

# Response to the *Discussion Paper on the proposed AANA Wagering Advertising & Marketing Communication Code*

From the Victorian Responsible Gambling Foundation

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## 1. About the foundation

The Victorian Responsible Gambling Foundation is an independent statutory authority established in 2012 with the bipartisan support of the Victorian parliament. The foundation was established with three clear objectives:

1. reducing the prevalence of problem gambling
2. reducing the severity of harm related to gambling, and
3. fostering responsible gambling.

Operating within a public health framework, the foundation strives to meet its mandate by acting across four key areas:

- providing effective and accessible problem gambling counselling services
- increasing community awareness about the risks of gambling and the help available to those who need it through public campaigns and community education activities
- providing information and advice to the community on the Victorian gambling environment to promote discussion and participation in decisions about gambling, and
- conducting research to better understand the impact and address the negative consequences of gambling on our communities

The foundation has primary responsibility and is firmly focused on identifying, understanding and ameliorating the impact of gambling-related harm in Victoria.

Through our professional counsellors, the foundation has access to first hand accounts of thousands of clients including gamblers and those affected by someone else's gambling. Having access to information about the experiences of men, women and children from across Victoria gives the foundation real insight into the impact of gambling harm in households across the state.

Furthermore, the foundation is fortunate to have what is regarded as a rigorous, independent research program with national and global networks involved in the program.

## 2. Introduction

The foundation welcomes the opportunity to respond to this discussion paper.

In accord with its mission, the foremost focus of this response will be to provide information to address or prevent harms from gambling. In particular, the foundation is greatly concerned with children and young people's exposure to advertising and marketing by wagering service providers during television broadcasts of sporting events, via social media and at sports grounds themselves.

The foundation considers that fostering responsible gambling and reducing harm from race betting and sports betting is best focused on creating consistent rules in Australia in the following matters:

- a) Regulatory interventions to minimise children and young people's exposure to gambling promotion as well as regulating the content of promotions and advertisements
- b) Restrictions around the uses and promotions of inducements
- c) Working with publishers and media providers to ensure standards for promotions through their platforms are consistent with rules and guidelines for marketing.

Wagering advertising and promotion currently takes place via traditional media such as television, print, radio, outdoor, sponsorships, partnerships and ground signage. It also increasingly takes place via alternative methods such as digital, e-mails, SMS, native content, podcasting, social media, program partnerships and content (live reads, pull throughs, broadcast commentary etc), as well as other communication techniques.

It has been reported that \$149 million was spent on gambling advertising in the year to August 2015 up from \$104.5 million in the same period in 2014.<sup>1</sup> Expenditure on gambling advertising in Australia has been growing rapidly since 2010, outgrowing overall advertising spend.<sup>2</sup> It should be noted these figures will not be capturing the total spend on advertising and promotions. As well as paid media advertising, companies have also used a number of other promotions, including stadium and team sponsorships, use of celebrity ambassadors, partnerships with broadcasters etc.

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<sup>1</sup> O'Brien N. and Williams P. (2015) '[Sports betting companies spend big on ads but the regulator is watching](#)' *Sydney Morning Herald* 27 September

<sup>2</sup> See Sproston, K. Hanley, C. Brook, K. Hing, N. and Gainsbury, S. (2015) '[Marketing of sports betting and racing](#)'. Gambling Research Australia) p.38ff

Signage promoting gambling has become ubiquitous at sports events and even in public transport facilities and vehicles people use to attend sports<sup>3</sup>.

In the digital space companies have focussed on building recognition and loyalty, as well as promoting betting on products, using social media such as Facebook and YouTube.<sup>4</sup> The total effect of all this advertising and promotion has been a rapid saturation of much of the environment where Australians live their daily lives.

As a result, some methods now used to promote or sell wagering services may not be traditionally considered as advertising yet they are most certainly still promotions.

