *proposed prohibition notice* if the Commonwealth Minister proposes to impose an interim prohibition on the advertisement of:
 - (a) consumer goods of a particular kind; or
 - (b) product related services of a particular kind.
- (2) Subsection (1) does not apply in relation to an interim prohibition if the Commonwealth Minister has issued a notice under section 21 certifying that the prohibition should be imposed without delay.
- (3) The proposed prohibition notice must:
 - (a) be in writing; and
 - (b) be published on the internet; and
 - (c) set out a copy of a draft notice for the imposition of the interim prohibition; and
 - (d) set out a summary of the reasons for the proposed imposition of the prohibition; and
 - (e) invite any person who advertises:
 - (i) consumer goods of that kind; or
 - (ii) product related services of that kind;to notify the Commission, in writing and within a period specified in the notice, if the person wishes the Commission to hold a conference in relation to the proposed imposition of the prohibition.
- (4) The period specified in the proposed prohibition notice under paragraph (3)(e):

- (a) must be a period of at least 10 days, or such longer period as the Commonwealth Minister specifies in the notice; and
- (b) must not commence before the day on which the notice is published.

(5) A proposed prohibition notice is not a legislative instrument.

14 Commonwealth Minister to be notified if no person wishes a conference to be held

- (1) If no person notifies the Commission in accordance with a proposed prohibition notice that the person wishes the Commission to hold a conference, the Commission must, in writing, notify the Commonwealth Minister of that fact.
- (2) A notice under subsection (1) is not a legislative instrument.

15 Notification of conference

- (1) If one or more persons notify the Commission in accordance with a proposed prohibition notice that they wish the Commission to hold a conference, the Commission must:
 - (a) appoint a day, time and place for the holding of the conference; and
 - (b) given written notice to the Commonwealth Minister, and to each person who so notified the Commission of that day, time and place.
- (2) The day appointed must be at least 5 days, but not more than 14 days, after the end of the period specified under paragraph 13(3)(e).
- (3) A notice under paragraph (1)(b) is not a legislative instrument.

16 Recommendation after conclusion of conference

- (1) As soon as is practicable after the conclusion of a conference held under this Subdivision in relation to the proposed imposition of an interim prohibition, the Commission must:
 - (a) by written notice given to the Commonwealth Minister, recommend that the Commonwealth Minister:
 - (i) impose the prohibition in the same terms as the draft notice referred to in paragraph 13(3)(c); or
 - (ii) impose the prohibition with such modifications to that notice as are specified by the Commission; or
 - (iii) not impose the prohibition; and
 - (b) cause a copy of the notice given under paragraph (a) to be given to each person who was present or represented at the conference.
- (2) The Commonwealth Minister must:
 - (a) have regard to a recommendation made under paragraph (1)(a) or (2)(a); and
 - (b) if they decide to act otherwise than in accordance with the recommendation—the Commonwealth Minister, by written notice published on the internet, set out the reasons for their decision.

Subdivision B—Conference requirements after an interim prohibition is imposed

17 Opportunity for a conference after an interim prohibition has been imposed by the Commonwealth Minister

- (1) This section applies if:
 - (a) an interim prohibition on the advertisements of consumer goods of a particular kind, or on product related services of a particular kind, is in force; and

- (b) the interim prohibition was imposed by the Commonwealth Minister; and
 - (c) before the prohibition was imposed, the Commonwealth Minister published a notice under section 21 certifying that the interim prohibition should be imposed without delay.
- (2) The Commonwealth Minister must, by written notice published on the internet, invite any person who advertises:
- (a) consumer goods of that kind; or
 - (b) product related services of that kind;
- to notify the Commission, in writing and within a period specified in the notice, if the person wishes the Commission to hold a conference in relation to the interim prohibition.
- (3) The period specified in the notice under subsection (2):
- (a) must be a period of at least 10 days, or such longer period as the Commonwealth specifies in the notice; and
 - (b) must not commence before the day on which the notice is published.
- (4) A notice under subsection (2) is not a legislative instrument.

18 Notification of conference

- (1) If one or more persons notify the Commission in accordance with a notice published under subsection 17(2) that they wish the Commission to hold a conference, the Commission must:
- (a) appoint a day, time and place for the holding of the conference; and
 - (b) give written notice to the Commonwealth Minister, and to each person who so notified the Commission of that day, time and place.

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- (2) The day appointed must be at least 5 days, but not more than 14 days, after the end of the period specified in the notice under subsection 17(2).
- (3) A notice under paragraph (1)(b) is not a legislative instrument.

19 Recommendation after conclusion of conference

- (1) As soon as is practicable after the conclusion of a conference held under this Subdivision in relation to an interim prohibition, the Commission must:
 - (a) by written notice given to the Commonwealth Minister, recommend that the interim prohibition remain in force, be varied or be revoked; and
 - (b) cause a copy of the notice to be given to each person who was present or represented at the conference.
- (2) The Commonwealth Minister must:
 - (a) have regard to a recommendation made under paragraph (1)(a); and
 - (b) if he or she decides to act otherwise than in accordance with the recommendation—the Commonwealth Minister must, by written notice published on the internet, set out the reasons for his or her decision.

