

Liquor & Gaming NSW

# Public Comment Policy



## Background and purpose

Regular contact with the media is an important aspect of Liquor & Gaming NSW's (L&GNSW) role as a fit-for-purpose regulator achieving social and economic benefits for the people of NSW.

L&GNSW provides regular information to the media to:

- ▲ promote confidence in the regulation of the industry and a transparent regulatory approach
- ▲ inform and provide guidance about misconduct, wrongdoing and irresponsible practices to protect both industry integrity and the well-being of the community
- ▲ engage with and helping educate both industry and the public about best practice in harm minimisation
- ▲ promote a vibrant and sustainable industry consistent with community expectations, and
- ▲ deliver outcomes across its key result areas and ensure industry meets its regulatory obligations.

This public comment policy explains processes and requirements for commenting publicly on investigations, regulatory actions and functions and other relevant issues raised by the media.

## Informing the public of our activities

L&GNSW is responsible for the development, implementation, supervision and integrity of the overall regulatory framework for the liquor, wagering, registered club and gaming industries. Our role includes overall policy direction and advice (including advising government on legislative changes), early intervention, education and coordination of licensing, compliance and enforcement functions.

Our activities are covered in more than 20 pieces of legislation, including the:

- ▲ *Liquor Act 2007*
- ▲ *Registered Clubs Act 1976*
- ▲ *Gaming and Liquor Administration Act 2007*
- ▲ *Casino Control Act 1992*
- ▲ *Totalizator Act 1997*
- ▲ *Public Lotteries Act 1996*
- ▲ *Gaming Machines Act 2001*
- ▲ *Lotteries and Art Unions Act 1901*

The legislation provides for the proper conduct, in the public interest, of regulated industries and activities. This may include taking action to minimise harm, encourage compliance, deter breaches of the law and promote public confidence.

L&GNSW is accountable for its investigations and regulatory actions. Informing the public of our activities, including when no regulatory action is taken, is important because it:

- ▲ explains the circumstances in which we may or may not act
- ▲ instils public confidence in our administration of regulated industries including our compliance and enforcement activities
- ▲ promotes compliance with the law by informing the public and industry about improper practices and the consequences that may result from wrong doing
- ▲ promotes harm minimisation and raises awareness among patrons about risky, unsafe and illegal practices and their associated impacts

- ▲ encourages members of the public to report concerns about irresponsible industry practices and conduct
- ▲ provides transparency to industry stakeholders, and
- ▲ provides a response to publicly aired concerns about industry non-compliance and associated community impacts.

## General limitations on public comment

In some cases it may not be appropriate for L&GNSW to make a public comment. For example, if a matter is in the early stages of investigation, we must balance the public interest benefits of making a public statement against the risk of prejudicing inquiries and the rights of the person who is the subject of inquiries.

Factors that may limit our ability to comment about investigations and regulatory actions include:

- ▲ legislative restrictions (certain provisions of the legislation)
- ▲ the need to safeguard confidential or sensitive information (such as commercial in confidence information)
- ▲ the potential to jeopardise ongoing investigations and regulatory actions through the premature release of information
- ▲ privacy legislation and guidelines
- ▲ ensuring a person's right to a fair hearing is not prejudiced

- ▲ the potential risk of defamation or other legal proceedings brought by complainants against L&GNSW officers or other entities;
- ▲ the potential risk of affecting a persons' ability to operate and trade, and
- ▲ compliance with the court's orders not to disclose information in certain circumstances or at specified times.

## Investigations, regulatory actions and regulatory framework functions

Liquor & Gaming NSW may make a statement about an investigation, regulatory action or regulatory framework function when it is in the public interest and consistent with its Strategic Approach. This may include confirming that it has received a complaint which it is in the process of assessing. There is a range of factors taken into account when considering whether it is appropriate to make a public statement.

Most importantly, L&GNSW will consider whether making a statement would promote confidence and transparency in the regulatory regime, and promote compliance with the legislation. For example, there may be circumstances where making a statement could provide a clear deterrent which would prevent serious or widespread misconduct, or allay public concern about a matter that would have a significant negative impact on the integrity of the industry sectors we regulate.

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When considering whether to make a statement, L&GNSW will balance any likely public benefits against the risk that a statement may prejudice any person who is, or likely to be, the subject of investigation or regulatory action.

Where L&GNSW acknowledges or makes a comment on an investigation, this does not necessarily mean that a person will be the subject of regulatory action, including legal or other proceedings - no adverse inference should be drawn with respect to that person.

In some circumstances, third parties may suggest that L&GNSW is investigating a matter. We will normally only confirm the existence of an investigation or a complaint and make no further comment until the investigation is concluded. However, we may provide updates on the progress of the investigation if it is in the public interest. In determining whether updates are in the public interest, we will have regard to the principles set out in this public comment policy.