Accordingly, the foundation considers as a starting point that a clear definition of wagering advertising and marketing communication is required. It can be defined as:

*Wagering advertising and promotions are any commissioned, co-contributed or paid for form of communication or message that is designed to increase, or has the effect of increasing, the recognition, appeal and/or consumption of wagering products, services or brands. Wagering advertising and promotion occurs on traditional and digital platforms and takes different forms, but is consistently concerned with the promotion of wagering.*

### **3. Identifying and addressing the problem in general – summary of foundation’s position**

The foundation’s response to the AANA makes the following points:

Gambling is a product that can cause harm which is the reason for its regulation. Therefore the primary concern of any code or rules regulating advertising and promotion must be effectiveness in reducing harm from gambling.

#### **Recommended key principles for effective codes and rules**

In order for gambling codes to be effective in reducing harm from gambling and contributing to a responsible gambling environment the following principles need to be observed:

**1) Exposure to gambling needs to be limited, especially among children and young people**

The extent and level of exposure to gambling promotion needs to be controlled, particularly in relation to children and young people. Access to gambling is clearly associated with increased risk of harm. Increased visibility of prompts to gamble is therefore also related to increased risk. This is particularly so with the advent of legal online wagering where access to gambling is effectively continuous and limitless. This is why levels of exposure to gambling promotion are important to those at risk.

**2) The content of gambling advertising or promotion should not undermine the prevention of harm from gambling**

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<sup>3</sup> Thomas, S., Lewis, S., Duong, J., & McLeod, C. (2012). Sports betting marketing during sporting events: a stadium and broadcast census of Australian Football League matches. *Australian and New Zealand Journal of Public Health*, 36(2), 145-152

<sup>4</sup> For a breakdown of uses of social media see Thomas SL. et.al., (2015) [The marketing of wagering on social media: an analysis of promotional context on YouTube, Twitter and Facebook](#) VRGF

The content of gambling promotion needs to be regulated in relation to its ability to send messages and create associations with gambling that:

- a. undermine recipients ability to understand the risks involved or the actual gambles they are taking
- b. encourage behaviours that are likely to undermine control over gambling
- c. generate misunderstandings about the place or importance of gambling in relation to sport and/or other social relationships.

**3) Codes need to be adequately enforced**

Any code or regulation is only as good as its enforcement. This has three aspects:

- a. The independence of the adjudicators. They need to be free from conflicts of interest and have, or have access to and adopt, the recommendations of relevant independent expertise, as well as able to represent actual rather than perceived/assumed community standards
- b. The timeliness of decisions: promotional campaigns/flights are often short, therefore address and redress should occur quickly
- c. Sanctions and penalties should be sufficient to deter breaches of the rules. This includes the ability to enforce removal and adequate modification prior to re-use

**4) Rules must cover all forms of gambling promotion and advertising**

The rules cover all the channels over which gambling is promoted and all the forms in which it is promoted. This is necessary to deliver consistency but also for the effective creation and maintenance of a responsible gambling environment.

**5) Rules are consistent rather than piecemeal.**

While, as the AANA has noted, its system of self-regulation should “sit alongside and complement systems of regulation, co-regulation and self-regulation”,<sup>5</sup> it is important that these different rules do not compete and proliferate in a way that creates a confusing series of avenues for assessment and complaint that act as a series of dead ends for redress. There is a danger of this happening, as can be seen in the appendix attached to this response.

The foundation appreciates that the AANA discussion paper is primarily concerned with content and appears to regard control over exposure as the preserve of government regulation. However, it is the case that content and exposure are intertwined, since what is appropriate content depends in part on who is exposed, how they are exposed and how often they are exposed. Moreover, industry currently has wide latitude in deciding when and where to run its promotions, so it is by no means clear that it could not choose to limit exposure.

In terms of content and content adjudication it is important that independence and expertise is brought to bear. Interpretation of potential harm through a lens of industry and media/publisher representatives with a clear conflicts of interest can be expected to lack effectiveness and legitimacy. Content analysis should be based on evidence and considered analysis.

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<sup>5</sup> AANA submission to Department of Communications: Review of the Australian Communications and Media Authority (August 2015) p. 2

The question of enforcement can be also dealt with in the way the AANA constructs its code. Currently there is great proliferation in promotions, running across many channels and often for relatively short time frames. Dealing with complaints promptly will be important. For complaints to be effective, sanctions imposed must be meaningful. An effective code must include deterrence that will strongly encourage industry to censor inappropriate content before it is disseminated, and adequately amend any content where complaints have been upheld before being disseminated again.