Subdivision C—Conduct of conferences

20 Conduct of conferences

- (1) At a conference held under Subdivision A or B of this Division:
 - (a) the Commission must be represented by a member or members of the Commission who are nominated by the Chairperson; and
 - (b) each person who notified the Commission in accordance with whichever of the following is applicable:
 - (i) a proposed prohibition notice;
 - (ii) a notice under subsection 17(2).

- is entitled to be present or to be represented; and
- (c) any other person whose presence at the conference is considered by the Commission to be appropriate is entitled to be present or to be represented; and
 - (d) the Commonwealth Minister is, or a person or persons nominated in writing by the Commonwealth Minister are, entitled to be present; and
 - (e) the procedure to be followed must be as determined by the Commission.
- (2) The Commission must cause a record of the proceedings at the conference to be kept.
- (3) The Commission must, as far as practicable, ensure that each person who is entitled to be present, or who is representing such a person, at the conference is given a reasonable opportunity at the conference to present his or her case and in particular:
- (a) to inspect any documents (other than a document that contains particulars of a secret formula or process) which the Commission proposes to consider for the purpose of making a recommendation after the conclusion of the conference; and
 - (b) to make submissions in relation to those documents.

Subdivision D—Miscellaneous

21 Interim prohibition without delay in case of danger to the public

- (1) If it appears to the Commonwealth Minister that the advertisement of consumer goods of a particular kind create an imminent risk of serious harm, due to the effects of the consumer goods being advertised, he or she may, by written notice published on the internet, certify that an interim prohibition on advertisements of consumer goods of that kind should be imposed without delay.

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- (2) If it appears to the Commonwealth Minister that product related services of a particular kind create an imminent risk of death, serious illness or serious injury, he or she may, by written notice published on the internet, certify that an interim ban on services of that kind should be imposed without delay.
- (3) If:
- (a) the Commonwealth Minister publishes a notice under subsection (1) or (2); and
 - (b) action of any kind has been taken under Subdivision A of this Division in relation to the interim ban or recall notice, but no recommendation has been made under section 16;
- the Commonwealth Minister may impose the interim prohibition without regard to that action.
- (4) A notice under subsection (1) or (2) is not a legislative instrument.

22 Copy of notices under this Division to be given to advertisers

- (1) If the Commonwealth Minister:
- (a) issues a proposed prohibition notice; or
 - (b) publishes a notice under section 17(2); or
 - (c) publishes a notice under subsection 21(1) or (2);
- he or she must cause a copy of the notice to be given to each person who, to the knowledge of the Commonwealth Minister, supplies the consumer goods, or the product related services, to which the notice relates.
- (2) The copy must be given:
- (a) within 2 days after the publication or issue of the notice; or
 - (b) if it is not practicable to give the copy within that period—as soon as practicable after the end of that period.

- (3) A failure to comply with subsection (1) does not invalidate the notice.

Division 4—Jurisdictional matters

23 Conferring jurisdiction on the Federal Court

- (1) Jurisdiction is conferred on the Federal Court in relation to any matter arising under this Part or the Advertising Prohibitions in respect of which a civil proceeding has been instituted under this Part or the Advertising Prohibitions.
- (2) The jurisdiction conferred by subsection (1) on the Federal Court is exclusive of the jurisdiction of any other court other than:
- (a) the jurisdiction of the Federal Circuit Court under section 32; and
 - (b) the jurisdiction of the several courts of the States and Territories under section 33; and
 - (c) the jurisdiction of the High Court under section 75 of the Constitution.

24 Conferring jurisdiction on the Federal Circuit Court

Jurisdiction is conferred on the Federal Circuit Court in relation to any matter arising under this Part or the Advertising Prohibitions in respect of which a civil proceeding is instituted by a person other than the Commonwealth Minister.

25 Conferring jurisdiction on State and Territory Courts

- (1) Jurisdiction is conferred on the several courts of the States and Territories in relation to any matter arising under this Part or the Advertising Prohibitions in respect of which a civil proceeding is instituted by a person other than the Commonwealth Minister or the Commission.

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- (2) The jurisdiction conferred by subsection (1) on the several courts of the States is conferred within the limits of their several jurisdictions, whether those limits are as to locality, subject matter or otherwise.
- (3) The jurisdiction conferred by subsection (1) on the several courts of the Territories is conferred to the extent that the Constitution permits.
- (4) This section is not to be taken to enable an inferior court of a State or a Territory to grant a remedy other than a remedy of a kind that the court is able to grant under the law of that State or Territory.

26 Transfer of matters by the Federal Court

- (1) Subject to subsection (2) and (3), if:
 - (a) a civil proceeding instituted by a person (other than the Commonwealth Minister or the Commission) is pending in the Federal Court; and
 - (b) a matter for determination in the proceeding arises under this Part or the Advertising Prohibitions;the Federal Court may, on the application of a party to the proceeding or of its own motion, transfer the matter, and any other matter for determination in the proceeding, to a court of a State or a Territory.
- (2) The Federal Court must not transfer a matter to another court under subsection (1) unless:
 - (a) the other court has power to grant the remedies sought before the Federal Court in the matter; and
 - (b) it appears to the Federal Court that:
 - (i) the matter arises out of, or is related to, a proceeding that is pending in the other court; or
 - (ii) it is otherwise in the interests of justice that the matter be determined by the other court.

