

Investigation Report – Betfocus Pty Ltd

Summary	
Entity	Betfocus Pty Ltd (Betfocus)
Australian Company Number	668 993 379
Relevant legislation	<i>Interactive Gambling Act 2001</i>
Type of activity	Part 7B – National Self-Exclusion Register
Findings	<p>3 contraventions of subsection 61MA(2) [Opening a wagering account for a registered individual]</p> <p>3 contraventions of subsection 61KA(3) [Provision of licensed interactive wagering services to registered individuals]</p> <p>2 contraventions of subsection 61LA(4) [Sending regulated electronic messages to registered individuals – recklessness of provider]</p> <p>No contraventions of subsection 61JP(5) [Failure to promote the National Self-exclusion Register in accordance with the <i>Interactive Gambling (National Self-exclusion Register) Register Rules 2022</i>].</p>

Background

- On 30 January 2025, the ACMA commenced an investigation under subparagraph 21(1)(iv) of the *Interactive Gambling Act 2001* (IGA) into Betfocus' compliance with Part 7B of the IGA. This followed complaints from consumers registered with BetStop – the National Self-exclusion Register™ (**NSER**).
- In assessing compliance with the IGA, the investigation focused on 3 individuals who had made complaints about Betfocus (Complainants 1, 2 and 3).
- On 13 February 2025, under paragraph 173(b) of the *Broadcasting Services Act 1992*, the ACMA gave Betfocus a Notice requiring it to provide information pursuant to the investigation (the **Notice**).
- On 6 March 2025, the ACMA received 3 separate emails (Submission 1).
- On 1 May 2025, the ACMA received a second submission (Submission 2)
- On 2 July 2025, the ACMA provided its preliminary findings to Betfocus. The ACMA's findings are based on:
 - > Submissions 1 and 2 from Betfocus

- > records extracted from the NSER by the ACMA which demonstrate when relevant individuals became registered individuals and when Betfocus made requests to the operator of the NSER (the Register operator), including when the Register operator informed Betfocus that the individual was a registered individual.
7. The reasons for the ACMA's findings, including the key elements which establish the contraventions are set out below.

Relevant legislative provisions

8. 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 the report are a reference to the provisions within the IGA.

Finding 1 – Breach: Licensed interactive wagering service providers must not open accounts for registered individuals (subsection 61MA(2))

Regulatory obligation

9. Subsection 61MA(2) provides that an IWP must not open a licensed interactive wagering service account for a registered individual.
10. Subsection 61MA(3) provides that subsection 61MA(2) does not apply if the IWP took reasonable precautions and exercised due diligence to avoid the contravention.
11. Section 61GB defines:
- > an account as:
 - (a) a pre-paid account; and
 - (b) a credit account; and
 - (c) anything that may reasonably be regarded as the equivalent of an account.
 It is immaterial whether an account has a nil balance.
 - > a licensed interactive wagering service account as an account that:
 - (a) an individual has with a licensed interactive wagering service provider; and
 - (b) relates exclusively to the provision, or prospective provision, of one or more licensed interactive wagering services¹ to the individual.
12. The Register operator is the body corporate engaged to provide and operate the NSER. Section 61NC provides that an IWP can check the registration status of an individual at any time by making a request to the Register operator (a **request**). Subsection 61NC(6) sets out the connectivity requirements for an IWP to ensure that that it can make such requests of the NSER.
13. The ACMA is of the view that the act of submitting a request to the Register operator under section 61NC before opening a new wagering account for an individual is unlikely, on its own, to satisfy a test of reasonable precautions and due diligence.² In

¹ Licensed interactive wagering service is defined by section 61GB of the IGA

² <https://www.acma.gov.au/compliance-considerations> accessed 26 May 2025

this context, all actions an IWP took (or it would have been reasonable for it to take) would need to be considered. This may include:

- > Applying flags to people who have been identified as self-excluded so they would be prevented from opening an account if they attempted to register with altered details, as referenced in the ACMA compliance guidance of 19 March 2024.³
- > Having a system to ensure the information provided by a new customer is accurate before using it to check the NSER and considering what information the IWP already has about that customer. For example, undertaking an identity verification check to verify that the person opening the account is who they say they are, and the information provided by them matches their identity document, and validating the contact details they provided to ensure any mobile numbers and email addresses used belong to the person opening an account.⁴

