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By email: OnlineRules@acma.gov.au

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Dear ACMA

Comments on the draft *Broadcasting Services (Online Content Service Provider Rules) 2018*

1. Overview

Ad Standards appreciates the opportunity to provide comment on the ACMA's draft *Broadcasting Services (Online Content Service Provider Rules) 2018 (Online Rules)* and Consultation Paper.

In summary, Ad Standards welcomes the rules proposed by the ACMA to extend the restriction on the promotion of betting and gambling in and around live sports coverage to online content. We do however submit that consideration also be given to:

- 1.1. **Recognition of the AANA Codes:** amending section 18 of the draft Online Rules ("Gambling promotional content to be socially responsible") to require that all online gambling promotional content must comply with the AANA Wagering Advertising and Marketing Communications Code and AANA Code of Ethics (collectively, the **AANA Codes**); or in the alternative, if section 18 is to be retained (as currently drafted), a provision be included that meeting the requirements of the AANA Codes will be deemed compliance with the Online Rules.
- 1.2. **Complaints handling:** providing for a complaints resolution referral process in the Online Rules, similar to that which is set out in the broadcast codes, including that online content service providers must refer any complaints made under section 18 of the Online Rules to Ad Standards, to the extent that they relate to the content of advertising.



We have set out our detailed comments below.

2. Self-regulatory system

- 2.1. As you are aware Ad Standards is responsible for the administration of the complaint resolution component of the advertising self-regulation system, supporting the work of the Ad Standards Community Panel (**Community Panel**) which is the body established to consider complaints about advertising and marketing communications against the provisions set out in the relevant advertising codes.
- 2.2. The self-regulation system effectively regulates the advertising and marketing of all advertising and marketing communications in all forms of media across Australia, and is effective in minimising harms from exposure to advertising and marketing of racing and sports betting in all forms of media (on an appropriate, media platform neutral basis).
- 2.3. The current advertising self-regulation model is working well to maintain high advertising standards and ensure consumer trust and protection is met for the benefit of all of the community.

3. Recognition of the AANA Codes

- 3.1. The ACMA have acknowledged that the draft Online Rules set out certain obligations about the content of gambling advertisements similar to, or which reflect, the current AANA Codes¹.
- 3.2. Section 18 of the draft Online Rules requires that a provider must ensure that any gambling promotional content provided in conjunction with live coverage of a sporting event is “socially responsible”. Guidance on what is considered not to be “socially responsible” is set out in paragraph 18(1), and includes a range of matters similar to those in the AANA Wagering Code.
- 3.3. We also note that the current Commercial Television Industry - Code of Practice (**TV Code**) and Commercial Radio Code of Practice (**Radio Code**) also set out similar rules for gambling advertisements during a live sporting event². Whilst we are of the view that these two Codes should also be amended to include a single provision requiring licensees to comply with the AANA Codes³, it is our

¹ ACMA ‘Draft online content service provider rules – Gambling promotional content provided in conjunction with live coverage of a sporting event - Consultation paper’ dated April 2018 (**Consultation paper**), pp. 3 & 19

² Appendix 3, Clause VII of the TV Code; Clauses 9.13 and 9.14 of the Radio Code.

³ In our submission to the FreeTV ‘Review of the provisions relating to the broadcast of gambling and betting commercials and the promotion of odds in live sport in the Commercial Television Industry Code of Practice - 17 November 2017’, we proposed that consideration be given to amending the TV Code rules to a single provision requiring licensees to ensure compliance with the AANA Wagering Code. This proposal was not adopted; however it would have removed duplication between the codes and allowed for more consistent treatment of the issues under the AANA’s Wagering Code.

In respect of the Radio Code, the proposed amendments circulated by Commercial Radio Australia as part of its ‘Review of the provisions relating to gambling and betting odds in live sport in the Commercial Radio Code of Practice – 6 November 2017’, suggested to replace a number of provisions in section 9, with a single provision that required licensees to comply with the AANA



submission that in the context of the online operating environment, it is even more important to provide this level of consistency and certainty for online content service providers and end-users, given that the provision of online content involves a more diverse range of services and providers than television or radio broadcasters, including entities that have not previously been regulated by the ACMA⁴.

- 3.4. Therefore, although we agree that section 18 of the draft Online Rules are reflective of the rules under the AANA Codes, and also similar to the TV and Radio Codes, we suggest that instead of section 18 prescribing matters which are not “socially responsible”, it should be amended to a single provision requiring that all online gambling promotional content complies with the requirements of the AANA Codes.
- 3.5. The key benefits of this approach includes:
 - a. The flexibility of the AANA Codes to quickly respond to recurring issues and evolving advertiser and content service provider practices, as well as adapting to changing consumer needs and expectations. The AANA Codes reflect community standards in relation to the content of advertising, and also specifically in relation to gambling advertising. They have also developed and evolved with public and industry consultation.
 - b. Removal of duplication between the Online Rules and the AANA Codes as well as providing a uniform set of standards which are technology and platform neutral, allowing for more consistent treatment of the issues.
 - c. Making it clear to online content service providers that they have an obligation to ensure that they only provide material to end-users that complies with the AANA Codes. They will also receive the benefit of guidance provided through the AANA Practice Notes and Community Panel decisions.
 - d. The commitment of online content service providers to abide fully by the decisions of the Community Panel and to remove content if a complaint is upheld by the Community Panel.
- 3.6. In the alternative, if section 18 is to be retained (as currently drafted), we suggest that one way of creating greater consistency would be to include an additional provision which provides that an online content service provider is taken to have met the requirements under section 18, if they can demonstrate that they have complied with the AANA Codes (as may be amended from time to time). In this way, they will be deemed to have complied with or satisfied the Online Rules.
- 3.7. However as the AANA Codes are not mandatory, online content service providers

Wagering Code. It was noted that the reason for doing so was that “(t)his removes duplication between the codes and allows for more comprehensive treatment of the issues under the AANA’s dedicated code”. Although this proposal was ultimately not adopted, the reasoning given for proposing the introduction of a single provision is also relevant in the context of online advertising i.e. to remove duplication and ensure consistent outcomes for advertisers and end-users.

