



**CHILDREN  
& MEDIA  
AUSTRALIA**

Thriving in a digital world

March 31, 2023

Dr John White  
Inquiry secretary  
Standing Committee on Social Policy and Legal Affairs  
Department of the House of Representatives  
[REDACTED]

Dear John,

When Children and Media Australia gave evidence at the public hearing of the Inquiry into online gambling on Feb 7, we took on board several questions.

In summary these questions were

1. Why advertising content is selfregulated, not legislated, and the deficiencies in such systems
2. How ACMA might be reformed to better combat gambling harms.
3. The impact of financial squeezes on gambling ie children switching from simulated gambling to real life behaviour
4. Why don't some children become gamblers/ who's vulnerable
5. Which o'seas jurisdictions are doing well in dealing with loot boxes,

*In response to Question 1.*

- The content of advertising is, at basic level, governed by the Competition and Consumer Act containing the Australian Consumer Law, which protects consumers from false and misleading representations and misleading and deceptive conduct.
- The history of regulation of advertising in Australia to the 80s is well covered in [Blakeney and Barnes \(1982\)](#). Of relevance to this Inquiry are the arguments put at pp53-60 in regard to the definition of advertising that is "misleading or deceiving", and how advertising that is unfair could be seen as misleading or deceiving, viz *An advertisement becomes "unfair" under section 5 of the Federal Trade Commission Act as it portrays a product or service in proximity with (1) a dramatic display of emotional pleasures; or (2) the satisfaction of emotional needs or desires; or (3) the alleviation of emotional anxieties or fears, where such pleasure, satisfaction, or alleviation is substantially unlikely to be similarly engendered by the actual purchase or use of the product*

Examination of many sports betting ads with such criteria in mind would be useful.

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- Further, the issues raised by the [Australian Law Reform Commission in 2019](#) at paras 11.14 and 11.15, as to when direct regulation is warranted deserve serious consideration. viz  
*should be considered when, among other things: the problem is high-risk, of high impact or significance; the community requires the certainty provided by legal sanctions ...*
- The content of commercials to be shown on Australian screens can be reviewed in advance against codes and regulation by [Clearads](#), a division of FreeTV Australia. It would be useful to review how Clearads assesses gambling and sports betting ads against the “misleading and deceiving” provisions of Australian Consumer Law”.

*In response to Question 2.*

ACMA reviewed the present Free TV Code of Practice related gambling and sports betting ads.

ACMA's role in the approval process for Free TV Codes is to review a code of practice and include it its register if:

- it provides appropriate community safeguards
- it was endorsed by a majority of providers in that industry sector
- members of the public have been given an adequate opportunity to comment

ACMA could be far more effective in this role if it

- a) took a fully evidence-based approach to satisfying itself that, for eg the Free TV Code provisions related to gambling and sports betting actually provided appropriate community safeguards.  
ACMA approved a Code that allowed gambling ads to be shown at any time on TV (except in G programs shown between 6 and 7 am, or between 4 and 7pm; except in programs specifically directed to children before 8.30pm). The times shielded are in fact very limited, given that the base level time zone across TV is PG.  
ACMA approved the Code amendments in 2018 which only limited sports betting ads in live sporting events to scheduled breaks and to after 8.30pm (though the Minister at the time had a hand in that). The expectation that an 8.30pm watershed for sports ads would provide protection for the vulnerable child and adolescent sports audience was never seen as realistic by the community, and even more so now.
- b) investigated fully if members of the public really had an adequate opportunity to comment at Code revision time.  
In this regard, the ACMA needs to direct FreeTV to improve their processes in regard to:

- promotion of the review process and opportunity to participate
- allowing the community the opportunity to make suggestions as to how the Code could be improved BEFORE the Code goes out for comment. At present the community is only asked to comment on the version of the Code that FreeTV has decided they want to implement
- allowing further comment after community comment has been received and the version to be presented to ACMA has been developed. Alternatively, ACMA could offer this opportunity.

*In response to Question 3.*

CMA refers the Committee to research by [Hing et al \(2022\)](#)

*In response to Question 4.*

CMA refers the Committee to the very recent excellent research by the AIFS.

And re who's vulnerable see [Hing et al \(2022\)](#)

*In response to Question 5.*

CMA refers the Committee to the very recent excellent research by the AIFS.

We are happy to discuss further any of the above issues.

Yours sincerely



Barbara Biggins OAM CF

Hon CEO