- (3) If the Federal Court transfers a matter to another court under subsection (1):
- (a) further proceedings in the matter must be as directed by the other court; and
 - (b) the judgment of the other court in the matter is enforceable throughout Australia and the external Territories as if it were a judgment of the Federal Court.

27 Transfer of matters by a State or Territory court

- (1) This section applies if:
- (a) a proceeding is pending in a court (other than the Supreme Court) of a State or a Territory; and
 - (b) a matter for determination in the proceeding arises under this Part or the Advertising Prohibitions, other than under Division 3 of the Advertising Prohibitions.
- (2) The court must, if directed to do so by the Federal Court, transfer to the Federal Court:
- (a) the matter; and
 - (b) such other matters for determination in the proceeding, the determination of which would (apart from any law of a State or of the Northern Territory relating to cross-vesting of jurisdiction) be within the jurisdiction of the Federal Court, as the Federal Court determines.
- (3) Subject to subsection (4), the court may, on the application of a party to the proceeding or of its own motion, transfer the matter to a court (other than the Supreme Court) of another State or Territory.
- (4) The court (the *first court*) must not transfer a matter to another court under subsection (3) unless:
- (a) the other court has power to grant the remedies sought before the first court in the matter; and
 - (b) it appears to the first court that:

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- (i) the matter arises out of, or is related to, a proceeding that is pending in the other court; or
 - (ii) it is otherwise in the interests of justice that the matter be determined by the other court.
- (5) If the court transfers a matter to another court under subsection (3), further proceedings in the matter must be as directed by the other court.

28 Transfer of proceedings to Family Court

- (1) If:
- (a) a civil proceeding is pending in the Federal Court; and
 - (b) a matter for determination in the proceeding under this Part of the Advertising Prohibitions;
- the Federal Court may, on the application of a party to the proceeding or of its own motion, transfer the proceeding to the Family Court.
- (2) Subject to subsection (3), if a proceeding is transferred to the Family Court under subsection (1):
- (a) the Family Court has jurisdiction to hear and determine the proceeding; and
 - (b) the Family Court also has jurisdiction to hear and determine matters not otherwise within its jurisdiction (whether because of paragraph (a) or otherwise):
 - (i) that are associated with matters arising in the proceeding; or
 - (ii) that, apart from subsection 32(1) of the *Federal Court of Australia Act 1976*, the Federal Court would have had jurisdiction to hear and determine in the proceeding; and
 - (c) the Family Court may, in and in relation to the proceeding:
 - (i) grant such remedies; and
 - (ii) make orders of such kinds; and
 - (iii) issue, and direct the issue of, writs of such kinds;

as the Federal Court could have granted, made, issued or directed the issue of, in and in relation to the proceeding; and

- (d) remedies, orders and writs granted, made or issued by the Family Court in and in relation to the proceeding have effect, and may be enforced by the Family Court, as if they had been granted, made or issued by the Federal Court; and
- (e) appeals lie from judgments of the Family Court given in and in relation to the proceeding as if the judgments were judgments of the Federal Court constituted by a single Judge of that Court, and do not otherwise lie; and
- (f) subject to paragraphs (a) to (e) of this subsection, this Act, the regulations, the *Federal Court of Australia Act 1976*, the Rules of Court made under that Act, and other laws of the Commonwealth, apply in and in relation to the proceeding as if:
 - (i) a reference to the Federal Court (other than in the expression ***the Court or a Judge***) included a reference to the Family Court; and
 - (ii) a reference to a Judge of the Federal Court (other than in the expression ***the Court or a Judge***) included a reference to a Family Court Judge; and
 - (iii) a reference to the expression ***the Court or a Judge*** when used in relation to the Federal Court included a reference to a Family Court Judge sitting in Chambers; and
 - (iv) a reference to a Registrar of the Federal Court included a reference to a Registrar of the Family Court; and
 - (v) any other necessary changes were made.

- (3) If any difficulty arises in the application of paragraphs (2)(c), (d) and (f) in or in relation to a particular proceeding, the Family Court may, on the application of a party to the
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proceeding or of its own motion, give such directions, and make such orders, as it considers appropriate to resolve the difficulty.

- (4) An appeal does not lie from a decision of the Federal Court in relation to the transfer of a proceeding under this Act to the Family Court.

Division 5—Miscellaneous

29 Intervention by the Commission

- (1) The Commission may, with the leave of a court and subject to any conditions imposed by the court, intervene in any proceeding instituted under this Part or the Advertising Prohibitions.
- (2) If the Commission intervenes in a proceeding, the Commission is taken to be a party to the proceeding and has all the rights, duties and liabilities of such a party.

30 Conduct of directors, employees or agents of bodies corporate

- (1) If, in a proceeding under this Part or the Advertising Prohibitions in respect of conduct that is engaged in by a body corporate and to which this Part or the Advertising Prohibitions applies, it is necessary to establish the state of mind of the body corporate, it is sufficient to show:
 - (a) that a director, employee or agent of the body corporate engaged in that conduct within the scope of the actual or apparent authority of the director, employee or agent; and
 - (b) that the director, employee or agent had that state of mind.
- (2) Any conduct engaged in on behalf of a body corporate:
 - (a) by a director, employee or agent of the body corporate within the scope of the actual or apparent authority of the director, employee or agent; or
 - (b) by any other person:
 - (i) at the direction of a director, employee or agent of the body corporate; or

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- (ii) with the consent or agreement (whether express or implied) of such a director, employee or agent;
if the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the director, employee or agent;
is taken, for the purposes of this Part or the Advertising Prohibitions, to have been engaged in also by the body corporate.

