



**Submission to the Senate Environment and Communications Legislation
Committee**

**Communications Legislation Amendment (Online Content Services and
Other Measures) Bill 2017**

12 January 2018

Introduction

ASTRA welcomes the opportunity to contribute to the Senate Environment and Communications Committee's inquiry into the Communications Legislation Amendment (Online Content Services and Other Measures) Bill 2017.

Our submission is structured as follows:

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Section 5: ASTRA Code of Practice amendments

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1. Executive Summary

- The subscription television industry takes very seriously the need to ensure that advertising on its platform is consistent with community standards.
- The industry has taken a responsible approach to betting advertising and complies with the expansive range of restrictions which are already in place.
- We are committed to working with the Government to ensure that the new advertising restrictions are implemented in a way which appropriately balances community standards with the need to moderate unnecessary business impacts on broadcasters.
- Accordingly, ASTRA is well progressed in the development of Code of Practice amendments which would implement the new restrictions on the broadcast platform.
- We are concerned, however, that the restrictions to be placed on advertising during online coverage of live sport, as set out in the Bill, are not consistent with and in fact exceed the amendments to the ASTRA Codes.
- In this submission we expand on these concerns, and also make further comments on aspects of the drafting of the Bill.
- In respect of the new broadcasting program standards power, this should be made consistent with the existing program standards power in the *Broadcasting Services Act 1992*, which requires that there be a failure of industry codes before the power can be used.
- We are also concerned to ensure that there is consistency between the broadcast and online platforms, and note there are a number of exemptions and conditions contained in the proposed new Code of Practice which are not replicated in the Bill in relation to broadcast or online.
- The majority of the concerns raised in this submission have been brought to the attention of the Minister's Department as part of earlier consultations.

2. Introduction

ASTRA welcomes the opportunity to contribute to the Committee's consideration of the Communications Legislation Amendment (Online Content Services and Other Measures) Bill 2017 (the Bill).

We note the Bill is further to the Government's announcement in the 2017 Budget that advertising of gambling and betting products during live sport would be further restricted.

We understand the Government's intention is to provide an environment in which Australians, particularly children, are able to watch live coverage of sporting events without exposure to gambling advertisements or promotions.

ASTRA is committed to working productively with the Government to ensure implementation of the Government's policy intent in a way which reasonably manages the impact on industry.

It is our strong preference that new restrictions be enacted through the co-regulatory codes of practice, rather than through legislation. ASTRA is well progressed in implementing changes to its Codes of Practice, with a draft new Code released for public consultation on 23 November 2017.

However, we understand the purpose of the Bill is to provide the Government with reserve powers to mandate rules for broadcast television in the event Codes are considered inadequate or are not developed. The Bill will also establish a legislative scheme to enable regulation of betting advertising during coverage of live sport transmitted on online platforms.

ASTRA has had the opportunity to comment on several exposure drafts of the Bill. We have had productive engagement with the Department of Communications and the Arts, with substantial aspects of our feedback incorporated into the Bill as introduced into Parliament.

There remain, however, several aspects of the Bill which raise concern for ASTRA's members.

3. Background

ASTRA is the peak industry body for subscription media in Australia. ASTRA was formed in September 1997 when industry associations representing subscription (multichannel) 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 subscription TV operators, as well as over 20 independently owned and operated entities that provide programming to these platforms, including Australian-based representatives of international media companies, small domestic channel groups and community-based organisations.

ASTRA's members provide a diverse range of news, information, sport and entertainment programs which deliver significant social benefits to a broad cross-section of the Australian community. In 2018, one third of Australians subscribe, along with millions more who watch subscription content in public venues. Every week more than 1000 hours of first-run locally produced content is broadcast on subscription TV, as well as the best international content.

ASTRA's membership includes channels whose product offering is based primarily on the broadcast of live sport, both on the broadcast platform and through innovative online products. These channels stand to be directly impacted by the new restrictions, and to a much greater degree than free-to-air (FTA) television broadcasters, for whom live coverage of sport only makes up a portion of programming output. This is despite the fact that the primary source of community concern regarding gambling advertising has been commercial FTA television and the fact that live coverage of sport on FTA television attracts far larger audiences than on subscription television.

The subscription television channels which will be affected by the new restrictions include larger Australian-based businesses like Fox Sports, which carries large amounts of local content and employs hundreds of Australians, as well as the local versions of international channels such as ESPN and beIN Sports, which attract very niche audiences to coverage of international sporting leagues.

4. Betting advertising on subscription television – existing restrictions

Whilst the overwhelming majority of Australians who bet on racing and sport do so safely and responsibly, ASTRA members take very seriously their responsibility to

ensure advertising for gambling products and services is in line with community expectations, in particular in relation to children.

This commitment is demonstrated by the inclusion of a range of safeguards in enforceable Codes of Practice¹ developed by ASTRA and ratified by the regulator, the Australian Communications and Media Authority (ACMA), following public consultation.

Subscription television licensees are required under ASTRA's Codes to ensure that special care is taken in regards to the exposure of children to certain kinds of advertising. There is a natural incentive towards compliance, given the importance of the customer relationship and brand reputation within the subscription television model.

Further, ASTRA members presently take into account the issues around gambling advertising and vulnerable groups under the requirements of clause 2.6 of the Australian Association of National Advertisers (AANA) Code of Ethics which requires that advertising not depict material that is contrary to prevailing community standards on health and safety.

We also note the targeted Code of Practice addressing gambling advertising published by the AANA.² This Code provides a set of platform-neutral content restrictions relating to gambling and betting advertising which apply equally across the industry. Having these restrictions set down in a single Code is also useful for consumers in understanding what is acceptable under the regulatory framework for advertising and marketing, regardless of where they see those communications. Compliance with any code adopted by the AANA is required under the ASTRA Codes.

In 2013, the industry and Government developed specific safeguards to address community concern regarding the integration of live odds and other betting advertising into sports coverage. The restrictions were incorporated into the ASTRA Codes of Practice, are comprehensive and in general:

- prohibit the promotion of betting odds:
 - during play, during scheduled breaks in play, or during unscheduled breaks in play in a live sporting event, and
 - by a commentator during the periods 30 minutes before the event has commenced and 30 minutes after the event has concluded;
- prohibit sports betting advertising during play;
- permit the promotion of betting odds other than by a commentator (including spot commercials and paid, clearly identified sponsorship segments) before play has commenced or after play has concluded;
- permit the broadcast of betting advertisements before play has commenced, during scheduled and unscheduled breaks in play, and after play has concluded;
- require representatives of gambling or betting organisations to be clearly identifiable as such and not appear as part, or as a guest, of the commentary team at any time.

We note that as these restrictions are contained in registered Codes of Practice, any viewer who is concerned there may have been a breach of the restrictions can make a

¹ <http://astra.org.au/advocacy/codes-of-practice>

² <http://aana.com.au/self-regulation/codes/>

formal complaint to the broadcaster. This complaint can then be escalated to the ACMA, who can investigate and, if a breach is found, impose significant penalties.

