



**Submission to the Joint Select Committee on Gambling Reform Inquiry  
into the Advertising and Promotion of Gambling Services in Sport**

**8 March 2013**

## **1. Introduction**

The Australian Subscription Television and Radio Association (ASTRA) welcomes the opportunity to make a submission to the Joint Select Committee on Gambling Reform ('the Committee') Inquiry into the advertising and promotion of gambling services in sport.

## **2. About ASTRA**

ASTRA is the peak industry body for subscription television (STV) in Australia. ASTRA was formed in September 1997 when industry associations representing subscription (multi-channel) 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 STV operators, as well as channels that provide programming to these platforms. A list of ASTRA members is attached to this submission.

### **Overview of the STV Sector**

The STV sector gives Australians access to quality, live, original and award-winning international and Australian programming across many genres, including movies, news, children's, documentaries, light entertainment, lifestyle and drama, live local and international sport, music, ethnic language, local weather and pay per view events.

The Australian STV industry employs over 6,400 people and in 2011-12 invested \$667 million into Australian content. Deloitte Access Economics estimates the overall direct contribution made by STV to the Australian economy at \$1.4 billion in 2011-12 and at least \$7 billion overall since the start of STV in 1995.

With over 200 channels (including HD and Plus 2) from over 20 different media companies broadcast on the Foxtel platform and channel packages offered through Telstra T-Box and Xbox 360, the breadth, range and diversity of STV programming remains unsurpassed in the Australian broadcasting environment. Received by 34% of Australians through their homes and over a million more through hotels, clubs and other entertainment and business venues, STV provides 24 hour news, sport and entertainment.

## **3. General comments**

The Australian STV sector recognises the importance of handling the promotion of gambling and betting services in a careful and appropriate manner in order to balance the interests of wagering operators and the rights of their customers to gamble responsibly with our responsibility to minimise harm to vulnerable members of the public such as children. We have adopted a cautious and socially responsible approach, with specific rules in the codes of practice for STV for many years, and are currently in the process of enhancing these protections in relation to reducing and controlling the promotion of live odds in sports broadcasts. We also comply with the various Federal and State laws, regulations and codes of practice which relate to the advertising of gambling or wagering products, including the *Interactive Gambling Act 2001* (Cth), which prohibits STV licensees from broadcasting an advertisement for an interactive gambling service.

ASTRA commends government efforts to address issues of problem gambling and supports measures that have been effective in reducing these problems. ASTRA could not, however, support any new measures where there is little or no evidence as to their effectiveness in addressing issues of community concern, but nevertheless could impact significantly on the commercial operations of STV broadcasters, their channel provider partners and advertising partners.

ASTRA also recognises there is concern from some sections of the community regarding the advertising and promotion of betting and gambling services. In particular, there has been

concern regarding odds information being relayed by commentators or sporting role models during play in live sports broadcasts. It is important to note that while most of this community concern has arisen from the in-play promotion of live odds by sports commentators during live sports coverage by our free-to-air competitors, ASTRA and its members have, as part of an industry-wide response, been working closely with the Government since May 2011 to develop amendments to the codes of practice for STV to reduce and control the promotion of live odds in sports broadcasts.

Advertising on STV is regulated under a co-regulatory framework overseen by the Australian Communications and Media Authority (ACMA) and already provides for a range of community safeguards, including specifically in relation to the advertising and promotion of gambling services. The amendments being developed for reducing and controlling the promotion of live odds will add to this existing framework.

#### **4. Current regulation of advertising and promotion of gambling services in STV sports broadcasts**

ASTRA submits that the existing framework for regulating content on STV works effectively to maintain community standards and protect children from harm while not only enabling subscribers to view the content they want when they want, but also allowing advertisers to use STV services to reach a targeted audience to promote their products and services. The current co-regulatory model for STV is an example of industry-based content regulation, underpinned by legislation and overseen by the ACMA, that works well both for consumers, broadcasters and advertisers.

##### **4.1 Codes of practice for STV**

Under the *Broadcasting Services Act 1992* (Cth) (BSA), industry groups representing particular sections of the broadcasting industry develop codes of practice, in consultation with the ACMA, that apply to the broadcasting operations of those sections of the industry.

Codes of practice developed under the BSA are expected to address a range of public policy concerns, including:

- preventing the broadcasting of programs that, in accordance with community standards, are not suitable to be broadcast by STV providers;
- the protection of children from exposure to program material which may be harmful to them;
- methods of handling complaints from the public about program content, advertising or compliance with codes of practice;
- other matters relating to program content that are of concern to the community.

By law the ACMA may only register a code of practice if it is satisfied that:

- the code of practice provides appropriate community safeguards for the matters covered by the code;
- the code is endorsed by a majority of providers of broadcasting services in that section of the industry; and
- members of the public have been given adequate opportunity to comment on the code.