#### **4. Problems codes and regulations need to address - protecting the consumer, reducing harm from gambling, responding to community concerns**

All gambling codes and rules should protect vulnerable populations. Groups at risk from gambling harm include young people, especially young males, people experiencing mental health issues and people experiencing loneliness or social isolation.<sup>6</sup> A particular concern for the foundation is that children are currently exposed to large amounts of digital, broadcast and print advertising for wagering.<sup>7</sup>

Primary targets for most of the advertising appears to be young men.<sup>8</sup> However, concerns have been raised that the extent and form of the advertising has wider reach than this group, in particular children.<sup>9</sup> Some parents are concerned about gambling being legitimised and normalised for their adolescent children.<sup>10</sup> Normalisation is meant (and felt) in two ways:

- that gambling is being represented to young people, particularly young men, as something that is low in risks, an expected part of being an adult, and a natural or normal part of following a sport. Such views may in turn result in underage gambling as teenagers emulate those older and seek rites of passage.<sup>11</sup>
- that gambling is being associated with sport to such an extent that the way sport is perceived and played is being changed. From sport as a healthy and family friendly activity, that engages loyalty to a team that in turn builds character and models good behaviour, to sport as a gambling product in which picking winners is the primary engagement. Such a change is not being welcomed by the broader community

The community is correct in its perception that children and young people are heavily exposed to gambling advertising when watching sport. In 2011, Thomas et al found that there were an average of 58.5 episodes of gambling in AFL games at stadiums and 50.5 episodes on TV.<sup>12</sup>

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<sup>6</sup> Miller, H. (2015) Background Paper - Risk factors for problem gambling: Environmental, geographic, social, cultural, demographic, socio-economic, family and household, VRGF

<sup>7</sup> For a summary of widespread community concerns see Sproston, K. Hanley, C. Brook, K. Hing, N. and Gainsbury, S. (2015) [Marketing of sports betting and racing](#). Gambling Research Australia p.45ff

<sup>8</sup> Hing N., (2014). [Sports betting and advertising](#). Australian Gambling Research Centre Discussion Paper no.4

<sup>9</sup> For a summary of concerns about children see Sproston, K. Hanley, C. Brook, K. Hing, N. and Gainsbury, S. (2015) [Marketing of sports betting and racing](#). Gambling Research Australia. p.145ff. See also Phillips T. (2013). [Gambling and young people: impacts, challenges and responses](#), VRGF p.13ff

<sup>10</sup> Thomas, SL. (2014). [Parents and adolescents discuss gambling advertising: A qualitative study](#). Victorian Responsible Gambling Foundation p 6-7. See also Sproston et.al p.45ff

<sup>11</sup> For an overview see Phillips T. (2013). [Gambling and young people: impacts, challenges and responses](#), VRGF

<sup>12</sup> Thomas, S., Lewis, S., Duong, J., & McLeod, C. (2012). Sports betting marketing during sporting events: a stadium and broadcast census of Australian Football League matches. *Australian and New Zealand Journal of Public Health*, 36(2), 145-152.

Similarly, Lindsay et al found that there were an average of 110.67 episodes of advertising in TV coverage of NRL games.<sup>13</sup> Research has shown that adolescents were just as likely as adults to have watched professional sporting events in the last 12 months (84%).<sup>14</sup>

The foundation has recently received research which demonstrates the effect that sports betting advertising has on children and adolescents. In a study of 152 children aged between 8 and 16 years, Thomas et.al. found that over two-thirds of children correctly recalled the name of at least one sports betting brand.<sup>15</sup> Approximately one in five children were able to identify three or more sports betting brands. In addition, children in this study were able to correctly associate teams with shirt sponsors, indicating an implicit association made in their minds between gambling or other unhealthy products and sport. Almost two-thirds of children correctly identified at least one team sponsorship relationship.

As noted above it is important that the rules around advertising and promotions are responsive to community concerns. The community strongly opposes advertising of wagering products, particularly during sporting events. The ACMA found that 62 per cent of a sample of 1,225 Australian adults thought that advertising of wagering during sporting events was completely or mostly unacceptable.<sup>16</sup> Only 9 per cent thought that such advertising was completely acceptable. Such a strong response may be because the community recognises the risks of gambling advertising for vulnerable groups, including children.

