



**Submission by
Free TV Australia**

Senate Standing Committee on
Environment and Communications

*Interactive Gambling Amendment (Sports
Betting Reform) Bill 2015*

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EXECUTIVE SUMMARY

- Commercial television broadcasters have extensive restrictions in place to ensure community standards are met and that the advertising and promotion of betting services is undertaken responsibly. Restrictions on the placement of gambling and betting advertisements in the Commercial Television Industry Code of Practice (Code) have recently been expanded as part of the 2015 review of the Code. In registering the Code, the ACMA was satisfied that these rules provide appropriate community safeguards.
- Advertisements relating to betting and gambling are not permitted to be shown during programs classified G at the following times:
 - 6am and 8.30am; and
 - 4pm and 7pm.
- Further, under the new code, advertisements relating to betting and gambling are not permitted during any program that is broadcast between 5.00 am and 8.30 pm and principally directed to children.
- Strong protections in relation to the broadcast of gambling advertisements during sporting events (introduced in 2013) have also been retained. These changes were the result of extensive public consultation and imposed far-reaching new restrictions on gambling advertising.
- Commercial free-to-air broadcasters are the only media platform with such comprehensive restrictions on gambling and betting advertisements. Complaints about these rules are low, and broadcasters have demonstrated very high levels of compliance over a sustained period.
- Allowances need to be made in any regulatory regime for accidental/incidental material, and horse, harness and greyhound racing.
- Media consumption and usage patterns have evolved rapidly in recent times, particularly among young people. Content can now be accessed over a range of platforms and devices which are not subject to the kinds of regulations and restrictions that apply to Free TV broadcasters. Placing restrictions only on one platform will lead to regulatory by-pass, at the expense of responsible Australian businesses.
- Audiences for sporting events are overwhelmingly made up of adults. Child audiences for sport are traditionally low, and remain so as the media landscape continues to fragment and shift. Where children are viewing sporting events, the vast majority are co-viewing with adults.
- Free TV does not support the Bill. The current restrictions provide appropriate community safeguards.

Introduction

Free TV Australia (Free TV) represents Australia's commercial free-to-air television broadcasters. At no cost to the public, our members provide fifteen distinct channels of content in each market across a broad range of genres, as well as rich online and mobile offerings. The value of commercial free-to-air television to the Australian public remains high. On any given day, free-to-air television is watched by more than 13.6 million Australians.

Free TV Australia welcomes the opportunity to respond to the Senate Standing Committee on Environment and Communications' Inquiry into the *Interactive Gambling Amendment (Sports Betting Reform) Bill 2015* (Bill).

Free TV members are cognisant of the significant social issue of problem gambling. Commercial television broadcasters have extensive protections in place to ensure community standards are met and any advertising and promotion of betting services is undertaken responsibly.

The Commercial Television Industry Code of Practice (Code) contains strict requirements on gambling advertising, which were recently expanded as part of the 2015 Code review. The independent media regulator, the Australian Communications and Media Authority (ACMA) were satisfied that the provisions in the Code provided appropriate community safeguards, in line with the requirements of the *Broadcasting Services Act 1992* (BSA).

There are very low levels of complaint associated with these rules, and compliance is very high – no broadcaster has been found in breach since their inception.

It is important that any gambling advertising restrictions apply equally across all media platforms. Otherwise 'regulatory bypass' will occur, and the relevant advertisements will simply move to those platforms which are not subject to any regulation.

Free TV does not support the parts of the Bill that place restrictions on commercial free-to-air broadcasters for two key reasons:

- The Code already contains extensive (and in some cases, more targeted) restrictions to limit the exposure of young people to advertisements for gambling. Free-to-air television already have the strongest regulations of any media platform in Australia, including in relation to restrictions on gambling advertisements. Broadcasters already face significant regulatory consequences if they are found in breach of the Code. Further restrictions and penalties are unnecessary.
- The wording of clause 61GO of the Bill, and in particular the definition of *restricted wagering service advertisement* will make it untenable for broadcasters to show sporting events where there is any gambling reference at the ground, including signage, uniforms, hoardings, or even the name of the location of the sporting event (for example, *Sportingbet Stadium Penrith*).

Current restrictions on gambling advertising on Free TV

1. Current rules

Commercial television broadcasters are required to comply with the Code, which is developed by Free TV in consultation with the ACMA.

Broadcasters also comply with various State and Territory restrictions in relation to gambling advertising.

Code Review

The Free TV Code was reviewed in 2015. In accordance with the process set out in the *Broadcasting Services Act 1992* (BSA), Free TV developed the Code and conducted an extensive public consultation process over 8 weeks. Just 3% of submissions to the Code review process called for more extensive restrictions on gambling advertising on television.

A revised version of the Code and all submissions were then provided to the Australian Communications and Media Authority (ACMA). The ACMA registered the Code in November 2015, being satisfied that the revised Code provided appropriate community safeguards for the matters that it covered, and that the public had been given an opportunity to comment on the Code.

