



---

**Inquiry into the Communications Legislation  
Amendment (Online Content Services and  
Other Measures) Bill 2017**

Submission to the Senate Environment and  
Communications Legislation Committee

---

15 January 2018

## Contents

About UNICEF .....	3
Executive summary.....	3
Summary of recommendations .....	4
The problem.....	5
a) The established association between problem gambling and family violence .....	6
b) Increasing rates of child poverty in Australia.....	6
c) The significant and increasing impact of digital technologies on childhood .....	6
Choice of option regarding the scope of the restriction of gambling promotion .....	7
Choice of implementation pathway.....	9
The need for a National Action Plan on Business and Human Rights .....	11
Contact .....	11

## About UNICEF

1. UNICEF is a multilateral organisation that works in over 190 countries to promote and protect the rights of children. UNICEF supports child health and nutrition, clean water and sanitation, quality basic education for all boys and girls, and the protection of children from violence, exploitation, abuse and HIV. UNICEF is unique among world organisations for our rights based and participatory approach to working with children and young people. UNICEF Australia is a national committee of UNICEF which advocates for the rights of all children and works to improve public and government support for child rights and international development. Since 2010, UNICEF has worked directly on children’s rights and business issues, having developed the Children’s Rights and Business Principles and other related guidance for governments and businesses.

## Executive summary

2. UNICEF Australia welcomes the inquiry into the Communications Legislation Amendment (Online Content Service and Other Measures) Bill 2017 being conducted by the Senate Environment and Communications Legislation Committee. We welcome the opportunity to lodge a submission on these important issues. This brief submission highlights issues facing children in Australia that further contextualise the need for regulatory action to reduce the exposure of children to gambling promotions, and comments on how protecting the best interests of children must shape the assessment and choice of the available options and mode of implementation.
3. We are concerned that children in Australia are currently exposed to significant levels of gambling promotion. It is entirely appropriate and necessary that the Federal Parliament act to reduce the risk of children being exposed to the promotion of gambling, and UNICEF Australia applauds the efforts of the Australian Government and other Members of Parliament to minimise children’s exposure to such advertising, including through online content.
4. However, we are concerned that the preferred scope of restriction (Option 3) and “implementation pathway” as outlined in the Regulation Impact Statement in the Explanatory Memorandum are limited and comparatively weak given the known information about teenagers ‘at risk’ of serious gambling problems, and the agreed seriousness of the impacts problem gambling.

5. Given the potential harms to children due to problem gambling, and the broader social and economic consequences that would be borne by the Australian community as a whole, we encourage the Australian Government to adopt both a scope of restriction and “implementation pathway” that reduces children’s exposure to gambling advertising to the greatest extent possible and as quickly as possible. Although there are undoubtedly many competing interests under consideration, this policy issue has an undeniable and significant impact on children. This requires that the best interests of children as a group should be given priority by the Parliament in determining both the scope of the restriction and implementation pathway. As outlined in this submission, this should be done through a comprehensive prohibition, implemented directly through legislation, or in the alternative, a legislative requirement that the Australian Communications and Media Authority (ACMA) develop a binding program standard regarding the promotion of gambling.

### Summary of recommendations

**Recommendation 1:** UNICEF Australia recommends that, regardless of the mode of implementation, the applicable time restriction on the promotion of gambling should be determined after consideration of all available and up to date evidence regarding the viewing times of children in Australia and ensure that the prohibition applies across the known peak viewing times of children (up to and including people who are 17 years’ of age).

**Recommendation 2:** UNICEF Australia recommends that gambling promotions be restricted through a comprehensive legislative prohibition such as that outlined in Option 6 of the Explanatory Memorandum. The prohibition should:

- a) Be developed with the best interests of children as a primary consideration;
- b) Cover known peak viewing times of children (up to and including people who are 17 years’ of age); and
- c) Include meaningful enforcement mechanisms (such as civil penalties and/or licencing consequences).

