



Submission by Free TV Australia

Independent Gambling Authority of South
Australia

*Draft Notices – Implementation of
recommendations from Inquiry Report
relating to live odds*

25 June 2013



EXECUTIVE SUMMARY	3
1. Introduction.....	4
2. Free TV proposed amendments to the Code.....	5
3. Areas of inconsistency	6
3.1 <i>Permissible promotions regarding odds for events scheduled over more than one day, or outcomes/contingencies.....</i>	<i>6</i>
3.2 <i>Breadth of advertising prohibition</i>	<i>7</i>
3.3 <i>Application to all broadcasts, not just sporting events</i>	<i>8</i>
3.4 <i>Application to horse, harness and greyhound racing.....</i>	<i>8</i>
3.5 <i>Olympics and Commonwealth Games.....</i>	<i>9</i>
3.6 <i>References to odds after the conclusion of an event.....</i>	<i>9</i>
4. General concerns with the IGA draft Notice.....	9
4.1 <i>Drafting does not align with stated intent</i>	<i>9</i>
4.2 <i>The IGA draft Notice goes further than the recommendations of the Inquiry Report.....</i>	<i>10</i>
4.3 <i>The IGA draft Notice goes further than is reasonably necessary</i>	<i>10</i>
4.4 <i>The IGA draft Notice is very complex</i>	<i>11</i>
5. Conclusion	11

EXECUTIVE SUMMARY

- Free TV Australia welcomes the opportunity to respond to the proposed notice to implement the decision of the Independent Gambling Authority to regulate the advertisement of “live odds” betting.
- Free TV has proposed amendments to the Commercial Television Industry Code of Practice that will ban the promotion of all odds during play, and ban any promotion of odds by sporting commentators for 30 minutes before and after a match. Gambling advertising will also be banned during play other than in clearly scheduled breaks.
- The amendments are in line with an announcement by the Prime Minister of 26 May 2013. The commercial radio and subscription television sectors are also proposing amendments to their respective Codes to implement that announcement.
- The proposed amendments to the Commercial Television Industry Code of Practice provide robust rules that will effectively implement Recommendation 1.1 of the IGA’s Final Report.
- Broadcasting is a national activity and inconsistencies between Federal and State regulations present operational difficulties. Free TV is therefore concerned to ensure that the IGA Codes and the national broadcasting rules are harmonised.
- The main areas where we would request further consideration to ensure that the SA regulations and industry Codes are harmonised are:
 - Rules relating to tournament contingencies and longer form events;
 - The definition of “odds promotion” over and above the provision of comparative price odds;
 - The times at which the prohibition applies;
 - Application to horse, harness and greyhound racing;
 - The application of the rules to events such as the Olympics and Commonwealth Games; and
 - Clarification of post-match odds promotions.
- In addition to harmonising the rules, Free TV also requests further consideration be given to the drafting of some areas of the IGA Codes to ensure certainty, particularly in relation to the times the prohibitions in the SA rules will apply and the scope of the relevant restrictions.

1. Introduction

Free TV Australia (**Free TV**) is the peak industry body representing all of Australia's commercial free to air television licensees. Free TV welcomes the opportunity to provide the Independent Gambling Authority (**IGA**) with relevant information in implementing its recommendations concerning the advertising of "live odds", and respond to the draft of the relevant gazette notice (**IGA draft Notice**).

The commercial free to air television sector is committed to ensuring that television content aligns with community standards and expectations. The Commercial Television Industry Code of Practice (2010) (**Code**) was registered by the Australian Communications and Media Authority (**ACMA**) and came into effect on 1 January 2010 following consultation with the public. The Code covers matters prescribed in section 123 of the *Broadcasting Services Act 1992* (Cth). The ACMA can investigate broadcasters' compliance with the Code, and there are a range of remedies available to the ACMA if a broadcaster is found in breach.

On 29 June 2012, the Federal Minister for Broadband, Communications and the Digital Economy announced an agreement with commercial television, commercial radio, and subscription television to regulate the advertising of live odds during sporting events.

A further announcement was made by the Prime Minister on 26 May 2013, which set strict parameters for both the promotion of odds, and the frequency of general advertisements relating to betting and gambling.