ASTRA members adhere to these restrictions and since the commencement of the rules in 2013, the regulator, the ACMA has not made any breach findings against subscription television broadcasters. Since January 2015 there have been only 17 complaints about gambling advertisements received by Foxtel.

We also comply with the various Federal and State laws and regulations which relate to the advertising of gambling or wagering products, including the *Interactive Gambling Act 2001* (Cth), which prohibits subscription TV licensees from broadcasting an advertisement for an interactive gambling service.

5. ASTRA Code of Practice amendments

As noted above, ASTRA is well progressed in the development of changes to its Codes of Practice to implement the new restrictions on the broadcast and narrowcast platforms. Following consultation with members and other broadcast industry groups, ASTRA released a draft new Code appendix on 23 November 2017, for public comment.

The draft new gambling provisions prohibit the broadcast of commercials relating to betting or gambling during live sporting events, including for five minutes before and after live play, between 5.00 am and 8.30 pm. Separate rules are applicable to long form live sporting events.

The existing restrictions on the broadcast of betting odds during live sports have also been extended in a similar way, to include five minutes before and after live play, between 5.00 am and 8.30 pm.

The draft Code Appendix includes several exceptions and conditions to the proposed restrictions, which would reflect the particular circumstances of subscription television (in contrast to the FTA networks) but which would not compromise the Government's stated policy intention. The exceptions would avoid a range of potential unintended consequences arising from the application of a 'one-size-fits-all' approach across all relevant sectors. These are addressed in detail at [Attachment 1](#), which is a copy of the draft Code Appendix and detailed explanatory notes.

We believe these exceptions and conditions are consistent with the Government's policy intent in relation to subscription television and its intent in relation to online content services, which seek to balance the need to address public interest considerations in relation to gambling promotional content with the need to avoid imposing unnecessary financial and administrative burdens on the providers of online content services (refer to new section 4(3AB)).

6 Comments on the Bill

6.1 General comments

The Bill is in a few instances broader than the regulation under the Codes currently being negotiated, which is not consistent with the policy objective of achieving neutrality across all platforms. To the extent possible, ASTRA considers that the regulations for the broadcast program standard power and the online content service provider rules should mirror the incoming Code of Practice restrictions.

6.2 Broadcasting provisions

We note that the purpose of the broadcasting provisions in the Bill is to ensure the Government has powers to institute the new restrictions in the event a co-regulatory Code fails to do so. As this largely mirrors existing powers for the ACMA to make program standards, we do not have any substantial in-principle concerns. However, we would like to reiterate that the drafting of the subscription television industry's Code amendments is well advanced and we do not anticipate it will be necessary to use this new power.

Section 125A(1) and 125A(3)

We support proposed subsection 125A(3), which provides that the ACMA can only make program standards only in circumstances in which the Minister has issued a direction. This should ensure the ACMA acts in accordance with the Government's policy objectives.

However, we would support the inclusion of pre-requisites that need to have occurred before the Minister is empowered to direct the ACMA to develop a standard. Under the existing standards power in the *Broadcasting Services Act 1992* (BSA) (section 125), in order for the ACMA to be empowered to make standards, it must be satisfied that there is convincing evidence that a code has failed to provide appropriate community safeguards, or if there is no appropriate code.

The Minister's power in new 125A(1) should be similarly constrained to circumstances in which a code dealing with gambling advertising during live sport has failed to meet policy objectives in a material respect, and/or has not been developed by a specified date or within a specified time period.

We also submit that a direction given by the Minister under proposed subsection 125A(1) should be subject to disallowance. Page 28 of the Explanatory Memorandum states that such a Ministerial Direction would be a legislative instrument but would not be subject to disallowance. Additionally, any timeframe specified by the Minister for the ACMA to determine a standard should not precede any period under which either House of Parliament may disallow such a legislative instrument.

Subscription television exemptions not recognised

There are a number of subscription TV specific exemptions which are contained in the proposed ASTRA Code appendix that are currently not reflected in the broadcast provisions of the Bill. For certainty it is important that these exemptions are included in the Bill.

Definition of 'gambling service'

The Bill provides that for the purposes of the program standard powers, the definition of 'gambling service' has the meaning set out in Schedule 8. ASTRA's comments apply to the definition of 'gambling service' in the context of both the broadcasting program standard and online content service provider rules.

The definition of 'gambling service' conflicts with what has been put forward in ASTRA's Code appendix, as the following elements of the definition cover content which is specifically excluded from the ASTRA Codes' definition of Betting Advertisement:

- Clause 18(c) and (d) 'conduct of a lottery or supply of lottery tickets': Government lotteries, lotto, keno or contests are exempted under the ASTRA codes.
- 18(e) 'game played for money', 'game of chance or of mixed chance of skill', 'consideration to play or enter a game'.

We note that the explanatory memorandum for the bill states that "*The reference to a game of mixed chance and skill is not intended to include games that would generally be regarded to be games of skill, even though it could be argued that the outcome of the game might be affected by chance.*" However, this does not provide additional clarity as the interpretation of what is "generally regarded to be a game of skill" is highly subjective. For example, on one interpretation, the section significantly expands the scope of services to the extent that games such as Supercoach, tipping competitions and even trade promotions could be caught. For the sake of regulatory certainty and the Government's policy intent, we consider that these definitions should be consistent with the ASTRA Codes.

The provision also does not exclude horse racing, harness racing or greyhound racing, as is consistent with current regulation and broadcast industry Codes. There exists a symbiotic relationship between the gambling industry and the racing industry. The racing industry would not exist without wagering and wagering operators would be substantially smaller without the racing industry. Therefore, consumers of racing programs are inherently interested in the receipt of wagering information (including gambling advertising) as part of those racing-specific programs and services (e.g. SKY Racing's service). We would appreciate confirmation on whether the Minister intends to provide a class exemption for racing services.

ASTRA also proposes the specific exclusion of advertisements for fantasy sports betting products on the following bases:

- fantasy products require a material level of skilled input and are not based primarily on chance like traditional wagering products. Daily fantasy typically involves the performance of a number of players across different matches which requires time and prior preparation in order for players to meaningfully enter competitions. Conversely, traditional wagering products typically require little preparation and tend to have discrete outcomes based on fewer variables. As a result, ASTRA considers that advertisements for paid fantasy products are much less likely to trigger short term wagering during live sporting events than traditional wagering products (which we understand to be a primary driver for limiting gambling advertisements during live sport);
- daily fantasy products are niche products; there are significantly fewer providers of the product than ordinary gambling products; and industry data suggests that take up of these products is not materially growing. As a result, we consider

there is far less of a threat of extensive advertising given the smaller size of the market and the limited competing players. Further, we understand that community concern has not centred around advertising for these products but rather the advertising practices of traditional wagering products; and

- fantasy sports products have different messaging and incentives to traditional wagering products – while many fantasy competitions offer players the opportunities to win cash or prizes, daily fantasy competitions (and the advertisements of those competitions) are often also framed to incentivise players to “compete against your mates”, which is a different non-monetary incentive absent from typical gambling against a wagering operator. Competing against mates is not anti-social (and is arguably more controlled than standard gambling) and is framed in a more positive message than traditional wagering advertising, which we consider much less likely to be harmful from a community perspective.

