

GL4015

Gambling advertising and inducements

Introduction

NSW prohibits the advertisement of any offer of an inducement to participate in any gambling activity, including an inducement to bet more frequently. This includes any inducement offered with a disclaimer that the offer is not available in NSW.

NSW also prohibits any offers of inducements to open betting accounts, refer friends to open betting accounts, keep a betting account open or consent to receive gambling advertising.

Breaches of these prohibitions can result in significant financial penalties. Directors and other corporate officers of a betting service provider may also be held liable.

These provisions are found in Parts 4A and 4B of the *Betting and Racing Act 1998* and Part 7 of the *Totalizator Act 1997*.

It is the responsibility of the betting service provider to ensure prohibited gambling advertising is not published or communicated in NSW.

Betting service providers will still be able to continue to advertise certain offers directly to betting account holders where account holders have consented to receiving those offers.

How to use these guidelines

These guidelines give guidance on Liquor & Gaming NSW's (L&GNSW) compliance and enforcement approach to the publication of gambling advertising and inducements.

Prohibited gambling advertisements may cause significant gambling-related harms, including encouraging individuals to gamble beyond their means.

L&GNSW's risk-based compliance approach is intended to prevent and minimise the risk of these harms occurring.

These guidelines do not seek to limit betting service providers' ongoing obligation to the public to advertise their services responsibly. To this end, notwithstanding anything contained in these guidelines, where an advertisement seeks to circumvent the objective of the gambling advertising and inducements requirements, L&GNSW may take enforcement action.

These guidelines are not intended to limit or extend the application of the *Betting and Racing Act 1998* (the Act) or *Totalizator Act 1997*, or the words used in those Acts.¹

L&GNSW's compliance approach may change to respond to emerging issues and evidence as well as how industry participants comply with requirements imposed by the Act. L&GNSW will advise stakeholders before changes to its compliance approach are made.

These guidelines are provided for guidance only, and independent legal advice should be obtained to ensure an informed and complete understanding of obligations and compliance with the legislation.

Prohibition on publishing or communicating gambling inducements

Under section 33H of the Act, in NSW it is an offence to publish or communicate any prohibited gambling advertisement, including an inducement to participate, or to participate frequently, in any gambling activity (including an inducement to open a betting account).

An inducement is defined under 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.

1. Any reference to a requirement under the *Betting and Racing Act 1998* is taken to include the same requirement imposed under the *Totalizator Act 1997*

What does ‘publishing’ and ‘communicating’ mean?

The Act specifies that material is ‘published’ if it is disseminated or accessible to the public or a section of the public. L&GNSW will consider that material has been published if it is accessible to the ‘world at large’ and capable of being accessed by people in NSW.

In assessing what constitutes ‘world at large’ for the purposes of digital advertising, including internet and email, L&GNSW will have regard to section 33G(2) of the Act.

Where an advertisement facilitates the dissemination of information to a person who does not hold a betting account with the betting service provider, L&GNSW will consider it to be a publication to the ‘world at large’.

Gambling advertising communicated directly to a person who holds an account with the betting service provider will not be considered by L&GNSW to have been published or communicated under the Act, because only betting account holders will receive the offer. Note that restrictions apply to how betting service providers direct market to account holders (section 33HA of the Act) and what kinds of inducements can be offered to account holders (section 33JA of the Act).

Outdoor or out of home advertising

L&GNSW will consider any material displayed in NSW using outdoor and out of home advertising (e.g. billboards, bus advertising or posters) to be published or communicated for the purposes of the Act.

Television and Radio

L&GNSW will consider material broadcast on television or radio that is able to be viewed and/or heard in NSW to be published to the ‘world at large’ and capable of being accessed by a person in NSW.

Prohibited gambling advertising on television and radio will include

- ▲ ads during breaks in shows that include inducements,
- ▲ advertorials or in-show endorsements offering inducements on behalf of betting service providers,
- ▲ ticker-tape advertising in-show that includes prohibited advertisements.