Free TV has proposed amendments to the Code (**Free TV amendments**) that will ban the promotion of live odds during the broadcast of sporting events, including by banning sporting commentators from mentioning live odds and banning all live odds promotion during play. Gambling advertisements are also limited to clearly defined breaks in play. The Free TV amendments are in line with the Prime Minister's announcement. The commercial radio and subscription television sectors are proposing amendments to their respective Codes to implement the announcement as well.

The Free TV amendments have now been submitted to the ACMA, who will be considering them at their meeting of 27 June. The ACMA will determine if the Free TV amendments provide appropriate community safeguards, and will only register the Code if they believe it does. A copy of the Free TV amendments is at Attachment A. We request that the IGA keep this Attachment confidential until the relevant ACMA processes are concluded.

2. Free TV proposed amendments to the Code

The Free TV amendments are set out at Attachment A. These changes will operate in conjunction with the existing restrictions on the placement of gambling advertisements, set out at clause 6.14 of the existing Code.

The Free TV amendments set out the following rules:

- A promotion of odds for any sporting event will be banned during a game or match, including in any breaks.
- Commentators and their guests will be banned from promoting odds as part of a broadcast of a live sporting event:
 - at any time during play (including during breaks in play);
 - during the period 30 minutes before play commences; and
 - during the period 30 minutes after play has concluded.
- Crosses to representatives of gambling organisations at the venue or field of play will be banned, and those representatives must be distinguishable from commentators at all times.
- A promotion of odds relating to a live sporting event by other persons, including discrete and distinguishable representatives of gambling organisations, is only permitted:
 - before play commences; and
 - after play has finished;but only where that promotion is an advertisement or clearly identified sponsorship segment presented by a person other than a sports commentator (or their guest).
- For long form sporting events (events of extended duration, tournaments for single sports and multi-sport events), promotion of odds is permitted before and after play and on a very limited basis as part of a distinct break of at least 90 seconds, provided that the promotion is not for a game or match that has already commenced. These limited promotions of odds in long form sporting events recognise the different nature of these types of events, and strike an appropriate balance which is in keeping with the spirit of the restrictions.
- An advertisement or sponsorship information relating to a gambling organisation will be only be permitted during scheduled breaks or suspensions in play for a live sporting event, provided that advertisement does not contain any reference to odds.
- There are also a number of restrictions to ensure that any permissible promotions are conducted in a responsible manner. Any permitted promotion for odds during a live sporting event must satisfy a number of harm minimisation measures, including:
 - be socially responsible and not mislead or deceive the audience;
 - not be directed at children or portray live odds betting as a family activity;
 - avoid exaggerated claims, association with alcohol, or association with success or achievement; and
 - be accompanied by a responsible gambling message.
- The proposed rules regarding the promotion of odds will not apply to:

- coverage of horse racing, harness racing and greyhound racing events;
- a live odds promotion as part of a broadcast of a live sporting event originating from outside Australia, where it is not reasonably practicable to remove the live odds promotion from the broadcast.

The Free TV amendments place significant restrictions on the advertising of odds and gambling during sporting events.

These restrictions are more onerous than the IGA draft Notice in many instances, including in relation to the commencement of Play, the restrictions on generic advertisements, the rules governing the appearance of gambling representatives, and the rules about commentators and their guests.

3. Areas of inconsistency

Free TV is concerned about a number of material inconsistencies between the Free TV amendments and the IGA draft Notice. These relate to areas where the IGA Codes go further than the Free TV amendments, or create additional obligations.

As we have noted, the ACMA is yet to review the proposed amendments to the broadcasting Codes and the final form of these amendments may change.

While we appreciate that the IGA draft Notice will apply to gambling providers and not broadcasters, harmonisation and consistency between the two sets of rules is nevertheless desirable.

Regulatory consistency is very important to enable commercial free-to-air television broadcasters to function efficiently in an increasingly challenging media environment. Broadcasting is essentially a national activity and accommodating differences in State based regulatory systems presents significant operational challenges. To the extent that there are differences, South Australian free-to-air broadcasters will have to carry a significant additional regulatory burden. The Free TV amendments (and amendments to the other broadcasting Codes) will bind all broadcasters across Australia, creating a level playing field for all states and events.