**Recommendation 3:** As an alternative to a comprehensive prohibition contained in legislation, UNICEF Australia recommends that the Bill be amended to require ACMA to determine a program standard (or similar) regarding the promotion of gambling to apply across all content service types. The legislation should specify that the program standard must:

- a) Be developed with the best interests of children as a primary consideration;

- b) Includes restrictions that cover known peak viewing times of children (up to and including people who are 17 years' of age); and
- c) Includes meaningful enforcement mechanisms (such as civil penalties and/or licencing consequences).

**Recommendation 4:** UNICEF Australia recommends that the Australian Government develop a National Action Plan on Business and Human Rights (NAP) that contains specific, forward-looking commitments, timelines and allocated responsibilities, as well as specific commitments to protect and realise the rights of children in the context of business operations and business relationships.

## The problem

6. The Explanatory Memorandum (EM) of the Bill sets out in great detail the association between problem gambling and maladaptive behaviours (including substance abuse, criminality, poorer educational outcomes and suicidal ideation and attempts). It also sets out the 'strong correlation between exposure to gambling promotions at a young age leading to children to become problem gamblers later in life.' The significant and justified concern expressed by parents and members of the community about children's exposure to gambling promotion is also noted.
7. The EM also states that of teenagers (aged 12 to 17 years):
  - 63-82% gamble each year;
  - 4-7% exhibit serious patterns of pathological gambling; and
  - 10-15% are at risk of either developing or returning to a serious gambling problem.<sup>1</sup>These are deeply concerning statistics.
8. In addition to these acknowledged issues, several additional factors must impact upon the Parliament's assessment of what is the best mode of reducing children's exposure to gambling promotion:

<sup>1</sup> Explanatory Memorandum, Communications Legislation Amendment (Online Content Service and Other Measures) Bill 2017, 6, citing the Journal of Gambling Issues: Issue 22, December 2008: Impact of gambling advertisements and marketing on children and adolescents: Policy recommendations to minimise harm by Sally Monaghan, Jeffrey Derevensky & Alyssa Sklar, School of Psychology, The University of Sydney Available at: <http://youthgambling.mcgill.ca/en/PDF/Publications/2008/Monaghan%20Derevensky%20Sklar.pdf>.

**a) The established association between problem gambling and family violence**

Gambling problems are known to impair family relationships, and evidence has established a clear association between gambling problems and family violence. The Australian Institute of Family Studies has observed “...over half of people with gambling problems (56%) report perpetrating physical violence against their children”<sup>2</sup> and “children of people with gambling problems are exposed to a range of family stressors, including financial and emotional deprivation, physical isolation, inconsistent discipline, parental neglect/abuse and rejection, poor role modelling, family conflict, and reduced security and stability”.<sup>3</sup>

**b) Increasing rates of child poverty in Australia**

Recent years have seen an increase in the numbers of children in Australia living in poverty. In 2016, an estimated 731,300 children, or 17.4%, were living in poverty in Australia.<sup>4</sup> These figures denote significant hardship for children and families living today, as well as a significant policy problem to be solved if we are to reduce the numbers of children living in poverty in future Australian societies. As outlined above, children of people with gambling problems are exposed to financial deprivation.<sup>5</sup>

**c) The significant and increasing impact of digital technologies on childhood**

Digital technologies are increasingly changing experiences of childhood, presenting both opportunities and risks for children and families. Young people aged 15 – 24 years are the most connected age group globally to online content,<sup>6</sup> and the online activity of children in Australia continues to increase. The increasing centrality of digital technologies in the lives of children must inform our approach to the restriction of gambling promotion.