ASTRA commences a review of its codes of practice every three years to ensure they remain relevant to community and industry. The ACMA will take into account submissions made during the public consultation process—which must be undertaken as part of the review—as well as its own research and any other information it deems relevant, before being satisfied that a code of practice provides appropriate community safeguards.

The Subscription Broadcast Television, Subscription Narrowcast Television, and Subscription Narrowcast Radio Codes of Practice ('the ASTRA Codes') are currently under review, with draft revised codes released for public consultation in March 2012. ASTRA notes that no submissions were made on the issue of advertising or promotion of gambling services on STV (including during sports broadcasts), in response to the public call for comments.

#### **4.2 Measures in the ASTRA Codes of Practice relating to advertising and promotion of gambling services**

The ASTRA Codes include a range of measures in relation to the regulation of advertising:

- Under the *Subscription Broadcast Television Codes of Practice* (SBT Codes), advertisements broadcast by Licensees must comply with any relevant Australian Association of National Advertisers' Codes, including the Code of Ethics, the Code for Advertising to Children and the Food and Beverages Advertising & Marketing Communications Code. Licensees must refer advertising complaints to the Advertising Standards Bureau where appropriate.<sup>1</sup>

The SBT Codes recognise that special care must be shown in the broadcast of advertisements on channels intended for consumption by children. Advertisements broadcast during programming directed at children must comply with the Australian Association of National Advertisers' Code for Advertising to Children and the Food and Beverages Advertising & Marketing Communications Code.<sup>2</sup>

In addition, there are specific rules relating to advertisements for betting or gambling. The SBT Codes specifically require licensees to take into account the intellectual and emotional maturity of its audience when scheduling advertisements relating to betting or gambling.<sup>3</sup>

The definition of "advertisements" includes all advertising for which the licensee receives payment or other valuable consideration for broadcast in breaks within or between programs, or by visual and/or oral superimposition on a program.<sup>4</sup>

- Under the *Subscription Narrowcast Television Codes of Practice* subscription narrowcasters, where practicable, must:
  - ensure that advertisements broadcast are consistent with the relevant industry codes applicable to advertising;
  - broadcast advertisements appropriately in the light of current community attitudes and the need to limit exposure of children to material intended for adult viewing;
  - subject television advertisements for products and services which are of particular concern or sensitivity to additional placement restrictions.<sup>5</sup>
- Under the *Subscription Narrowcast Radio Codes of Practice*, the content of program material and advertisements delivered on narrowcast services must be consistent with standards acceptable to the relevant specific audiences involved.<sup>6</sup>

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<sup>1</sup> SBT Code, cl 6.1(a)

<sup>2</sup> SBT Code, cl 6.3

<sup>3</sup> SBT Code, cl 6.5

<sup>4</sup> SBT Code, cl 7

<sup>5</sup> SNT Code, cl 3.9

<sup>6</sup> SNR Code, cl 1.1

### 4.3 Complaints and enforcement under the ASTRA Codes

An industry-based regulatory framework for content regulation provides flexibility and allows content providers to be more responsive to changes in community expectations about the suitability of content. Industry is best placed to assess – and resolve – complaints in the first instance.

From a STV perspective, providing appropriate community safeguards and resolving subscriber concerns is also an issue of customer relationship management. A STV provider has an existing commercial relationship with its customers and, being the first point of contact regarding customer concerns allows the business an opportunity to resolve complaints and, ultimately, retain its customers.

In its report into interactive and online gambling and gambling advertising, released December 2011, the Committee stated that:

A range of industries have codes of conduct in place covering gambling advertising... [including]... the television industry. These codes prescribe acceptable activities and codes of behavior around advertising of gambling products, but industry codes have no statutory basis.<sup>7</sup>

It is important to reiterate that the codes of practice for STV do have a strong statutory basis, and are administered by the ACMA. Under the BSA, the ACMA monitors compliance with the Codes and can investigate complaints and take action where breaches occur. The regulatory framework provides the ACMA with appropriate powers to investigate and enforce the Codes, or to develop industry standards where, in the opinion of the ACMA, codes of practice are not working effectively. As the Federal Court recently noted, these powers form part of a broader legislative scheme which vests in the ACMA a pre-eminent role over industry groups in determining whether community standards are appropriately provided for:

...it is clear that the Parliament intended the ACMA to play an important and prominent role in ensuring that regulations affecting broadcasting provide appropriate community safeguards...

...the legislative scheme is one which, while creating what might be described as conjoint roles for both industry groups and the ACMA in developing a code of practice, in that interrelationship it is ultimately for the ACMA (and not industry groups) to determine whether a particular code of practice provides appropriate community safeguards...<sup>8</sup>

### 4.4 Regulatory requirement for gambling ads on STV including responsible gambling messages

Advertisements for gambling services broadcast on STV must comply with any relevant Federal or State law relating to the provision of responsible gambling messages. As set out below, responsible gambling messages are also planned to be included in code provisions dealing specifically with the promotion of live odds.