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

14. Betfocus is licensed by the NSW Greyhound Welfare and Integrity Commission and is provided with authorisation by Liquor and Gaming NSW to provide licensed interactive wagering services. For this reason, Betfocus is included on the ACMA's Register of IWPs maintained under section 68.⁵

15. It is not disputed that Betfocus is an IWP for the purposes of the IGA, and the obligations under Part 7B apply.

Did Betfocus open a licensed interactive wagering service account for a registered individual?

Complainant 1

16. Complainant 1 became a registered individual on 9 April 2024 at 3:42pm AEST.

17. NSER records show that Betfocus made the following requests to the Register operator about Complainant 1:

- > 2:32 pm AEST on 17 May 2024 (Request 1). In response to this request, the Register operator advised Betfocus that Complainant 1 was a registered individual.
- > 10:05 am AEST on 26 August 2024 (Request 2). The information about the customer was the same as Request 1. In response to this request, the Register operator again advised Betfocus that Complainant 1 was a registered individual.
- > Betfocus did not include information about Request 1 or 2 in its Submissions. Noting Submission 2 detailed that the Complainant did not have an account with Betfocus until 11:06 am AEST on 26 August 2024, the ACMA understands that Requests 1 and 2 represent attempts by Complainant 1 to open a licensed interactive wagering service account with Betfocus that were prevented as the Register operator advised Betfocus that Complainant 1 was a registered individual.

³ [Compliance update – 19 March 2024](#) accessed on 30 June 2025

⁴ <https://www.acma.gov.au/guidelines-reasonable-precautions-and-due-diligence> accessed on 26 May 2025

⁵ This register is available here on the ACMA's website: <https://www.acma.gov.au/check-if-gambling-operator-legal>

- > 11:06 am AEST on 26 August 2024 (Request 3 [which included substantially similar information to Requests 1 and 2]) – around 1 hour after Request 2. In response to this request, the Register operator responded that the identifying details provided by Betfocus for an NSER check did not sufficiently match an NSER record.
18. Submission 1 said that Betfocus proceeded to open a licensed interactive wagering service account for Complainant 1 at 11:06 am AEST on 26 August 2024, following the Register operator's response to Request 3.
 19. In Submission 2, Betfocus said that, in relation to the account opening attempt associated with Request 3, it verified the identity of Complainant 1 through its third-party service provider before opening the account. Betfocus provided evidence of this successful verification.
 20. While the Notice required Betfocus to provide information about each account of, or attempt to open an account by, Complainant 1, Betfocus did not include information about Requests 1 and 2 in its Submissions, including whether it had run identity verification requests on these previous occasions.
 21. The Notice had asked Betfocus to detail its processes, if any, to identify any duplicate or similar licensed interactive wagering service accounts when it identified a customer or potential customer as a registered individual. In Submission 2, Betfocus responded that it did not identify any duplicate or similar accounts, or attempts to open an account, for Complainant 1 during the relevant period. The ACMA is of the view that Betfocus's inability to produce this evidence indicates gaps and deficiencies in Betfocus' processes and procedures to identify and link attempts by the same customer to open wagering accounts.
 22. By 10:05 am on 26 August 2024, the Register operator had advised Betfocus that Complainant 1 was a registered individual on 2 occasions, in response to Requests 1 and 2. Despite this, around 1 hour after Betfocus had been informed that Complainant 1 was currently a registered individual (in response to Request 2), Betfocus proceeded to open a licensed interactive wagering service.
 23. The ACMA acknowledges the submission from Betfocus about the identity verification step referred to in paragraph 19. The ACMA considers all facts and circumstances applicable to each matter and accordingly has considered this factor in conjunction with the additional facts and circumstances outlined above.
 24. The ACMA considers that, based on the substantially similar customer information used and the timing of Requests 2 and 3, it would have been reasonable for Betfocus to identify that the 2 attempts to open an account, which occurred within around 1 hour of each other, were associated with the same individual. Betfocus failed to identify this association and take appropriate and reasonable precautions. Having appropriate systems and processes would have prevented Betfocus from opening an account for Complainant 1. These arrangements would have been consistent with the expectations set out in compliance guidance from the ACMA in March 2024.
 25. The ACMA finds that Betfocus contravened subsection 61MA(2) by opening a licensed interactive wagering service account for Complainant 1 while they were a registered individual on 26 August 2024.