Prohibited gambling advertising on television and radio will not include:

- ▲ physical advertising inadvertently captured during a broadcast where the broadcast is filmed outside NSW, for example a billboard at a Queensland rugby game advertising an inducement that is picked up in the broadcast,

- ▲ prohibited gambling advertising published or communicated in another state or territory by a regional provider that borders NSW that is inadvertently broadcast into NSW due to the proximity to the border (this does not apply to online content).

In determining whether publication is inadvertent, L&GNSW will have regard to the following:

- ▲ is the publication or communication only intended for an audience other than NSW?
- ▲ is the publication or communication intended for an audience other than NSW and the broadcaster has taken reasonable steps to not publish or broadcast the advertisement into NSW?
- ▲ is the publication or communication outside the boundaries of the broadcaster’s licence area?

For example, Radio Station A broadcasts a prohibited gambling inducement for Victorian residents from Shepparton. If the broadcast is inadvertently received in Albury, L&GNSW may not prosecute this publication or communication.

Where a broadcaster has been advised that the material published or communicated includes prohibited gambling advertising, it must ensure no further broadcast occurs. Where a broadcaster continues to broadcast prohibited gambling advertising after being advised by the Minister or the Minister’s delegate that the content breaches the Act, it may be prosecuted for that breach.

The restrictions detailed in these guidelines apply to live broadcasts (including online), and those rebroadcasted (including online).

Print

In considering whether printed material is published or communicated for the purposes of the Act, L&GNSW will consider material to be published or communicated where:

- ▲ prohibited gambling advertising is printed in NSW, for example a Sydney-based newspaper advertisement that includes an inducement
- ▲ prohibited gambling advertising printed in another State or Territory but intended for significant distribution in NSW, for example a sporting magazine printed in Victoria but routinely circulated within NSW.

L&GNSW will not consider that printed materials have been published or communicated for the purposes of the Act where the prohibited gambling advertisement has been inadvertently published or communicated in NSW.

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For example, Betting Service Provider A publishes a full page ad offering an inducement in a newspaper with primarily Queensland circulation. Where the newspaper is available in NSW, but it is clear that the publication is incidental to its primary circulation, L&GNSW will not consider the material breaches the publishing requirement under the Act.

In determining whether publication is incidental, L&GNSW will have regard to the following:

- ▲ is the publication or communication only intended for an audience other than NSW?
- ▲ is the publication or communication primarily or substantially intended for an audience other than NSW?

Where material has been published or communicated in NSW and the publication or communication in NSW is not inadvertent, L&GNSW will consider that the material has been published or communicated for the purposes of the Act.

Physical gambling advertising captured in a still photograph taken outside NSW, for example a billboard at a sporting event or fixture that is communicated or published in print in NSW will in most cases be considered inadvertent by L&GNSW.

Digital media

Advertising on digital media provides betting service providers the opportunity to engage with a broad audience that is often not accessed through television or print. Digital media includes banner advertising, advertising on webpages, mobile display, search engine results, email, SMS and in apps. Any advertising through digital media must comply with all requirements under the Act.

In assessing whether a betting service provider has published or communicated prohibited gambling advertising on digital media, L&GNSW will have regard to the intended audience and whether the betting service provider has taken reasonable steps to prevent the prohibited advertisement from being published or communicated in NSW. This will include, but may not be limited to:

- ▲ is the publication or communication primarily or substantially intended for an audience other than NSW?
- ▲ is the digital media on which the publication or communication is made wholly or substantially intended for an audience other than NSW?

- ▲ has the betting service provider caused any prohibited advertising to be geo-blocked for NSW?

These restrictions also apply to any advertising on a betting service provider's website unless it is behind a membership wall.

L&GNSW will not consider that an advertisement has been published online where:

- ▲ the betting service provider has caused all prohibited gambling advertisements to be geo-blocked,
- ▲ the geo-blocking provider has taken all reasonable steps to ensure the geo-blocking function is working, and
- ▲ a person in NSW has used a virtual private network (VPN) to mask their location to access the online content.

Digital media behind a membership or pay wall

The Act distinguishes between people who have betting accounts and those who do not (see section 33G(2) of the Act). A person who does not have a betting account with the betting service provider will be considered part of the 'world at large'. Any communication to this person will satisfy L&GNSW that an advertisement has been published or communicated.

