

18 February 2016

Committee Secretary
Senate Standing Committees on Environment and Communications
PO Box 6100
Parliament House
Canberra ACT 2600

By email: ec.sen@aph.gov.au

Dear Secretary

Interactive Gambling Amendment (Sports Betting Reform) Bill 2015

The Australian Subscription Television and Radio Association (ASTRA) welcomes the opportunity to comment on the Interactive Gambling Amendment (Sports Betting Reform) Bill 2015 (the Bill).

About ASTRA

ASTRA is the peak industry body for subscription media in Australia. ASTRA was formed in September 1997 when industry associations representing subscription (multichannel) television and radio platforms, narrowcasters and program providers came together to represent the new era in competition and consumer choice. ASTRA's membership includes the major subscription TV operators, as well as over 20 independently owned and operated entities that provide programming to these platforms, including Australian-based representatives of international media companies, small domestic channel groups and community-based organisations.

ASTRA's members deliver to consumers a diverse range of news, information, sport and entertainment programs which convey significant social benefits to a broad cross-section of the Australian community. In 2015, one third of Australians subscribe, along with millions more who watch subscription content in public venues. Every week more than 1000 hours of first-run locally produced content is broadcast, as well as the best international content.

In 2014/15 ASTRA members invested more than \$796 million in local content production, added \$2.083 billion to the economy, and created jobs for 8370 Australians.

ASTRA is concerned to ensure that regulation affecting the industry does not inhibit this investment, productivity and job creation.

Adequacy of existing safeguards

Whilst the overwhelming majority of Australians who bet on racing and sport do so safely and responsibly, ASTRA members take very seriously their responsibility to ensure advertising for gambling products and services is in line with community expectations, in particular in relation to children.

This commitment is demonstrated by the inclusion of a range of safeguards in enforceable Codes of Practice developed by ASTRA and ratified by the regulator, the Australian Communications and Media Authority (ACMA), following public consultation. A copy of these provisions is provided at Attachment A.

Subscription television licensees are required under ASTRA's Codes to ensure that special care is taken in regards to the exposure of children to certain kinds of advertising. No products or services may be advertised in children's programming that could place children in physical, mental or moral jeopardy (clause 6.3(a), Subscription Broadcast Television Codes of Practice).

Licensees are also required to take into account the intellectual and emotional maturity of the intended audience of the channel when scheduling advertising relating to betting or gambling (clause 6.5). There is a natural incentive towards compliance, given the importance of the customer relationship and brand reputation within the subscription television model.

Further, ASTRA members presently take into account the issues around gambling advertising and vulnerable groups under the requirements of clause 2.6 of the Australian Association of National Advertisers (AANA) Code of Ethics which requires that advertising not depict material that is contrary to prevailing community standards on health and safety.

We also note the development of a targeted Code of Practice addressing gambling advertising by the AANA.¹ It is intended that this Code will provide a set of platform-neutral content restrictions relating to gambling and betting advertising which apply equally across the industry. Having these restrictions set down in a single Code is also useful for consumers in understanding what is acceptable under the regulatory framework for advertising and marketing, regardless of where they see those communications. Compliance with any code adopted by the AANA is required under the ASTRA Codes.

In 2013, the industry and Government developed specific safeguards to address community concern regarding the integration of live odds and other betting advertising into sports coverage. The restrictions were incorporated into the ASTRA Codes of Practice, are comprehensive and in general:

- prohibit the promotion of betting odds:
 - during play, during scheduled breaks in play, or during unscheduled breaks in play in a live sporting event, and
 - by a commentator during the periods 30 minutes before the event has commenced and 30 minutes after the event has concluded;

¹ <http://aana.com.au/self-regulation/code-development/>

- prohibit sports betting advertising during play;
- permit the promotion of betting odds other than by a commentator (including spot commercials and paid, clearly identified sponsorship segments) before play has commenced or after play has concluded.
- permit the broadcast of betting advertisements before play has commenced, during scheduled and unscheduled breaks in play, and after play has concluded;
- require representatives of gambling or betting organisations to be clearly identifiable as such and not appear as part, or as a guest, of the commentary team at any time.