Section 125A(6)

The proposed clause 125A(6) allows a program standard to require that explanatory matter relating to the gambling program standard is provided by the licensee or provider in a manner specified in the standard. It is difficult to tell from the drafting if this is a requirement to publish information about the rules on-air. The clause states that the information is “to be provided in a manner specified in the standard”, from which we conclude that this will be left to the ACMA’s discretion.

This provision is of concern to ASTRA for two reasons. First, ASTRA had previous assurances from the Department in relation to the industry code amendments that there would be no on-air statements required (previously referred to as “safe zone announcements”). Second, ASTRA objects to this issue being left to the ACMA’s discretion. If there are to be information publishing requirements, which we don’t think there should be given that we operate within the existing gambling advertising restrictions without having to publish explanatory material, licensees and providers should be able to publish them on whatever platform they feel is appropriate.

Section 125A(10)

The explanatory memorandum to the Bill states that the intention of this clause is that:

“live coverage of a sporting event would consist of all coverage of the actual event, as well as any program matter transmitted during unscheduled breaks in the event. For example, if a broadcaster were providing live coverage of a cricket match, and that match was temporarily suspended due to rain, subsection 125A(1) would have the effect that any replacement program matter transmitted by the broadcaster during that rain break would be deemed to be live coverage of that cricket match.”

Pursuant to the explanatory memorandum, the implementation of the gambling advertising restrictions should balance the policy goal of protecting children from exposure to gambling promotions during **live** coverage of a sporting event, whilst balancing the significant revenue stream for broadcasters that gambling advertising represents. We consider that the example given within the Bill does not properly balance the interests of the various stakeholders.

We do not consider that any replacement program matter transmitted by a broadcaster during such unscheduled breaks in play should be deemed to be part of the live coverage of the sporting event. For example, an earlier broadcast of a magazine program (which are commonly shown during the lunch-break of longer form events, and is not a live sporting event) rebroadcast due to an unscheduled break in the live sporting event should not be subject to the gambling restrictions.

For the avoidance of doubt, ASTRA is not proposing a blanket exemption during the Long Form Sporting Event. ASTRA believes the current proposed regime for Long Form Sporting Events (see the draft ASTRA Code at Attachment 1, clauses (3), (4), (5) and (7)) represents a more reasonable balance whilst meeting policy objectives.

Section 125A(7)

This proposed new section would allow a gambling promotion program standard to make provision for a range of new record-keeping requirements (RKR) in relation to live coverage of a sporting event that relates to the program standards contemplated by new sections 125A(5) and (6). A similar clause exists as regards the online content service provider rules in new clause 13(3) of Schedule 8. Our comments below are applicable to both clauses.

These clauses did not appear in any of the previous exposure drafts of the Bill and the clauses state that the required records will be “of kind or kinds specified in the” standard or online content service provider rules. This suggests that the form and content of the records will again be left to the ACMA’s discretion.

The RKR impose an additional compliance burden on both broadcasters and online content service providers, the scope of which is unfettered by the current drafting. The RKR do not reflect, and go well beyond record keeping requirements in the existing Code of Practice and the recent draft update of the Code. The costs and time involved in establishing, maintaining and administering the RKR could potentially be significant.

We believe that any requirement for RKR should be made by the ACMA on an exceptions basis only (i.e where the broadcasters’ or online content service providers’ own records would not suffice) and in consultation with industry. The RKR should be in-keeping with the Government’s policy intent not to impose unnecessary financial and administrative burdens on content providers.

Section 125A(12)

This clause provides that if coverage of the sporting event is delayed, section 125A has effect as if there were a corresponding delay to the period. We note this is also mirrored in new clause 21(2) and (4) of the new Schedule 8.

It is unclear to ASTRA as to whether this clause relates to replays or short delays to coverage itself and how this section would operate. Therefore we recommend that both this clause and clause 125A(14) are amended to apply to where coverage is delayed, but provided as if it were live (per ASTRA’s proposed definition of Live in Schedule 8 clause 2 as outlined below), so that these clauses do not have open ended application.

We make the same comments in relation to clauses 21(2) and (4) of the new Schedule 8.

Section 204

New section 204(3) states that the Administrative Appeals Tribunal's (AAT) jurisdiction to review ACMA's decision is limited to circumstances in which a program standard provides the decision is reviewable.

We note that the explanatory memorandum states that "*For example, it is likely that the ACMA would provide for merits review where its decision would affect the interests of a person, but that it may not be necessary to do so where decisions would be of a procedural or preliminary nature, would have no appropriate remedy or would have such limited impact that the costs of review cannot be justified.*"

This paragraph highlights the real risk that leaving this issue to the discretion of the ACMA may not adequately provide any person affected by the program standards the natural justice required for such administrative decisions. Where a person's rights are affected by the ACMA's decisions, a merits review should be available at both an internal and external (e.g. AAT) level, without any qualifiers. This will ensure that the rule of law is upheld and ensure that a correct and preferable decision is made by the decision-makers.

The same comments apply in relation to online content and new section 204(4).

6.3 Online content provisions

As a general comment, the online content service provider rules should not be more or less restrictive than the broadcast standard power and should also mirror existing restrictions and exemptions in broadcast Codes, not increase or decrease them.

Clause 2

We have concerns regarding the definition of 'live' as it now includes delayed transmissions commencing prior to the conclusion of the relevant match. This is inconsistent with the ASTRA Codes which refers only to "live-to-air broadcast". We note that the definition of "live" in the Commercial Television Industry Code of Practice is broader than the ASTRA codes (for reasons specific to localised free-to-air transmissions), but it does not cover delayed matches that commence before the conclusion of the relevant sporting event.

It is not clear to us why it is necessary to broaden this definition and we consider to the extent possible that the definitions should be consistent with the existing ASTRA Codes as well as the Government's stated policy intent.

Clause 4

We consider that online services that entirely or substantially (not just entirely) contain content which are simulcasts or simultaneous retransmissions of certain broadcasting services should be an 'exempt' online content service. Not all online platforms are identical to their equivalent subscription TV broadcast service.

Clause 11

We query whether, under the proposed drafting, the ACMA will be empowered to make online content service provider rules in the absence of a direction from the Minister. There is no such constraint in clause 11, and whilst clause 27 empowers the Minister to direct the ACMA on the use of its powers, there is no requirement that the ACMA only act to make service provider rules if directed by the Minister (reference new section 125A(4) on page 5 of the Bill, in relation to broadcasting program standards). We strongly submit that the ACMA should be constrained to acting only in circumstances where a Ministerial direction has been issued. We do not see why broadcast and online should be regulated differently in this regard.

