



Submission to

Office of Liquor, Gaming and Racing - Victoria
Static Betting Advertising Consultation

on behalf of

Australian Association of National Advertisers

15 September 2016

Introduction

The AANA welcomes the opportunity to provide this submission to the Static Betting Advertising Consultation, Office of Liquor, Gaming and Racing, Victoria.

The AANA is the peak body for advertisers and has represented national advertising for over 85 years. It represents the common interests and obligations of companies across all business sectors involved in the advertising, marketing and media industry.

The AANA has a strong ongoing commitment to self-regulation. The AANA designed and delivers the self-regulatory component of regulation controlling advertising and marketing communication in Australia.

The AANA's self-regulatory system applies to all media and virtually all forms of advertising and marketing communication. The AANA protects the rights of consumers by helping to ensure advertising and marketing communication is conducted responsibly, including through its development and administration of industry codes and the overall self-regulatory system.

The advertising, marketing and media industry plays a fundamental economic role in society - contributing approximately \$40 billion to the Australian economy and employing over 200,000 people¹. It is the driver of consumer choice and, by promoting competition, helps consumers get better value for money. It enables innovation to be brought to market and stimulates economic growth and jobs.

The AANA self-regulatory system

Self-regulation is an essential part of the Australian business landscape and contemporary society. It flourishes through strong leadership, commitment and cooperation across business, government and the community at large. While the AANA is responsible for developing and maintaining the overarching Codes, self-regulation is not the exclusive domain of any one particular body but the collective concern of many players, large and small.

The current self-regulatory system for advertising and marketing communication in Australia was established by the AANA in 1997. Its establishment was due to advertisers' recognition that they have a responsibility to deliver marketing that is aligned to community standards and expectations. The AANA system of self-regulation sits alongside and complements systems of regulation, co-regulation and self-regulation. Self-regulation of the advertising and marketing communication industry provides a flexible mechanism to meet the challenges of the ever-evolving advertising, marketing and media industry, along with changing community expectations.

The AANA self-regulatory system provides Codes that reflect community standards in relation to the regulation of advertising and marketing and have evolved following regular public consultation. The Codes are technology and platform neutral and provide a uniform set of self-regulatory standards for advertising and marketing communication.

Complaints about advertising are directed to the Advertising Standards Bureau (ASB) which administers the operation of the independent adjudicators, who comprise the Advertising Standards

¹ *Advertising Pays: the economic, employment and business value of advertising*, June 2016
<http://www.advertisingpays.com.au/>

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Board (Ad Standards Board)². Brand owners who are found in breach of the standards are required to remove or amend the relevant marketing material, irrespective of the platform.

The Code of Ethics is the cornerstone of the advertising self-regulatory system and is supplemented by the Code of Advertising and Marketing to Children, Food & Beverages Code, Environmental Claims Code and most relevant to this consultation, the Wagering Advertising & Marketing Communication Code (“Wagering Advertising Code”).

In evolving and developing the AANA self-regulatory system, the AANA reflects brand owners’ intent to continue to meet the community’s expectations for ethical standards in advertising and marketing communications. The system is recognised and endorsed through inclusion in other self and co-regulatory systems, and all major media owners have agreed to support the decisions of the Ad Standards Board.

Definition of advertising

In the AANA Codes, **Advertising or Marketing Communication** means *any material which is published or broadcast using any medium or any activity which is undertaken by, or on behalf of, an advertiser or marketer, and*

- over which the advertiser or marketer has a reasonable degree of control, and
- that draws the attention of the public in a manner calculated to promote or oppose directly or indirectly a product, service, person, organisation or line of conduct.

Medium is defined as any medium whatsoever including without limitation cinema, internet, outdoor media, print, radio, television, telecommunications, or other direct to consumer media including new and emerging technologies.

