

DOC20/145723

Regulatory position in respect to tipping competitions and special odds

As you may be aware, Liquor & Gaming NSW (L&GNSW) is an agency within the Department of Customer Service, responsible for the development, implementation and integrity of the regulatory framework of wagering activities in NSW. This includes the regulation of gambling-related advertising to ensure that these activities do not encourage gambling through the prohibited advertisement of wagering inducements.

A key part of ensuring that the regulatory framework continues to achieve its legislative objectives is ongoing monitoring of advertising, offers and competitions that may contravene the legislation.

As part of this monitoring program, L&GNSW has identified recent instances where betting service providers (BSPs) have published advertisements involving tipping competitions as part of a Trade Promotion Lottery (TPL).

Similarly, L&GNSW has also identified instances where BSPs are advertising special odds markets with maximum bets in apparent contravention of the Guidelines and the *Betting and Racing Act 1998* (the Act).

L&GNSW has considered these promotions and the various provisions of the Act and has determined to notify all industry operators that the publication or communication of such promotions to the world at large breaches the applicable legislation.

L&GNSW notes that convictions for breaches of section 33H(1) of the Act can result in individual penalties of up to \$11,000, or \$110,000 for a corporation, for each offence.

Applicable legislation

It is an offence under section 33H(1) of the Act for a non-proprietary association or licensed betting service provider, or any other person to:

“...publish or communicate, or cause to be published or communicated, whether from in or outside New South Wales, any gambling advertisement that may be accessible to a person in New South Wales and that contravenes any requirement of this section.”

Section 33H(2)(h) states that:

“A gambling advertisement must not:

(h) include any inducement to participate, or to participate frequently, in any gambling activity (including an inducement to open a betting account)”.

An “inducement” is defined in section 33GA of the Act to include the offer of a credit, voucher, reward or other benefit; the offer of a gambling product, or the offer of a condition or other aspect of a gambling product that includes additional benefits or enhancements or any other product prescribed in the Regulations. No inducements are currently prescribed in the Regulations.

Consideration of tipping competitions

As noted above, L&GNSW has identified certain tipping competitions published as part of a TPL where it was a requirement of entry into the competition that entrants are either existing members of the BSP or become a member of the BSP to participate in the promotion. This requirement effectively forced entrants to open betting accounts with the BSP if they did not already have one and wanted to enter the competition.

L&GNSW has formed the view that these promotions breach the Act by inducing non-members to open a betting account. Non-members who are so induced to open a betting account can be later exposed to both direct and indirect marketing of betting products that would otherwise be contrary to legislation. One of the intentions of the advertising restrictions is to protect the wider public from the advertisement of inducements and the provision of tipping competitions which require entrants to open betting accounts is contrary to these objects.

Finally, L&GNSW notes that the procedure for obtaining a TPL permit requires that the applicant ensure that the proposed promotion complies with all legislation relating to the business. For BSPs this includes ensuring you adhere to the advertising laws in the Act, including section 33H(2)(h). Approval of a TPL by Fair Trading NSW does not provide tacit approval for the publication and communication of gambling advertising that includes inducements. Therefore, L&GNSW will not consider a TPL permit to be a mitigating factor in any regulatory action.

L&GNSW notes that tipping competitions that do not require an individual to open a betting account in order to enter the competition do not breach the Act.

Advertising of special odds, including maximum bets

In this context, 'special odds' refers to any instance where BSPs are providing more than one price for the same outcome. It does not refer to instances where the BSP is offering a single price over the course of the market which is a "special" or differs from their normal pricing approach in some other way. In these instances the promotion of ordinary odds offered on an outcome is permissible. However, the advertisement of special odds is an inducement.

Special odds offers are often paired with maximum bet limits, to limit the potential size of the inducement. The Guidelines make it clear that maximum bets are permitted by L&GNSW on ordinary odds. This recognises that maximum bet levels are necessary to limit BSP exposure in low liquidity markets.

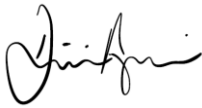
The Guidelines clearly state that maximum bets can be advertised on ordinary odds. They are not to be used on special odds.

It is incumbent upon BSPs to ensure that the advertisement of outcomes is focused only on the promotion of ordinary odds offered and does not seek to promote special offers, rewards or odds that are additional to ordinary odds and therefore an inducement which cannot be advertised under the Act.

Further information

While this correspondence is provided for your information and a response is not required, any such response or further query in respect of these matters may be directed to Mr Darren Duke, Manager Compliance, by email at darren.duke@liquorandgaming.nsw.gov.au or on (02) 9995 0648.

Yours sincerely



Dimitri Argeres
Director, Liquor & Gaming Compliance

9 October 2020