Where a betting service provider publishes or communicates, or causes to have published or communicated, a prohibited gambling advertisement to a membership-based online forum, that advertisement will be taken to have been published or communicated for the purpose of the Act.

A betting service provider must ensure that prohibited gambling advertisements are not provided to online publishers, including websites, email lists and social media, to be published or communicated to the publisher's members unless the betting service provider is satisfied that the advertisement will only be published or communicated directly to persons who hold betting accounts with it.

This applies to all digital media, including where a person must sign in before they are able to access the advertisement, or where members have opted in to receiving information on inducements (as this is capable of being published or communicated to persons who do not hold a betting account with the betting service provider).

Gambling advertising and inducements

This restriction also applies to any advertising on a betting service provider's website or app where the advertising is visible before a person signs into their betting account. A betting service provider must not advertise any inducement on its website or app that is able to be accessed by a person in NSW unless that inducement is only able to be accessed by a person who holds a betting account with that betting service provider.

An advertisement is published or communicated for the purposes of the Act whether or not the advertisement is actually received by a person in NSW (see section 33G(2) of the Act). It is sufficient that the advertisement is capable of being published or communicated to a person in NSW who does not hold a betting account with the betting service provider.

Social media

A betting service provider must not publish or communicate a prohibited gambling advertisement on social media if that advertisement can be accessed by a person in NSW.

Where a betting service provider enters into an agreement with an online publisher or individual to publish or communicate gambling advertising through social media, the agreement should ensure that prohibited gambling advertisements, including inducements, are not published or communicated in NSW. The responsibility for ensuring compliance will be borne by the betting service provider.

L&GNSW will generally consider that a prohibited gambling advertisement has been published or communicated on social media where:

- ▶ the betting service provider posts the prohibited gambling advertisement on a social media platform and that post is able to be accessed by a person in NSW, or
- ▶ the betting service provider enters into an agreement with a person to post (including pictures, comments, links and shares), or authorises, or permits a person to post the prohibited gambling advertisement on social media on behalf of the betting service provider or its agent, and that post is able to be accessed by a person in NSW.

As is the case with other digital media, L&GNSW will not consider that an advertisement has been published online where:

- ▶ the betting service provider has caused all prohibited gambling advertisements to be geo-blocked,

- ▶ the geo-blocking provider has taken reasonable steps to ensure that the geo-blocking function is working, and
- ▶ a person in NSW has used a virtual private network (VPN) to mask their location to access the online content.

Third party

A person who publishes or communicates a prohibited gambling advertisement on behalf of a betting service provider may be guilty of an offence.

A third party may be held liable for publishing or communicating a prohibited gambling advertisement where:

- ▶ they have entered into an agreement with a betting service provider to publish or communicate the prohibited gambling advertisement, or
- ▶ they have published or communicated the prohibited gambling advertisement for a benefit.

L&GNSW may prosecute a person who publishes or communicates a prohibited gambling advertisement in addition to, or in place of, a betting service provider.

What is an inducement?

Broadly speaking, L&GNSW considers that an inducement includes any offer that may be capable of persuading or encouraging a person to participate, or to participate frequently, in any gambling activity, including to open a betting account.

Section 33GA of the Act and section 79A of the *Totalizator Act 1997* define an inducement to include:

- ▶ the offer of a credit, voucher, reward or other benefit; or
- ▶ 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
- ▶ the offer of a gambling product, or the offer of a condition or other aspect of a gambling product, that is declared by the regulations to be a prohibited inducement.

Section 33GA of the Act does not contain an offence provision. When considering whether the offer, publication or communication of a product that falls within the definition of "inducement", L&GNSW will have regard to the following:

- ▶ does the advertisement include an inducement which might persuade or encourage people to switch from a competitor betting service provider?