31 Conduct of employees or agents of persons other than bodies corporate

- (1) If, in a proceeding under this Part or the Advertising Prohibitions in respect of conduct that is engaged in by a person (the *principal*) other than a body corporate and to which this Part or the Advertising Prohibitions applies, it is necessary to establish the state of mind of the principal, it is sufficient to show:
 - (a) that an employee or agent of the principal engaged in that conduct within the scope of the actual or apparent authority of the employee or agent; and
 - (b) the employee or agent had that state of mind.
- (2) Any conduct engaged in on behalf of a person (the *principal*) other than a body corporate:
 - (a) by an employee or agent of the principal within the scope of the actual or apparent authority of the employee or agent; or
 - (b) by any other person:
 - (i) at the direction of an employee or agent of the principal; or
 - (ii) with the consent or agreement (whether express or implied) of such an employee or agent;
if the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the employee or agent;

is taken, for the purposes of this Part or the Advertising Prohibitions, to have been engaged in also by the principal.

- (3) If:
- (a) a person other than a body corporate is convicted of an offence; and
 - (b) subsection (1) or (2) applied in relation to the conviction on the basis that the person was the principal mentioned in that subsection; and
 - (c) the person would not have been convicted of the offence if that subsection had not been enacted;
- the person is not liable to be punished by imprisonment for that offence.

32 Compensation for acquisition of property

- (1) If the operation of this Part and the Advertising Prohibitions would result in an acquisition of property from a person otherwise than on just terms, the Commonwealth is liable to pay a reasonable amount of compensation to the person.
- (2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in the Federal Court for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.
- (3) In this section:

acquisition of property has the same meaning as in paragraph 51(xxxi) of the Constitution.

just terms has the same meaning as in paragraph 51(xxxi) of the Constitution.

33 Regulations

- (1) The Governor-General may make regulations prescribing matters:
 - (a) required or permitted by Part 3 to be prescribed; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to that Part.

- (2) Strict compliance with a form of application or notice prescribed for the purposes of Part 3 is not, and is taken never to have been, required and substantial compliance is, and is taken always to have been, sufficient.

Part 3—Advertising Prohibitions

Division 1—Introduction

34 Definitions

(1) In this Schedule:

alcoholic beverage advertisement means any writing, still or moving picture, sign, symbol or other visual image, or any audible message, or any combination of 2 or more of those things, that gives publicity to, or otherwise promotes or is intended to promote:

- (a) alcoholic beverage consumption; or
- (b) the purchase and/or use of an alcoholic beverage product.

C period has the same meaning as in the *Children's Television Standards 2009*.

C program has the same meaning as in the *Children's Television Standards 2009*.

children has the same meaning as in the *Children's Television Standards 2009*.

gambling services means services which provide the staking of money on uncertain events driven by chance.

gambling service advertisement means any writing, still or moving picture, sign, symbol or other visual image, or any audible message, or any combination of 2 or more of those things, that gives publicity to, or otherwise promotes or is intended to promote:

- (a) gambling services; or
- (b) the use of gambling services; or

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- (c) the hiring of workers for the running of gambling services.

international significance means one in which other countries participate in the sporting event.

licensed gambling venues means public venues such as hotels and TAB outlets where gambling is permitted according to the laws of the respective state/territory and local governments.

pleasurable services: the provision by one person to or for another person (whether or not of a different sex) of sexual services in return for payment or reward.

pleasurable service advertisement means any writing, still or moving picture, sign, symbol or other visual image, or any audible message, or any combination of 2 or more of those things, that gives publicity to, or otherwise promotes or is intended to promote:

- (d) pleasurable services; or
- (e) the use of pleasurable services; or
- (f) the hiring of workers for the running of pleasurable services.

sporting event means an event that's primary purpose is to play and watch sport.

sporting place means a place that's primary purpose is to facilitate the playing of sport.

unhealthy food means a food or beverage, or any product containing a food or beverage, that does not comply with nutrient profile criteria set out in the regulations provided by section 37C.

unhealthy food advertisement means any writing, still or moving picture, sign, symbol or other visual image, or any audible message, or any combination of 2 or more of those things, that gives publicity to, or otherwise promotes or is intended to promote:

- (a) unhealthy food consumption; or
- (b) the purchase and/or use of an unhealthy food consumption product.

(2) In this Part:

- (a) a reference to engaging in conduct is a reference to doing or refusing to do any act, including:
 - (i) the making of, or the giving effect to a provision of, a contract or arrangement; or
 - (ii) the arriving at, or the giving effect to a provision of, an understanding; or
 - (iii) the requiring of the giving of, or the giving of, a covenant; and
- (b) a reference to conduct, when that expression is used as a noun otherwise than as mentioned in paragraph (a), is a reference to the doing of or the refusing to do any act, including:
 - (i) the making of, or the giving effect to a provision of, a contract or arrangement; or
 - (ii) the arriving at, or the giving effect to a provision of, an understanding; or
 - (iii) the requiring of the giving of, or the giving of, a covenant; and
- (c) a reference to refusing to do an act includes a reference to:
 - (i) refraining (otherwise than inadvertently) from doing that act; or
 - (ii) making it known that that act will not be done; and
- (d) a reference to a person offering to do an act, or to do an act on a particular condition, includes a reference to the person making it known that the person will accept applications, offers or proposals for the person to do that act or to do that act on that condition, as the case may be.