The recent Code review resulted in increased, targeted safeguards for gambling advertising on commercial free-to-air television. The ACMA registered the Code on the basis that it contained appropriate community safeguards. The new Code commenced operation on 1 December 2015.

On this basis, there are no grounds for placing further restrictions on gambling advertising on commercial free-to-air television, as proposed in the Bill.

Safeguards in the Code – General programming

The safeguards relating to gambling advertising during general programming in the newly registered Code are more extensive and targeted than under the previous Code. The rules apply equally to the primary channel and to each multi-channel service provided by a broadcaster.

Under clause 6.5.1 of the Code, a commercial relating to betting or gambling cannot be broadcast:

- On any day, in any program classified G¹ or lower between:
 - 6.00 am and 8.30 am; and
 - 4.00 pm and 7.00 pm; and
- during any program that is broadcast between 5.00 am and 8.30 pm and principally directed at children.

¹ Excludes news, current affairs and sports programs, which are not classified. However, the Code contains separate rules for gambling advertising during a live sporting event, which are detailed below.

These restrictions have been specifically tailored to ensure that gambling and betting advertisements are not placed in programs that are likely to have a substantial child audience.

The rules in the Code are more targeted than the rules proposed at clause 61GO of the Bill.

There are many programs classified G broadcast at different times of day which are for adults and do not have any appeal to children.

For example, clause 61GO of the Bill would prohibit gambling advertising from appearing in *House Hunters*, a property program airing at 11.30 pm on 9Life, but would permit it a children's program that is classified PG airing at 4 pm. This outcome does not achieve the stated aim of the clause:

...to minimise the exposure of children to sports betting advertising.²

Conversely, the provisions of the Code are focused on prohibiting these advertisements in G programs at specific times, and programs between 5.00 am and 8.30 pm that are principally directed to children, regardless of the classification.

The rules in the Code are therefore more fit for purpose in limiting the exposure of children to gambling advertising than a blanket ban on gambling advertisements in all G programs.

Safeguards in the Code – Live sporting events

Appendix 3 to the Code sets out a range of strong safeguards, including a complete prohibition of any references to Odds (for any game or event, whether live or not) during the broadcast of a live sporting event.

In summary, the Code:

- Prohibits any promotion of odds when a game is in play – both for the game in play and for any other sporting event (including horse, harness or greyhound racing);
- Prohibits the promotion of odds by commentators and their guests at all times when the game is in play and for 30 minutes before and after play;
- Prohibits gambling representatives from appearing as a commentator, as well as prohibiting live crosses at the venue, ground or field of play;
- Significantly limits the number of odds promotions allowed for long-form sporting events like the Olympics;
- Limits generic gambling advertisements during live sports broadcasts to scheduled breaks in play (such as half time), or unscheduled breaks when players are not on the field. Such advertisements are not allowed to include the promotion of odds.

In addition, Appendix 3 of the Code incorporates a number of harm minimisation measures which apply to any permissible advertisements during

² Explanatory Memorandum to the *Interactive Gambling Amendment (Sports Betting Reform) Bill 2015* at page 8

a live sporting event. Any bettering or gambling commercial broadcast during a live sporting event (whether or not it contains odds) must not:

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

Any permitted promotions must also be socially responsible, not mislead or deceive the audience, and must be accompanied by a responsible gambling/mandatory warning message, either in a generic form, or in line with State laws or industry Codes if applicable.

2. Compliance levels

Evidence indicates that the Code is operating effectively and in line with community standards and expectations.

Of the total Code complaints received since 2012 to the end of 2015, just 4.78% related to gambling advertisements (percentage includes complaints about general programming and live sport).³

Compliance levels are very high. The ACMA has not found any broadcaster to be in breach of these Code provisions.

As stated earlier, just 3% of submissions to the Code review process in 2015 called for additional restrictions on gambling advertising.

Free TV does not support proposed Division 3 of the Bill. The current restrictions on gambling advertising on commercial free-to-air television provide strong, targeted and appropriate community safeguards.

Content of sports broadcasts

1. Incidental and/or accidental material

For sporting events occurring in Australia, there are often references to gambling or wagering companies at the games – through sponsorship or signage at the grounds, on players' or referee's uniforms, or even sponsorship of the grounds.

Broadcasters also receive broadcasts of overseas sporting events which feature prominent signage and other advertisements for gambling services.

The wording of clause 61GO of the Bill, and in particular the definition of *restricted wagering service advertisement* will make it difficult for broadcasters to

³ Source: Free TV Code Complaints database

show sporting events where there is any gambling reference at the ground. It is not feasible to blur or pixelate these images during a live sporting event, especially in relation to signage as the camera follows the ball during play. This will lead to uncertainty for free-to-air television broadcasters as to whether broadcasts of these sporting events risks placing the broadcaster in breach.

It is therefore important that any proposal for restrictions of gambling and betting advertisements accommodate the accidental or incidental broadcast of potentially contravening material where the broadcaster does not receive any direct or indirect benefit (in addition to any direct or indirect benefit received for broadcasting the event itself).

