



Communications Law Centre, UTS

Submission to the Inquiry into the advertising and
promotion of gambling services in sport

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Executive Summary

1. CLC considers that wagering is no longer necessarily periodic, and is evolving into a continuous casino-like paradigm in which gamblers can bet, at any time, over all mediums and on all aspects of sport. As a result, the potential for problem gambling behaviour is significant. Regulation of wagering should be strengthened to counteract the potential for harm.
2. CLC considers that the promotion of live odds and the discussion of wagering during sports coverage normalises wagering as being integral to sport.
3. The CLC supports the recommendation of the Parliamentary Joint Select Committee on Gambling Reform which proposes legislation prohibiting live odds promotion during the broadcast of sporting events.
4. Prohibitions on live odds promotion should apply to commercial television and radio, as well as subscription television.
5. Prohibition on live odds promotion should extend to pre and post-match commentary and discussion, commentary and discussion in scheduled breaks in play and unscheduled breaks in play and to sports talkback and sports discussion programs.
6. Broadcasts covering racing events or racing related events should be excluded from any prohibition relating to live odds promotion.
7. The CLC supports a mandatory code of conduct for advertising by wagering providers.
8. Provisions in the proposed mandatory code of conduct for advertising by wagering providers should be mirrored in the Codes of Practice for commercial television, subscription television and commercial radio.
9. The Children's Television Standards should explicitly state that advertisements relating to betting, gambling or wagering shall not be broadcast during "C" periods.

1. Introduction

- 1.1 The Communications Law Centre, UTS (CLC) is an independent, non-profit, public interest centre specialising in communications, media and online law and policy. We appreciate this opportunity to respond to the Committee's Inquiry into the advertising and promotion of gambling services in sport.
- 1.2 This submission addresses the following Terms of Reference:
 - (a) in-ground and broadcast advertising and;
 - (c) in-game promotion and the integration of gambling into commentary and coverage.

2. The nature of sports wagering and sports wagering advertising

- 2.1 Wagering has typically attracted less legislation and regulation than other forms of gambling (such as casino-like games) because of a perceived lower potential for problem gambling behaviour.¹ At present, there are fewer restrictions on online sports wagering in the *Interactive Gambling Act 2001*(Cth.) ('IGA'). Sports wagering advertising is currently allowed under the IGA because sports wagering (apart from some micro bets and 'betting on the run') is an 'excluded wagering service' under s 8A (and therefore, not an interactive gambling service)². Conversely, advertising of interactive gambling services, such as casino-like games, is prohibited under Part 7A of the IGA.
- 2.2 CLC considers that wagering is no longer necessarily periodic, and is evolving into a continuous casino-like paradigm in which gamblers can bet, at any time, over all mediums and on all aspects of sport. As a result, the potential for problem gambling behaviour is significant. Regulation of wagering should be strengthened to counteract the potential for harm.
- 2.3 CLC considers that the promotion of live odds and the discussion of wagering during sports coverage normalises wagering as being integral to sport. Significant long term social harms may result from instilling a culture of wagering, particularly in the case of children.
- 2.4 Sports wagering advertising is often intrusive. In October 2012, the Australian Broadcasting Corporation's *Media Watch* documented the advertising practices of sports wagering website *Tom Waterhouse.com*.³ According to *Media Watch*, the website engaged in extensive promotion of live odds across several major sports on all three Australian commercial television networks. Tom Waterhouse also engaged in general conversation regarding upcoming sporting events, including during news broadcasts. Such practices may be in breach of the 2010 Commercial Television Code of Practice if disclosure of any commercial arrangements between Tom Waterhouse and the commercial television network is not made.⁴
- 2.5 The Committee's previous Inquiry into online gambling and gambling advertising noted that regulation of sports wagering advertising is inconsistent across jurisdictions.⁵ It recommended the

¹ Department of Families, Housing, Community Services and Indigenous Affairs, Review of Current and Future Trends in Interactive Gambling Activity and Regulation (June 2009), available at <http://www.fahcsia.gov.au/our-responsibilities/communities-and-vulnerable-people/publications-articles/review-of-current-and-future-trends-in-interactive-gambling-activity-and-regulation-june-2009>.

² s 5 (3) (aa) IGA.

³ *Tom Everywhere.com: Media Watch*, television program, Australian Broadcasting Corporation, Sydney, 29 October 2012 (transcript).

⁴ 2010 Commercial Television Code of Practice cl 1.20: "If a licensee enters into a commercial arrangement in relation to a factual program, and the third party's products or services are endorsed or featured in the program, the licensee must disclose the existence of that commercial arrangement."