Platform neutral, national approach

The AANA Codes do not make a distinction between traditional media advertising, including outdoor advertising, and digital advertising. The definition of “Advertising or Marketing Communication” in the AANA Codes ensures virtually all commercial communication is captured and the Codes have evolved in recent years to include social media and consumer public relations communication. The Codes will continue to evolve as new technology and means of communication evolve so that they remain relevant and universal.

This means that the standards specified in the AANA Codes in relation to wagering advertising apply equally across all media. The platform neutral self-regulatory model provides for the ASB to receive all complaints without the consumer having to consider the medium in which the relevant advertisement appeared.

The proposed policy reform identifies transport infrastructure and areas proximate to schools as locations for advertising prohibition due to the exposure to children and adolescents that these advertising locations provide. The prohibition of betting advertisements in or on public transport infrastructure is intended to include, train, tram, bus and taxi infrastructure.

The Outdoor Media Association (OMA) is the peak national industry body representing most of Australia’s out of home media display and media production companies, as well as some media display asset owners. The AANA supports the submission made by the OMA and notes that in 2015, the

² <https://adstandards.com.au/about>

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gambling/gaming sector spent approximately \$11.8 million in the out of home market, making up almost 2% of all media revenue booked on out of home advertising across Australia. Notably, this represents only 6% of the gambling/gaming sector's total marketing spend. In a sector that is under pressure from competing media players, any ban or restriction on this advertising category would have a financial impact on industry business models and their ability to be competitive in market.

When dealing with an industry that operates across a range of media, and particularly where consumers can access the same or similar material across a range of platforms, it is an expensive burden on industry to impose different regulatory requirements depending on the media used, the product category or the geographical location of the material.

When determining what – if any – combination of regulatory interventions might be needed in the future, it is important to respect the rights of brand owners to commercial free speech whilst fully respecting the rights of consumers and the broader community to expect marketing communication to reflect prevailing community standards.

Code of Ethics

The Code of Ethics applies to all advertising regardless of the product or service being promoted. Prior to the introduction of the Wagering Advertising Code discussed below, wagering advertising was assessed against requirements in relation to:

- discrimination and vilification;
- exploitative and degrading content;
- depictions of violence;
- use of offensive language;
- treatment of sex and nudity; and
- depictions of material contrary to Prevailing Community Standards on health and safety.

The Ad Standards Board considered advertising under the last requirement (section 2.6) when the complaint was with respect to a community concern regarding wagering advertising in particular, for example that the advertisement linked wagering with sexual success or made a promise of winning.

Research conducted for the ASB in 2012 showed there is a high level of understanding within the community about the ability to make a complaint to the ASB. An analysis of advertising complaints received in regards to gambling advertising shows a very low level of cases assessed against section 2.6 of the Code of Ethics and no breaches of the Code in relation to gambling marketing in the past year. The level of cases assessed by the Ad Standards Board in relation to gambling advertising under the AANA Codes is only 6.5 per cent of total cases.

In contrast, the proportion of complaints over the past year in relation to sex, sexuality and nudity; discrimination or vilification; and violence were 27.3 per cent, 15.8 per cent and 11.8 per cent respectively.

Wagering advertising continues to be subject to the Code of Ethics, however in addition, the new Wagering Advertising Code now applies.

Wagering Advertising Code

The Wagering Advertising Code came into effect on 1 July 2016. It was developed following an open public consultation process and drawing on input from the wagering sector, governmental organisations and regulators, media and academics. The aim is to help ensure that advertisers and

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marketers continue to develop and maintain a high standard of social responsibility in the advertising and marketing of wagering products in Australia and contribute to existing harm-minimisation measures.

The Wagering Advertising Code provides a range of protections for the community including requirements that wagering advertising must not:

- be directed primarily to minors;
- portray people under the age of 25, unless in an incidental role;
- portray or encourage the consumption of alcohol in combination with wagering;
- state or imply a promise of winning;
- state or imply a link between wagering and sexual success or enhanced attractiveness;
- portray or encourage wagering as a means of relieving financial difficulties;
- portray or encourage excessive participation;
- portray or encourage peer pressure to wager or disparage abstention.