Any inconsistency will create a uniquely restricted advertising market in South Australia that may discourage interstate wagering services from becoming authorised in South Australia, and disadvantage events held in South Australia. It may also prevent major sporting events taking place overseas that are broadcast in other Australian states from being shown in South Australia.

There are a number of material differences between the proposed Free TV amendments and the IGA draft Notice, which are detailed below. Free TV has proposed a solution in each instance to ensure that the two sets of rules are aligned.

3.1 Permissible promotions regarding odds for events scheduled over more than one day, or outcomes/contingencies relating to tournaments

The IGA draft Notice will prohibit promotion of odds for outcomes and contingencies on some long form events, or the outcome of overall tournaments, for a significant period before the relevant match or final tournament round commences.

In some cases, this may result in an advertising prohibition lasting a number of days, or at significant times. In relation to the example provided, the odds on whether a player will make the quarter finals should not be prohibited for the whole day of the semi-final match. They should only be prohibited once the relevant semi-final match is actually in play.



Prohibiting the promotion for odds for a match or contingency that is not commencing for a number of hours is effectively a general prohibition on odds, rather than a restriction on “in the run” betting promotions. Such an approach goes beyond the stated scope of the IGA’s approach.

The Free TV Code amendments provide restrictions for tournaments that reflect the unique nature of each individual sport. For example, promotion of odds in golf tournaments are permitted before play has commenced and not more than once on each day of the competition. Importantly, promotions for odds are still not permitted for a match, game or event that has already started. This is in keeping with the Prime Minister’s announcement, and the spirit of the South Australian proposals. It also permits wagering operators to support the cost of televising major sporting events in a responsible manner.

Free TV requests that:

- clause 1(4)(a) be clarified to stipulate that it only applies after the start of the event;
- clause 1(4)(b) and (c) be amended to reflect that the prohibition on odds promotions or contingencies will only apply once play for the relevant match or game has commenced, or play for that particular day of competition has commenced.

3.2 Breadth of advertising prohibition

The scope of the advertising prohibition in the IGA draft Notice is very broad. It goes beyond the provision of comparative odds to prohibit any encouragement to bet. The Free TV amendments relate to the provision of comparative odds only.

Free TV is very concerned at this broad definition, which goes beyond the recommendations of the IGA’s *2011-2013 Codes of Practice Review Inquiry Report (Inquiry Report)*. Recommendation 1.1 of Inquiry Report stated:

*All codes will be amended to prohibit the advertising in print, on broadcast radio or television, or on outdoor signs (including ground signage) **the odds or price of participation** in a contingency in respect of an event at any time after the commencement of the event.*

[Emphasis added]

The Inquiry Report also provided the following comments regarding “live odds” advertising:

- there is no need for the widespread publication (pushing) of the prices of outcomes on events which have commenced; and
- there is a need for people wishing to place bets to be informed about the state of the markets in which those bets are placed.

The IGA draft Notice restricts gambling advertising that encourages betting on a form of gambling. “Encourages betting on a form of gambling” in Clause 1(2) is widely drafted to not only ban quoting of prices but also advertisements that:

...

- (b) draw any attention to the time period which the gambling is available;
- (c) the way in which the consumer can gamble; or
- (d) “it otherwise encourages the betting”.

In our submission (b), (c) and (d) go beyond the recommendations of the Inquiry Report. An advertisement does not have to contain any specific reference to odds to fall within the prohibition. The wording of these prohibitions is so broad that it will create significant uncertainty about the permissible content of advertisements.

The additional restrictions will raise difficult questions regarding the application of the law. On one view, the additional restrictions are so wide that they prohibit any reference to betting service providers, previous bets and/or the chance of a house winning. It will also, in effect, create restrictions on the content of generic branding advertisements where there is no reference to odds, but where there may be a general call to action regarding accessing a website or telephone service.

An alternative view is that, (b) does not apply unless an advertisement mentions that a bet must be placed before a race commences, (c) can only apply if “in person”, the telephone or the internet are mentioned and (d) can only apply if there is an express invitation to bet.

In our view, the IGA draft Notice introduces an unacceptable level of uncertainty about the information that can be provided in advertisements in South Australia and what cannot.