Clause 16

The ‘class exemptions’ power for the ACMA is not very limited or constrained, and it is difficult to tell what types of service the Government has in mind with this drafting. We consider that if criteria can be provided to the ACMA for making individual exemption decisions as is provided in new clause 15, it should also be provided for ‘class exemptions’.

Clause 17

Our interpretation is that this clause would allow the online content service provider rules to apply only to parts of an online service that provide live sporting coverage.

Therefore, where a viewing window is housed on a distinct page within an overall website, we would expect that banner advertising on the overall website will not be affected by the rules, and that the rules will only apply to the part of the site where the viewing window resides.

However, it is not clear from the drafting whether this would allow banner advertising around a viewing window and we request that this can be clarified and that an express provision is included that the restriction applies to live, linear video streams only.

International services geo-blocked to Australia should not be caught.

Services that are geo-blocked to, or are otherwise not accessible in, Australia should not be caught by this Bill. Currently, an international service could be caught if it is “likely to appeal to the public or a section of the public in Australia” under the geographical link to Australia test, even if Australians are not entitled to access them in Australia, which would be beyond the policy objectives of the Bill.

Accordingly, we propose that either in the definition of Online Content Service, or in “clause 5 – Geographical link to Australia”, an express exception should be included for services which are geo-blocked to Australia. Geo-blocked services which are not generally available to Australians should not fall under the Bill and equally, the Bill should not apply to these services, even if accessed by a user based in Australia, if they have circumvented geo-blocking technology to view that content (e.g. through using VPN technology).

Definition of 'incidental'

We welcome the exclusion of incidental and accidental references from the operation of a standard and the online content service provider rules, but submit that definitions of 'accidental' and 'incidental' need to be included, and should be consistent with those in the ASTRA Codes. This would ensure that mention of the official sponsor of an event, or the appearance of sponsorship livery on uniforms (both examples of things which are beyond a broadcaster's control, and from which the licensee derives no benefit), do not result in a breach of the restrictions.

7 Conclusion

We understand the Government's intention is to provide an environment in which Australians, are able to watch live coverage of sporting events without excessive exposure to gambling advertisements or promotions.

ASTRA and its members are working cooperatively with Government, other broadcasters and the ACMA to give effect to this proposal through amendments to industry codes of practice. It is our strong preference that new restrictions for the broadcast platform be enacted through the co-regulatory codes of practice, rather than through legislation.

We therefore accept the Government's legislative intent in the Bill, subject to our concerns, as outlined in this submission, being addressed. Amendments are required to ensure that the Bill fulfils the regulatory policy objective of balancing the need to address public interest considerations in relation to gambling promotional content with the need to avoid imposing unnecessary financial and administrative burdens on the providers of live sporting coverage (refer to new section 4(3AB)).

ATTACHMENT 1 – Copy of ASTRA Code amendments public consultation materials



REVIEW OF THE PROVISIONS RELATING TO THE BROADCAST OF GAMBLING AND BETTING COMMERCIALS AND THE PROMOTION OF ODDS IN LIVE SPORT IN THE SUBSCRIPTION TELEVISION INDUSTRY CODES OF PRACTICE

INVITATION FOR PUBLIC COMMENT

23 NOVEMBER 2017

OVERVIEW

ASTRA is conducting a review of the provisions relating to the broadcast of gambling and betting commercials and the promotion of odds (the **Gambling Provisions**) in live sport in the Subscription Television Broadcasting and Narrowcasting Codes of Practice (the **Codes**), and invites comments from members of the public regarding the proposed changes.

At this time ASTRA is not seeking comments on any other part of the Codes.

WHAT THIS CONSULTATION PACKAGE CONTAINS

This consultation package contains two documents:

- an Explanatory Note which contains details about how to make written submissions on the review of the Gambling Provisions, an overview of the current Code and Gambling Provisions (Part A) and an overview of the main proposed changes to the Gambling Provisions (Part B); and
- the draft revised Gambling Provisions.

REQUEST FOR PUBLIC COMMENTS BY FRIDAY 22 DECEMBER 2017

All public comments should contain your name and address and must be received by 5.00pm 22 December 2017.

You may submit your comments to ASTRA by either:

- Post: addressed to ASTRA Code Review, 5 Thomas Holt Drive, North Ryde NSW 2113; or
- Email to admin@astra.org.au.

PUBLICATION OF SUBMISSIONS

Please note that the submissions will be published. If you do not wish your submission to be published, you should mark it clearly 'Confidential – not for publication'.

GUIDELINES FOR COMMENTS

In making comments for the review of the Gambling Provisions, you should have regard to:

- the objectives of the Code and the statutory context in which it operates;
- the way in which the Gambling Provisions have operated since their introduction in 2013;
- the operation of the Code alongside other regulatory instruments and codes of practice, including the *Broadcasting Services Act 1992*, and State and Territory regulations and codes relating to betting and gambling.

Comments received will be considered by ASTRA in the preparation of the final draft of the Gambling Provisions. The Code will then be submitted to the Australian Communications and Media Authority (ACMA), along with all public comments received.

Before registering the Gambling Provisions as part of the Code, the ACMA must be satisfied that the Code:

- adequately deals with the subject matter covered and provide appropriate community safeguards;
- is endorsed by the majority of subscription television licensees; and
- members of the public have been given adequate opportunity to comment on the draft Code.

PART A – OVERVIEW OF THE CODE

The content of subscription television programs is regulated under the Codes, which are developed by ASTRA in consultation with the public and registered with the ACMA.

The ASTRA Codes cover areas such as program content and classification, advertising, privacy, subscriber service obligations and complaints procedures.

The Codes operate alongside the requirements of the *Broadcasting Services Act 1992* (BSA) and a number of other regulatory requirements. Under the BSA, there are serious penalties for non-compliance with the Codes.

Broadcasters are also subject to a broad range of other laws and regulations, including on matters such as competition and consumer protection, defamation, contempt, surveillance and reporting of certain legal proceedings.

Existing gambling regulatory framework

The existing Appendix A of the Codes contains extensive advertising restrictions for promoting odds and broadcasting gambling advertisements in live sports coverage.

These restrictions were first introduced in the Codes in 2013 following extensive consultation and have not substantially changed since that time. The provisions:

- generally ban references to live odds during the broadcast of a live sporting event;
- ban the promotion of odds by commentators and their guests for 30 minutes before and after play;
- ban all other commercials relating to betting and gambling during live sporting events at all times other than before Play has commenced, during scheduled breaks, during unscheduled breaks and after Play has concluded; and
- require representatives of gambling organisations to be clearly identified during live sporting events. They must not appear as commentators or in gambling advertisements or promotions of live odds at or around the venue where the live event is taking place.

In addition to the provisions in the Codes, broadcasters are also required to comply with the following national, State and Territory laws which regulate gambling:

- the *Interactive Gambling Act 2001* which prohibits the advertising of interactive gambling services in any State or Territory in Australia;
- specific restrictions in each State and Territory in relation to the advertising of gambling, wagering, casinos, gaming machines, lotteries, competitions and trade promotions; and
- the Australian Consumer Law which applies in relation to misleading and deceptive conduct.

