

# In-play gambling advertising

## Information sheet

### Restrictions on gambling advertising during sporting fixtures in NSW

The Racing Administration Amendment Regulation 2015 creates a new offence relating to gambling advertising during sporting fixtures. This new offence is contained within clause 12A of the Betting and Racing Regulation 2012.<sup>1</sup>

This offence commences on 1 March 2016. It prohibits any person from publishing gambling advertising during a sporting fixture (e.g. a single match, game, contest or fight) where:

- a) the advertising relates to that fixture, and
- b) there is a sports controlling body prescribed in NSW for the relevant sporting event.

Once a sports controlling body is prescribed in NSW, the name of that sports controlling body and details as to the scope of the prescription will be published on the Liquor & Gaming NSW website at [www.liquorandgaming.justice.nsw.gov.au](http://www.liquorandgaming.justice.nsw.gov.au).

### In what circumstances is advertising captured by the offence?

To be captured by the offence, the advertisement must relate to the particular sporting fixture that is

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<sup>1</sup> Changes to the Racing Administration Amendment Regulation 2015 amended the name of the Racing Administration Regulation 2012 to the Betting and Racing Regulation 2012

in progress. Unless otherwise stated, all references to advertisements in this information sheet refer to gambling advertising as defined in the Betting and Racing Regulation 2012 and section 80 of the *Totalizator Act 1997*. In the Regulation, gambling advertising means “advertising that gives publicity to, or otherwise promotes or is intended to promote, participation in gambling activities, but does not include totalizator advertising within the meaning of section 80 of the *Totalizator Act 1997*”.

Gambling advertising as defined in the *Totalizator Act 1997* means “advertising that is directly related to the conduct of a totalizator”.

The offence prohibits the publication of gambling advertising from the start to the finish of the sporting fixture in question, including during scheduled and unscheduled breaks. Warm-ups, presentations and entertainment that occurs pre and post-game is not considered to be part of the sporting fixture.

The offence does not apply to a sporting fixture scheduled to take place over a period exceeding 4 hours or that takes place on multiple days.

Advertisements, to the extent that they are published on the internet or in a premises which people attend specifically to gamble (e.g. a hotel, registered club, racing club or TAB retail outlet), are also exempt.

In addition, this offence does not apply to a race as defined in the *Racing Administration Amendment (Sports Betting National Operational Model) Act 2014*. This includes a greyhound race, harness race or horse race.

## Who can be prosecuted under this Regulation?

The offence applies to any person who publishes the prohibited advertising, including a wagering operator, broadcaster, commentator or any other person.

## How will the term 'publish' be defined?

Section 27 of the *Racing Administration Act 1998* defines 'publish' as: disseminate, exhibit, provide or communicate by oral, visual, written, electronic or other means, and includes cause to be published. The last part of the definition is important for wagering operators to consider.

## What specific types of advertising are captured by the offence?

The types of advertising covered by this offence include:

- Promotions or advertisements that refer to live odds on outcomes of the event that is in progress. This includes from the start to the finish of the match, including any scheduled or unscheduled breaks. Unlike the Codes of Practice developed by broadcasters and registered by the Australian Communication and Media Authority (ACMA) ('the Codes'), the offence provision does not include any additional restrictions on the promotion of odds in the 30 minute period before and after the relevant event.
- Promotions or advertisements that refer to in-play betting on the specific event that is in progress. The publication or broadcasting of advertisements for online in-play betting services is already prohibited under the *Interactive Gambling Act 2001* (Cth), subject to limited exceptions. However, the NSW offence also prohibits advertising for telephone or face to face in-play betting services if the advertisement refers to a particular event that is in progress when that advertisement is broadcast.

- Advertisements that otherwise refer to an event that is in progress. Some examples include:
  - A gambling advertisement that specifically refers to State of Origin Game 1, while State of Origin Game 1 is in progress.
  - A gambling advertisement that makes reference to a specific event, such as an advertisement that refers to the AFL or NRL Grand Final, if broadcast while that AFL or NRL Grand Final is in progress.
  - Advertisements that refer to betting on a specific contingency occurring within a game - for example, the next goal scorer in the AFL Grand Final (while that AFL Grand Final is in progress) or the next person to hit a six in a 20/20 cricket match (while that match is in progress).
  - A gambling advertisement that refers to betting in relation to a particular player from a sports team who is playing in the match in progress, provided that there is a nexus to the game being played. For example, a betting advertisement which promotes wagering on a particular player being nominated 'player of the match' published while that match is in progress. The mere appearance of a player in a commercial with no direct reference to a game in progress (e.g. as a brand ambassador for a licensed wagering operator, or in match footage) will not be considered a contravening advertisement.

## What specific types of advertising are not captured by the offence?

- Gambling advertising that does not in any way refer to a sporting fixture that is in progress (for example, generic brand advertising, or advertising that refers to a match that is scheduled to be played after the current match that is underway.)
- Sponsorship segments that simply indicate that a betting service provider has sponsored the

event in progress (e.g. inclusion of the betting service provider's logo, or a statement that the event is sponsored by a particular betting service provider; provided that there is no reference to betting on that sporting fixture).

## Is there an exemption for extended sporting fixtures?

The NSW offence will not apply in relation to any sporting fixture that is scheduled to take place over a period exceeding 4 hours, or that takes place over multiple days. The specific wording of the provision refers to an event '... scheduled to take place over a period exceeding four hours'. This means that if the event is scheduled to take place for longer than four hours (e.g. a one day cricket match) but concludes before four hours has elapsed; no breach will have been committed.