Free TV submits that Clause 1(2) should be restricted to the application of the provision of price only and (b), (c) and (d) of the relevant clause should be removed from the IGA draft Notice. This will align with the Free TV amendments and the Codes to be implemented by the other sectors of the broadcasting industry.

In the alternative, given that the IGA draft Notice is only intended to prohibit advertisements for odds for in the run betting, the provisions should be revised to more specifically and precisely define the scope of the restrictions.

3.3 Application to all broadcasts, not just sporting events

The proposed Free TV amendments relate to broadcasts of live sporting events, which is defined broadly to include delays against the gate and time-zone delays. There are already existing restrictions in the Code to prohibit advertisements relating to betting and gambling (including odds) at times when children are likely to be watching.

In contrast, the IGA draft Notice will prohibit the promotion of odds in any broadcast once a match or event has commenced, even if the promotion is contained in a general entertainment program on another channel to the relevant sports broadcast, or the event or match is not being broadcast at all.

This goes beyond the statement made by the South Australian Premier on 20 May 2013, which was to prohibit the promotion of odds “in sporting broadcasts”. The Inquiry Report also focused on the need to limit the promotion of odds in relation to sports broadcasts.

Such an approach is likely to lead to confusion and uncertainty for broadcasters and advertisers in relation to placement and timing of advertisements.

Free TV requests that the IGA draft Notice be amended to limit the application of the prohibition to live sporting events, which should be defined in line with the Free TV amendments. This will provide harmonisation while still targeting the identified areas of concern.

3.4 Application to horse, harness and greyhound racing

The Free TV amendments state that the rules do not apply to broadcasts of horse, harness and greyhound racing events. The IGA draft Notice does not contain a similar exclusion.



We recognise that the stated intention of the IGA draft Notice is only to prohibit “in the run” odds promotions, which are not applicable to these events.

However, we have concerns that the drafting of the IGA draft Notice is unclear on this point, as detailed in Section 4 of this submission.

For the avoidance of doubt, Free TV requests that a specific exclusion be provided for broadcasts of horse, harness and greyhound racing.

3.5 Olympics and Commonwealth Games

The IGA draft Notice does not make provision for extended long form events such as the Olympics and the Commonwealth Games.

The Free TV amendments allow the promotion of odds in these events on a very limited basis (once every 3 hours), provided that the promotion is not for a game, match or event that has already started.

The restrictions proposed by Free TV are consistent with the principles that underpin the South Australian proposals – that is, to prevent the promotion of odds once an event is underway.

Without specific reference, the application of the South Australian rules to these events is uncertain.

Free TV therefore requests that the IGA draft Notice be amended to specifically include reference to events such as the Olympics and Commonwealth Games in the same terms as the Free TV amendments.

3.6 References to odds after the conclusion of an event

The IGA draft Notice does not provide any clear guidance on post-event odds and whether they will be prohibited by the amendments. Because it is not possible to bet on an event once it has finished, such promotions would seem to be permitted, however this is not clear from the drafting. For example, publication of odds relating to the outcome of previous betting could be regarded as “otherwise encourage[ing] the betting” in breach of 2(d) of the IGA draft Notice.

For the avoidance of doubt, Free TV suggests the insertion of a clause to specify that post- event odds promotions are permitted.

4. General concerns with the IGA draft Notice

In addition to the specific areas of difference, Free TV has a number of general concerns with the IGA draft Notice.

4.1 Drafting does not align with stated intent

Free TV understands that the IGA draft Notice is intended to prohibit the promotion of odds for a particular event after it has commenced, with the exception of some advertisements concerning contingencies or outcomes of a tournament.

This understanding is based on:

- Discussions at the meeting on 19 June 2013;
- The Notes on Clauses provided with the draft Notice, which states that “The effect of the clause is to prohibit advertising of the odds or price of participation in contingency in respect of an event **at any time after the commencement of the event ...**” [emphasis added];
- Recommendations 1.1 and 1.2 of the Inquiry Report; and

- The announcement by the Premier¹.

However, clause 1(4) of the IGA draft Notice clearly bans all advertising for events completed in a single day for “- the day of the event”.