Gambling advertising and inducements

- does the advertisement include an inducement which might persuade or encourage people to engage in gambling behaviour?
- does the advertisement include an inducement which might persuade or encourage people to engage in gambling behaviour in a certain way, for example online or on a device, or at certain times?
- does the advertisement include an inducement which might persuade or encourage people to continue gambling behaviour?
- does the advertisement include an inducement which might persuade or encourage people to intensify their gambling behaviour?
- is the advertisement offering an inducement which might persuade or encourage people to bet and is additional to what is normally received as part of the core wagering product?

Section 33H of the Act prohibits any inducement being published or communicated to a person in NSW, including an inducement that includes a disclaimer that the offer is not available to NSW residents. To be clear, the use of a disclaimer that an offer is not available to NSW residents will not stop an advertisement being considered a prohibited gambling advertisement.

For example, it is prohibited for Betting Service Provider C to publish online *“Deposit \$50 and receive \$120 PLUS a bonus \$200 in bets if team/horse wins. New customers only. T&Cs apply. Excludes NSW, WA, SA and VIC”*

Rewards programs

The advertising of a rewards program or service that:

- does not require a person to participate, or to participate frequently in any gambling activity,
 - does not require a person to open a betting account, and
 - does not provide any voucher, credit or account for betting purposes as part of the rewards program,
- will not attract adverse attention from L&GNSW.

The offering of an inducement to gamble to a rewards program member who does not have a betting account with the betting service provider will be considered by L&GNSW to be in breach of the legislation.

Advertising that will offend

While L&GNSW takes a broad approach to what could be considered an inducement, consistent with the Act, L&GNSW will consider the following kinds of offer to be a prohibited offer when made to the ‘world at large’ (irrespective of whether they are accompanied

by a disclaimer) or where they are sent to a betting account holder that has not consented to receiving the advertisement

This is not an exhaustive list of offers that may be a prohibited gambling advertisement. Other offers may constitute an inducement. This will be informed by the criteria detailed above or any inducements prescribed in the Regulations.

- Offers of free or bonus bets e.g. *“Deposit \$50 now and bet with \$200”*
- Offers of refunds (whether as a bonus bet or cash) e.g. *“Get a refund on your fixed odds win bet if your horse runs 2nd or 3rd”, “If your team leads at half time and loses, we’ll refund half your bet”*
- Offering an inducement through a third party e.g. a website publishes a bonus bet offer to members of the website that are not members of the betting service provider
- Offering an inducement through a third party on social media e.g. a comment on a post on Facebook that communicates an offer for the betting service provider *“Bet now and get \$500 free – new deposits receive a deposit match up to \$500”*
- First bet refunds, including first bets on particular races/sports e.g. *“First bet refund on tonight’s dogs”*
- Reward points for bets placed or for opening an account e.g. *“5,000 bonus rewards points – redeem as a \$100 bonus bet”*
- Special additional odds or increased winnings for a limited period, specific race or match or a minimum bet amount e.g. *“Bonus – win 30% more on Race 3 this Saturday at Randwick”, “Super boost your odds on races every Saturday from 11am to 2pm”, “50% better odds this weekend if you bet \$50 or more” “Double your winnings on Souths v Sharks this weekend” “Doubled winnings on every NRL match this weekend when you place a bet on Thursday”.*
- Free bonus bet plus e.g. *“Deposit \$50 and receive \$120 PLUS a bonus \$200 in bets if team/horse wins. T&Cs apply. Excludes NSW, WA, SA and VIC”*
- The advertising of ‘cash out’ features or similar available during contingency e.g. *“Cash out at any point during each race this weekend at Randwick” “Early cash out available at any time during all NRL matches”*

Gambling advertising and inducements

L&GNSW considers that the inducements detailed above fall within the definition of inducement in sections 33GA(1)(a) or 33GA(1)(b).

