

# Final Investigation Report – L.E. Cleary & R.A. Cleary (Partnership) trading as VicBet

Summary	
<b>Entity</b>	L.E. Cleary & R.A. Cleary (Partnership) trading as VicBet (VicBet)
<b>Australian Business Number</b>	50 757 903 976
<b>Relevant legislation</b>	<i>Interactive Gambling Act 2001</i>
<b>Type of activity</b>	Part 7B – National Self-Exclusion Register
<b>Preliminary Findings</b>	1 contravention of subsection 61LA(2) [Sending regulated electronic messages to registered individuals – knowledge of provider]

## Background

1. On 21 August 2023, BetStop - the National Self-exclusion Register™ (**NSER**) commenced operations. The NSER allows Australians to self-exclude from all licensed interactive wagering service providers (IWPs) in a single process. Given the serious consumer harm that could result from non-compliance with the NSER, the ACMA had informed IWPs that it expected their systems would be in place to enable full compliance from the commencement of the NSER's operations.
2. On 6 June 2024, the Australian Communications and Media Authority (**ACMA**) commenced an investigation into VicBet's compliance with the *Interactive Gambling Act 2001* (**IGA**) following a consumer complaint. The complaint received on 19 April 2024 alleged that the consumer received an email from VicBet at 10:47am on 19 April 2024 to their email address. The email was titled "VICBET Specials!".
3. ACMA's findings are based on:
  - > the consumer complaint received on 19 April 2024, including the screenshot of the email they received from VicBet;
  - > the submission provided by VicBet on 3 July 2024 in response to the ACMA's notification that it had commenced an investigation;
  - > the copy of the email sent by VicBet to the complainant on 19 April 2024 provided to the ACMA on 21 November 2024;
  - > records from the NSER which demonstrate when the complainant was a registered individual and when the Register operator informed VicBet that the complainant was a registered individual; and

- > VicBet's submission of 10 January 2025 in response to the ACMA's preliminary findings.
4. The reasons for the ACMA's findings, including the key elements which establish the contraventions are set out below.

## Relevant legislative provisions

5. Obligations related to the NSER are set out in Part 7B of the IGA. The provisions relevant to this investigation are provided at **Attachment A**. Unless otherwise specified, all references to provisions within legislation in the report are a reference to provisions within the IGA.

### **Finding – Breach: A regulated electronic message must not be sent to an electronic address of a registered individual (subsection 61LA(2))**

#### Regulatory Obligation

6. An IWP must not send, or cause to be sent, a regulated electronic message to an electronic address that is known by the IWP to be an electronic address of a registered individual (see subsection 61LA(2)).
7. A regulated electronic message is defined by section 61GF as an electronic message where, having regard to:
  - a) the content of the message; and
  - b) the way in which the message is presented; and
  - c) the content that can be located using the links, telephone numbers or contact information (if any) set out in the message;it would be concluded that the purpose, or one of the purposes, of the message is:
  - d) to offer to provide licensed interactive wagering services; or
  - e) to advertise or promote licensed interactive wagering services; or
  - f) to advertise or promote a provider, or prospective provider, of licensed interactive wagering services.

#### Is VicBet a licensed interactive wagering service provider for the purposes of the IGA?

8. VicBet is licensed by the Victorian Gambling and Casino Control Commission (VGCCC) to provide licensed interactive wagering services in Australia.<sup>1</sup> For this reason, VicBet is also included on the ACMA's Register of IWPs maintained under section 68 of the IGA.<sup>2</sup>
9. As such, VicBet is an IWP for the purposes of the IGA, and the obligations under Part 7B apply.

#### Did VicBet send, or cause to be sent, electronic messages?

10. The evidence provided by the complainant marks the sender as "Rod Cleary & VicBet Racing", with the sender's address as 'vicbet@vicbet.com'. VicBet provided the ACMA a copy of the email that was sent.

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<sup>1</sup> [Victorian Gambling and Casino Control Commission: Approved Bookmakers \(vgccc.vic.gov.au\)](https://vgccc.vic.gov.au)

<sup>2</sup> This register is available here on the ACMA's website: <https://www.acma.gov.au/check-if-gambling-operator-legal>.