The new Gambling Provisions

The new Gambling Provisions retain these existing restrictions and introduce the following additional restrictions between 5.00 am and 8.30 pm:

- a ban on the broadcast of commercials relating to betting and gambling during live sporting events including during scheduled and unscheduled breaks; and
- a ban on the broadcast of commercials relating to betting and gambling and promotion of betting odds for 5 minutes before the scheduled start time of play and 5 minutes after the conclusion of play.

A detailed explanation of the provisions is contained in the Explanatory Notes at Part B of this consultation package.

PART B: DETAILED EXPLANATORY NOTES ON THE GAMBLING PROVISIONS

Subscription television broadcasters take their responsibility to ensure that broadcast content is aligned with community expectations regarding gambling advertising in live sports coverage seriously.

The new Gambling Provisions prohibit the broadcast of commercials relating to betting or gambling during live sporting events, including for five minutes before and after live play, between 5.00 am and 8.30 pm. Separate rules are applicable to long form live sporting events.

The existing ban on the broadcast of betting odds during live sports has also been extended in a similar way, to include five minutes before and after live play, between 5.00 am and 8.30 pm.

A more detailed explanation of the proposed changes is set out below. This Explanatory Note does not comment on clauses which remain substantially the same unless necessary for completeness.

Appendix A: Betting Advertising in a Live Sporting Event

Clause (1) Under the existing Codes, commercials relating to betting or gambling are permitted before play has commenced, during scheduled and unscheduled breaks in play and after play has concluded. Clause 1 now prohibits broadcasting of commercials relating to betting and gambling during live sporting events from 5 minutes before the commencement of play until 5 minutes after the conclusion of play, subject to exceptions in clauses (2), (3) and (11).

This provision is designed to protect children, by prohibiting gambling advertisements during times that children are likely to be watching live sport.

Clause (2) - Clause (2) permits commercials relating to betting or gambling before play has commenced, during scheduled and unscheduled breaks in play and after play has concluded between 8.30pm and 5.00am when children are unlikely to be watching. Clause 2 also addresses the issues which arise from the interaction of new time-of-day restrictions, and subscription TV's single national signal.

Subscription television broadcasts to all timezones using a single national signal. The fact that the Government's announced policy includes a time of day component gives rise to a need to determine which Australian timezone will apply for the purposes of the restrictions.

For example, a sporting event may commence in Perth at 5.30pm local time (AWST). During Daylight Saving, it will be 8.30pm (AEDT) in the eastern States such as New South Wales and Victoria. If the timezone of the location of the sporting event is to apply, broadcasters that are able to broadcast different signals into different timezones will be able to commence limited gambling advertising in those eastern States. However, a broadcaster with a national signal will be subject to the blanket restrictions for a further three hours.

This would put subscription television at a substantial competitive disadvantage. Subscription television would bear this unfair penalty despite not being the primary

source of community concerns with gambling advertising, having received very few complaints in recent years.

ASTRA believes a sensible alternative consists of the 8.30pm watershed being tied to Australian Eastern Standard Time, or Australian Eastern Daylight Time, as applicable. We believe this balances the need to ensure as many Australians as possible benefit from the new protections (the majority of subscription television audiences are located in the eastern States) with the need to ensure the new restrictions do not impose unfair penalties on one class of broadcaster or substantially distort the market.

Table 1 below outlines the total hours local teams played in FY17 in different timezones during the proposed new gambling advertising black out period, along with the average total audiences and average audiences aged between 0 – 17 of those events. Table 1 clearly demonstrates the disproportionate impact on a broadcaster with a national signal caused by setting the timezone based on where the event takes place. Based on FY17 numbers, national signal broadcasters would have to apply the restrictions in eastern States for an additional 55 hours beyond those broadcasters that can provide localised signals.

In addition, Table 1 demonstrates that the total numbers of children watching sport in timezones other than AEST/AEDT is extremely low and a small proportion of total audiences (between 7 – 11%), which mitigates any impact that ASTRA’s proposal may have.

Table 1 – FY17 live hours, audiences for events hosted outside AEST/AEDT timezone

Market	Live Hours	Average Audience		
		Total People	P 0-17	P 0-17 Profile
Adelaide (All year 20:00 - 20:29)	20:34	20,124	1,851	9%
Brisbane (Day Light Savings 19:30 - 20:29)	16:09	19,625	1,525	8%
Perth (Day Light Savings 17:30 - 20:29)	7:09	12,491	901	7%
Perth (Standard Time 18:30 - 20:29)	12:20	29,272	3,155	11%

Local teams include teams from AFL, AFLW, NBL, A-League, W-League, NRL and Super Rugby.

Clause (3) - Clause (3) outlines how to deal with commercials relating to betting or gambling during long form sporting events. No more than one commercial relating to betting or gambling may be shown in any two hours and commercials may only be shown in scheduled or unscheduled breaks. This introduces a limit on the frequency of commercials relating to betting or gambling, and restricts the commercials to stoppages in sporting events or games.

This exemption recognises the nature of long form sporting events where a ‘siren to siren’ prohibition is not appropriate, and is consistent with the existing recognition and provision of an exemption for long form events in the current Codes. Advertising during play remains prohibited in long form events.

Clause (5) - Clause (5) extends the prohibition at clause (1) to the promotion of betting odds in live sporting events. Accordingly, the promotion of betting odds during a live sporting event is prohibited from 5 minutes before the commencement of play until 5 minutes after the conclusion of play (subject to exceptions in Clauses (6) and (7)).

Clause (6) – Clause (6) states that betting odds may be promoted other than by a Commentator during a live sporting event, in the period 8.30pm to 4.59am, as is

currently permitted at any time under the current Codes. Such promotions are permitted before play has commenced and after play has concluded. A provision is also made in relation to long form events in accordance with Clause (7).

Clause (7) – is a reframing of the existing provisions relating to the promotion of betting odds other than by a commentator during long form events. The list of long form sporting events has been extended to include a number of Rugby League and Rugby Union events that have been staged and gained popularity since the Codes were last released.

Deletion of existing clause (11) – existing clause (11) contains a number of safeguards intended to ensure the content of gambling advertising is responsible and in line with community standards. ASTRA has no objection in principle with this clause. However, since the existing restrictions came into place in 2013, the Australian Association of National Advertisers (the AANA) has made the AANA Wagering Code of Ethics (**Wagering Code**) which relates specifically to the content of gambling advertising. The Wagering Code includes the protections in existing clause (11) and applies to all betting advertising on all platforms. In addition to the Wagering Code, there are a number of State and Territory laws which already govern the content of gambling advertising (including requirements around protections for children). So as to avoid duplication, ASTRA proposes removing the existing restrictions in the ASTRA Codes. ASTRA also considers that this makes clear that the content of an advertisement is ultimately the responsibility of the relevant advertiser.