In relation to the content of such advertising, the Codes require that promotions and advertisements during a live sporting event must be socially responsible and accompanied by a responsible gambling message (refer to clause 10 of Appendix A of the Subscription Television Code of Practice). Under clause 11 of Appendix A, promotions of betting odds and betting advertisements must not:

- be directed at children
- portray children as participating in betting or gambling
- portray betting or gambling as a family activity
- make exaggerated claims
- promote betting or gambling as a way to success or achievement; or
- associate betting or gambling with alcohol.

We note that under the *Broadcasting Services Act 1992*, the Government regulator, the ACMA cannot register a Code of Practice unless it is satisfied that, among other things, it provides appropriate community safeguards for the matters covered by the Code.

We also note that as these restrictions are contained in registered Codes of Practice, any viewer who is concerned there may have been a breach of the restrictions can make a formal complaint to the broadcaster. This complaint can then be escalated to the ACMA, who can investigate and, if a breach is found, impose significant penalties.²

ASTRA members adhere to these restrictions and since the commencement of the rules in 2013, the regulator, the ACMA has not made any breach findings against subscription television broadcasters. Since January 2014 there have been fewer than 10 complaints about gambling advertisements made under the ASTRA Codes. One was escalated to the ACMA for investigation and the ACMA found that the advertisement in question did not breach the ASTRA Codes.

We submit that these restrictions are operating well to limit the exposure of families and children to live odds and other betting advertisements.

² Complaints can be escalated to the ACMA if no response is received from the broadcaster within 60 days, or if a response is received but is considered inadequate.

ASTRA also notes that ratings information demonstrates that adults are the overwhelming majority of viewers across sports programming. For example, unsupervised children (0-17 years) comprise only 3.07% of viewership across the Fox Sports suite of channels.

The Bill

ASTRA does not support the wide-ranging bans which would be imposed by the Bill. As set out above, ASTRA believes existing restrictions are working well to address community concern regarding the exposure of vulnerable people to betting advertising.

Further, the Bill seems to go far beyond the stated intentions of protecting problem gamblers from certain predatory practices³ and minimising the exposure of children to sports betting advertising⁴. In particular:

- the definition of *restricted wagering service* is extremely broadly defined such that:
 - it may capture a wide range of services which do not actually facilitate the placing, making, receiving or acceptance of bets, but which do, in a broad sense, *relate to* those things (for example a website which features sports statistics could be caught by the definition as could a news bulletin/story about the Melbourne Cup);
 - to the extent that part of a service falls within the definition, the whole of that service could be a *restricted wagering service*. This may mean that if a company facilitates betting on live sporting events, that company's retail sports betting offering could be considered part of the same service.

From ASTRA's perspective, the provisions prohibiting advertising restricted wagering services are even more problematic because they go further than prohibiting advertisements for particular types of services (such as micro-betting). The definition of a *restricted wagering service advertisement* is so broad that it could prohibit any advertisements on behalf of a company whose business includes, but is not limited to, a restricted wagering service, even if the advertisement does not refer to a restricted wagering service. For example, if a large retail group operated a range of businesses including a restricted wagering service under a common brand, it would prevent that company from running advertisements for other parts of its business such as a supermarkets, gyms, chemists etc which are in no way related to online sports betting. It would even prevent such a company from running generic brand advertisements.

If ASTRA's members are prevented from accepting advertisements from any business who operates a restricted wagering service during sports coverage, there is likely to be a real and material financial impact and could lead, among others, to a loss of jobs within the industry.

Notwithstanding that it does not support the Bill, ASTRA wishes to make some comments on the Bill as drafted. ASTRA submits that the Bill would benefit from

³ S61G of the Bill

⁴ Paragraph 13, Explanatory Memorandum

clarification in terms of scope and operation, and the kinds of exemptions which appear in the above outlined Codes of Practice.

