

**THE COALITION OF MAJOR PROFESSIONAL AND PARTICIPATION SPORTS  
INCORPORATED**

**SUBMISSION TO THE SENATE ENVIRONMENT AND COMMUNICATIONS  
LEGISLATION COMMITTEE**

**INQUIRY INTO COMMUNICATIONS LEGISLATION AMENDMENT (ONLINE CONTENT  
SERVICES AND OTHER MEASURES) BILL 2017**

**12 JANUARY 2018**



## INTRODUCTION

COMPPS consists of the following organisations:

- Australian Football League (**AFL**);
- Cricket Australia (**CA**);
- Football Federation Australia (**FFA**);
- National Rugby League (**NRL**);
- Netball Australia (**NA**);
- Rugby Australia (**RA**); and
- Tennis Australia (**TA**).

These sports play a huge role in developing, promoting and presenting sport in Australia from the grass roots through to the international level. They are not-for-profit bodies and are responsible for the long-term development and sustainability of their sports.

Each of these organisations is the governing body and custodian of a major professional sport in Australia. They are mass participation sports - between them, they have over 9 million participants and 16,000 clubs.

COMPPS members provide a wide range of public benefits through a self-funding business model. A large portion of the revenue of COMPPS members is devoted to enhancing, promoting and developing sport for all Australians both at national and 'grassroots' level.

Our interest in the Inquiry into Communications Legislation Amendment (Online Content Services and Other Measures) Bill 2017 comes as our sports offer live streaming, and have commercial arrangements in place with gambling organisations.

## OVERVIEW

### Existing gambling regulatory framework

There is a framework already in place that regulates the broadcast of gambling ads during live sporting events. Existing provisions include:

- 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 adverts or promotions of live odds at or around the venue where the live event is taking place.

The regulatory framework is being strengthened further through amendments to the Commercial Television, Subscription Television, Narrowcasting and Commercial Radio Codes of Practice. The amendments introduce additional restrictions between 5am and 8.30pm including:

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

- There will be separate rules applicable to long form sporting events and to national broadcasts where there is no capacity to modify signals to satisfy regulatory requirements on a localised basis.

We submit that viewing a live sporting event online is inherently a different viewing experience to the big screen associated with free-to-air and Pay TV, with online being a personal experience generally on a smaller screen which is less likely to encourage family viewing and the propensity for children to be exposed to the content of the broadcast. We therefore submit that restrictions contained within the proposed Codes of Practice referred to above are sufficient in the circumstances and that the restrictions for online be no broader than that contained in the Codes.

## **IMPACT OF COMMUNICATIONS LEGISLATION AMENDMENT (ONLINE CONTENT SERVICES AND OTHER MEASURES) BILL 2017**

As major professional sporting organisations with a broad range of stakeholders, including fans, members and participants, our sports are well placed to participate in the policy debate about reform to online sports betting advertising.

While all sports understand there is a level of community concern regarding the scheduling and quantity of gambling advertising during the broadcast of live sporting events on television, particularly in the context of its impact on child audiences, it is important to note we that we work with our respective broadcast partners, betting partners and Government to ensure there are sensible measures in place to address such issues.

We also know that a large number of our fans and supporters enjoy wagering on our sports and want to remain informed about the products and offerings that are available. It is a challenging balancing act to ensure the interests of all parties are protected.

The proposed changes to wagering advertising via the internet will have an adverse effect on the capacity of our sports to reinvest revenue in our integrity departments as well as grassroots and development programs, community programs, and the broader communities in which our sports are played.

There are a number of issues that need to be addressed and are highlighted below. These include:

- Live-streaming
- Age-gating
- International publishers
- Exemption for small online content providers
- Consistency across industry codes

### Live streaming

Sports seek confirmation that the prohibitions proposed in the Bill on wagering advertising over the internet will only apply to limit advertising:

- within the live stream of a sports match that is made available in this country (be that in the form of ad breaks or integrations in that stream); and
- around the live stream of a sports match that is made available in this country (be that in the form of banner advertising or other imagery that is visible to the viewer from within the live stream view port / landing page).

Removing or switching off these forms of advertising and integration on a sports broader website, where they are delivered separately on platforms away from the live stream of the sport, would be extremely difficult to implement from a practical point of view and would have a material impact on our capacity to derive advertising revenue (which underpin our digital businesses).

We note the proposed new subsection 4(3AB)(a) in the Broadcasting Services Act 1992 states that *“The Parliament also intends that gambling promotional content provided on online content services be regulated in a manner that enables public interest considerations in relation to gambling promotional content to be addressed in a way that does not impose unnecessary financial and administrative burdens on the providers of online content services.”* We respectfully submit that a broader interpretation of the prohibition on gambling ads that extends beyond the page containing the live stream of the sport would impose unnecessary financial and administrative burdens.

We also note that Schedule 8, Division 2, Section 17 attempts to clarify that a for the purposes of the application of this Schedule to a sporting event, if content that consists of live coverage of the sporting event is, or is to be, provided on a distinct part of an overall online content service that part is taken to be an online content service in its own right and that part is taken not to be included in the overall online content service.