Clause (11) – creates a new exemption for subscription TV channels with very small audiences. The proposal is that channels with average audience share of 0.5% or less should be exempt from the new restrictions.

On 2016 figures, this would result in exemptions for the following niche channels:

- beIN SPORTS 1 – 3 – broadcasting European football tournaments, European tennis, European rugby;
- ESPN and ESPN 2 – broadcasting US sports such as NFL, NBA, Major League Baseball;
- Eurosport – broadcasting European events, including cycling, European basketball, athletics, volleyball; and
- EPL club team channels MUTV, LFCTV and Chelsea TV.

Due to the very small audiences for these channels, this exemption will not compromise the Government's stated intentions of protecting children and would guard against the unintended likely consequence of denying coverage of niche overseas sports to die-hard fans and driving existing businesses and jobs out of Australia.

These channels provide niche coverage of overseas events to a small number of highly devoted fans. These channels (as listed above), can be contrasted with the mass-appeal broadcasts of the major Australian football codes or cricket events on free-to-air television which attract audiences of up to 3.5 million viewers. It is these major broadcasts where ASTRA understands community concern to be focused. These niche channels are also in a different category to the other sports channels on subscription television which provide coverage of a mix of niche and more popular sports

The niche sports channels on subscription TV attract a fraction of these audiences and they are typically adult audiences. For example, Eurosport maintains an average age of 57 and 95% of audiences are over 18. For ESPN, 88% of audiences are over 18. The average age profile of audiences for beIN Sports 1 – 3 is 89.3% over 18.

To reflect the fact that programming and sports coverage moves across groups of co-branded channels, ASTRA proposes that if a channel is supplied to the licensee as part of a group of 2 or more co-branded channels, then the audience share of the channel(s) for the purposes of the exemption will be the audience share of those co-branded channels when assessed together.

It is important to note that under ASTRA's drafting, these small channels would only be exempted as regards the new restrictions that are to apply between 5.00am and 8.29pm. All existing restrictions in the Codes of Practice relating to live odds and gambling advertising during breaks which currently apply at any time of day would continue to apply to the small channels, at any time of day.

Clause (13) – Clause 13 (c) contains a reframing of existing exemptions for Subscription Television Narrowcast services. Whilst these changes are not related to the Government's policy announcement, they have been under consideration by ASTRA in the context of its ongoing review of the Subscription Television Broadcasting and Narrowcasting Codes. It is appropriate to include the changes in the current consultation, so as to deal with all changes to the Gambling Provisions at once.

Clause 13(c) extends an existing exemption in the Subscription Television Narrowcast Codes of Practice for services that are provided exclusively to premises licensed to serve alcohol, and that are not available for private or domestic use.

This existing exemption acknowledges that children are typically not permitted in these premises, and that customers of these premises are accustomed to and expect gambling services and advertising to be present. This means the chances of inadvertent exposure of minors to betting advertising is minimal.

The proposed extension is to other sites/premises where children are unlikely to be present. For example, the extension will apply to premises that are licensed to offer gambling services. Children are not permitted in these premises.

The exemption will also cover other sites where children are not present and where viewers are likely to expect or be accustomed to the presence of wagering advertising (such as mines or military sites). ASTRA considers that the inclusion of these exemptions are unlikely to undermine the Government's stated policy intention.

Clause 14 – Clause 14(a) clarifies that it will not be a breach of the Code if any non-compliance is a result of play commencing at a different time than the scheduled start time communicated to or reasonably understood by the Licensee. For example, where the commencement of play is brought forward due to circumstances beyond a licensee's control.

Clause 14 (b) reflects the existing provisions in the current Codes.

Definitions

"Betting Advertising" or "Betting Advertisement" – the definition has been clarified to make it clear that fantasy sports and sports tipping competitions are not included.

ASTRA proposes the exclusion of advertisements for fantasy sports betting products on the following bases:

- fantasy products require a material level of skilled input and are not based primarily on chance like traditional wagering products. Daily fantasy typically involves the performance of a number of players across different matches which

requires time and prior preparation in order for players to meaningfully enter competitions. Conversely, traditional wagering products typically require little preparation and tend to have discrete outcomes based on fewer variables. As a result, ASTRA considers that advertisements for paid fantasy products are much less likely to trigger short term wagering during live sporting events than traditional wagering products (which we understand to be a primary driver for limiting gambling advertisements during live sport);

- daily fantasy products are niche products; there are significantly fewer providers of the product than ordinary gambling products; and industry data suggests that take up of these products is not materially growing. As a result, we consider there is far less of a threat of extensive advertising given the smaller size of the market and the limited competing players. Further, we understand that community concern has not centred around advertising for these products but rather the advertising practices of traditional wagering products; and
- fantasy sports products have different messaging and incentives to traditional wagering products – while many fantasy competitions offer players the opportunities to win cash or prizes, daily fantasy competitions (and the advertisements of those competitions) are often also framed to incentivise players to “compete against your mates”, which is a different non-monetary incentive absent from typical gambling against a wagering operator. Competing against mates is not anti-social (and is arguably more controlled than standard gambling) and is framed in a more positive message than traditional wagering advertising, which we consider much less likely to be harmful from a community perspective.

“Incidental Accompaniment” – this definition has been expanded to take in the official sponsors of the competition, event, match or team. This is consistent with the existing definition which exempts references arising from commercial arrangements beyond the licensees’ control. Advertising or signage which is made to appear at an event is also to be classed as an ‘incidental accompaniment’, to recognise the fact that the presence of this advertising or signage, like physical advertising or signage at an event, is typically outside the control of the licensee.

“Low audience share channel” is a new definition required by the insertion of clause (11). The definition provides a robust and transparent means of assessing which channels can access the exemption in clause (11).

“Play” - The definition of Play has been amended so that it commences at the formal start of an event (for example, whistle or the commencement of active play as applicable) rather than on players entering the field. This is a more precise indicator and will enable licensees to accurately identify the 5 minute period before and after games during which time advertisements relating to Betting or Gambling are banned. The definition has also been amended to clarify that in respect of Long Form Live Sporting Events, Play does not include separate or other programs in Scheduled Breaks.

“Scheduled Breaks” – the table has been updated to include additional examples of scheduled breaks which now exist in sporting events, but which are not reflected in the current Codes.

APPENDIX A

BETTING ADVERTISING IN A LIVE SPORTING EVENT

Betting Advertising during a Live Sporting Event

- (1) Subject to clauses 2 and 3, a Licensee must not broadcast Betting Advertising during a Live Sporting Event from 5 minutes before the commencement of Play until 5 minutes after the conclusion of Play.
- (2) Between 8:30pm and 4:59am AEST or AEDT (as applicable), a Licensee may broadcast Betting Advertising during a Live Sporting Event:
 - a) before Play has commenced;
 - b) during Scheduled Breaks in Play;
 - c) during Unscheduled Postponements in Play; and
 - d) after Play has concluded.

