

South Australia—advertising and responsible gambling codes of practice

Official guidance from the Independent Gambling Authority

Commercial gambling providers operating in South Australia (including authorised interstate betting operators providing account-based betting services by telephone, internet and other electronic means) are governed by advertising and responsible gambling codes of practice prescribed by the Independent Gambling Authority in the Gambling Codes of Practice Notice 2013.

The Authority has received requests from gambling providers about the practical operation of these codes. While the Authority cannot formally bind itself or any court by the giving of this guidance, it accepts that it will be of practical assistance to gambling providers to have particular issues discussed and explained in their policy context.

This document must be read together with the current consolidated version of the Gambling Codes of Practice Notice 2013.

This document sets out the policy position of the Authority, current as at 19 August 2016.

1. Inducements (product and price)

- 1.1 Clause 54(1)(a) of the Gambling Codes of Practice Notice 2013 bans inducements directed at encouraging patrons to gamble. Typical examples range from commissions and rebates on activity to the provision of discounted meals, “free” bets and “shopper docket”. While some inducements are permitted as acceptable loyalty programs and acceptable trade promotion lotteries, and while complimentary tea and coffee is also allowed, everything else (discounted meals, “free” bets and “shopper docket” included) is absolutely prohibited.
- 1.2 In the context of wagering operations, the Authority has been asked about competitive pricing.
- 1.3 The Authority’s position is that, subject to the bet type being permitted under section 4 of the *Authorised Betting Operations Act 2000*, aspects of the product are a core part of the gambling transaction and are therefore not captured as an inducement directed to encouraging a person to gamble.
- 1.4 For example, offering to pay the best totalisator price is a specific form of fixed odds betting sanctioned by the *Authorised Betting Operations Act*. Similar is the ancient form of “concession” bet—paying a fixed price for the win and returning the stake for the place.
- 1.5 This situation should be distinguished where one product offer is collateral to another—in that case there would be an inducement (for example, offering a tenth bet for nothing or offering a “free” bet on condition that it is matched with the patron’s own money).

2. Inducements (trade promotion lotteries)

- 2.1 Clause 54 of the Gambling Codes of Practice Notice 2013 bans inducements to gamble and inducements to open gambling accounts, subject to some “carve-outs” of permissible

- inducements to gamble. (There are no carve-outs to the ban on inducements to open gambling accounts.)
- 2.2 While the Authority does not regard trade promotion lotteries as necessary, or particularly desirable, activities for gambling providers, the codes recognise long standing practice by allowing them in a limited fashion, either as part of a bespoke loyalty program or as standalone acceptable trade promotion lotteries.
- 2.3 The guiding principle is that trade promotion lotteries can be used to retain existing custom but should not be used to attract new customers.
- 2.4 Although the default requirements for acceptable loyalty programs (clause 55(1)(a)) do not mention trade promotion lotteries, it has always been possible for system vendors and gambling providers to obtain approval of their loyalty program rules (bespoke loyalty programs) and these rules can include what is effectively a class approval of trade promotion lotteries. As such lotteries would be provided only to the members of the loyalty program, the retention/attraction issue is not in play. The reference to trade promotion lotteries should be specific (by reference to matters such as qualifying activity and frequency and value of draws).
- 2.5 Where gambling providers wish to offer trade promotion lotteries outside a bespoke loyalty program, specific approval is required to monitor the retention/attraction issue. This can either be one-off or on a class basis. The Authority would prefer those wishing to regularly offer trade promotion lotteries to obtain a class approval. Class approvals require a degree of specificity as to qualifying activity and frequency and value of draws such that the retention/attraction issue can be determined.
- 3. Inducements (complimentary gambling products)**
- 3.1 The notion of a complimentary gambling product is referred to in two places in the Gambling Codes of Practice Notice 2013—clause 16(2) and clause 54(2)(b). The reference in clause 16 is essentially an echo of the reference in clause 54.
- 3.2 Clause 54 starts with a blanket prohibition on inducements to gamble and inducements to open a gambling account. It goes on to carve out certain exclusions, the principal ones being acceptable loyalty programs and acceptable trade promotion lotteries. What is “acceptable” for each of those is dealt with more comprehensively in a succeeding clause.
- 3.3 Clause 54(2)(b), which carves out the acceptable trade promotion lottery exemption, also refers to the provision of a complimentary gambling product. This was done because one of the entities regulated by the codes of practice is a lottery provider enjoying the benefit of a statutory mandate to offer promotional lotteries outside the standard regulatory regime for trade promotion lotteries.
- 3.4 Of course, those words are not, in their terms, directed to that activity and could apply to other situations where gambling providers typically provide their product free of charge. Known instances are where a casino licensee hands out chip vouchers to passers-by or to when a wagering provider includes a \$10 betting voucher as a giveaway to all the people attending an invited guests function at an event on which betting takes place. (Neither of these practice is a lottery and so does not fall into the acceptable trade promotion lottery category.)

