

Betting Service Providers

INDUSTRY ALERT - Increasing observations of concerning behaviour by bookmakers

The NSW Government is committed to preventing and reducing gambling harm. This commitment is a central object of NSW wagering law and a critical component of Liquor & Gaming NSW's (L&GNSW) regulatory approach.

Wagering is lawful in NSW and the industry makes an important economic contribution in the State. However, initiatives such as the National Consumer Protection Framework for online wagering (NCPF) clearly show that this is not to be at the expense of consumers and vulnerable people.

In recent months, L&GNSW has observed increasing instances of NSW licensed bookmakers engaging in conduct inconsistent with these principles. In some cases, this conduct is targeting customers that the bookmaker knows, or should know, are the most vulnerable to gambling harm.

This is unacceptable.

L&GNSW expects that betting service providers (BSPs) consider the intent of Government policy and the expectations of the community when providing wagering services. Even where the law is silent on a particular issue, BSPs may have broader obligations – for instance a requirement to remain a suitable person to hold a bookmaker's licence.

Suitable persons do not target people who they know, or ought to know, are experiencing significant gambling harm.

The expectation of L&GNSW is that BSPs **actively** adopt an approach that reflects this in **all** of their operations. BSPs should not engage in conduct that could reasonably be expected to cause harm *even if* the legislative framework does not specifically prohibit the conduct.

As the peak periods associated with the football finals and Spring Carnival ends, it is an opportune moment for BSPs to consider whether their operations meet these expectations.

This Alert also identifies some of the concerning behaviours observed in recent months. Some of this behaviour should already have ceased due to the introduction of BetStop. Other types of behaviours will also be addressed, including by changes to legislation, in the coming months. Despite this, L&GNSW is concerned that operators will continue to seek to exploit loopholes or silent areas in the law to adopt practices that are clearly at odds with the expectations of Government and the community.

The purpose of this Alert is to make it clear that L&GNSW intends to address behaviour not in line with these expectations by:

- using existing regulatory tools to take a more expansive approach to compliance and enforcement, including where the suitability of a licensee is called into question
- working with and making referrals to other regulators where conduct may fall within legislation they enforce, for example, the unfair contract term and unconscionable conduct provisions in Australian Consumer Law
- where existing tools are insufficient to disincentivise this behaviour, developing additional regulatory tools to ensure industry operates in line with our expectations
- seeking amendments to the law to ensure the activities identified to date are clearly prohibited.

L&GNSW also intends to issue an interim update to the Gambling Advertising and Inducements Guidelines in the coming months. As you would be aware, L&GNSW conducted a targeted review of these guidelines late last year. The findings of the review are on hold, pending the Australian Government's response to the recommendations of the Standing Committee on Social Policy and Legal Affairs, which deal with advertising and inducements. The interim update will consolidate advice provided to industry since the Guidelines were last published and consider the most recent case law.

Examples of concerning behaviours that are inconsistent with the expectation of bookmakers

The list below is non-exhaustive. It is provided to demonstrate the kinds of behaviours L&GNSW is particularly concerned about given the potential for harm.

- **Knowingly offering services and sign-up offers to customers who are excluded with other operators or with their associated brands, or whom the BSP has otherwise identified as displaying behaviour that may indicate the customer is at risk of gambling harm.**

A general expectation is that BSPs consider harm minimisation in their day-to-day operations and that they aim to reduce harm where possible. There is a clear expectation that when a BSP is aware an individual is experiencing significant harm, they take steps to address this behaviour.

L&GNSW has received several complaints involving allegations of BSPs, or third parties acting on behalf of BSPs, cold-calling individuals and offering inducements to open a betting account. This is often a result of staff moving between BSPs. In some cases, these customers are self-excluded from another BSP.

While sign-up offers are already prohibited nationwide as part of the NCPF, and BetStop is now in force, this behaviour is particularly concerning given the targeting of self-excluded individuals.

- **Placing barriers to closing accounts, including charging account closure fees.**

It is important that individuals seeking to manage or cease their gambling activity are not faced with unreasonable barriers to doing so. Easy account closure is a key measure of the NCPF for that reason.

L&GNSW has observed instances where BSPs have attempted to place barriers to account closure. This includes confusing account closure information and processes and charging customers an administrative fee to withdraw funds and close their account.

A request for account closure may indicate a customer is taking steps to minimise the gambling related harm they are experiencing. BSPs are disempowering customers by prolonging the time it takes for their accounts to be closed and increasing the risk of them engaging in further gambling activities.

- **Placing excessive barriers to withdrawing funds from an account.**

As with account closure, customers seeking to withdraw funds should not be faced with unreasonable barriers to doing so. This is a harm minimisation issue. L&GNSW is very concerned that BSPs are drafting their Terms and Conditions in ways that allow them to place excessive barriers on account withdrawals.

L&GNSW understands that there may be reasons why a BSP would need to undertake due diligence in performing these functions, but this should not be used as an excuse to discourage individuals from managing their gambling activity.

- **Sharing private consumer information between related BSPs.**

L&GNSW has received multiple complaints where it was identified that BSPs had shared information with other BSPs or third parties. BSPs must not unlawfully disclose information about a betting account.

L&GNSW is concerned about this behaviour because customer privacy is not being protected. Additionally, sharing account information presents a risk to customers who may be targeted in the future by BSP employees who move within the industry. This first example outlined above demonstrates this is a valid concern.

L&GNSW expects operators to stop engaging in this kind of conduct immediately.

L&GNSW will be more active in ensuring bookmakers operate in line with community expectations

L&GNSW intends to increase its focus on areas of poor behaviour. Part of this will include giving greater consideration to how an operator's behaviour meets the objects of NSW wagering, and other, laws.

As part of this effort, L&GNSW will seek to act where it can against electronic betting authorities and share with the relevant licensing bodies, and other regulators as appropriate, any examples of poor behaviour observed. L&GNSW will encourage licensing bodies and other regulators to consider whether action is warranted on that basis.

L&GNSW is commencing a review of the Bookmaker Telephone and Electronic Betting Conditions, with the first phase being to reform the regulatory framework for Customer Debit Funds Trust Accounts. This will be followed by a broader review, which will seek to clarify harm minimisation standards that bookmakers are expected to uphold. Bookmakers who fail to meet these standards can expect to be subject to enforcement action, up to and including suspension or cancellation of their authorities.

If the above measures and existing regulatory tools do not prove effective, L&GNSW will explore legislative amendment and new regulatory tools to combat behaviours it considers unacceptable.

Further information

This correspondence is provided for your information and a response is not required. However, for further information or to raise a query, you can contact Mr Terry O'Brien, Director – Policy, by email at Terry.O'Brien@racing.nsw.gov.au or on (02) 8575 1216.

Sincerely



Tarek Barakat
A/Chief Executive Officer
Hospitality and Racing
Department of Enterprise Investment and Trade