## Criminal and administrative proceedings

L&GNSW will normally comment on outcomes of investigations or regulatory actions, including:

- ▲ when an infringement notice or court attendance notice has been issued, and
- ▲ when a show cause decision is made in administrative proceedings.

## Matters with the Independent Liquor and Gaming Authority Board (the Authority)

Generally, L&GNSW will comment on whether a matter is to be or has been referred to the Authority.

L&GNSW may confirm that an investigation is concluded and the appropriate regulatory action (if any) is being considered where:

- ▲ an investigation has been previously confirmed
- ▲ the matter is with the Authority for consideration, and
- ▲ there is a public interest in making such a statement.

## Regulatory framework functions

L&GNSW may make public comment on regulatory framework functions. These comments may take the form of media releases, briefings, reports, newsletters, speeches and comments in the course of industry liaison activities.

Where L&GNSW has publicised a prosecution, the outcome will also be publicised, including the outcome of any appeal. This may occur by an editorial note to the original media release.

L&GNSW will generally issue a media release on the outcome of administrative proceedings, including merits reviews by the NSW Civil and Administrative Tribunal (NCAT) and ILGA. The media release will include the name of the person against whom the proceeding was taken and the outcome.

L&GNSW may issue the media release even where:

- ▲ the person has a right to appeal or seek review of the decision. This is done to ensure that the public is made aware of and informed about any regulatory action taken by L&GNSW and

- ▲ there has been a regulatory outcome that does not involve criminal or administrative proceedings, for example, the operation or updating of various disciplinary schemes such as ‘Three Strikes Regime’.

L&GNSW will always assert the right to publicise a regulatory outcome and not keep outcomes secret unless constrained by legal requirements. This is important for regulatory transparency and acts as an effective deterrent against wrongdoing.

While L&GNSW may comment about the existence of an investigation or complaint where it is in the public interest, it will not normally issue a media release except in special circumstances, such as, where L&GNSW is investigating a suspected serious breach of the legislation and the issue is of significant public interest.

## Media releases

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- ▲ L&GNSW will generally issue a media release on the outcome of administrative proceedings, including merits reviews by the NSW Civil and Administrative Tribunal (NCAT) and ILGA. The media release will include the name of the person against whom the proceeding was taken and the outcome.
- ▲ L&GNSW may issue the media release even where:
  - (a) the person has a right to appeal or seek review of the decision. This is done to ensure that the public is made aware of and informed about any regulatory action taken by L&GNSW; and
  - (b) there has been a regulatory outcome that does not involve criminal or administrative proceedings, for example, the operation or updating of various disciplinary schemes such as ‘Three Strikes Regime’.

- ▲ L&GNSW will always assert the right to publicise a regulatory outcome and not keep outcomes secret unless constrained by legal requirements. This is important for regulatory transparency and acts as an effective deterrent against wrongdoing.
- ▲ While L&GNSW may comment about the existence of an investigation or complaint where it is in the public interest to do so, it will not normally issue a media release except in special circumstances, such as, where L&GNSW is investigating a suspected serious breach of the Legislation and the issue is of significant public interest.

## Media contact

Media enquiries should be directed to the Media Manager on **02 9995 0794** or at **[eric.aubert@liquorandgaming.nsw.gov.au](mailto:eric.aubert@liquorandgaming.nsw.gov.au)**

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## Definitions

**Investigation** is not limited to formal investigations conducted under the legislation we administer. It refers to the range of actions that Liquor & Gaming takes to ensure compliance with the law and includes assessing complaints and conducting audits, inspections and operations.

**Regulatory action** includes statutory and non-statutory remedial and enforcement actions, as well as actions taken by Liquor & Gaming NSW to achieve outcomes that do not involve criminal or administrative proceedings. These actions may include educative and industry support activities, issuing statutory directions, the operation of statutory schemes, lodging disciplinary proceedings with the Independent Liquor & Gaming Authority Board (The Authority) and operational activity such as audits and inspections.

**Enforcement actions** includes criminal actions such as summary prosecutions; infringement notices and forfeiture and disposal of goods; lodging disciplinary complaints; and administrative actions such as imposing licence conditions, issuing directions and statutory notices, and imposing strikes on licensees.

**Regulatory framework function** includes actions by Liquor & Gaming in relation to regulatory policy direction, advice, information, guidance and education in relation to all regulated activities, as well as the conduct and compliance of licensing regimes including early intervention and awareness activities.

**Industry sectors** for which Liquor & Gaming NSW is responsible includes the liquor, registered clubs, wagering and gambling activities in NSW.

**Regulatory outcome** means any result or determination of an investigation, regulatory action, or regulatory framework function.



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