



Submission to

House of Representatives Standing Committee on Social
Policy and Legal Affairs Inquiry into Online Gambling

on behalf of

Australian Association of National Advertisers

November 2022

Introduction

The Australian Association of National Advertisers (AANA) welcomes the opportunity to provide this submission to the House of Representatives Standing Committee's Inquiry into Online Gambling and its impacts on those experiencing gambling harm.

The AANA exists to promote all forms of responsible marketing through the self-regulation of advertising content to ensure it meets prevailing community standards.

Since 1997 the AANA and Ad Standards have been the custodian of Australia's advertising content self-regulation system, successfully developing advertising codes and operating an impartial complaints handling process at no cost to tax-payers and with a high compliance rate.

The AANA develops, reviews and updates the codes whereas Ad Standards provides an avenue for the public to raise concerns around advertising and such complaints are adjudicated by an independent Community Panel which includes people from a broad range of age groups and backgrounds and is gender balanced, and as far as possible representative of the diversity of Australian society.

The AANA has five Codes which regulate advertising in Australia, including wagering advertising through the AANA Wagering Advertising Code (the Wagering Code).

The Wagering Code was introduced in 2016 in response to the growth in wagering advertising and community concern around such advertising. At that point in time, the regulation of wagering advertising was fractured and a unified national framework regulating the content of wagering advertising did not exist due to the constitutional limits on Federal Parliament's ability to legislate on this area. For this reason, the AANA introduced rules in the form of the Wagering Code to self-regulate the content of wagering advertisements. The object of the Wagering Code is to ensure that advertisers and marketers develop and maintain a high sense of social responsibility in advertising and marketing wagering products in Australia.

Our submission will focus on the issue of advertising restrictions, in particular what protections exist under the AANA Wagering Advertising Code to restrict advertising gambling services to children.

The AANA self-regulatory system

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 Ad Standards and adjudicated by the independent Community Panel. Advertisers 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 Code ("Wagering Code").

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.*

These definitions combine to ensure that online wagering advertising is covered by the Code.

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 Ad Standards to receive all complaints without the consumer having to consider the medium in which the relevant advertisement appeared.

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.

Code of Ethics

The AANA Code of Ethics applies to all advertising regardless of the product or service being promoted and contains restrictions in relation to:

- discrimination or vilification in advertising;
- 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.

Wagering advertising must comply with the Code of Ethics in addition to the Wagering Code.

AANA Wagering Advertising Code

The Wagering 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 marketers

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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 Code applies to all advertising for wagering products and services by licenced operators in Australia, including online advertising. 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 Wagering Code does not apply to:

- unlicensed offshore operators who advertise in Australia;
- gaming, such as casino games or electronic gaming machines (also known as pokies);
- lotto and lottery products;
- trade promotions;
- odds compilation or tipping services provided by third parties who are not licensed operators.

The Wagering Code was further amended in 2017 to provide clarity on the definition of 'wagering activities' and guidance on what is considered to be excessive participation.

The Wagering 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; or
- portray or encourage peer pressure to wager or disparage abstention.

The regulation of advertising needs to keep pace with the times and the AANA has a mandate to evolve its Codes to align with community expectations. The Wagering 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 Ad Standards, 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 independent Community Panel 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 Community Panel decisions 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.

Protection of Minors

The Wagering 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.

Further Consultation

The AANA would welcome an opportunity to discuss in more detail with the House of Representatives Standing Committee the issue of wagering advertising and the protection of minors from such advertising. Please contact Megan McEwin at megan@aana.com.au regarding opportunities for further consultation.