⁴ Consultation Paper, p.3



may choose to achieve compliance in some other way, though given the practical guidance available on the application of the AANA Codes through Ad Standards, a deemed compliance approach is likely to be taken up as a more user-friendly option.

- 3.8. We would be pleased to discuss further with the ACMA as to how the above approaches could best work.

4. Management of complaints regarding gambling advertising content

- 4.1. The Explanatory Memorandum to the *Communications Legislation Amendment (Online Content Services And Other Measures) Bill 2017*, acknowledged that “(i)t is anticipated that investigations of potential breaches of the online content service provider rules will be largely complaints driven”⁵. Ad Standards therefore submits that the Online Rules should also include a clear complaint resolution referral process similar to that which is included in the broadcasting codes⁶.
- 4.2. The ACMA have indicated their intention that the Online Rules be as consistent as practicable with the broadcasting rules⁷. The TV Code and Radio Code both provide for a complaint referral approach which in effect, results in Ad Standards managing complaints related to the content of TV and Radio advertising or marketing material⁸.
- 4.3. Therefore, one clear way of ensuring consistency across platforms is for the Online Rules to provide for a complaints resolution process that includes referral of complaints about the content of gambling advertising to Ad Standards, as is the case for broadcasters.
- 4.4. Under recent amendments to the *Broadcasting Services Act 1992 (BSA)*⁹, one of the objects of the BSA is now “to provide a means for addressing complaints about gambling promotional content provided on online content services”¹⁰. A new section 24 has also been inserted and provides:

24 Complaints to ACMA—online content service provider rules

(1) If a person has reason to believe that an online content service provider has contravened the online content service provider rules, the person may make a complaint to the ACMA about the matter.

(2) The ACMA may conduct an investigation into the complaint if it thinks that it is desirable to do so, but is not required to conduct an investigation.

⁵ Explanatory Memorandum for the *Communications Legislation Amendment (Online Content Services And Other Measures) Bill 2017*, p. 4

⁶ See section 7.3 of the Commercial Television Industry Code of Practice; and section 10 of the Commercial Radio Code of Practice.

⁷ Consultation paper, p.2

⁸ Section 7.3 of the TV Code; Section 10.14 of the Radio Code.

⁹ Communications Legislation Amendment (Online Content Services and Other Measures) Act 2018 (Cth), which came into force on 12 April 2018

¹⁰ Paragraph 3(1)(ia) of the BSA.



Note: One of the ACMA's functions is to monitor compliance with the online content service provider rules.

- 4.5. It is therefore noted that there is no requirement for the ACMA to conduct an investigation into a complaint, and there is nothing to preclude the ACMA from referring a complaint to a third party complaints resolution process – such as that which is administered by Ad Standards.
- 4.6. The existing complaint resolution process managed by Ad Standards is an effective and efficient way to respond to consumers' concerns about the content of advertising. We should therefore become the first key point of contact for all complaints about the content of online gambling advertisements, including for the following reasons:
 - a. Ad Standards are already the central authority for receiving complaints about advertising across all forms of media in all areas of Australia and in relation to advertising of any products or services. As the ACMA are already aware, Ad Standards already accepts complaints relating to the content of gambling advertising in any medium, including online.
 - b. Over recent years Ad Standards has received a large number of complaints about advertising for gambling and wagering services. Although broadcasters receive and resolve complaints made under the broadcaster codes through their own complaints system, a significant number of complaints about advertisements are also received by Ad Standards. We are therefore well equipped to deal with any complaints that may arise under section 18 of the Online Rules.
 - c. Our complaints system is transparent and accessible to all consumers, with easy to follow steps and support throughout the process provided by Ad Standards staff.
 - d. Transferring the complaint management process for online gambling advertising content to Ad Standards would effectively establish a 'one-stop-shop', for the advertising of gambling products and services in Australia. This would greatly improve clarity and consistency for consumers and would provide a single point of contact for those responsible for advertising gambling products and services across all media (broadcast and online).
 - e. The complaints system operates at no cost to the consumer or to the government, as it is funded through a voluntary levy based on advertising spend.
 - f. When required, Ad Standards is supported in enforcing compliance with Community Panel determinations by the media and media industry associations. This system has demonstrated its effectiveness during the past 20 years - with a record of nearly 100 per cent (currently 97%) compliance by industry with Community Panel determinations.



- g. Ad Standards already has processes in place for referral of non-compliance (or serious matters warranting immediate referral prior to Community Panel consideration) to relevant government bodies. Ad Standards has only had to seek the support of government bodies in very rare instances.
- 4.7. We therefore submit that where a complaint is made about the content of advertising material (under section 18 of the draft Online Rules), online content service providers are required to refer such complaints to Ad Standards to the extent that the content of the advertisement or marketing communication relates to the promotion of gambling and betting odds in live sports coverage.
- 4.8. As the ACMA would acknowledge, the commitment of online content service providers, advertisers, their agencies, media buyers, media operators and industry associations are all essential to ensure community expectations about advertising standards are being met.

I would be happy to elaborate further on any of the information provided with this submission, and Ad Standards looks forward to continuing to work together with the ACMA to ensure that advertising on all forms of media, meets community standards.

Kind regards

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

Fiona Jolly
Chief Executive Officer