We ask the Committee to clarify that the intent of the legislation is therefore to limit the proposed bans to the page on which the livestream is shown, rather than a broader application across the entire website.

#### Age-gating

As people change the way they consume sport and television content, COMPPS members are making a significant investment in technology, process and people to provide our digital audiences with personalised and relevant content. This includes the introduction of age-gating so that users can input their age and minors are protected from exposure to gambling advertising on digital platforms. Such changes are costly and complex, but the sports are committed to doing all we can to enhance the experience of our digital users.

For example recent changes to NRL.com include providing all users with the opportunity to input their age, allowing for better protection against minors receiving wagering advertising on their digital platforms. The changes have been complex and costly.

COMPPS understood from discussions with Government and the Department that an exemption to the proposed prohibition on wagering advertising during the live stream would be extended to those publishers who had established that the user that is receiving the wagering advertising is over 18 years of age.

We note that the Bill gives ACMA the power to determine an online content service is exempt from the online content service provider rules in some circumstances. Further we note that the Bill outlines the decision-making criteria that ACMA is to apply when determining exemptions, including “other matters (if any) as the ACMA considers relevant”. However, there is no explicit reference in the Bill to “age-gating” as criteria for ACMA granting an exemption to the online content service provider rules. We strongly submit that the “other matters as the ACMA considers relevant” provision is intended to allow exemptions where an online content service provider has an age-gating mechanism in place and that such exemption should be implemented.

### International publishers

Sports in Australia are subject to increasing competitive pressures from considerably better resourced publishers who enjoy international scale – Facebook, Google, Twitter, the NBA, the NFL and Amazon, being some examples.

We are very interested to understand how these proposed prohibitions would be applied fairly and evenly among all publishers, including these international publishers that deliver sports content in Australia.

We are also keen to ensure that these prohibitions, should they be introduced, are applied to the broadcast of all sport (national and international) that is broadcast traditionally and over the internet in this country.

It goes without saying that a failure to capture or adequately enforce the proposed changes as against international publishers would place our sports at a considerable disadvantage to these global businesses than is already the case.

We note the proposed clause 5 of Schedule 8—Geographical link to Australia – states that a service has a **geographical link to Australia** if an ordinary reasonable person would conclude that: (a) the service is targeted at individuals who are physically present in Australia; or (b) any of the content provided on the service is likely to appeal to the public, or a section of the public, in Australia. We therefore trust that the prohibitions contained within the Bill would extend the online broadcast of live sports such as NBA, NFL and English Premier League.

We submit that an exception to the above be provided for and consistent with the exceptions contained in the proposed Free TV and ASTRA Codes of Practice, being that it would not a breach in circumstances where:

- a failure to comply arises from the live sporting event originating outside of Australia; and
- the online content service provider has not added any gaming promotional content; and
- it is not reasonably practicable for the online content service provider to remove the gaming promotional content; and
- the online content service provider does not receive any direct or indirect benefit for the gaming promotional content in addition to any direct or indirect benefit received from broadcasting the event.

### Exemption for small online content providers

Proposed clause 15 of Schedule 8 provides that ACMA will have the discretion to exempt a provider that is deemed to be a small online content service from one or more of the online content service provider rules. To ensure a level playing field across all sports, we strongly submit that the exemption for a small online content service be removed. We made the same submission to ASTRA with regard to its proposed exemption for a low audience share channel.

### Consistency across industry codes

COMPPS has made submissions to Free TV, Commercial Radio Australia and ASTRA in relation to amendments to their various Industry Codes that will implement the additional restrictions on commercials relating to betting and gambling during live sporting events. We believe there needs to be consistency in the application of rules across broadcast services and would encourage ACMA to use the Commercial Television, Subscription Television, Narrowcasting and Commercial Radio Codes of Practice as a guide to the application of similar rules for online content service providers.

In this regard, we would welcome proactive engagement with ACMA in the development of the online rules, to ensure consistency with the Industry Codes, provide input pertaining to sports and ensure measures are in place to deal with events such as long form sporting events. As outlined above, all sports understand the community concern regarding gambling advertising during the broadcast of live sporting events and have been proactively engaged with their broadcast and betting partners in a bid to address concerns.

## **CONCLUSION**

We understand and acknowledge the need to address community concerns but we also know that a large number of sports fans enjoy wagering on our sports and want to remain informed about the products that are available and the odds.

The prohibition on gambling advertising during sports broadcasts will have an adverse financial impact on COMPPS members. It is important to remember that COMPPS sports are not-for-profit entities and any commercial surplus generated is invested back into grassroots, participation and development programs, events and game integrity.

COMPPS thanks the Inquiry for the opportunity to make this submission and would be pleased to work with the Inquiry and with the government further on these issues.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Malcolm Speed', written in a cursive style.

**Malcolm Speed AO**  
**Executive Director**