Advertising that will not offend

L&GNSW does not currently consider the following kinds of offers are prohibited under the Act where they do not persuade or encourage a person to participate, or to participate frequently, in any gambling activity:

- ▲ Advertising of a base service or generic corporate branding e.g. *"Bet with Lucky Betting Club today"*
- ▲ Advertising of non-betting service products offered by the betting service provider e.g. *"We show every race live – Click here to follow the action"*².
- ▲ Current odds or markets being offered, including best price e.g. *"Best Odds on State of Origin"*
- ▲ Basic information about the pricing and odds characteristics of wagering products e.g. *"\$2.50 for Cooper Cronk to score the first try in the NRL Grand Final"* *"NSW \$1.50 to win the first State of Origin game"*.
- ▲ Live streaming of sports or racing events e.g. *"Watch live sport here right now"*.
- ▲ Special odds or increased winnings which apply to a whole sport, or round of sport, and allow a customer to bet at all times e.g. *"Increased returns on multi bets with 3 or more legs"* *"50% better odds on all NRL matches this weekend"*².
- ▲ Markets where a customer automatically wins if specific criteria are met e.g. *"If your team is ahead by 12 points at any time, we'll pay out your bet"* *"If your team is ahead at half-time, you win!"*.
- ▲ Maximum bets on ordinary odds or pricing e.g. *"\$20 for Cameron Smith to score 12 points or more against Manly. Maximum bet \$50"*.
- ▲ Terms and conditions of wagering products, frequently asked questions and/or how-to guides that give information about how products work but are not used for promotional purposes or do not otherwise seek to promote the availability or use of product e.g. information on a betting service provider's website explaining how a same game multi, quinella, trifecta or "justice" refund work.

While noting the above offers, L&GNSW has significant concerns where advertising indicates that an inducement is being offered, even if the product itself does not constitute an inducement – For instance

advertising standard odds as "Bonus odds" or "Happy hour" etc. Where a betting service provider uses this language in an advertisement, L&GNSW may investigate and prosecute that betting service provider for a breach of the law.

Prescribing inducements in regulations

Betting service providers are responsible for ensuring that their advertising is in compliance with the legislation, and this includes offers that meet the definition of an inducement within the legislation even if it is not listed above.

This includes any product or condition prescribed as an inducement under the Regulations.

The effect of prescribing the product under the Regulations is that the product is now specified as an inducement for the purposes of the Act.

As betting service providers may offer very similar products under a variety of names, L&GNSW will not prescribe products by their name but by a descriptor of their content.

Defence against prosecution for publishers

A person will not be guilty of an offence for publishing or communicating: a prohibited gambling advertisement (section 33H(6) of the Act); a gambling advertisement directly to a betting account holder (section 33HA(5)); or offering a prohibited inducement (section 33JA(4)) if:

- ▲ the gambling advertisement or offer was in the form provided or was approved by or on behalf of the betting service provider, and
- ▲ the person has not been notified by the Minister or the Minister's delegate that the publication or communication may include a prohibited gambling advertisement or offer.

Where a prohibited gambling advertisement is identified by L&GNSW, L&GNSW (under delegation from the Minister) will issue a formal notice to the publisher that the gambling advertisement they have published/are continuing to publish, is a prohibited gambling advertisement.

The notice will instruct the publisher to stop the publication, or prevent the future publication, of the prohibited gambling advertisement as soon as practicable.

2. Note: this only applies to special odds or increased winnings. Bonus bets, cash out offers, minimum bet amounts and other prohibited inducements are not permissible if they apply to a whole sport or whole round of sport.

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Where a publisher fails to abide by a direction under the notice it may be liable for prosecution for any instances of publication of the inducement after the direction is issued.

L&GNSW will consider that a notification that a publication or communication may be in breach of the Act will apply to an entire campaign where the prohibited gambling advertisement is in the same, or largely similar form throughout the campaign.

For example, Television Station A agrees to run a 10-week campaign for Betting Service Provider C that includes a bonus bet offer. The Minister or the Minister's delegate notifies Television Station A that the advertisement is a breach of the Act in week 1 of the campaign. Future publications of the prohibited gambling advertisement after this notification may be prosecuted by L&GNSW.

For example, Television Station B agrees to run a 10 week-campaign for Betting Service Provider D that includes a bonus bet offer of \$50 for every \$50 spent. The Minister or the Minister's delegate notifies Television Station B that the advertisement is a breach of the Act in week 1 of the campaign. Betting Service Provider D changes the ad so that the bonus bet offer is \$51 for every \$50 spent. L&GNSW will consider that the notification continues to apply to this campaign, even though the advertisement has changed slightly as the advertisement continues to contain an inducement and the offer is under the same campaign.