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- (3) In this Part, an advertisement is said to be *targeted* at a specific audience if:
- (a)

Division 2—Advertising Prohibitions

Subdivision A—Simplified outline

35 Simplified outline of this Division

This Division sets out the specific advertising prohibitions, and the provisions relating to those restrictions. It does not impose the offences related to the breaching of those prohibitions.

Subdivision B concerns the advertising prohibitions of alcoholic beverages.

Subdivision C concerns the advertising prohibitions of fast food products.

Subdivision D concerns the advertising prohibitions of gambling services.

Subdivision E concerns the advertising prohibitions of pleasurable services.

Subdivision B—Alcoholic beverages

36 Alcoholic beverage advertisements not to be broadcast

- (1) An alcoholic beverage advertisement can only be broadcasted in Australia between the hours of 10pm and 5am on all days of the week.
- (2) If a sporting event of international significance is being hosted in Australia and shown, alcoholic beverage advertisements can be shown after 6pm if it is on any screens in a sporting place.

- (3) A person must not broadcast an alcoholic beverage advertisement in Australia on commercial television:
- (a) during a C period or program; or
 - (b) immediately before or after the shows; or
 - (c) on dedicated subscription children's channels; or
 - (d) on children's television in general.
- unless the advertisement was permitted under section 36A.

36A Accidental or incidental broadcast permitted

- A person may broadcast an alcoholic beverage advertisement if:
- (a) the person broadcasts the advertisement as an accidental or incidental accompaniment to the broadcasting of other matter; and
 - (b) the person does not receive any direct or indirect benefit (whether financial or not) for broadcasting the advertisement.

36B Alcoholic beverage advertisements not to be published

- (1) A person (whether an individual or a corporation) must not:
- (a) publish an alcoholic beverage advertisement in Australia; or
 - (b) authorise or cause an alcoholic beverage advertisement to be published.
- (2) Subsection (1) does not apply if the alcoholic beverage advertisement is on a board or screen that is on the boundaries of a sporting place during a sporting event held in Australia that is of international significance.

36C Alcoholic beverage advertisements not to be published electronically

A person must not publish an alcoholic beverage advertisement, or authorise or cause an alcoholic beverage advertisement to be published electronically, in Australia.

Subdivision C—Unhealthy food

37 Unhealthy food advertisements not to be broadcast

- (1) A person must not broadcast unhealthy food advertisements in Australia or external territories targeted at children.
- (2) An unhealthy food advertisement must not be broadcast during a C band period.
- (3) An unhealthy food advertisement may be broadcast if a sporting event of international significance is being hosted in Australia and shown.
- (4) Unhealthy food advertisements that are broadcasted under subsection (3) must be shown after 6pm if it is on any screens in the sporting place.

37A Accidental or incidental broadcast permitted

- (1) A person may broadcast an unhealthy food advertisement if:
 - (a) the person broadcasts the advertisement as an accidental or incidental accompaniment to the broadcasting of other matter; and
 - (b) the person does not receive any direct or indirect benefit (whether financial or not) for broadcasting the advertisement.
- (2) This section of the Act is only valid until one month after the commencement of this Act.

37B Unhealthy food advertisements not to be published electronically

A person must not publish an unhealthy food advertisement that is targeted towards children, or authorise an unhealthy food

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advertisement that is targeted towards children to be published electronically, in Australia.

37C Regulations

The President may make regulations prescribing what constitutes as *unhealthy food*.

Subdivision D—Gambling services

38 Gambling service advertisements not to be broadcast

- (1) A gambling service advertisement can only be broadcasted in Australia in a licensed gambling venue.
- (2) A gambling service advertisement that is utilised under subsection (1) shall not be audible or visible outside the licensed gambling venue.
- (3) Subject to subsection (1), a gambling service advertisement must not be broadcasted on:
 - (a) radio;
 - (b) television; or
 - (c) a public space.

38A Gambling service advertisements not to be published

- (1) A person (whether an individual or a corporation) must not:
 - (a) publish a gambling service advertisement in Australia; or
 - (b) authorise or cause a gambling service advertisement to be published.
- (2) Subsection (1) does not apply if the gambling service advertisement is on a board or screen that is:
 - (a) in a licensed gambling venue; and
 - (b) is not visible from outside the venue.

38B Gambling service advertisements not to be published electronically

A person must not publish a gambling service advertisement, or authorise or cause a gambling service advertisement to be published electronically, in Australia.

Subdivision E—Pleasurable services

39 Pleasurable service advertisements not to be broadcast

- (1) A pleasurable service advertisement can only be broadcasted in Australia between the hours of 10pm and 5am on all days of the week.
- (2) A person must not broadcast a pleasurable service advertisement in Australia on commercial television:
 - (a) during a C period or program; or
 - (b) immediately before or after the shows; or
 - (c) on dedicated subscription children's channels; or
 - (d) on children's television in general.