9. The association between problem gambling and children’s experiences of family violence and economic and emotional deprivation further illustrate that there is a clear public interest in policy measures to reduce problem gambling and minimise the risk of children and adults developing problem gambling habits, including through restrictions on gambling promotion. In addition, Australia’s commitment to the *Sustainable Development Goals 2030* requires us to act to end all forms of poverty (SDG1), and all forms of violence against children (SDG 16.1; 16.2).<sup>7</sup> Such ambitious

---

<sup>2</sup> Australian Institute of Family Studies, *The impact of gambling problems on families AGRC Discussion Paper No. 1 – November 2014* (2014) <<https://aifs.gov.au/agrc/publications/impact-gambling-problems-families/what-are-impacts-gambling-problems-families>> citing Dowling et al., in press.

<sup>3</sup> Ibid, citing Darbyshire, Oster, & Carrig (2001).

<sup>4</sup> Australian Council of Social Service, *Child poverty on the rise: 730,000 children in poverty* (16 October 2016), <[http://www.acoss.org.au/media\\_release/child-poverty-on-the-rise-730000-children-in-poverty/](http://www.acoss.org.au/media_release/child-poverty-on-the-rise-730000-children-in-poverty/)>.

<sup>5</sup> Australian Institute of Family Studies, above n 2, citing Darbyshire, Oster, & Carrig (2001).

<sup>6</sup> UNICEF, *The State of the World’s Children 2017: Children in a Digital World* (2017), <[https://www.unicef.org/publications/files/SOWC\\_2017\\_ENG\\_WEB.pdf](https://www.unicef.org/publications/files/SOWC_2017_ENG_WEB.pdf)>, 1.

<sup>7</sup> Transforming our world: the 2030 Agenda for Sustainable Development, GA Res 70/1, 70th sess, Agenda items 15 and 116, UN Doc A/Res/70/1 (21 October 2015) <<https://undocs.org/A/RES/70/1>>, [9].

goals will only be achieved through concerted, coordinated and comprehensive use of the policy levers available to government, and the present reforms present one such opportunity to do so.

### Choice of option regarding the scope of the restriction of gambling promotion

10. The Regulation Impact Statement of the EM puts forward six potential options, with five of these outlining different scope of prohibition of advertising gambling, ranging from a 'siren to siren' prohibition (Option 2) to a comprehensive prohibition (Option 6). The Regulation Impact Statement explains that the Government considers Option 3 to be the best, with this option proposing restrictions that would "Prohibit gambling advertising around the broadcast of live sports from five minutes before the start of play until five minutes after, across platforms", applying between 5:00am and 8:30pm.
11. UNICEF Australia is concerned that Option 3 would still allow for gambling promotions to be shown during family programs when considerable numbers of children could be viewing. For example, it appears that under preferred Option 3 that gambling promotions could be shown:
  - a) during a family news program airing at 6:30pm on the day prior to a sporting telecast; and
  - b) during daily news programs airing between 5:00pm – 6:00pm ahead of an evening sporting event starting at 7:30pm.
12. In contrast, it is acknowledged in the Regulation Impact Statement that of the options outlined, a comprehensive prohibition (Option 6) would have the greatest positive impact on children. UNICEF Australia agrees with this statement.
13. As a signatory to the *Convention on the Rights of the Child*, Australian legislatures must take the best interests of the child as a primary consideration when making decisions about children. Although this is acknowledged in the 'Statement of Compatibility' that accompanies the Bill, the ramifications of this obligation for the assessment of the different options under consideration, and the possible modes of implementation, are not fully considered.
14. When a decision is being made that concerns children as the regulation of gambling advertising does, protecting the best interests of children in Australia requires the

legislature to give priority to the interests of children when compared to other interests. This is justified on the basis of children’s vulnerability due to their stage of human development, and the reliance on adults to protect and defend their interests.

The United Nations Committee on the Rights of the Child has explained:

*The expression “primary consideration” means that the child’s best interests may not be considered on the same level as all other considerations. This strong position is justified by the special situation of the child: dependency, maturity, legal status and, often, voicelessness. Children have less possibility than adults to make a strong case for their own interests and those involved in decisions affecting them must be explicitly aware of their interests.*<sup>8</sup>

...