Free TV does not support its inclusion in the Bill in any event, however if clause 61GO is retained, it must be amended to accommodate these issues.

This is in line with the provisions of the Code, and the *Interactive Gambling Act 2001* (IGA), in relation to interactive gambling services.

2. Application to horse, harness and greyhound racing

Proposed clause 61GO of the Bill also prohibits the promotion of gambling on horse, harness or greyhound racing, as services offering gambling on these events are included in the definition of *restricted wagering service*. Under the Code, promotion of odds for these events is already prohibited during the broadcast of other live sporting events.

Apart from this restriction however, the existing framework (including the IGA) otherwise recognises the intrinsic relationship between wagering and certain types of sport, like horse racing, dog racing and harness racing, and makes certain allowances for that interdependency. This recognition should continue. These sports were developed in order for people to gamble on them which is why they have always been treated differently from other sports on which betting is permitted. There is higher community tolerance for betting on these sports and they are viewed by a very distinct audience.

Although it is not clear, clause 61GO also appears to prohibit gambling advertisements during horse, harness and greyhound racing broadcasts. This is because there is no definition of “sporting event”. While “sporting event” is distinguished from horse, harness and greyhound racing elsewhere in the IGA and the Bill, the lack of a definition for “sporting event” and any distinguishing language in the proposed section means that the position is uncertain for broadcasters. An outcome that banned gambling advertising during horse, harness and greyhound racing broadcasts would be strongly opposed by Free TV members.

Audiences for sporting events

Audiences for sporting events broadcast on commercial free-to-air television are overwhelmingly made up of adults.

Child audiences for sport are traditionally low, and remain so as the media landscape continues to fragment and shift. Ratings data shows that each of the top 50 sporting programs broadcast in 2015 was viewed by less than 10% of children aged 0-17, and children 0-17 made up less than 15% of the total audience for the top sporting events of 2015.⁴ Of those children who were watching, the majority were co-viewing with an adult – at least 75% across all age groups.

The numbers of children watching the major sporting codes across the season have also declined across the board in 2015.⁵ Less than 1.5% of all kids watched AFL, League or Cricket on the weekends in 2015.⁶

Changing viewing habits

The media market today is rapidly evolving. The diversity of services and platforms available now was not envisaged when licence fees were originally set for analogue, single channel free-to-air television services. The media landscape has evolved substantially since that time. Urgent action is required to remove broadcasting licence fees to reflect these market changes.

Free TV members are delivering more services to Australians using less spectrum, as well as innovating and investing in new technology and content delivery mechanisms. Commercial free-to-air broadcasters continue to be the largest investors in the screen production industry in Australia. Commercial free-to-air broadcasters spent more than \$1.5 billion on Australian content in 2013-14 – delivering high quality local sports, drama, documentaries, children's programs, and news and current affairs to Australians at no charge. In addition to their investment in Australian content, broadcasters comply with a range of other costly regulatory obligations which do not apply to competitors.

At the same time, new entrants are flooding into the market driven by new technology, business models and consumer behaviour. Competitors – especially new entrants such as streaming services – are not subject to the same level of regulation, and in many cases do not even pay their fair share of taxes in Australia.

Young people are driving the use of these emerging technologies in the new media environment. The latest Nielsen multi-screen report shows that over a month, teens aged 13-17 spent almost half of their screen time watching video on the internet, a smart phone or tablet.⁷

⁴ Source: OzTAM, 5 capital cities, 01 January - 31 December 2015, based on programs coded as Sport, kids aged 0-17, Free TV channels.

⁵ Source: OzTAM, 5 capital cities, 01 January - 31 December 2015 v 2014, by week and weekend, based on programs coded as Australian Rules Football, Cricket and Rugby League, kids aged 5-12, 13-17, and 0-17, Free TV channels, average audience percentage increase and decrease.

⁶ Source: OzTAM, 5 capital cities, weekends from 01 January - 31 December 2015, kids aged 0-17, Free TV channels.

⁷ OzTam, Regional TAM & Nielsen, *Australian Multi-screen Report, Quarter 3, 2015*, pp 13

Recent research by the ACMA confirmed that children overall are watching less commercial free-to-air television:

Overall, between 2001 and 2013 there has been a nine per cent decline in the average daily number of children watching television in metropolitan cities. Notably, there has also been a decline in child viewers—from 13 per cent to 11 per cent of the potential child audience. Commercial television licensees experienced the biggest drop in the potential child audience—from 8.5 per cent in 2001 to 4.5 per cent in 2013.⁸

Placing restrictions only on one platform will lead to regulatory by-pass, at the expense of responsible Australian businesses.

In this context, there is limited utility in placing further restrictions on commercial free-to-air broadcasters, who already have the strongest regulations of any media platform in Australia.

⁸ Australian Communications and Media Authority *Children's Television Viewing – Research Overview*, March 2015, pp 5