⁵ 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, para. 12.124.

implementation of a mandatory code of conduct for advertising by wagering providers, covering several aspects of advertising and other inducements.⁶

3. CLC supports a total prohibition on live odds promotion in sports coverage

- 3.1 Commercial television and radio broadcasters have significant reach and influence, and should be subject to legislation and regulation in the public interest.⁷ Legislation and regulation of sports wagering advertising should also extend to subscription television services due to the significant amount of sports coverage that subscription television provides.⁸
- 3.2 The CLC supports the recommendation of the Parliamentary Joint Select Committee on Gambling Reform which proposes legislation prohibiting live odds promotion during the broadcast of sporting events.⁹ We also note a proposed bill put forward by Senator Richard Di Natale gives effect to this recommendation.¹⁰
- 3.3 Prohibition on live odds promotion should extend to pre and post- match commentary and discussion, commentary and discussion in scheduled breaks in play and unscheduled breaks in play and to sports talkback and sports discussion programs. A 'promotion' should be defined broadly so that it includes implicit as well as explicit promotions and inducements such as those described in para. 2.4 above. The effect of the prohibition should be to remove any inducement to wager during sports programming or sports related programming.
- 3.4 Examples of 'promotion' should include (but not be limited to):
- Spot commercials
 - Sponsored messages
 - Commentary or in-game appearances by representatives of wagering agencies
 - Messages delivered by commentators or other persons associated with a sports broadcast.
- 3.5 The prohibition should initially be imposed on commercial television and radio broadcasters as well as subscription television services such as *Fox Sports Australia*. We note that Senator Di Natale's bill

⁶ Ibid, para. 12.139 (Recommendation 16).

⁷ Commercial television and radio broadcasters play a central role in providing commentary on news and sporting events. They should be subject to a significant level regulatory control per s 4(1) *Broadcasting Services Act 1992* (Cth.).

⁸ For example, *Fox Sports Australia* claims to provide 23 hours of live sports coverage per day to over 2 million households in Australia. See <http://www.foxsports.com.au/about-us>.

⁹ 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, Recommendation 14, para. 12.101. Note, this legislation has not been enacted.

¹⁰ 'Greens bill to ban broadcast of betting odds during sport', <http://greens.org.au/content/greens-bill-ban-broadcast-betting-odds-during-sport>.

proposes to extend prohibition to the Internet. This is likely to be difficult in practice, as many popular sports and sports wagering sites are based outside Australia. If certain websites attain the level of influence of commercial radio and television broadcasters and subscription television broadcasters, they may be subject to legislation and regulation in the future if they are deemed to be 'content service enterprises'.¹¹ Advertising online should be subject to the proposed mandatory code of conduct for advertising by wagering providers (see para. 4.1 below).

- 3.6 Broadcasts covering racing events or racing related events should be excluded from any prohibition relating to live odds promotion.
- 3.7 The prohibition on live odds promotion would supersede any related provisions under the Commercial Television Code of Practice, Commercial Radio Codes of Practice and Australian Subscription Television Codes of Practice.

4. Regulation of sports wagering advertising

- 4.1 The focus of legislation and regulation should be live odds promotion, as this is where the greatest harm occurs. Given the inconsistencies in regulation noted in para. 2.2 above, the CLC supports a mandatory code of conduct for advertising by wagering providers. The code of conduct should apply to all forms of sports wagering advertising on all media (apart from live odds promotion during non-racing sporting events which should be prohibited, as above). The code should cover any inducement to bet or wager and include standard forms of harm minimisation messages. These harm minimisation messages should clearly state potential harms that arise from sports wagering, such as monetary losses.
- 4.2 Provisions in the proposed mandatory code of conduct for advertising by wagering providers should be mirrored in the Codes of Practice for commercial television, subscription television and commercial radio. We note that there are already restrictions on betting and gambling advertising in the Commercial Television Code of Practice.¹²
- 4.3 Consideration should also be given to the imposition of mandatory program standards for commercial television and radio broadcasters under the *Broadcasting Services Act 1992* (Cth.) ('BSA'). If the code of conduct (as mirrored in the Codes of Practice) fails to provide adequate community safeguards, the Australian Communications and Media Authority should develop a program standard under s 125 BSA relating to sports wagering advertising. We note that Australian content in television advertising is already regulated by a program standard.¹³

¹¹ See Department of Broadband, Communications and the Digital Economy- Convergence Review Final Report, March 2012.

¹² Commercial Television Code of Practice 2010 at para. 6.14.

¹³ Television Program Standard for Australian Content in Advertising (TPS 23).

4.4 The Children’s Television Standards should expressly state that advertisements relating to betting, gambling or wagering shall not be broadcast during “C” periods.¹⁴

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¹⁴ The Children’s Television Standards 2009 do not contain the words “betting”, “gambling” or “wagering”. Advertising of alcoholic drinks is expressly covered by CTS 36.