The primary concern of any regulation of wagering marketing is the protection of vulnerable members of the population, be they children and young people, those with mental health issues, or those with gambling problems. Current regulations aim to protect children and adolescents from being targeted by gambling advertising. However, it is apparent that they are not adequately controlling exposure in these groups. Research has established that adolescents are exposed to gambling marketing<sup>17</sup>, and there is also strong evidence that the extent of marketing is inconsistent with community standards

Gambling is a hazardous product and so protection of the consumer is of heightened importance. An environment of responsible gambling exists where consumers:

- are given tools and assistance to control their gambling
- are able to clearly understand and make decisions about the bets they make or the offers they are made
- are not subject to advertising, promotions or other forms of marketing that lead them to discount or misunderstand the risks they are taking, or encourage them into behaviour such as chasing losses

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<sup>13</sup> Lindsay, S., Thomas, S., Lewis, S., Westberg, K., Moodie, R., & Jones, S. (2013). Eat, drink and gamble: marketing messages about 'risky' products in an Australian major sporting series. *BMC public health*, 13(1), 719

<sup>14</sup> Sproston, K. Hanley, C. Brook, K. Hing, N. and Gainsbury, S. (2015) [Marketing of sports betting and racing](#). Gambling Research Australia. p143

<sup>15</sup> Thomas, S., Pitt, H., Bestman, A., Randle, M., Stoneham, M., Daube, M. and Pettigrew, S. (unpublished) *Children and parent recall of gambling sponsorship in Australian sport*. Victorian Responsible Gambling Foundation.

<sup>16</sup> Australian Communications and Media Authority (2013) [Betting odds and advertising for betting agencies during sports broadcasts: Community research](#). p16

<sup>17</sup> Sproston, K. Hanley, C. Brook, K. Hing, N. and Gainsbury, S. (2015) [Marketing of sports betting and racing](#). Gambling Research Australia.

- where vulnerable consumers, such as those underage, are not exposed to messages they are likely to misconstrue or that prompt or encourage them to gamble

## 5. Rules for content

In the content of promotions, it is the case that care needs to be taken to promote, not undermine, the responsible gambling environment and not to impact on vulnerable populations. The foundation supports, in part, some of the points made in the AANA discussion paper, however there are areas where improvement is needed, as follows.

The AANA discussion paper speaks, for example, of ruling out the targeting of children. This clearly should be the case, since gambling is not a legal product for those underage and such promotions would be open to legal sanction. It is the case that children are being exposed to gambling promotion regardless of 'targeting' and therefore the code needs to take this into account.

Thus the foundation recommends that: gambling promotions should actively discourage children's engagement with promotions.

On matters of content the foundation recommends that most effective harm minimisation is likely to occur when content:

- 1) must not depict minors or those who could be construed as minors
- 2) must not depict an adult who is under 25 years of age unless:
  - a. they are shown in an incidental role in a natural situation (for example, in a team playing sport) and where there is no implication they will engage in wagering activities or are associated with a wagering brand;
  - b. they are clearly not engaging in wagering activities or being associated positively with a wagering brand; or
  - c. they are shown in an advertising or marketing communication promoting gambling that has been placed in an age restricted environment such as premises that do not admit minors or a suitably age restricted digital platform
- 3) must not reflect or be associated with youth culture, including by featuring a character or personality with particular appeal to minors
- 4) must not associate gambling with the consumption of alcohol through depiction or context
- 5) must not suggest that winning will be a definite outcome of participating in gambling activities
- 6) must not suggest that participation in gambling activities is likely to improve a person's financial prospects
- 7) must not suggest a link between gambling and seduction, sexual success or enhanced attractiveness
- 8) must not expressly state that a person's skill can influence the outcome of a gambling activity
- 9) must make visible and audible that terms and conditions apply and how they can be directly accessed in relation to the specific product(s) being promoted

- 10) must provide visible and audible messages that state that gambling can be harmful, that frequent gambling is risky, and that promote knowledge of responsible gambling tools, such as activity tracking and self-exclusion, and how they can be accessed. The foundation recommends that a series of alternating messages would be acceptable across promotions but that they should be sanctioned as effective by independent experts in the field of gambling harm.