Complaint 2

26. Complainant 2 became a registered individual on 24 March 2024 at 9:32:43 pm AEDT.
27. NSER records show that Betfocus made the following requests to the Register operator about Complainant 2:
 - > 10:00:43 am AEST on 2 October 2024 (Request 1). In response to this request, the Register operator advised Betfocus that the Complainant 2 was a registered individual. Betfocus did not include information about Request 1 in its Submissions. The ACMA is of the understanding that Request 1 represents an attempt by Complainant 2 to open a licensed interactive wagering service account with Betfocus that was prevented as the Register operator advised Betfocus that Complainant 2 was a registered individual.
 - > 10:00:54 am AEST on 2 October 2024 (Request 2) [which included substantially similar information to Request 1] – 11 seconds after Request 1. In response to this request, the Register operator returned a negative matching response as the information provided by Betfocus did not sufficiently match an NSER record.
28. Betfocus confirmed in its Submissions that it opened a licensed interactive wagering service account for Complainant 2, following Request 2. Betfocus submitted, that it verified that identity before opening the account. As noted above, the ACMA acknowledges this submission but has considered it in the context of the other applicable circumstances and facts.
29. Betfocus stated in Submission 2, that it took ‘no specific action’ to satisfy itself that the information in Request 2 belonged to Complainant 2.
30. The Notice required Betfocus to provide information about each account of, or attempt to open an account by, Complainant 2. Betfocus did not include any information about Request 1 in Submissions 1 and 2. As with Complainant 1 (see paragraphs 20 and 21), the ACMA is of the view that this indicates gaps and deficiencies in Betfocus’ processes and procedures to identify and link attempts by the same individuals to open accounts.
31. By 10:00:43 am AEST on 2 October 2024, the Register operator had advised Betfocus that Complainant 2 was a registered individual, in response to an attempt by Complainant 2 to open an account. Despite this, around 11 seconds later, Betfocus proceeded to open a licensed interactive wagering service account for Complainant 2.
32. The ACMA considers that, based on the substantially similar information used and the timing of Requests 1 and 2, it would have been reasonable for Betfocus to identify that the 2 attempts to open an account, which occurred within around 11 seconds of each other, were associated with the same individual. Betfocus failed to identify this association and take appropriate and reasonable action. Having appropriate systems and processes, consistent with the expectations set out in compliance guidance from the ACMA in March 2024, would likely have prevented Betfocus from opening an account for Complainant 2.

33. The ACMA finds that Betfocus contravened subsection 61MA(2) by opening a licensed interactive wagering service account for Complainant 2 while they were a registered individual on 2 October 2024.

Complainant 3

34. Complainant 3 became a registered individual on 31 August 2023 at 10:23:21 am AEST.
35. NSER records show that Betfocus made 2 requests about Complainant 3 to the Register operator at 8:16 am on 25 March 2024. In response to these requests, the Register operator responded that Complainant 3 was not a registered individual as the information provided by Betfocus did not sufficiently match an NSER record.
36. Betfocus submitted in Submission 2 that the identity information provided by Complainant 3 'did not pass IDV [identity verification]'. Accordingly, the ACMA is of the view that the section 61NC requests submitted by Betfocus about Complainant 3 included unverified identity information about Complainant 3.
37. Betfocus was aware that the information was unverified, however, Betfocus used this unverified information in requests to the Register operator under section 61NC. Using unverified information about a customer runs the risk of relying on inaccurate information and reduces the likelihood of a reliable response from the Register operator in response to a request under section 61NC. This is inconsistent with the compliance guidance issued by the ACMA, including on 19 March 2024
38. Despite this, in Submission 1, Betfocus said that Complainant 3 'opened an account with Betfocus on 25/3/24' and that the 'account was closed on 6/4/24 without placing a bet'. Submission 1 included evidence in the form of a screenshot of the account profile for Complainant 3 in Betfocus' system.
39. Submission 2 was not consistent with Submission 1 in that, Submission 2 states, that the account 'did not pass IDV [identity verification] and consequently no accounts were opened...'.
40. Due to this conflicting information in Betfocus's submissions, the ACMA has considered whether Betfocus opened a licensed interactive wagering service account for Complainant 3 on 25 March 2024. Submission 2 detailed that Betfocus sent an email to Complainant 3 on or around 25 March 2024. This email commenced with 'Welcome to Betfocus' and went on to express 'you're part of the Focus family' (Welcome Email). The email also set-out functionality available in Complainant 3's account. The ACMA is of the view that Complainant 3 received the Welcome Email because they had a licensed interactive wagering service account with Betfocus at that time.
41. As described in paragraph 11, a licensed interactive wagering service account is:
- > An account that an individual has with a licensed interactive wagering services provider.
- The ACMA finds that an account was opened for Complainant 3 as:
- i) Betfocus provided evidence in the form of a screenshot of its system that indicated that an account had been created;