Scope of the new provisions

In addition to the concerns raised about the scope of the proposed provisions above (in particular the definition of restricted wagering service and restricted wagering service advertisement), it is not clear how some of the concepts introduced by the Bill interact with the existing provisions of the Interactive Gambling Act 2001 (the **Act**). For example:

- *restricted wagering services* would currently capture *excluded wagering services* and some *telephone betting services*. If the intention is to remove these exceptions from the prohibitions, including in relation to broadcasting/publishing interactive gambling service advertisements, we consider that the Bill should amend the existing provisions, rather than creating a new, conflicting regime in the interests of regulatory certainty.
- the Bill introduces a new Regulator in respect of the provisions which would be added by the Bill. This will create regulatory uncertainty as there will be multiple regulators with overlapping jurisdiction. For example, if there is an advertisement for a sports betting product, then the new regulator will have powers in respect of section 61GO of the Bill and the ACMA will continue have referral powers section 61DA of the Act. This could lead to differing approaches in enforcement and ultimately a lack of certainty.

Exemptions to ensure consistency with Codes of Practice

The restrictions in the Codes of Practice are subject to a set of exemptions which reflect the customer relationship with subscription TV and also the realities of the subscription television broadcast production chain.

International 'pass-through' content

Under the Codes of Practice, an exemption is provided, subject to certain conditions, for live-to-air broadcasts of a sporting event that originates from outside Australia (international 'pass-through' content). This has the effect of providing an exemption for international 'pass-through' content – content which is produced overseas and broadcast directly to Australians without local alteration. The exemption reflects the manner in which a number of sports channels are broadcast into the Australian market.

Great value is placed by consumers on receiving sports coverage on a live basis. Considerable sports coverage originates from overseas and there is no opportunity to edit or control the feed. Further, several channels on the subscription TV platform are broadcast in their entirety as received from offshore channel providers. There is no intermediating editing or control of the feed, and for these reasons, promotions of betting services of the kind addressed in the Bill sometimes appear in the broadcast.

ASTRA reiterates its opposition to the broad ambit restrictions in the Bill but at the same time submits that any new restrictions, should they proceed, should include an exemption for international 'pass-through' content, to avoid the unintended

consequence of limiting Australian viewers' access to live coverage of international sporting events (as broadcasters may be forced to drop such coverage to comply with a blanket ban on advertisements for betting services).

The exemption in the Codes of Practice for these circumstances means that consumers can continue to enjoy live coverage of overseas events.

As per the provisions in the Codes of Practice, to avoid bypass or exploitation of such an exemption, it could be limited to services originating from overseas where the broadcaster:

- has not added the advertisement of restricted wagering services
- does not receive any benefit from the advertisement, and
- it is not reasonably practicable for the broadcaster to remove the advertisement from the broadcast.⁵

'Pay per view channels and red-button services'

The restrictions in the Codes of Practice do not apply to 'pay per view' services or alternative subsidiary services that are accessed through an active choice by the viewer (such as "red button" services).

The exemption for these services reflects the fact these services are highly discretionary, and are actively sought out by customers. This means that a conscious decision has been made by an adult to purchase and consume these services, thereby minimising the likelihood of inadvertent exposure to betting advertising.

Should it proceed, ASTRA submits that the Bill should be further amended to ensure that section 61GO does not apply to pay per view channels

Accidental and incidental references

The restrictions in the Bill are framed expansively and would capture content which is not traditionally classed as advertising. Accidental and incidental references to betting or betting services should not attract liability.

The industry Codes of Practice recognise that commentators may from time to time, in a live environment, make accidental reference to gambling on the event on which they are commenting. Given this is not planned and no benefit is received for the 'promotions', we submit they should be exempt from any new restrictions. We note an exception from criminal liability for 'accidental' publication is provided in the Act⁶ and submit this approach should be mirrored.