It applies to advertising in relation to wagering products and services by licensed Australian operators and complements existing State and Territory legislation.

The Wagering Advertising Code provides a robust self-regulatory framework for advertising and marketing communication of wagering services using any medium. It applies to betting on thoroughbred, harness and greyhound racing, sporting and other events. It allows the industry to ensure that the content of advertising and marketing activities is delivered in a responsible manner with particular consideration given to the potential impact on young people and those Australians who may find it difficult to gamble responsibly.

The regulation of advertising self-evidently needs to keep pace with the times and the AANA has a mandate to evolve its Codes to align with community expectations. The Wagering Advertising Code is a prime example of this evolution. Beyond setting the standard for responsible wagering advertising, the key benefits of the Wagering Advertising Code are that:

1. it applies to advertising by licensed operators, regardless of membership of the AANA;
2. it applies to all media in the same way, including out of home advertising as well as online and social media advertising;
3. consumers who wish to make a complaint can do so with the ASB, regardless of the media in which the advertising appeared or the jurisdiction in which the operator is registered;
4. a single complaint is sufficient to initiate the complaints handling process and determinations by the Ad Standards Board are made in a timely manner;
5. a code breach requires the advertiser to remove the advertisement from display or broadcast, which can cause considerable financial loss beyond the value of current regulatory fines;
6. all Ad Standards Board determinations are made publicly available and advertisers in breach may be the subject of adverse publicity.

These benefits contrast with a regulatory approach where advertising requirements may be media specific, complaints may not be investigated by regulators and resolution of complaints is likely to be much slower than the current system.

Impact of advertising on wagering activity

The Consultation Paper refers to a range of research into advertising activity and the impact on gambling. However in the AANA's view the selections of material do not provide a comprehensive overview of the information that can be gleaned from the research.

Marketing of sports betting and racing

The recent report *Marketing of Sports Betting and Racing*³ states that the results of research show that there are concerns over the normalisation of gambling. But it goes on to note that only a minority of respondents, except for problem gamblers, reported that this marketing had increased discussions, interest, desire and actual wagering behaviour amongst friends and family. The survey conducted as part of the research found that only 3 in ten adults agreed they are more likely to gamble on sports or racing after seeing sports or racing advertising. However these results are skewed to problem gamblers and the result is only 17% for non-problem gamblers. The report acknowledges that a limitation of the research was that it included the use of non-representative panel samples to target key groups of interest.

In particular, the report stated that while the study found that greater engagement with sports and race betting was associated with higher exposure to wagering advertising, despite using *"both qualitative and quantitative studies, it was not possible to determine a causal relationship between wagering marketing and betting behaviour. This is because the factors that lead to betting include a complex array of social, individual, and environmental factors that are interrelated"*. The report notes that the direction of causation cannot be determined, acknowledging that it could be that more frequent gambling results in more exposure to related marketing.

Interactive gambling

Other recent research includes the report into *Interactive Gambling*⁴ commissioned by Gambling Research Australia, which also clarifies the role that advertising has on gambling activity. The report shows that the two key factors that had the greatest influence on the decision to start gambling via an interactive medium were convenience of online access (65.1%) and price and promotions (36.1%). Advertising/marketing was noted as an influential factor by 8.6% of respondents to the research.

The two key factors that influence the decision of interactive gamblers to gamble at one Internet site over another were price and promotions (42.8%) and reputation (30.4%). Again advertising/marketing was much less influential with 10.5% of respondents noting it as a factor.

Interestingly, respondents were more likely to report that viewing promotions, not advertising per se, increased the likelihood they would gamble online. The research showed that promotions have a substantial impact on participants and 20% of non-interactive gamblers indicated that promotions would increase their likelihood of interactive gambling.