*Viewing the best interests of the child as “primary” requires a consciousness about the place that children’s interests must occupy in all actions and a willingness to give priority to those interests in all circumstances, but especially when an action has an undeniable impact on the children concerned.*<sup>9</sup>

This includes legislation and policies that shape business activities and operations, including marketing and advertising.<sup>10</sup>

15. Additionally, the Regulation Impact Statement states “[t]here is less concern where these events are broadcast after 8:30pm as children are less likely to be viewing at this time...”.<sup>11</sup> No information is provided evidencing the times that children in Australia view content either online or through television.

16. Conversely, there appears to be evidence indicating that significant numbers of children are viewing content well beyond 8:30pm. For example, the 2017 Australian Video Viewing Report for Q1 outlines the daily viewing patterns of adults and children. It indicates that periods of co-viewing (involving both children and adults) peak at approximately 9:00pm.<sup>12</sup> Additionally, the 2014 Australian Multi-Screen Report (Quarter 1) indicates a peak viewing time of around 8:30pm for ‘teens’ aged 13-17

---

<sup>8</sup> United Nations Committee on the Rights of the Child, *General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1)\** UN Doc. CRC/C/GC/14, 29 May 2013, [37].

<sup>9</sup> United Nations Committee on the Rights of the Child, *General Comment No. 16 (2013) on State obligations regarding the impact of the business sector on children’s rights*, 62nd session, UN Doc CRC/C/GC/16 (17 April 2013) <[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2FC%2FGC%2F16&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2FC%2FGC%2F16&Lang=en)>, [40].

<sup>10</sup> United Nations Committee on the Rights of the Child, *General Comment No. 16 (2013) on State obligations regarding the impact of the business sector on children’s rights*, 62nd session, UN Doc CRC/C/GC/16 (17 April 2013) <[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2FC%2FGC%2F16&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2FC%2FGC%2F16&Lang=en)>, [53] – [60].

<sup>11</sup> Explanatory Memorandum, Communications Legislation Amendment (Online Content Service and Other Measures) Bill 2017, 5.

<sup>12</sup> Regional TAM, OzTAM and Nielsen, *Australian Video Report Quarter 1, 2017* (2017) <<http://www.oztam.com.au/documents/Other/Australian%20Video%20Viewing%20Report%20Q1%202017%20Final.pdf>>, 18.



years during both weekdays and weekends.<sup>13</sup> Viewing times for younger children aged 0 – 12 years appears to peak between 6:30pm (weekdays) and 7:30pm (weekends).<sup>14</sup> This source of information indicates that significant numbers of children, particularly teenagers, would continue to be exposed to gambling promotions if the restriction were to cease at 8:30pm as proposed in all of the options for restriction.

**Recommendation 1:** UNICEF Australia recommends that, regardless of the mode of implementation, the applicable time restriction on the promotion of gambling should be determined after consideration of all available and up to date evidence regarding the viewing times of children in Australia and ensure that the prohibition applies across the known peak viewing times of children (up to and including people who are 17 years' of age).

**Recommendation 2:** UNICEF Australia recommends that gambling promotions be restricted through a comprehensive legislative prohibition such as that outlined in Option 6 of the Explanatory Memorandum. The prohibition should:

- d) Be developed with the best interests of children as a primary consideration;
- e) Cover known peak viewing times of children (up to and including people who are 17 years' of age); and
- f) Include meaningful enforcement mechanisms (such as civil penalties and/or licencing consequences).

## Choice of implementation pathway

17. In terms of how such a restriction would be implemented, the Regulation Impact Statement outlines that "...the preferred implementation pathway is to request the broadcast industry to initiate a change to their respective codes of practice...Where no relevant enforceable codes of practice exist...or where the code change pathway outlined above fails the Commonwealth would seek to legislate the reforms." The EM also explains that the proposed new section 125A will "provide the ACMA with the power to (if directed by the Minister) determine program standards about gambling promotional content which apply to certain broadcasters and subscription providers."