- ii) notwithstanding an apparently contradictory statement in Submission 2, Betfocus stated in Submission 1 that it opened an account for Complainant 3; and
 - iii) Complainant 3 subsequently received further correspondence from Betfocus including the Welcome Email that 'welcomed' Complainant 3 to Betfocus and referenced tools available in Complainant 3's account. The ACMA is satisfied that this email was sent because Betfocus had opened an account for Complainant 3.
- > An account that relates exclusively to the provision, or prospective provision, of one or more licensed interactive wagering services to the individual.
42. Betfocus is a licensed provider of interactive wagering services. While Betfocus submitted the account could not be used until a customer verified their identity, it is the ACMA's understanding that this account related to the prospective provision of licensed interactive wagering services, although the provision of such services was subject to identity verification for the Complainant being completed.
43. The ACMA finds that Betfocus contravened subsection 61MA(2) by opening a licensed interactive wagering service account for Complainant 3 while they were a registered individual on 25 March 2024.

Summary

44. The ACMA finds that Betfocus contravened subsection 61MA(2) on 3 occasions by opening a licensed interactive wagering service account for:
- > Complainant 1 on 26 August 2024;
 - > Complainant 2 on 2 October 2024; and
 - > Complainant 3 on 25 March 2024.

Finding 2 – Breach: Prohibition of the provision of licenced interactive wagering services to registered individuals (subsections 61KA(3))

Regulatory obligation

45. Subsection 61KA(3) provides that an IWP must not provide licensed interactive wagering services to a registered individual. Subsection 61KA(4) provides that a person commits a separate contravention of subsection 61KA(3) in respect of each day during which the contravention occurs.
46. Licensed interactive wagering service is defined by section 61GB as a regulated interactive gambling service (defined by section 8E) that:
- > is a wagering service (as defined in section 4); and
 - > has an Australian customer link (as defined in section 8); and
 - > is not provided in contravention of subsection 15AA(3).

Did Betfocus provide licensed interactive wagering services to registered individuals?

Complainant 1

47. Finding 1 established that Betfocus opened a licensed interactive wagering service account for Complainant 1 while they were a registered individual on 26 August 2024.
48. Finding 1 also detailed the ACMA's views that Betfocus failed to prevent Complainant 1 from opening a licensed interactive wagering service account while excluded – including that it opened an account for Complainant 1 around 1 hour after the Register operator advised Betfocus that the individual was a registered individual.
49. In Submission 2, Betfocus provided evidence that it provided Complainant 1 with licensed interactive wagering services on 1 day, 26 August 2024. Complainant 1 was able to place 40 bets, leading to losses that significantly impacted the customer.
50. Consistent with the assessment in paragraph 24, the ACMA considers that appropriate and reasonable precautions would have enabled Betfocus to identify that Requests 2 and 3, which included substantially similar information, concerned the same individual and therefore to conclude that Request 3 (associated with the successful attempt to open an account) was associated with a registered individual. Betfocus failed to identify this association and take appropriate and reasonable action. This failure meant that Betfocus opened the licensed interactive wagering service account and subsequently provided Complainant 1 with licenced interactive wagering services.
51. The ACMA finds that Betfocus contravened subsection 61KA(3) on 1 occasion by providing wagering services to Complainant 1 while they were a registered individual on 26 August 2024.