Betting Advertising - Long Form Live Sporting Events

- (3) Clause 1 does not prevent Betting Advertising during a Long Form Live Sporting Event:
 - a) during Scheduled Breaks in Play; and
 - b) during Unscheduled Postponements in Play,provided that no more than one Betting Advertisement is shown in any 2 hour period during Play between 5.00am and 8.29pm AEST or AEDT (as applicable).
- (4) Clause 3 applies to each sporting event or game in a Long Form Live Sporting Event (such as the Australian Open Tennis) as if each sporting event or game was broadcast on an individual match basis.

Promotion of Betting Odds during Live Sporting Event

- (5) Subject to clauses 6 and 7, a Licensee must not broadcast a Promotion of Betting Odds during a Live Sporting Event from 5 minutes before the commencement of Play until 5 minutes after the conclusion of Play.

Restrictions on the Promotion of Betting Odds other than by a Commentator

- (6) A Licensee may broadcast a Promotion of Betting Odds other than by a Commentator during a Live Sporting Event:
 - a) between 8:30pm and 4:59am AEST or AEDT (as applicable), before Play has commenced or after Play has concluded; or
 - b) in relation to Long Form Live Sporting Events, in accordance with Clause 7.

Promotion of Betting Odds - Long Form Live Sporting Events

- (7) Clauses 5, 6 and 11(b) do not prevent the Promotion of Betting Odds other than by a Commentator during Play in a Long Form Live Sporting Event, as part of a distinct break of at least 90 seconds and in accordance with the rules set out below for each Long Form Live Sporting Event:

Tennis	Not more than once per Session. To be placed between matches where the broadcast moves from one match to another.
Golf	Not more than once on each day of competition.
Formula 1, Moto GP and Supercars	Not more than once on each day of competition. To be placed no later than the end of the warm-up lap for Supercars Championship Series Race, or the relevant feature race.
Cricket	Not more than once on each day of competition. To be placed between Sessions.
Olympic and Commonwealth Games	Not more than once every 3 hours on each day of competition.
Rugby Union Sevens, Rugby Union Tens and Rugby League Nines Tournaments (or other similar tournaments)	Between matches and not more than 4 times on each day of competition.

provided that the Promotion of Betting Odds is not for a race, match or game that has already commenced.

Promotion of Betting Odds by a Commentator

- (8) A Licensee must not broadcast a Promotion of Betting Odds by a Commentator of a Live Sporting Event:
- a) within 30 minutes before the commencement of Play; and
 - b) within 30 minutes after the conclusion of Play.

Representatives of gambling organisations

- (9) During a Live Sporting Event, representatives of gambling or betting organisations must be clearly identifiable as such and must not appear as part, or as a guest, of the commentary team at any time.

- (10) During a Live Sporting Event representatives of gambling or betting organisations:

- a) undertaking a Promotion of Betting Odds; or
- b) appearing in Betting Advertising,

must not be at or around, or appear to be at or around, the sports venue where the event which is the subject of the Live Sporting Event is taking place.

Exemptions from this Appendix

- (11) Clauses 1 and 5 of this Appendix do not apply to Live Sporting Events which are broadcast on Low Audience Share Channels. During a Live Sporting Event, a Licensee must not broadcast on a Low Audience Share Channel:

- a) Betting Advertising during Play other than during Scheduled Breaks in Play and Unscheduled Postponements in Play: or

- b) Promotion of Betting Odds:
 - i. during Play;
 - ii. during Scheduled Breaks in Play; or
 - iii. during Unscheduled Postponements in Play,
other than as permitted under clause 7 during a Long Form Live Sporting Event.

For the avoidance of doubt:

- c) the limitation to Betting Advertising during a Long Form Live Sporting Event in clause 3 does not apply to Low Audience Share Channels; and
 - d) paragraph 11(a) above does not prevent a Licensee from broadcasting Betting Advertising on a Low Audience Share Channel:
 - i. before Play has commenced;
 - ii. during a Scheduled Break in Play;
 - iii. during an Unscheduled Postponement in Play; and
 - iv. after Play has concluded.
- (12) This Appendix does not apply to a Live Sporting Event of horse racing, harness racing or greyhound racing.
- (13) This Appendix does not apply to a service that is delivered by a Licensee:
- a) on a pay-per-view basis; or
 - b) as an alternative subsidiary service associated with a Live Sporting Event that is accessed through an active choice by the viewer (for example, by using a button on a remote control to select data relating to Betting Odds on a particular event); or
 - c) as a Subscription Narrowcasting Service provided to:
 - i. limited locations (such as mining or military sites, hotels, short term accommodation, commercial outlets connected with the racing or wagering industry); or
 - ii. are limited audiences (such as channels produced by, on behalf of or in connection with the racing or wagering industry and intended for an adults-only audience); or
 - iii. commercial premises that are licensed to serve alcohol or offer gambling (including wagering or gaming services) and that is not available for private or domestic use.
- (14) It will not be a breach of this Appendix if:
- a) a failure to comply arises from Play of a Live Sporting Event commencing earlier than the scheduled start time communicated to the Licensee; or
 - b) a failure to comply arises from a Live Sporting Event originating from outside Australia; and
 - i. the Licensee has not added the Promotion of Betting Odds or Betting Advertising;
 - ii. the Licensee does not receive any direct or indirect benefit for the Promotion of Betting Odds or the broadcast of the Betting Advertising in addition to any direct or indirect benefit received from broadcasting the event; and
 - iii. it is not reasonably practicable for the Licensee to remove the Promotion of Betting Odds or Betting Advertising.

Definitions

In this Appendix:

“Accidental” means an unscripted and unplanned reference (including remarks by a Commentator) for which the Licensee does not receive any direct or indirect benefit (whether financial or not, and in

addition to any direct or indirect benefit that the Licensee receives for broadcasting the Live Sporting Event).

“**AEST**” means Australian Eastern Standard Time (UTC+10:00).

“**AEDT**” means Australian Eastern Daylight Time (UTC+11:00).

“**Betting Advertising**” or “**Betting Advertisement**” means, an advertisement by, or a distinct promotional reference for, a gambling or betting organisation during a Live Sporting Event, and includes any writing, still or moving pictures, signs, symbols or other visual images or any audible message(s) (or any combination of those things) that provides generic information about the organisation’s brand, business or services. Betting Advertising does not include an advertisement or a reference:

- a) relating to such things as Government lotteries, lotto, keno or contests;
- b) relating to fantasy sports betting products;
- c) relating to entertainment or dining facilities at places where betting or gambling take place, or a tourism commercial which incidentally depicts betting or gambling, provided in each case that the contents do not draw attention to betting or gambling in a manner calculated to directly promote their use;
- d) that is Accidental; or
- e) that is an Incidental Accompaniment.

“**Betting Odds**” means comparative, generally monetary, odds offered in respect of a game or event for a bet on the chance of any occurrence or outcome within that particular game or event, or the overall outcome of the game or event. For the avoidance of doubt, **Betting Odds** includes comparative odds for horse, harness and greyhound racing.