L&GNSW confirms that when the Minister prescribes a product as an inducement in the Regulations, that does not constitute a notice under section 33H(6)(b), 33HA(5)(b) or 33JA(4)(b).

Inducements that may not be offered

As outlined above, section 33H prohibits the advertisement of an inducement. However, under section 33JA of the Act, there are specific inducement offers that may not be offered at all to any person (even if they hold a betting account with a betting service provider). The inducements that are completely prohibited are inducements (as defined under section 33GA of the Act) for a person:

- ▲ to open a betting account; or
- ▲ to invite another person to open a betting account; or
- ▲ not to close a betting account; or
- ▲ to consent to receive gambling advertising from a betting service provider; or
- ▲ to not withdraw consent to receive gambling advertising from a betting service provider.

Investigations

L&GNSW has broad powers of investigation for any breach of the Act.

Part 4B of the Act provides that L&GNSW is empowered, in certain circumstances, to:

- ▲ require a person (corporation or individual) to provide information or records,
- ▲ require a person to answer any question asked by an inspector, except where a person refuses to answer a question on the ground that the answer may tend to incriminate that person,
- ▲ enter into residential premises with consent or search warrant, or any time for other premises, and
- ▲ inspect and seize things, including computers.

Racing industry related arrangements

The prohibitions against advertising inducements are not intended to be enforced by L&GNSW in relation to advertisements published or communicated on platforms which predominantly provide racing content, and/or have the overriding purpose of providing racing content, due to the strong link between wagering and racing (i.e. those who take an interest in racing do so to wager).

L&GNSW understands that people who watch racing content on racing media platforms tend to be existing customers of wagering operators.

Therefore L&GNSW does not intend to take action against a person where:

- ▲ an advertisement that includes an inducement has been published or communicated in NSW, and
- ▲ the inducement advertised is only available for a bet placed on a racing event and not to a bet placed on any other sport or fixture³, and
- ▲ the advertisement has been published or communicated on a platform which predominantly provides racing content and/or has the overriding purpose of providing racing content (that is, dedicated racing television channels, websites, written publications or radio stations and within the boundaries of racetracks), and
- ▲ the advertisement has been published or communicated on the part of the platform that exclusively contains racing-related content.

3. This restriction includes prohibiting platforms from advertising multis or other inducements which include racing events as well as other sports.

Gambling advertising and inducements

For example, for a radio station which predominantly broadcasts race meetings, but has some shows which contain general sports discussion, the station may not advertise an inducement during the shows which contain general sports discussion. At other times, the station may advertise inducements which solely relate to gambling on racing events.

The above arrangements only apply to advertisements on the platforms themselves and do not apply to direct advertising such as third party publications or mailing lists⁴. Advertising gambling inducements directly to consumers is generally prohibited by the Act with exceptions for direct marketing to holders of betting accounts. The restrictions on direct marketing inducements are summarised in these Guidelines above.

Section 33JA of the Act, which prohibits certain inducements from being offered at any time to any person, continues to apply under these arrangements. Therefore, the inducements listed in section 33JA may not be advertised on any platform, including platforms which predominantly provide racing content.

L&GNSW continues to consider that any inducement offered on any other platform, including general television channels, websites, written publications and radio stations, is an offence, even if these platforms are displaying or communicating racing content.

If a person is unsure as to whether or not a platform 'predominantly' publishes racing content or has the overriding purpose of publishing racing content, that person should generally adopt the view that it does not. L&GNSW will not provide guidance on whether a particular platform or inducement falls within the racing industry related arrangements.

L&GNSW's racing industry related arrangements is a compliance approach and may change in the future. L&GNSW will provide advanced notice to industry if this compliance approach is to be changed.

4. Therefore predominant racing platforms may not advertise inducements via direct marketing to anyone, including individuals who agree to receive marketing materials from the platform.