39A Pleasurable service advertisements not to be published etc.

- (1) A person (whether an individual or a corporation) must not:
 - (a) publish a pleasurable service advertisement in Australia; or
 - (b) authorise or cause a pleasurable service advertisement to be published.
- (2) Subsection (1) does not apply if the pleasurable services advertisement is for the purpose of engaging employment of potential workers, and does not contain any content that could be reasonably constituted as sexual in nature.

39B Pleasurable service advertisement not to be published electronically

A person must not publish a pleasurable service advertisement, or authorise or cause a pleasurable service advertisement to be published electronically, in Australia.

(5)

Division 3—Offences

Subdivision A—Simplified outline of this Division

60 Simplified outline of this Division

This Division deals with the offences that may be incurred as a consequence of breaching Division 2 of this Part.

Subdivision B relates to the offences in regards to the advertising of alcoholic beverages.

Subdivision C relates to the offences in regards to the advertising of unhealthy foods.

Subdivision D relates to the offences in regards to the advertising of gambling services.

Subdivision E relates to the offences in regards to the advertising of pleasurable services.

Subdivision Y relates to the Defences that can be used in regards to the offences described in this Division.

Subdivision Z concerns miscellaneous matters.

Subdivision B—Alcoholic beverages

61 Alcoholic beverages advertisements not to be broadcast

- (1) Subject to subsection (2), (3) and (4), a person commits an offence if the person:
 - (a) broadcasts an alcoholic beverage advertisement between the hours of 5am and 10pm on any day of the week; or

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- (b) authorises or causes the broadcasting of an alcoholic beverage advertisement between the hours of 5am and 10pm on any day of the week.

Penalty:

- (a) if the person is a body corporate—\$1,100,000; or
- (b) if the person is not a body corporate—\$220,000.

- (2) During a sporting event of international significance, a person commits an offence if the person:
 - (a) broadcasts an alcoholic beverage advertisement between 5am and 6pm on any day of the week which is not on a screen in a sporting place; or
 - (b) authorises or causes the broadcasting of an alcoholic beverage advertisement between the hours of 5am and 6pm on any day of the week is not on a screen in a sporting place.

Penalty:

- (a) if the person is a body corporate—\$1,100,000; or
- (b) if the person is not a body corporate—\$220,000.

- (3) Subject to subsection (4), a person commits an offence if the person:
 - (a) broadcasts an alcoholic beverage advertisement on commercial television:
 - (i) during a C period or C program; or
 - (ii) immediately before or after the shows; or
 - (iii) on dedicated subscription children's channels; or
 - (iv) on children's television in general;
 - (b) authorises or causes the broadcasting of an alcoholic beverage advertisement on commercial television:
 - (i) during a C period or C program; or
 - (ii) immediately before or after the shows; or
 - (iii) on dedicated subscription children's channels; or
 - (iv) on children's television in general.

Penalty:

- (a) if the person is a body corporate—\$1,100,000; or
- (b) if the person is not a body corporate—\$220,000.

- (4) A person is not liable for an offence if:
 - (a) the person broadcasts the advertisement as an accidental or incidental accompaniment to the broadcasting of other matter; and
 - (b) the person does not receive any direct or indirect benefit (whether financial or not) for broadcasting the advertisement.
- (5) Subsection (1), (2) and (3) are offences of strict liability.

61A Alcoholic beverage advertisements not to be published

- (1) Subject to subsection (2), a person commits an offence if the person:
 - (a) publishes an alcoholic beverage advertisement in Australia; or
 - (b) authorises or causes an alcoholic beverage advertisement to be published.

Penalty:

- (a) if the person is a body corporate—\$1,100,000; or
- (b) if the person is not a body corporate—\$220,000.

- (2) During a sporting event held in Australia that is of international significance, a person commits an offence if the person:
 - (a) publishes an alcoholic beverage advertisement which is not:
 - (i) within the boundaries of a sporting place; and
 - (ii) displayed on a board or screen; or
 - (b) authorises or causes an alcoholic beverage advertisement to be published which is not:
 - (i) within the boundaries of a sporting place; and

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- (ii) displayed on a board or screen.

Penalty:

- (a) if the person is a body corporate—\$1,100,000; or
- (b) if the person is not a body corporate—\$220,000.

- (3) A person commits an offence if the person:

- (a) publishes an alcoholic beverage advertisement electronically in Australia; or
- (b) authorises or causes the alcoholic beverage advertisement electronically in Australia.

Penalty:

- (a) if the person is a body corporate—\$1,100,000; or
- (b) if the person is not a body corporate—\$220,000.

- (4) Subsection (1), (2) and (3) are offences of strict liability.

Subdivision C—Unhealthy food

61 Unhealthy food advertisements not to be broadcast

- (1) Subject to subsection (4), a person commits an offence if the person:

- (a) broadcasts an unhealthy food advertisement which is targeted at children; or
- (b) authorises or causes the broadcast of an unhealthy food advertisement which is targeted at children.

Penalty:

- (a) if the person is a body corporate—\$1,100,000; or
- (b) if the person is not a body corporate—\$220,000.