The exception in the Codes of Practice for 'incidental references' reflects the fact that from time to time there may be references to gambling services on team uniforms or signage at the ground. It is not within the broadcasters' control to restrict these references and they should not be made liable for their appearance.

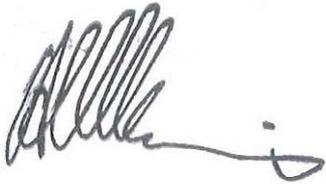
⁵ See drafting in clause 14 of Appendix A of the Subscription Broadcast Television Codes of Practice

⁶ Refer to section 61ED

ASTRA submits that it would be appropriate to provide a similar exception in the Bill.

Thank you for the opportunity to comment on the Bill. If you have any queries in relation to the above, please contact Holly Brimble, Policy and Regulatory Manager (holly.brimble@astra.org.au or 02 9776 2688).

Yours sincerely

A handwritten signature in black ink, appearing to read 'Andrew Maiden', with a stylized flourish at the end.

Andrew Maiden
CEO

APPENDIX A: BETTING ADVERTISING IN A LIVE SPORTING EVENT

- (1) During a Live Sporting Event, a Licensee must not broadcast:
 - (a) a Promotion of Betting Odds during Play, during Scheduled Breaks in Play, or during Unscheduled Breaks in Play; or
 - (b) Betting Advertising during Play.
- (2) A Licensee must not broadcast a Promotion of Betting Odds by a Commentator of a Live Sporting Event:
 - (a) within 30 minutes before the commencement of Play; and
 - (b) within 30 minutes after the conclusion of Play.
- (3) Without limiting clause 4, Clause 2 does not prevent the Promotion of Betting Odds other than by a Commentator (including spot commercials and paid, clearly identified sponsorship segments presented by person(s) other than Commentator(s)) before Play has commenced or after Play has concluded.
- (4) Clauses 1(a) and 2 do not prevent the Promotion of Betting Odds other than by a Commentator (including spot commercials and paid, clearly identified sponsorship segments presented by person(s) other than Commentator(s)) during a Long Form Live Sporting Event:
 - (a) before Play has commenced; and
 - (b) during Play, as part of a distinct break of at least 90 seconds and in accordance with the rules set out below for each Long Form Live Sporting Event:

Tennis	Not more than once per Session. To be placed between matches where the broadcast moves from one match to another.
Golf	Not more than once on each day of competition.
Formula 1, Moto GP and V8 Supercars	Not more than once on each day of competition. To be placed no later than the end of the warm-up lap for V8 Supercars Championship Series Race, or the relevant feature race.
Cricket	Not more than once on each day of competition. To be placed between Sessions.
Olympic and Commonwealth Games	Not more than once every 3 hours on each day of competition.

provided that the Promotion of Betting Odds is not for a race, match or game that has already commenced; and

- (c) after Play has concluded.
- (5) For a Long Form Live Sporting Event (other than tennis) which lasts for more than 1 day, Play commences 5 minutes before the broadcast coverage of the run of play or active progress of competition for that day commences, and concludes 5 minutes after the broadcast coverage of the run of play or active progress of competition for that day concludes. Play does not include periods of analysis, re-play footage or discussion that occur before and after the coverage of the run of play or active progress of the event for each day.
- (6) Clause 1(b) does not prevent the broadcast of Betting Advertisements:
 - (a) before Play has commenced;
 - (b) during Scheduled Breaks in Play;