In addition, STV licensees and their channel partners observe certain regulatory restrictions which are imposed on gambling or wagering providers under certain state legislation, regulations and codes of practice in relation to the advertising of their gambling products. For instance, under the South Australian Advertising (Authorised Interstate Betting Operators) Code of Practice a gambling provider must, in relation to advertising on radio or television, refrain from advertising its gambling products between 4.00pm and 7.30pm, Monday to Friday (both days inclusive). The practical effect of this is that in order to comply with particular state

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<sup>7</sup> Parliamentary Joint Select Committee on Gambling Reform, Second Report, *Interactive and online gambling and gambling advertising; Interactive Gambling and Broadcasting Amendment (Online Transactions and Other Measures) Bill 2011*, December 2011, para 12.121

<sup>8</sup> *Harbour Radio Pty Limited v Australian Communications and Media Authority* [2012] FCA 614 (14 June 2012), paras 96-98.

regulatory requirement advertising of gambling products is not scheduled on the sports channels provided by FOX SPORTS during this period not only in South Australia but across Australia as those channels are broadcast using a national rather than a state based signal.

#### **4.5 Prohibitions on interactive gambling advertisements**

Under the *Interactive Gambling Act 2001* (Cth), STV licensees are prohibited from broadcasting an advertisement for an interactive gambling service.<sup>9</sup> The prohibition is a licence condition for any subscription television broadcasting licensee. The prohibition is subject to limited exceptions relating to political communication, incidental or accidental advertising, products or services having the same name as an interactive gambling service or anti-gambling advertisements, or for gambling services that are excluded from the definition of an 'interactive gambling service'—for example, excluded wagering and excluded lottery services.

The *Interactive Gambling Act* also prohibits online betting once a match is in play. As a result, STV providers are very careful not to accept any advertisements from wagering operators which invite consumers to bet online during a live sports broadcast.

### **5. Amendments to the ASTRA Codes to reduce and control the promotion of live odds in sports broadcasts**

On 27 May 2011, the Council of Australian Governments (COAG) Select Council on Gambling Reform announced it had agreed to take action to reduce and control the promotion of live odds during sports coverage. Ministers agreed:

- to consult with industry as to the scope of the measures designed to reduce and control the promotion of live odds during sports coverage, and
- that industry would be provided with the opportunity to address this issue through amendments to their existing industry codes.

Ministers acknowledged that racing would be exempt due to its long standing integral connection with wagering.

ASTRA expects, very shortly, to release for comment proposed amendments to the ASTRA Codes to reduce and control the promotion of live odds during live sports broadcasts. The proposed amendments to the ASTRA Codes have been developed after an extended consultation period with the Australian Government from May 2011 to February 2013.

The proposed amendments would:

- prohibit sports commentators and their guests from promoting live odds relating to a particular sports event during a live broadcast of that sports event, including during the period 30 minutes before play commences and 30 minutes after play has concluded;
- permit promotion of live odds during specified scheduled breaks in play as determined by the rules and regulations of that sport (for example, half time in an NRL match), but only where that promotion is an advertisement or clearly identified sponsorship segment presented by a person other than a sports commentator (or their guests).

Addressing a number of concerns identified by the Committee during its 2011 inquiry into interactive and online gambling and gambling advertising, STV licensees would be required to ensure that any promotion of live odds must:

- be socially responsible and not mislead or deceive the audience;
- not be directed at children or portray live odds betting as a family activity;

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<sup>9</sup> See subsection 61FD(4) of the *Interactive Gambling Act 2001* (Cth)

- avoid exaggerated claims, association with alcohol, or association with success or achievement; and
- be accompanied by a responsible gambling message.

Restrictions on the promotion of live odds would 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 sports event originating from outside Australia, where it is not reasonably practicable to remove the live odds promotion from the broadcast;
- subscription television services accessed on a pay-per-view basis; or
- subscription television services provided solely to licensed commercial premises.

While these proposed amendments are yet to come into effect, STV providers of sports channels are already complying with these requirements given that the winter football sports season has already commenced with the start of the Super Rugby competition in mid February.

## 6. Comments under selected terms of reference

### 6.1 In-ground and broadcast advertising

As stated above, there are a range of provisions in the existing regulatory framework for broadcasting that help to regulate the advertising and promotion of gambling services on STV. ASTRA submits these provisions (which will include enhanced protections designed to reduce and control the promotion of live odds) and the regulatory framework under the BSA that governs their operation are effective in ensuring appropriate community safeguards, and that community concerns are taken into account, in relation to gambling services advertising on STV. In terms of State legislative provisions that regulate the advertising of gambling products, ASTRA submits that these would be more effective if uniform legislation was adopted in all states and territories of Australia.