³ Sproston, K., Hanley, C. and Brook, L. 2015, *Marketing of sports betting and racing*, Gambling Research Australia

⁴ Hing, N., Gainsbury, Dr S., Blaszczynski, Prof A., Wood, Prof R., Lubman, Prof D. and Russell, A. 2014, *Interactive Gambling*, Gambling Research Australia

This research suggests that advertising on the one hand has quite a low impact on the decision to gamble or to increase gambling whereas promotions (for example, a money back offer) have a greater impact. All participants reported that their gambling had increased significantly since they first began gambling online. This was related to new products and games, acquiring more portable devices and the availability of increased funds, including through credit. The report does not refer to advertising playing a role in this context.

Productivity Commission

The Consultation Paper provides a quote from the 2010 *Productivity Commission Inquiry Report*⁵ as follows: “gambling advertising, which aims to stimulate demand, has the potential to encourage harmful gambling behaviour and undermine efforts to educate people about gambling”. This is a conflation of two sentences in the report, omitting the statement that most “gambling advertising regulations are consistent with a harm minimisation approach”.

The Productivity Commission is clear that the function of advertising is to facilitate competition and, in the wagering arena, aggressive marketing may well have contributed to a more competitive wagering market and better outcomes for punters. It noted that overall, “the general approach to regulatory variations for advertising across gambling forms – geared to the potential for harm – appears appropriate”.

The report goes on to discuss areas of gambling advertising that could be improved. Static advertising of wagering advertising is not referred to. Of relevance to this consultation, the report refers to advertising to children in the context of commercial broadcasting, noting the potential to reassess those requirements (bearing in mind the report was published prior to the Commercial Television Industry Code of Practice coming into effect).

While the report says it “might be possible to go further – with more sweeping prohibitions on advertising that *might* [original emphasis] reach children...arguably the main thrust of the policy should be to address inappropriate content, being mindful of the difficulty of more generally limiting exposure to children of gambling without inadvertently eliminating the capacity for legitimate television marketing”.

Minors

The Wagering Advertising Code states that advertising of wagering products must not be primarily directed to minors - this is a clear prohibition on wagering advertising targeting those who are under the age of 18 years. Advertising must not depict a person who is a minor unless the person is shown in an incidental role in a natural situation and where there is no implication they will engage in wagering activities.

Further, wagering advertising must not depict a person aged 18-24 years old engaged in wagering activities. This is to ensure that persons who may be aged 18 years or over, but who may appear younger, are not shown engaged in wagering activities.

In any event, the *Marketing of sports betting and racing* report indicates that minors are not target markets for wagering advertising. The report found that a prominent target market was males, especially young adult males (i.e. aged 18 and over) and that 70-75% of adolescents disagreed with

⁵ Productivity Commission 2010, *Gambling*, Report No. 50, Canberra

the statement that sports or race betting marketing made them think about betting on sports in the future. The report did not make any findings as to whether betting activity actually followed on from exposure to betting marketing, rather the results are limited to intention.

The majority of adolescents who participated in the study actually reported negative responses to wagering marketing, for example feeling annoyed and bored. The report notes that the “study did not find a consistent relationship between exposure to wagering marketing and gambling intention amongst adolescents”.

Conclusion

As discussed above, the Wagering Advertising Code applies to all media and does not make a distinction between static and other advertising. Given the clear and wide ranging restrictions on wagering advertising contained in the Wagering Advertising Code, and in existing regulation, the AANA believes there is a need to assess whether there is a clear rationale to increase commercial and regulatory burden on a section of the advertising industry and a specific medium of advertising.

The Productivity Commission report notes that the “case based on existing evidence and judgment that advertising per se (not just inappropriate content) causes harm to minors is too weak to invoke the precautionary principle in favour of far reaching changes to the current restrictions”. Given there is no substantive evidence that harm would be reduced by additional regulation/restriction, it is vital to consider the potential negative impacts and unintended consequences of increasing regulation.