- (c) during Unscheduled Breaks in Play; and
 - (d) after Play has concluded.
- (7) Clause 6 applies to each sporting event or game in a tournament for a single sport (such as the Rugby World Cup) or a Long Form Sporting Event (such as the Australian Open Tennis) as if each sporting event or game was broadcast on an individual match basis.
- (8) During a Live Sporting Event, representatives of gambling or betting organisations must be clearly identifiable as such and must not appear as part, or as a guest, of the commentary team at any time.
- (9) During a Live Sporting Event, representatives of gambling or betting organisations:
- (a) undertaking a Promotion of Betting Odds; or
 - (b) appearing in a Betting Advertisement,
- must not be at or around, or appear to be at or around, the sports venue where the event which is the subject of the Live Sporting Event is taking place.
- (10) Promotions of Betting Odds and Betting Advertisements during a Live Sporting Event must be:
- (a) socially responsible; and
 - (b) accompanied by a responsible gambling message.
- (11) Promotions of Betting Odds and Betting Advertisements during a Live Sporting Event must not:
- (a) mislead or deceive the audience;
 - (b) be directed at children;
 - (c) portray children as participating in betting or gambling;
 - (d) portray betting or gambling as a family activity;
 - (e) make exaggerated claims;
 - (f) promote betting or gambling as a way to success or achievement; or
 - (g) associate betting or gambling with alcohol.
- (12) This Appendix does not apply to a Live Sporting Event of horse racing, harness racing or greyhound racing.
- (13) This Appendix does not apply to a service that is delivered by a Licensee:
- (a) on a pay-per-view basis; or
 - (b) as an alternative subsidiary service associated with a Live Sporting Event that is accessed through an active choice by the viewer (for example, by using a button on a remote control to select data relating to Betting Odds on a particular event).
- (14) It will not be a breach of this Appendix if:
- (a) a failure to comply arises from a Live Sporting Event originating from outside Australia; and
 - (b) the Licensee has not added the Promotion of Betting Odds or Betting Advertisement; and
 - (c) the Licensee does not receive any direct or indirect benefit for the Promotion of Betting Odds or the broadcast of the Betting Advertisement in addition to any direct or indirect benefit received from broadcasting the event; and

- (d) it is not reasonably practicable for the Licensee to remove the Promotion of Betting Odds or Betting Advertisement.

(15) In this Appendix:

“Accidental” means an unscripted and unplanned reference (including remarks by a Commentator) for which the Licensee does not receive any direct or indirect benefit (whether financial or not, and in addition to any direct or indirect benefit that the Licensee receives for broadcasting the Live Sporting Event).

“Betting Advertisement” means, an advertisement by, or a distinct promotional reference for, a gambling or betting organisation during a Live Sporting Event, and includes any writing, still or moving pictures, signs, symbols or other visual images or any audible message(s) (or any combination of those things) that provides generic information about the organisation’s brand, business or services. A Betting Advertisement does not include an advertisement or a reference:

- (a) relating to such things as Government lotteries, lotto, keno or contests;
- (b) relating to entertainment or dining facilities at places where betting or gambling take place, or a tourism commercial which incidentally depicts betting or gambling, provided in each case that the contents do not draw attention to betting or gambling in a manner calculated to directly promote their use; or
- (c) that is Accidental; or
- (d) that is an Incidental Accompaniment.

“Betting Odds” means comparative, generally monetary, odds offered in respect of a game or event for a bet on the chance of any occurrence or outcome within that particular game or event, or the overall outcome of the game or event. For the avoidance of doubt, **Betting Odds** includes comparative odds for horse, harness and greyhound racing.

“Commentator” means a person who is a host, guest or otherwise participating in a Live Sporting Event and includes a person calling, or providing analysis on the sporting event or game, but does not include discrete or distinguishable contributors, including clearly identified representatives of gambling or betting organisations.

“Incidental Accompaniment” means a reference or other material which occurs or is included in the normal course of broadcasting a Live Sporting Event for which the Licensee does not receive any direct or indirect benefit (whether financial or not, and in addition to any direct or indirect benefit that the Licensee receives for broadcasting the Live Sporting Event) and includes:

- the name of a sporting venue;
- a player’s or official’s uniform; or
- advertising or signage at the venue of the event which is the subject of the Live Sporting Event, for example, on a field barrier, big screen or scoreboard.

“Live Sporting Event” means a live-to-air broadcast of a sports event. A Live Sporting Event does not include broadcasts of programs that contain only analysis, award presentations or information.