Complainant 2

52. Finding 1 established that Betfocus opened a licensed interactive wagering service account for Complainant 2 while they were a registered individual on 2 October 2024.
53. Finding 1 also detailed the ACMA's views that Betfocus failed to prevent Complainant 2 from opening a licensed interactive wagering service account while excluded – including that it opened an account for Complainant 2, 11 seconds after the Register operator advised Betfocus that the individual was a registered individual.
54. Betfocus submitted that it provided Complainant 2 with licensed interactive wagering services on 2 days (26 and 27 October 2024). Complainant 2 was able to place 13 bets, leading to losses that significantly impacted the consumer.
55. Consistent with the assessment in paragraph 32, the ACMA considers that appropriate and reasonable precautions would have enabled Betfocus to identify that Requests 1 and 2 concerned the same individual and therefore to conclude that Request 2 (associated with the successful attempt to open an account) was associated with a registered individual. Betfocus failed to identify this association and take appropriate and reasonable action. This failure meant that Betfocus opened the licensed interactive wagering service account and subsequently provided Complainant 2 with licenced interactive wagering services.

56. The ACMA finds that Betfocus contravened subsection 61KA(3) on 2 occasions by providing wagering services to Complainant 2 while they were a registered individual on 26 October 2024 and 27 October 2024.

Complainant 3

57. The ACMA has found no evidence that Betfocus provided wagering services to Complainant 3 while they were a registered individual.

Summary

58. The ACMA finds that Betfocus contravened section 61KA(3) on 3 occasions by providing licensed interactive wagering services to:

- > Complainant 1 while they were a registered individual on 26 August 2024; and
- > Complainant 2 while they were a registered individual on 26 October 2024 and 27 October 2024.

Finding 3 – Breach: A regulated electronic message must not be sent to an electronic address of a registered individual (subsections 61LA(2) and (4))

Regulatory obligation

59. 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, or where the IWP is reckless as to the fact that the electronic address is an electronic address of the registered individual (see subsections 61LA(2) and (4), respectively).

60. A regulated electronic message is defined by section 61GF as an electronic message where, having regard to:

- > the content of the message; and
- > the way in which the message is presented; and
- > 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:

- > to offer to provide licensed interactive wagering services; or
- > to advertise or promote licensed interactive wagering services; or
- > to advertise or promote a provider, or prospective provider, of licensed interactive wagering services.

Did Betfocus send, or cause to be sent, electronic messages?

61. In Submission 2, Betfocus provided evidence that it sent or caused to be sent 2 emails within the scope of the investigation.

62. 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.
63. Email messages are messages sent using an internet carriage service to an email address in connection with an email account. The ACMA is satisfied that the 2 relevant emails sent by Betfocus were electronic messages under subparagraphs 61GE(1)(a)(i) and (b)(i).

Were the messages regulated electronic messages?

64. In Submission 2, Betfocus provided copies of each of the emails sent.

65. The ACMA has reviewed the content of these electronic messages:

- > Email 1 was an email sent on or around 25 March 2024 after Complainant 3 had opened an account with Betfocus (the Welcome Email described in Finding 1). The first sentence of the Welcome Email states 'welcome to Betfocus' and 'with us, you're not just a punter, you're part of the focus family.' The email also provides information about the wagering services offered by Betfocus including Betfocus *'Daily price boosts across Gallops and Greyhounds'* and *'Same Game Multi on your favourite Sports with awesome player markets available.'*

Based on the content of this message, the ACMA is satisfied that Email 1 is a regulated electronic message as the purpose, or one of the purposes, was to promote or advertise licensed interactive wagering services provided by Betfocus, a licensed interactive wagering service provider.

- > Email 2 was an email sent on 5 June 2024 that advised of an impending ban on using credit cards to place bets. Email 2 provided information about how to transition to other payment methods so that the recipient could continue to access licensed interactive wagering services provided by Betfocus. Betfocus submitted that the purpose of the message was to inform customers of a regulatory change.