11. Section 61GE of the IGA defines an electronic message as a message sent:
  - a) using:
    - i) an internet carriage service; or
    - ii) any other listed carriage services, and
  - b) to an electronic address in connection with:
    - i) an email account; or
    - ii) an instant messaging account; or
    - iii) a telephone account; or
    - iv) a similar account.
12. Email messages are sent using an internet carriage service to an email address associated with an email account. The ACMA is therefore of the view that the message sent by VicBet to the complainant, is an electronic message under subparagraphs 61GE(1)(a)(i) and (b)(i).

Was the message a regulated electronic message?

13. 'Regulated electronic message' is defined in section 61GF (see paragraph 8 above).
14. The email sent by VicBet was titled "VICBET Specials!" The email was sent by VicBet and contains information about various promotions from VicBet for different events and links to VicBet's website.
15. The ACMA is of the view that the email is a regulated electronic message as the purpose of the message, or one of the purposes, was to advertise or promote licensed interactive wagering services to the complainant.

Was the regulated electronic message sent to an electronic address of a registered individual?

16. Evidence from the complainant displays the electronic address to which the regulated electronic message was sent. The ACMA has checked the complainant's details against records in the NSER to determine if and when the complainant was a registered individual. The complainant became a registered individual on 18 January 2024 and was a registered individual at the time the email was sent on 19 April 2024.
17. The ACMA's finding is that the electronic address was the electronic address of the registered individual because the electronic address was listed in the individual's NSER entry and was the address to which VicBet sent the regulated electronic message.

Was the electronic address known by VicBet to be an electronic address of the registered individual?

18. Subsection 61LA(2) provides that an IWP must not send, or cause to be sent, a regulated electronic message to an electronic address that is known by the provider to be an electronic address of a registered individual.
19. The Register operator is the body corporate engaged to provide and operate the NSER. Under section 61NC an IWP may request the Register operator to inform it whether a current or prospective customer is a registered individual.

20. As detailed in paragraph 17, the complainant became a registered individual on 18 January 2024. From a review of NSER system logs, the ACMA has established that the Register operator informed VicBet that the complainant was a registered individual on 30 March 2024 at 2:47pm (AEDT). From this time, the ACMA is of the view that VicBet knew that the electronic address it had for the complainant, being their email address, belonged to a registered individual.
21. VicBet submitted that it was aware that the complainant was a registered individual, and consequently, the electronic address they held of the complainant was that of a registered individual. VicBet stated that:
- > When the complainant was found to be a registered individual, their account 'was closed immediately'.
  - > At this point, the complainant should have been removed from VicBet's marketing service, however, 'on this extremely rare occasion due to a software glitch' the complainant was not removed. VicBet's submission of 10 January 2025 clarified that this issue was because of human error where the complainant's email address was not removed from VicBet's marketing list as part of a manual removal process in 2022.
22. From VicBet's submission the ACMA understands that:
- > VicBet's system continued to record the complainant as a registered individual;
  - > VicBet closed the complainant's account because it belonged to a registered individual; and
  - > despite the above two points, VicBet failed to remove the complainant from its marketing system when it became aware that the complainant was a registered individual.
23. This failure of VicBet's system to remove the complainant from its marketing system does not otherwise change the fact that VicBet:
- > had been made aware that the complainant was a registered individual because they had been informed by the Register operator;
  - > had taken steps to comply with its obligations, including by closing the complainant's licensed interactive wagering services account; and
  - > continued to record that the complainant was a registered individual when it sent them the regulated electronic message.
24. The ACMA has therefore found that VicBet sent, or caused to be sent, 1 regulated electronic message to an electronic address that was known by VicBet to be an electronic address of a registered individual in contravention of subsection 61LA(2).

## **Conclusion**

25. The ACMA has found that VicBet has contravened subsection 61LA(2) of the IGA in relation to 1 regulated electronic message that it sent to an electronic address it knew to be the electronic address of a registered individual.

## **Attachments**

### **Attachment A – Extract of relevant provisions**

### Key provisions of the IGA

#### Section 61GB Definitions

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**licensed interactive wagering service** means a regulated interactive gambling service that:

- (a) is a wagering service (see section 4); and
- (b) has an Australian-customer link (see section 8); and
- (c) is not provided in contravention of subsection 15AA(3).

....