“Long Form Live Sporting Events” include:

- sporting events of extended duration, such as golf, cricket (excluding 20/20 cricket) and motor sports events;
- tournaments for single sports that involve concurrent games or matches, such as tennis championships; and
- multi-sport events, such as the Olympic and Commonwealth Games.

“Play” means the period of the actual run of play or active progress of the sporting event or game which is the subject of the Live Sporting Event. It commences at the time the players enter the area of play directly before the start of the event or game and concludes at the time the players leave the area of play following the end of the event or game. It includes *ad hoc* unscheduled breaks such as:

- stoppages for injuries;
- stoppages for adjudication by third or TV umpires/referees; and
- time outs and substitutions in games such as basketball.

For the avoidance of doubt, **Play** does not include:

- periods of training or warm-up in the area of play before a sporting event or game where players or participants subsequently return to the dressing rooms or sheds before formally re-entering the area of play;
- in relation to tennis, any period prior to the first coin toss for a Session or any period commencing 5 minutes after the broadcast coverage of the run of play or active progress for each Session concludes.

“Promotion of Betting Odds” means a distinct promotional reference that provides Betting Odds and includes any writing, still or moving pictures, signs, symbols or other visual images, or any audible message(s) (or any combination of those things). A Promotion of Betting Odds includes superimposed text and graphics such as banner advertisements and sponsorship logos but does not include a reference or material that is:

- Accidental; or
- An Incidental Accompaniment.

“Scheduled Break in Play” means stoppages in a sporting event or game that is the subject of a Live Sporting Event. A Scheduled Break in Play will differ depending on the sporting event or game that is the subject of the broadcast, for example:

Sport	Scheduled Break
Test Cricket	<ul style="list-style-type: none"> • Between each Session (ie., lunch break and tea break) • Drinks break • Change of innings
One Day International Cricket	<ul style="list-style-type: none"> • Between each Session / Change of innings • Drinks break
T20 Cricket	<ul style="list-style-type: none"> • Between each Session / Change of innings
Rugby League	<ul style="list-style-type: none"> • Half-time • Between full time and commencement of golden point
Rugby Union	<ul style="list-style-type: none"> • Half-time
Football (Soccer)	<ul style="list-style-type: none"> • Half-time • Between full time and extra time
AFL	<ul style="list-style-type: none"> • Quarter time • Half-time • Three-quarter time
Tennis	<ul style="list-style-type: none"> • Between each set • A distinct break of at least 90 seconds (including when during a Session the broadcast switches from one match still in Play to another match in Play at the same time), such break to occur not more than once every hour
Basketball	<ul style="list-style-type: none"> • Quarter time • Half-time • Three-quarter time • Between full time and overtime
Netball	<ul style="list-style-type: none"> • Quarter time • Half-time • Three-quarter time
Golf / V8 Supercars endurance races / Swimming Championships	<ul style="list-style-type: none"> • A distinct break of at least 90 seconds, such break to occur not more than once every hour

Sport	Scheduled Break
Formula 1 / MotoGP / V8 Supercars non-endurance races	<ul style="list-style-type: none"> • Between each practice round, qualifying round and race
Olympic Games & Commonwealth Games	<ul style="list-style-type: none"> • Between each day, twilight and night session • A distinct break of at least 90 seconds (including when during a session the broadcast switches from one event still in Play to another event in Play at the same time), such break to occur not more than every 2 hours

This is not an exhaustive list and other sporting events or games may also contain a Scheduled Break in Play, as determined by the rules and regulations of that sport.

“Session” means:

- in relation to tennis, the day, twilight, or evening session of matches as scheduled by the organisers of the relevant tournament or competition; and
- in relation to test cricket, any of the three distinct sessions of a match that are divided by lunch and the tea break; and
- in relation to one-day cricket, an innings.

“Unscheduled Break in Play” means the period when Play is suspended or delayed due to rain or other unforeseen event, the participants have left or are yet to enter the area of play and the broadcast of replacement or stand-by programs has not commenced.