- 3.5 Clause 16(2), by referencing complimentary gambling product, stands for the proposition that, if the practice is lawful, it should also be lawful to advertise it.
- 3.6 The Authority's position is that the provision of the complimentary gambling product, in order to be genuinely complimentary, must be both unconditional and transferable. That is certainly the case with SA Lotteries' lottery-based promotions and with the giveaway examples. However, the forms of offer made by wagering providers in connection with the opening of accounts, etc, which typically require the "gift" to be turned over a number of times before it can be cashed out, would not qualify.
- 4. Management plans and clause 22—substitution of additional responsible gambling advertising for full compliance with the mandatory warning message requirements**
- 4.1 This guidance note is intended to assist gambling providers in formulating management plans which substitute additional responsible gambling advertising ("**counter advertising**") for strict compliance with the requirements of clause 22 for the presentation of the mandatory warning message in advertising on television ("**primary advertising**"). Management plans which follow the guidance will be reviewed, within the 42 day commencement time, by Authority delegates rather than the full board. Management plans which follow the guidance are also more likely to receive approval for commencement earlier than 42 days. However, the existence of the guidance does not preclude a gambling provider filing a management plan which presents an innovative approach to regulatory equivalence—the critical issue will then be the power of the justification for the alternative regulatory treatment.
- 4.2 In drafting management plans, care should be taken to use language which makes it clear what the proposed alternative regulatory treatment is and avoids any possible ambiguity, especially with respect to the timing and placement of counter advertising. In particular, management plans should not incorporate or refer to the guidance (which itself could change). Instead, the management plan should operate as a freestanding statement of the regulatory obligation which the gambling provider will perform.
- 4.3 Gambling providers should be able to demonstrate that the content of counter advertising and its timing will direct it to the same target group as the primary advertising. This will be best achieved by running the counter advertising in the same programming in which the primary advertising runs¹ or, where it is not practicable for the counter advertising to run in the same programming in which the primary advertising runs, then as soon as practicable before or after that and, in any event, never outside a defined six-hour band² in which the primary advertising runs. Where providers want to be certain of compliance, running of counter advertising at the start of, or early in the course of, the programming which includes primary advertising will ensure that this principle is always complied with.
- 4.4 Counter advertising should, consistent with the base requirements of clause 22(2), represent at least 10% of the gambling provider's advertising placement (and at least one advertisement of 15

¹ For example, the broadcast of an AFL match, from the start to the end of the broadcast, is regarded as one unit of "programming". Where primary advertising runs during a an AFL match broadcast, to be certain of compliance, the counter advertising will run during that same broadcast.

² For the Authority's purposes, the bands will be the six hours running from midnight, 6.00am, midday and 6.00pm.

- seconds or more). For example, where a gambling provider places 5 minutes of advertising across an evening, 30 seconds of that should be responsible gambling messaging.
- 4.5 It follows that, where a gambling provider places primary advertising on more than one channel, the counter advertising should be placed on the same channels as the primary advertising. In some instances this may mean that the gambling provider will exceed the minimum 10% requirement.
- 4.6 Counter advertising should be renewed or refreshed routinely—as a guide, every 6 months.
- 4.7 Counter advertising should be unbranded (although the gambling provider’s name may be discreetly included in the end panel of the television commercial).
- 4.8 Primary advertising will still need to carry mandatory warning messaging meeting, at a minimum, the regulatory requirements of another jurisdiction in which it is aired (for example, the NSW message requirement).
- 4.9 Counter advertising should include the national gambling helpline number 1800 858 858. The number must be highly readable and on screen for a significant part of the advertisement.
- 4.10 Gambling providers are advised to liaise with the Office for Problem Gambling before filing a management plan proposing a variation to clause 22(2) and to anticipate a turnaround time of 30 days. The covering letter for the management plan filing should include an account of the discussions with the Office for Problem Gambling and, in particular, how any suggestions or recommendations were implemented.
- 5. Management plans and clauses 31, 32 and 44—substitution of additional responsible gambling messages for full compliance with the mandatory warning message requirements for texts, tweets, emails and social media postings**
- 5.1 This guidance note is intended to assist gambling providers in formulating management plans which substitute additional responsible gambling messages (“**counter messaging**”) for strict compliance with the requirements of clauses 31, 32 and 44 for the presentation of the warning messages in text messages, tweets, emails and other electronic messaging (including social media postings) (“**primary messaging**”). Management plans which follow the guidance will be reviewed, within the 42 day commencement time, by Authority delegates rather than the full board. Management plans which follow the guidance are also more likely to receive approval for commencement earlier than 42 days. However, the existence of the guidance does not preclude a gambling provider filing a management plan which presents an innovative approach to regulatory equivalence—the critical issue will then be the power of the justification for the alternative regulatory treatment.
- 5.2 In drafting management plans, care should be taken to use language which makes the proposed alternative regulatory treatment clear and which avoids any possible ambiguity. In particular, management plans should not incorporate or refer to the guidance (which itself could change). Instead, the management plan should operate as a freestanding statement of the regulatory obligation which the gambling provider will perform.

- 5.3 The codes of practice were varied to allow these clauses to be varied by a management plan in recognition of the limitations posed by the finite and short nature of texts and tweets. However, as strict compliance with the code provisions is considered feasible, it is necessary to ensure that counter messaging delivers at least the same regulatory impact as compliant primary messaging.
- 5.4 Where counter messaging is used, the current expanded mandatory warning message and the national gambling helpline number (1800 858 858) should be included.
- 5.5 Where a gambling provider issues 10 or fewer primary messages in a given format (text, tweet, social media posting) in a 24 hour period, there should be at least 2 instances of counter messaging in that same format.
- 5.6 For each additional 10 primary messages (or part thereof) in a given format in a 24 hour period, there should be one additional counter message. For example, 8 texts, 16 Facebook messages and 21 tweets would mean, in the same period, 2 counter message texts, 3 counter message Facebook posts and 4 counter message tweets.
- 5.7 At least half of the daily counter messages should be sent at times close to peak primary messaging times.