With regard to education campaigns

- 11) in regard to education campaigns and promotions the code *would apply*, to any materials that were created, sponsored or facilitated by industry or associated bodies. However, it should be noted that it is the foundation's position that all public education and information campaigns should be research-based and conducted independently of industry members or those in a position of conflict of interest.

## 6. Summary of recommendations

### Recommendations for effective rules and regulations

- 1) **Exposure to gambling needs to be limited, especially among children and young people**

The extent and level of exposure to gambling promotion needs to be controlled, particularly in relation to children and young people. Access to gambling is clearly associated with increased risk of harm. Increased visibility of prompts to gamble logically is also related to increased risk. This is particularly so with the advent of legal online wagering where access to gambling is effectively continuous and limitless. This is why levels of exposure to gambling promotion are important.

- 2) **The content of gambling advertising should not undermine the prevention of harm from gambling**

The content of gambling promotion needs to be regulated in relation to its ability to send messages and create associations with gambling that:

- a. undermine recipients ability to understand the risks involved or the actual gambles they are taking
- b. encourage behaviours that are likely to undermine control over gambling
- c. generate misunderstandings about the place or importance of gambling in relation to sport and/or other social relationships.

- 3) **Codes need to be adequately enforced**

Any code or regulation is only as good as its enforcement. This has three aspects:

- a. The independence of the adjudicators. They need to be free from conflicts of interest and have, or have access to relevant expertise, as well as able to represent community standards
- b. The timeliness of decisions: promotional runs are often short, address and redress should occur quickly
- c. Sanctions and penalties should be sufficient to deter breaches of the rules.

**4) Rules must cover all forms of gambling marketing**

The rules cover all the channels over which gambling is promoted and all the forms in which it is promoted. This is necessary to deliver consistency but also for the effective creation and maintenance of a responsible gambling environment.

**5) Rules are consistent rather than piecemeal.**

While, as the AANA has noted, its system of self-regulation should “sit alongside and complement systems of regulation, co-regulation and self-regulation”,<sup>18</sup> it is important that these different rules do not compete and proliferate in a way that creates a confusing series of avenues for assessment and complaint that act as a series of dead ends for redress. There is a danger of this happening, as can be seen in the appendix attached to this response.

## **Specific recommendations around content of advertising and promotions**

**1. Gambling promotions should actively discourage children’s engagement with promotions.**

**2. Content**

- a) must not depict minors or those who could be construed as minors
- b) must not depict an adult who is under 25 years of age unless:
  - i. they are shown in an incidental role in a natural situation (for example, in a team playing sport) and where there is no implication they will engage in wagering activities or are associated with a wagering brand;
  - ii. they are clearly not engaging in wagering activities or being associated positively with a wagering brand; or
  - iii. they are shown in an advertising or marketing communication that has been placed in an age restricted environment such as premises that do not admit minors or a suitably age restricted digital platform
- c) must not reflect or be associated with youth culture, including by featuring a character or personality with particular appeal to minors
- d) must not associate gambling with the consumption of alcohol through depiction or context
- e) must not suggest that winning will be a definite outcome of participating in gambling activities
- f) must not suggest that participation in gambling activities is likely to improve a person’s financial prospects
- g) must not suggest a link between gambling and seduction, sexual success or enhanced attractiveness
- h) must not expressly state that a person’s skill can influence the outcome of a gambling activity

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<sup>18</sup> AANA submission to Department of Communications: Review of the Australian Communications and Media Authority (August 2015) p. 2

- i) must make visible and audible that terms and conditions apply and how they can be directly accessed in relation to the specific product(s) being promoted
  - j) must promote responsible gambling with visible and audible messages that state that gambling can be harmful, that frequent gambling is risky, and that promote knowledge of responsible gambling tools, such as activity tracking and self-exclusion, and how they can be accessed.
- 3. Education campaigns and promotions: the code *would apply* to any materials that were created, sponsored or facilitated by industry or associated bodies. However, it should be noted that it is the foundation's position that all public education and information campaigns should be research-based and conducted independently of industry members or those in a position of conflict of interest.**

## 7. References

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