- (2) Subject to subsection (3) and (4), a person commits an offence if the person:

- (a) broadcasts an unhealthy food advertisement during a C band period; or
- (b) authorises or causes the broadcast of an unhealthy food advertisement during a C band period.

Penalty:

- (a) if the person is a body corporate—\$1,100,000; or
- (b) if the person is not a body corporate—\$220,000.

(3) Subject to subsection (4), during a sporting event held in Australia that is of international significance, a person commits an offence if the person:

- (a) broadcasts an unhealthy food advertisement where it is not:
 - (i) at the sporting place on a board or screen; and
 - (ii) between the hours of 6pm and 5am on any given day; or
- (b) authorises or causes an unhealthy food advertisement where it is not:
 - (i) at the sporting place on a board or screen; and
 - (ii) between the hours of 6pm and 5am on any given day; or

Penalty:

- (a) if the person is a body corporate—\$1,100,000; or
- (b) if the person is not a body corporate—\$220,000.

(4) A person is not liable for an offence if:

- (a) the person broadcasts the advertisement as an accidental or incidental accompaniment to the broadcasting of other matter; and
- (b) the person does not receive any direct or indirect benefit (whether financial or not) for broadcasting the advertisement.

(5) Subsection (4) is only valid until one month after the commencement of this Act.

(6) Subsections (1), (2) and (3) are offences of strict liability.

61A Unhealthy food advertisements not to be published electronically

- (1) A person commits an offence if the person:
- (a) publishes an unhealthy food advertisement that is targeted towards children; or
 - (b) authorises or causes an unhealthy food advertisement that is targeted towards children;
- to be published electronically in Australia.

Penalty:

- (a) if the person is a body corporate—\$1,100,000; or
- (b) if the person is not a body corporate—\$220,000.

- (2) Subsection (1) is an offence of strict liability.

Subdivision D—Gambling services

62 Gambling service advertisement not to be broadcast

- (1) Subject to subsection (2), a person commits an offence if the person:
- (a) broadcasts a gambling service advertisement in Australia; or
 - (b) authorises or causes a gambling service advertisement to be broadcasted in Australia.

Penalty:

- (a) if the person is a body corporate—\$1,100,000; or
- (b) if the person is not a body corporate—\$220,000.

- (2) If a person broadcasts a gambling service advertisement in a licensed gambling venue, a person commits an offence:
- (a) if the person:
 - (i) broadcasts; or
 - (ii) authorises; or
 - (iii) causes;

- a gambling service advertisement in a licensed gambling venue; and
- (b) the gambling service advertisement is:
 - (i) audible; or
 - (ii) visible;outside the licensed gambling venue.

Penalty:

- (a) if the person is a body corporate—\$1,100,000; or
- (b) if the person is not a body corporate—\$220,000.

- (3) Subsections (1) and (2) are offences of strict liability.

62A Gambling service advertisements not to be published

- (1) Subject to subsection (2), a person commits an offence if the person:
 - (a) publishes a gambling service advertisement in Australia; or
 - (b) authorises or causes a gambling service advertisement to be published in Australia.

Penalty:

- (a) if the person is a body corporate—\$1,100,000; or
- (b) if the person is not a body corporate—\$220,000.

- (2) If a person publishes a gambling service advertisement in a licensed gambling venue, a person commits an offence
 - (a) if the person:
 - (i) publishes; or
 - (ii) authorises; or
 - (iii) causes;a gambling service advertisement in a licensed gambling venue; and
 - (b) the gambling service advertisement is visible outside the licensed gambling venue.

Penalty:

- (a) if the person is a body corporate—\$1,100,000; or
 - (b) if the person is not a body corporate—\$220,000.
- (3) A person commits an offence if the person:
- (a) publishes a gambling service advertisement electronically, in Australia; or
 - (b) authorises or causes a gambling service advertisement to be published electronically in Australia.
- (4) Subsections (1), (2) and (3) are offences of strict liability.

Subdivision E—Pleasurable services

63 Pleasurable service advertisements not to be broadcast

- (1) A person commits an offence if the person:
- (a) broadcasts a pleasurable service advertisement in Australia between the hours of 5am and 10pm on all days of the week; or
 - (b) authorises or cause a pleasurable service advertisement in Australia to be broadcast between the hours of 5am and 10 pm on all days of the week.

Penalty:

- (a) if the person is a body corporate—\$1,100,000; or
 - (b) if the person is not a body corporate—\$220,000.
- (2) A person commits an offence if the person:
- (a) broadcasts a pleasurable service advertisement in Australia:
 - (i) during a C period or C program; or
 - (ii) immediately before or after the shows; or
 - (iii) on dedicated subscription children’s channels; or
 - (iv) on children’s television in general;
 - (b) authorises or causes a pleasurable services advertisement to be broadcast in Australia:

- (i) during a C period or C program; or
- (ii) immediately before or after the shows; or
- (iii) on dedicated subscription children's channels;
or
- (iv) on children's television in general.

Penalty:

- (a) if the person is a body corporate—\$1,100,000; or
- (b) if the person is not a body corporate—\$220,000.

(3) Subsections (1) and (2) are offences of strict liability.

63A Pleasurable service advertisements not to be published etc.