It is expected that broadcasters who are bound by the Codes will continue to comply with the restrictions relating to longer form sporting events that are contained in that Code. For the most part, long form sporting events (e.g. golf and cricket) will be scheduled to take place over a period of more than four hours, or on multiple days, and the proposed NSW offence would not apply in relation to those events.

The NSW offence does operate differently in relation to some events. In the case of tennis, for example, if Tennis Australia were to become prescribed as a sports controlling body in NSW, the NSW offence would not permit the promotion of live odds while a particular match was in progress.

Under the Codes, a long form sporting event is defined to include 'tournaments for single sports which involve concurrent games or matches, such as a tennis tournament.' The Codes permit only one live odds promotion per Session of tennis, where Session is defined as the day, twilight or evening Session of matches as scheduled by the relevant organisers of the tennis event. The promotion is required to be placed between

matches where the broadcaster moves from one match to another.

The NSW offence, however, takes a tennis tournament to be a series of individual matches and would, therefore, not permit any gambling advertisement referring to a particular match while that match was still in progress.

## How will the offence operate in relation to the Olympic and Commonwealth Games?

The focus of the new offence provision is on sporting events held regularly in Australia, which are conducted or administered by sports controlling bodies prescribed in NSW. It is intended to capture those events which facilitate frequent wagering. The two largest wagering sports in Australia are the NRL and AFL, which were estimated in 2012 to account for approximately 50 per cent of all sports wagering.<sup>2</sup>

It is not intended that the offence apply during the Olympic or Commonwealth Games, which are administered by the International Olympic Committee and Commonwealth Games Organising Committee respectively. Unlike Australian administered events which involve multiple games per week for a full season (e.g. April to September for AFL), the Olympic and Commonwealth Games are only held for a short period of approximately two to three weeks once every four years.

In addition, it is likely that for a number of the sports contested in those Games, there will not be a

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<sup>2</sup> ORC International, *Marketing of Sports Betting and Racing* (May 2015), p.31 available at <http://www.gamblingresearch.org.au/home/research/gra+research+reports/marketing+of+sports+betting+and+racing+report>

sports controlling body prescribed in NSW, such that the offence would not apply in any case.

In the interests of consistency, and given the infrequency of the Olympic and Commonwealth Games, it is considered that the restrictions in the Codes for the Olympics and Commonwealth Games are sufficient. Those restrictions permit live odds promotions no more than once every three hours on each day of the event.

The NSW Government will monitor the situation with the 2016 Olympic Games to determine whether the position described above should be reviewed.

### How will accidental or incidental breaches of the offence be treated?

OLGR's [Compliance and Enforcement Policy](#) adopts an escalated approach to enforcement action. Under the policy, OLGR's limited resources are applied where the risk of associated harm is greatest. Enforcement action is intended to be proportionate to the risk of harm associated with the relevant breach and the seriousness of the wrongdoing or misconduct.

The circumstances and facts of each matter will determine what regulatory intervention may be appropriate. When considering the escalation of a matter to possible prosecution action, OLGR will be informed by relevant mitigating factors, including isolated or inadvertent breaches of the Betting and Racing Regulation 2012.

Where there is evidence of deliberate, reckless or sustained misconduct, compliance and likely enforcement action would follow. Prosecutions against broadcasters will only be considered where egregious, systemic or repeated breaches of the Regulation have occurred.

Prosecution of isolated inadvertent breaches of the Regulation will not be commenced in relation to sporting fixtures originating outside Australia, provided that.

- The broadcaster has not added the betting advertising;
- The broadcaster does not receive any direct or indirect benefit for the gambling advertising in addition to any direct or indirect benefit received from broadcasting the sporting fixture; and
- It is not reasonably practicable for the broadcaster to remove the betting advertisement.

The issue of accidental or incidental breaches will be closely scrutinized as part of OLGR's ongoing monitoring of the operation of the new legislation.

### Why does the offence not capture online advertising?

The offence does not apply to online advertising. There are two key reasons for this.

1. The majority of concerns regarding wagering advertising relate to its increased frequency during televised sporting events, and the fact that such advertising exposes gambling products and terminology to a captive audience which includes children and young people.

A 2015 study conducted by Gambling Research Australia indicated that an estimated 39,000 minors typically watch each live sports broadcast in Australia, with around 50,000 watching a Friday night NRL game.<sup>3</sup> Media monitoring conducted over a 12 month period as part of that same study indicated that television was the most common advertising medium for those wagering providers included in the study, with the exception of one provider (which favoured print and radio advertising mediums). Consistent with this result, focus group participants indicated that they considered the medium where they were most

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<sup>3</sup> ORC International, *Marketing of Sports Betting and Racing* (May 2015), p.44

exposed to wagering advertising to be television advertising.<sup>4</sup>

Focusing on traditional media in the first instance is the most effective way of achieving the objectives of the reforms.

2. While advertising in the traditional media is the priority at this time, this does not mean that stricter controls will not be applied for online wagering advertising.

The Commonwealth review of illegal offshore wagering which considers, amongst other things, the operation and enforcement of the *Interactive Gambling Act 2001* (Cth) will inform the approach of the NSW Government to online gambling advertising. That Act regulates the advertising of interactive gambling services, which include online in-play sports betting. The NSW Government will await the recommendations of this review before considering what role NSW should play in regulating online gambling advertising into the future.

### For further information

Visit the website at

<https://www.liquorandgaming.justice.nsw.gov.au/Pages/gaming/wagering-applications.aspx>

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<sup>4</sup> Ibid., p.100-101.