ASTRA is not in a position to comment in detail on the possible relationship between the advertising and promotion of gambling services and issues of problem gambling in the community. We do, however, note a report undertaken for the Responsible Gambling Fund (now the Responsible Gambling Trust) in the UK, *The Comparative Effectiveness of Regulatory Approaches and Impact of Advertising on Propensity for Problem Gambling* (2011), which observed that:

...advertising is an environmental factor which has the power to shape attitudes and behavior relating to gambling. What is unclear is the strength of this power and the respective contribution advertising makes when combined with a range of environmental influences, such as the attitudes and behaviour of friends and family, socio-economic factors, broader gambling access and availability.

The Report concluded that the impact of advertising on gambling behavior is likely to be smaller rather than larger, noting that a significant increase in gambling-related advertising in the UK during the period 2007-2010 did not see any reciprocal increase in gambling participation, which had remained largely stable since 1999.<sup>10</sup>

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<sup>10</sup> Planzer, S. & H. Wardle, *The Comparative Effectiveness of Regulatory Approaches and the Impact of Advertising on Propensity for Problem Gambling*, Report for the Responsible Gambling Fund, London, 2011, pp.71-72.

## **6.2 In-game promotion and the integration of gambling into commentary and coverage**

Discussion in the media of odds information relating to a sporting event is not new. Analysis and commentary with regard to the odds on the outcome of an upcoming sporting event has been part of sports coverage on television, radio, and print (and now online) since legalised betting on sports events other than racing was introduced over 20 years ago. The provision of odds information during a scheduled break of a sports event (such as half-time in an NRL match) has been common in television and radio broadcasts for a number of years. Community concern regarding live odds promotion has only recently arisen largely because of in-play reference to live odds by commentators or sporting role models on commercial free-to-air television.

As discussed above, ASTRA recognises community concern regarding the promotion of live odds in sports coverage, and has been working closely with the Government since May 2011 to develop amendments to the ASTRA Codes of Practice to reduce and control the promotion of live odds during sports broadcasts.

ASTRA also notes and welcomes the Statement of Intent by the Australian Wagering Council, under which the promotion of live odds betting during a sports event would only be broadcast during pre-game or scheduled breaks, as well preventing promotion of live odds by commentators during play.<sup>11</sup>

## **6.3 Exposure to, and influence on, children**

ASTRA recognises community concerns regarding the possible impacts of gambling messaging during sports broadcasts on children, however we do note the Committee's views in December 2011 that the effects, if any, on children viewing gambling messages during sports broadcasts are unknown, and that the Committee recommended that further research was needed on the long-term effects of gambling advertising on children.<sup>12</sup>

ASTRA submits that there may be a general misconception regarding the numbers of children actually watching live sports broadcasts. Children under 18 in fact comprise a very small proportion of the audience for live sports events on STV. For the Top 50 most-watched live sports broadcasts shown on STV in 2012, children under 18 comprised just 11.3% of the total combined audience for those broadcasts, with less than one-third of those (or 2.3% of the total audience) being children under 18 watching without an adult present. The average number of children under 18 watching any one of the top 50 live sports broadcasts on STV in 2012 was just over 39,000 nationally.<sup>13</sup>

Given STV in Australia reaches around 2.2 million homes with a potential reach of over 7 million people, the numbers of children in STV homes watching live sport on STV, and thus any gambling advertisements that may be shown during sports events, is extremely small.

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<sup>11</sup> See the Australian Wagering Council media release:  
[http://www.austgamingcouncil.org.au/images/pdf/Media\\_Releases/awc\\_180213.pdf](http://www.austgamingcouncil.org.au/images/pdf/Media_Releases/awc_180213.pdf)

<sup>12</sup> Committee Report December 2011, p.255

<sup>13</sup> OzTam ratings for Top 50 Live Sport Programs on STV, 1/1/12 – 31/12/12.



## **ATTACHMENT: ASTRA Members**

### **Subscription Television Platforms**

Foxtel  
Telstra

### **Program Channel Providers**

Aurora  
Australian Christian Channel  
Australian News Channel  
BBC Worldwide Channels Australasia  
Discovery Networks  
E! Entertainment  
ESPN  
Eurosport  
Expo Networks  
FOX Sports  
MTV Networks  
National Geographic  
NBC Universal  
Nickelodeon  
SBS Subscription TV  
Setanta Sports Australia  
Sky Racing  
Turner International (Australia)  
TV1  
TVN  
TVSN  
Walt Disney Company (Australia) Pty Ltd

### **Communications Companies and Other Associate Members**

Ai Media  
Ignite Media  
Multi Channel Network  
BSA