- (1) Subject to subsection (2), a person commits an offence if the person:
- (a) publishes a pleasurable service advertisement in Australia; or
 - (b) authorises or causes a pleasurable service advertisement to be published in Australia.

Penalty:

- (a) if the person is a body corporate—\$1,100,000; or
- (b) if the person is not a body corporate—\$220,000.

(2) If the pleasurable service advertisement's primary purpose is to engage the employment of potential workers, a person commits an offence if the advertisement published contains any content that could be reasonably constituted as sexual in nature.

Penalty:

- (a) if the person is a body corporate—\$1,100,000; or
- (b) if the person is not a body corporate—\$220,000.

- (3) A person commits an offence if the person:
- (a) publishes a pleasurable service advertisement electronically in Australia; or

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- (b) authorises or causes a pleasurable service advertisement to be published in Australia.

Penalty:

- (a) if the person is a body corporate—\$1,100,000; or
- (b) if the person is not a body corporate—\$220,000.

- (4) Subsections (1), (2) and (3) are offences of strict liability.

Subdivision Y—Defences

85 Reasonable mistake of fact

- (1) In a prosecution for a contravention of a provision of this Division, it is a defence if the defendant proves that the contravention was caused by a reasonable mistake of fact, including a mistake of fact caused by reasonable reliance on information supplied by another person.
- (2) However, subsection (1) does not apply in relation to information relied upon by the defendant that was supplied to the defendant by another person who was, at the time when the contravention occurred:
 - (a) an employee or agent of the defendant; or
 - (b) if the defendant is a body corporate—a director, employee or agent of the defendant.
- (3) If a defence provided by subsection (1) involves an allegation that a contravention was due to reliance on information supplied by another person, the defendant is not entitled to rely on that defence unless:
 - (a) the court gives leave; or
 - (b) the defendant has, not later than 7 days before the day on which the hearing of the proceeding commences, served on the person who instituted the proceeding a written notice giving such information as the defendant then had that would identify or assist in identifying the other person.

86 Act or default of another person etc.

- (1) In a prosecution for a contravention of a provision of this Division, it is a defence if the defendant proves that:
 - (a) the contravention was due to the act or default of another person, to an accident or to some other cause beyond the defendant's control; and
 - (b) the defendant took reasonable precautions and exercised due diligence to avoid the contravention.
- (2) However, subsection (1) does not apply in relation to the act or default of another person who was, at the time when the contravention occurred:
 - (a) an employee or agent of the defendant; or
 - (b) if the defendant is a body corporate—a director, employee or agent of the defendant.
- (3) If a defence provided by subsection (1) involves an allegation that a contravention was due to reliance on information supplied by another person, the defendant is not entitled to rely on that defence unless:
 - (a) the court gives leave; or
 - (b) the defendant has, not later than 7 days before the day on which the hearing of the proceeding commences, served on the person who instituted the proceeding a written notice giving such information as the defendant then had that would identify or assist in identifying the other person.

Subdivision Z—Miscellaneous

87 Prosecution to be commenced within 3 years

A prosecution for an offence against a provision of this Division may be commenced at any time within 3 year of the commission of the offence.

88 Penalties for contraventions of the same nature etc.

- (1) If:
- (a) a person is convicted of 2 or more offences constituted by, or relating to, contraventions of the same provision of this Division; and
 - (b) the contraventions appear to the court:
 - (i) to have been of the same nature or a substantially similar nature; and
 - (ii) to have occurred at or about the same time;the court must not, in respect of the offences, impose on the person fines that, in the aggregate, exceed the maximum fine that would be applicable in respect of one offence by that person against that provision.
- (2) This section applies whether or not the person is also convicted of an offence or offences constituted by, or relating to, another contravention or other contraventions of that provision that were of a different nature or occurred at a different time.

89 Penalties for previous contraventions of the same nature etc.

- (1) If:
- (a) a person is convicted of an offence constituted by, or relating to, a contravention of a provision of this Division; and
 - (b) a fine has, or fines have, previously been imposed on the person by the court for an offence or offences constituted by, or relating to, another contravention or other contraventions of the same provision; and
 - (c) the contravention, or each of the contraventions, mentioned in paragraph (b) appear to the court:
 - (i) to have been of the same nature as, or a substantially similar nature to, the contravention mentioned in paragraph (a); and
 - (ii) to have occurred at or about the same time as the contravention mentioned in paragraph (a);

the court must not, in respect of the offence mentioned in paragraph (a), impose on the person a fine that exceeds the amount (if any) by which the maximum fine applicable in respect of that offence is greater than the amount of the fine, or the sum of the amounts of the fines, referred to in paragraph (b).

- (2) This section applies whether or not a fine has, or fines have, also previously been imposed on the person for an offence or offences constituted by, or relating to, a contravention or contraventions of that provision that were of a different nature or occurred at a different time.

90 Criminal proceedings not to be brought for contraventions of Division 2

Criminal proceedings do not lie against a person only because the person:

- (a) has contravened a provision of Division 2; or
- (b) has attempted to contravene such a provision; or
- (c) has aided, abetted, counselled or procured a person to contravene such a provision; or
- (d) has induced, or attempted to induce, a person, whether by threats or promises or otherwise, to contravene such a provision; or
- (e) has been in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of such a provision; or
- (f) has conspired with others to contravene such a provision.