“**Channel Provider**” means a person who:

- a) packages a channel (which may include programs produced by the person); and
- b) supplies the Licensee with the channel; and
- c) carries on a business in Australia, by means of a principal office or of a branch, that involves the supply of the channel;

where, apart from any breaks for the purposes of the transmission of incidental matter, the channel is televised by the Licensee on the service.

“**Commentator**” means a person who is a host, guest or otherwise participating in a Live Sporting Event and includes a person calling, or providing analysis on the sporting event or game, but does not include discrete or distinguishable contributors, including clearly identified representatives of gambling or betting organisations.

“**Incidental Accompaniment**” means a reference or other material which occurs or is included in the normal course of broadcasting a Live Sporting Event for which the Licensee does not receive any direct or indirect benefit (whether financial or not, and in addition to any direct or indirect benefit that the Licensee receives for broadcasting the Live Sporting Event) and includes:

- a) the official sponsors of the competition, event, match, team;
- b) the name of a sporting venue;
- c) branding on a player’s or official’s uniform; or
- d) advertising or signage which is at or which is made to appear at the venue of the event which is the subject of the Live Sporting Event, for example, on a field barrier, big screen or scoreboard.

“**Live Sporting Event**” means a live-to-air broadcast of a sports event. A Live Sporting Event does not include broadcasts of programs that contain only analysis, award presentations or information or a first-run transmission of delayed programming.

“**Long Form Live Sporting Events**” include:

- a) sporting events of extended duration, such as golf, cricket (excluding 20/20 cricket) and motor sports events;
- b) tournaments for single sports that involve concurrent games or matches, such as tennis championships; and
- c) multi-sport events, such as the Olympic and Commonwealth Games.

“**Low Audience Share Channel**” means a channel which has an average television audience share of 0.5% or smaller over a 5 year period or, if a channel has operated less than 5 years, the term of operation for that channel until it has operated for a 5 year period.

Audience share is to be determined by reference to:

- a) the OzTAM ratings information for metropolitan areas for the channel; or
- b) the aggregated OzTAM ratings information for metropolitan areas for a group of 2 or more co-branded channels,

over the previous 5 year period or the term of operation of the channel(s) (as applicable) and must demonstrate a 0.5% or smaller share of a national broadcast TV (free-to-air television and subscription television) audience. If OzTAM data is not available for a channel, the Licensee must provide other evidence that reasonably demonstrates the average viewership of the channel(s) is at or below a 0.5% share of all national broadcast TV viewing over the applicable period.

If a channel is supplied to the Licensee by a Channel Provider as part of a group of 2 or more co-branded channels, then the aggregate audience share of the channel(s) for the purpose of this definition will be the audience share of those co-branded channels when assessed together.

“**Narrowcaster**” means a holder of a subscription television narrowcasting licence pursuant to the *Broadcasting Services Act 1992*.

“**Play**” means the period of the actual run of play or active progress of the sporting event or game which is the subject of the Live Sporting Event. It commences at the formal commencement of the match or game (e.g. first siren, whistle or coin toss, as applicable) and concludes at the conclusion of active play for the match or game (e.g. final whistle or siren, as applicable). It includes *ad hoc* unscheduled breaks such as:

- a) stoppages for injuries;
- b) stoppages for adjudication by third or TV umpires/referees; and
- c) time outs and substitutions in games such as basketball.

In respect of Long Form Live Sporting Events, Play does not include separate or other programs in Scheduled Breaks.

“**Promotion of Betting Odds**” means a distinct promotional reference that provides Betting Odds and includes any writing, still or moving pictures, signs, symbols or other visual images, or any audible message(s) (or any combination of those things). A Promotion of Betting Odds includes superimposed text and graphics such as banner advertisements and sponsorship logos, spot commercials and paid, clearly identified sponsorship segments presented by person(s) but does not include a reference or material that is:

- a) Accidental; or
- b) An Incidental Accompaniment.

“**Scheduled Break in Play**” means stoppages in a sporting event or game that is the subject of a Live Sporting Event. A Scheduled Break in Play will differ depending on the sporting event or game that is the subject of the broadcast, for example:

Sport	Scheduled Break
Test Cricket	<ul style="list-style-type: none"> • Between each Session (ie., lunch break and tea break)

Sport	Scheduled Break
	<ul style="list-style-type: none"> • Drinks break • Change of innings
One Day International Cricket	<ul style="list-style-type: none"> • Between each Session / Change of innings • Drinks break
T20 Cricket	<ul style="list-style-type: none"> • Between each Session / Change of innings • Between the conclusion of second innings and Super Overs • Between Super Overs
Rugby League	<ul style="list-style-type: none"> • Half-time • Between full time and commencement of golden point
Rugby Union	<ul style="list-style-type: none"> • Half-time • Between full time and commencement of extra time
Football (Soccer)	<ul style="list-style-type: none"> • Half-time • Between full time and extra time • Between extra time and the commencement of a penalty shoot-out
AFL	<ul style="list-style-type: none"> • Quarter time • Half-time • Three-quarter time • Between full time and extra time
Tennis	<ul style="list-style-type: none"> • Between each set • A distinct break of at least 90 seconds (including when during a Session the broadcast switches from one match still in Play to another match in Play at the same time), such break to occur not more than once every hour
Basketball	<ul style="list-style-type: none"> • Quarter time • Half-time • Three-quarter time • Between full time and overtime
Netball	<ul style="list-style-type: none"> • Quarter time • Half-time • Three-quarter time • Between full time and overtime
Golf / Supercars endurance races / Swimming Championships	<ul style="list-style-type: none"> • A distinct break of at least 90 seconds, such break to occur not more than once every hour

Sport	Scheduled Break
Formula 1 / MotoGP / Supercars non-endurance races	<ul style="list-style-type: none"> • Between each Session
Olympic Games & Commonwealth Games	<ul style="list-style-type: none"> • Between each day, twilight and night session • A distinct break of at least 90 seconds (including when during a session the broadcast switches from one event still in Play to another event in Play at the same time), such break to occur not more than every 2 hours
Rugby Union Sevens, Rugby Union Tens and Rugby League Nines Tournaments (or other similar tournaments)	<ul style="list-style-type: none"> • Half-time • Full time • Between each morning, afternoon and evening session

This is not an exhaustive list and other sporting events or games may also contain a Scheduled Break in Play, as determined by the rules and regulations of that sport.

“**Session**” means:

- a) in relation to tennis, the day, twilight, or evening session of matches as scheduled by the organisers of the relevant tournament or competition;
- b) in relation to test cricket, any of the three distinct sessions of a match that are divided by lunch and the tea break;
- c) in relation to one-day cricket, an innings; and
- d) in relation to motorsport, an individual race or practice session or qualifying session.

“**Unscheduled Postponement in Play**” means the period when Play is postponed, suspended or delayed due to rain or other unforeseen event, the participants have left or are yet to enter the area of play and the broadcast of replacement or stand-by programs has not commenced.