**licensed interactive wagering service provider** means a person who provides a licensed interactive wagering service.

...

**registered individual** means an individual registered in the National Self-exclusion Register under this Part.

**Register operator** means the body corporate who keeps the National Self-exclusion Register as mentioned in subsection 61HA(1).

...

#### 61GE Electronic messages

(1) For the purposes of this Part, an **electronic message** is a message sent:

- (a) using:
  - (i) an internet carriage service; or
  - (ii) any other listed carriage service; and
- (b) to an electronic address in connection with:
  - (i) an email account; or
  - (ii) an instant messaging account; or
  - (iii) a telephone account; or
  - (iv) a similar account.

Note: Email addresses and telephone numbers are examples of electronic addresses.

(2) For the purposes of subsection (1), it is immaterial whether the electronic address exists.

(3) For the purposes of subsection (1), it is immaterial whether the message reaches its intended destination.

(4) Subsection (1) has effect subject to subsection (5).

*Excluded messages—voice calls*

(5) If a message is sent by way of a voice call, the message is not an **electronic message** for the purposes of this Part.

**61GF Regulated electronic messages**

(1) For the purposes of this Part, a **regulated electronic message** is an electronic message, where, having regard to:

- (a) the content of the message; and
- (b) the way in which the message is presented; and
- (c) the content that can be located using the links, telephone numbers or contact information (if any) set out in the message;

it would be concluded that the purpose, or one of the purposes, of the message is:

- (d) to offer to provide licensed interactive wagering services; or
- (e) to advertise or promote licensed interactive wagering services; or
- (f) to advertise or promote a provider, or prospective provider, of licensed interactive wagering services.

(2) Paragraphs (1)(d), (e) and (f) are to be read independently of each other.

**Section 61LA Regulated electronic message must not be sent to an electronic address of a registered individual**

*Offence—knowledge of provider*

(1) A person commits an offence if:

- (a) the person is a licensed interactive wagering service provider; and
- (b) the person sends, or causes to be sent, a regulated electronic message to an electronic address; and
- (c) the electronic address is known by the person to be an electronic address of a registered individual.

Penalty: 120 penalty units.

*Civil penalty provision—knowledge of provider*

(2) A licensed interactive wagering service provider must not send, or cause to be sent, a regulated electronic message to an electronic address that is known by the provider to be an electronic address of a registered individual.

Civil penalty: 180 penalty units.

*Offence—recklessness of provider*

(3) A person commits an offence if:

- (a) the person is a licensed interactive wagering service provider; and
- (b) the person sends, or causes to be sent, a regulated electronic message to an electronic address; and
- (c) the electronic address is an electronic address of a registered individual; and

(d) the person is reckless as to the fact that the electronic address is an electronic address of the registered individual.

Penalty: 60 penalty units.

*Civil penalty provision—recklessness of provider*

(4) A licensed interactive wagering service provider must not send, or cause to be sent, a regulated electronic message to an electronic address if:

(a) the electronic address is an electronic address of a registered individual; and

(b) the person is reckless as to the fact that the electronic address is an electronic address of the registered individual.

Civil penalty: 90 penalty units.

(5) For the purposes of subsection (4), a person is **reckless** as to the fact mentioned in paragraph (b) of that subsection if:

(a) the person is aware of a substantial risk that the fact exists; and

(b) having regard to the circumstances known to the person, it is unjustifiable to take the risk.

*Exception*

(6) Subsections (1), (2), (3) and (4) do not apply if the licensed interactive wagering service provider took reasonable precautions, and exercised due diligence, to avoid the contravention.

Note 1: The Register operator must, if requested to do so by a licensed interactive wagering service provider, inform the provider whether an individual is a registered individual (see section 61NC).

Note 2: In a prosecution for an offence against subsection (1), a defendant bears an evidential burden in relation to the matter in this subsection (see subsection 13.3(3) of the *Criminal Code*).

Note 3: In proceedings for a civil penalty order for a contravention of subsection (2) or (4), a defendant bears an evidential burden in relation to the matter in this subsection (see section 96 of the Regulatory Powers Act).

*Offences—extended geographical jurisdiction*

(7) Section 15.4 of the *Criminal Code* (extended geographical jurisdiction—category D) applies to an offence against subsection (1) or (3).