It appears to have been the intention of the drafter that the ban would only start when the event commenced, perhaps because the “forms of gambling to which this schedule applies” defined in clause 1(3) only arise “after commencement of the event”. However, the ban is on “gambling advertising” as defined in clause 1(2), not the form of gambling itself. Accordingly, the ban that would be imposed will operate for the day of the event.

We note that the “Example” given at clause 4(a) appears to be consistent with our understanding of the IGA’s intent and the “Notes on Clauses”, but the examples given for 4(b) and 4(c) of the IGA draft Notice are inconsistent.

Free TV would be very concerned if such a prohibition was to operate for the whole day of an event, with the effect that, for example, references to odds for events such as the Melbourne or Adelaide Cup could not be promoted on the day of the event.

It is recommended that the drafting be clarified to ensure that the intention is clearly reflected.

We also note that the Premier’s statement indicates that the intent is to prohibit the promotion of live odds “during sports broadcasting”. This limitation is not reflected in the IGA draft Notice, and is discussed further at section 3.3 of this submission.

4.2 The IGA draft Notice goes further than the recommendations of the Inquiry Report

As noted above at section 3.1, the IGA draft Notice goes further than Recommendation 1.1 of the Inquiry Report, because the prohibition extends beyond the provision of comparative odds. This is likely to create uncertainty for advertisers and broadcasters. Free TV requests that sub-clauses (b) to (d) be removed from clause 1(2) to address this issue.

4.3 The IGA draft Notice goes further than is reasonably necessary

The public debate regarding the advertising of live odds has focused on the normalisation of betting during sporting events, with the concern being that regular mentioning of wagering services and live odds during and close to the run of play suggests that wagering is part of the game.

This issue is being addressed by Free TV’s amendments to its Code through restrictions that remove wagering advertising during the broadcast of a game and the run of play or, in the case of a tournament, by restricting the advertising during the run of the relevant event and frequency with which generic mentions of betting opportunities can occur during the tournament.

The whole day restrictions that would be imposed by the Notice go much further than is reasonably necessary.

¹ http://www.premier.sa.gov.au/images/news_releases/13_05May/liveodds.pdf

The full day restriction also has an inconsistent impact on events depending on the time of day that they are broadcast, and will be hard to apply to international events that take place at night.

4.4 The IGA draft Notice is very complex

The type of advertising that the IGA is intending to prohibit is very specific – being promotions for “in the run” betting on an event or contingency after it has started. However, by structuring the draft Codes with a broad starting point (gambling advertising) and then limiting this by a series of further factors (form of gambling and time frames), the drafting becomes inherently complex and gives rise to uncertainty in interpretation.

In particular, it is not clear that the advertising prohibition applies only to “in the run” betting after the commencement of a match.

These concerns are outlined above at section 4.1.

There are a number of other areas of the draft Notice which also create some uncertainty, for example, the Notice:

- requires the express meaning of clauses 1(2), (3) and (4) each to be read down by operation of the other, which is confusing;
- relates to “betting on a form of gambling”. This reference point is inherently unclear because most people understand “gambling” as necessarily involving betting. It would appear that the phrase is intended to indicate that the notice applies to “a form of betting”.

We also note that enforcement of the proposed rule depends on regulation of advertising by “Authorised Interstate Betting Operators” on terms no more restrictive than those imposed on betting operations that are conducted within South Australia. This requires interstate operators to obtain authorisation in South Australia whether or not the operator is, in fact within the jurisdiction. Some betting operators may elect not to obtain authorisation in South Australia. Free TV submits that the Free TV amendments, which bind television broadcasters on a national basis, is a more effective means of regulating the relevant conduct.

If the IGA does proceed to impose regulations in this area at this time, Free TV urges the IGA to review the drafting to make the provisions as clear and precise as possible, to ensure that they are easy to implement for both advertisers and broadcasters.

In particular, it is recommended that the drafting identify the scope of the prohibition (“in the run” odds promotions) with greater clarity and precision.

5. Conclusion

Free TV continues to support the harmonisation of advertising rules to promote a nationally consistent approach to these important issues and requests that any rules ultimately implemented in South Australia are harmonised with the national approach currently being considered by the ACMA.

Free TV urges the Authority to review the IGA draft Notice having regard to the issues raised in this submission. Please contact us if we can answer any questions regarding this submission or if you would like to discuss the views we have expressed.