18. In effect, the preferred model rests on at least three contingencies, namely:

- 1) Industry bodies voluntarily heeding the "request" to develop a Code of Practice;

<sup>13</sup> Regional TAM, OzTAM and Nielsen, *Australian Multi-Screen Report – Quarter 1 2014* (2014)

<[http://www.oztam.com.au/documents/Other/Australian%20Multi-Screen%20Report%20Q1%202014\\_FINAL\\_2.pdf](http://www.oztam.com.au/documents/Other/Australian%20Multi-Screen%20Report%20Q1%202014_FINAL_2.pdf)>, 18.

<sup>14</sup> *Ibid*, 16.

- 2) The Codes of Practice having a period of operation, requiring the active monitoring of parents and community members regarding the effectiveness of the Codes of Practice; and
- 3) The Minister choosing to direct ACMA to develop a Standard in relation to gambling promotions.

These are possible occurrences that are in no way guaranteed. They will also take considerable time to occur, if at all.

19. UNICEF Australia is concerned that the preferred implementation pathway does not guarantee the effective and timely regulation of gambling promotion. The evidence demonstrating the impacts of problem gambling on children and families warrants more direct and immediate action.

20. In contrast, the Australian Government could restrict the promotion of gambling through more immediate, efficient and meaningful means, for example:

- 1) Directly legislating the prohibition; or
- 2) Legislating to require ACMA to determine a program standard regarding the promotion of gambling (similarly to the current requirement that it must determine standards with regard to children’s programs and Australian content under s 122, which also includes a power for the Minister to give directions about the standard).

21. We also understand that the proposed “implementation pathway” is a departure from previous forms of regulation of such issues; namely, where ACMA is required to develop a program standard (such as in relation to program standards for children’s programs under s 122 of the *Broadcasting Services Act 1992* (Cth)) or otherwise has the power to develop a program standard (under s 125).

22. Finally, UNICEF Australia is concerned that the proposed model would give a Minister the power and discretion to direct what should be an independent statutory authority. It is important that independent statutory bodies can operate without actual or perceived influence so that they can perform effective checks and balances that are central to democratic societies.

**Recommendation 3:** As an alternative to a comprehensive prohibition contained in legislation, UNICEF Australia recommends that the Bill be amended to require ACMA to determine a program standard (or similar) regarding the promotion of gambling to

apply across all content service types. The legislation should specify that the program standard must:

- a) Be developed with the best interests of children as a primary consideration;
- b) Includes restrictions that cover known peak viewing times of children (up to and including people who are 17 years' of age); and
- c) Includes meaningful enforcement mechanisms (such as civil penalties and/or licencing consequences).

## The need for a National Action Plan on Business and Human Rights

23. The current consideration of advertising and marketing of gambling should be considered in light of the Australian Government's obligations as outlined in the *United Nations Guiding Principles on Business and Human Rights*. UNICEF Australia maintains that Australia should develop a National Action Plan on Business and Human Rights as an overarching, structured and comprehensive policy framework in which to fully realise the state duty to protect human rights, the corporate responsibility to respect human rights, and ensure access to remedy for victims/survivors of corporate human rights abuses. A pro-active and comprehensive approach to these issues would provide certainty and direction to Australia's approach, and benefit children, communities and business alike. This is in contrast to Australia's current approach to business and human rights issues, which is largely ad hoc and piecemeal. We note with regret the decision of the Australian Government not to develop a National Action Plan on Business and Human Rights at this point in time.

**Recommendation 4:** UNICEF Australia recommends that the Australian Government develop a National Action Plan on Business and Human Rights (NAP) that contains specific, forward-looking commitments, timelines and allocated responsibilities, as well as specific commitments to protect and realise the rights of children in the context of business operations and business relationships.

## Contact

If you have any questions or if we can be of further assistance, please contact Alison Elliott, Senior Policy Adviser, at UNICEF Australia, on (02) 8917 3247 or [aelliott@unicef.org.au](mailto:aelliott@unicef.org.au).