The ACMA acknowledges that one of the purposes of the message may have been to inform customers of regulatory changes. However, the ACMA notes that Email 2 informed customers of the payment methods that were and were not permitted if the recipient wanted to access Betfocus' licensed interactive wagering services. This included advising customers that they 'can continue to use their Debit Card or fund their accounts via PayID.'

Email 2 was signed with the tagline 'Stay sharp, Betfocus'. This tagline or slogan is an example of wordplay involving Betfocus' trading name. This same tagline is included in the Betfocus app page on the Apple App store.⁶ The ACMA is satisfied

⁶ <https://apps.apple.com/au/app/betfocus/id6479281167>, accessed 30 June 2025

that this slogan promotes the branding of Betfocus, a provider of licensed interactive wagering services.

Further, Email 2 promoted the Betfocus app being available on both the Apple App store and Google Play store. Based on the copy of Email 2 provided by Betfocus, it is the ACMA's understanding that Email 2 included links to the respective app stores to download the Betfocus app. The ACMA is satisfied that the predominant purpose of the Betfocus app is to access licensed interactive wagering services.

Having regard to:

- > the content of Email 2, including its information about how customers can access licensed interactive wagering services from Betfocus and the promotion of Betfocus branding; and
- > the content that can be located using the links set out in Email 2, primarily its advertising of and link to the Betfocus app that can be used to access services from Betfocus,

the ACMA is satisfied that Email 2 is a regulated electronic message as its purpose, or one of its purposes, was to promote or advertise licensed interactive wagering services provided by Betfocus.

66. The ACMA finds that the 2 emails were regulated electronic messages.

Were the regulated electronic messages sent to electronic addresses of registered individuals?

67. Submission 2 detailed that the 2 emails were sent to Complainant 3. Finding 1 set out that Complainant 3 was a registered individual from 31 August 2023 and NSER records show that they continued to be a registered individual when the emails were sent on or around 25 March 2024 and on 5 June 2024.

68. The ACMA finds that the electronic address to which the emails were sent was an electronic address of a registered individual as it was the electronic address Betfocus recorded for Complainant 3.

Were the electronic addresses known by Betfocus to be electronic addresses of registered individuals?

Or, alternatively

Was Betfocus reckless to the fact that the electronic addresses were electronic addresses of registered individuals?

69. 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.

70. Subsection 61LA(4) provides that an IWP must not send, or cause to be sent, a regulated electronic message to the electronic address of a registered individual where the IWP is reckless to the fact that the electronic address is an electronic address of the registered individual.

71. For the purposes of subsection 61LA(4), subsection 61LA(5) sets out the relevant test for whether a person is reckless as to the fact that the electronic address is an electronic address of a registered individual, which will be satisfied 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.

72. Section 97 of the *Regulatory Powers (Standard Provisions) Act 2014* provides that “[i]f an element of a civil penalty provision is done by an employee, agent or officer of a body corporate acting within the actual or apparent scope of his or her employment, or within his or her actual or apparent authority, the element must also be attributed to the body corporate”.⁷

73. The ACMA has no evidence to suggest that Betfocus knew that the electronic address to which the messages were sent was an electronic address of a registered individual.

74. The ACMA has considered the circumstances in which Betfocus sent or caused to be sent Emails 1 and 2 to determine whether Betfocus was reckless to the fact that the electronic address to which it sent the messages was an electronic address of a registered individual.

75. The ACMA has found that Emails 1 and 2 were sent to Complainant 3 after the account described in Finding 1 was opened by Betfocus.

76. NSER records demonstrate that Betfocus submitted 2 section 61NC requests about Complainant 3 to the Register operator on 25 March 2024, around the time that Complainant 3 applied to open an account. In response to these requests, the Register operator responded that Complainant 3 was not a registered individual as the information provided by Betfocus did not sufficiently match an NSER record. Betfocus continued to submit section 61NC requests about Complainant 3 after 25 March 2024, including before sending Email 2. In response to each request, the Register operator advised that the individual was not a registered individual.

77. Betfocus submitted in Submission 2 that the identity information provided by Complainant 3 ‘did not pass IDV [identity verification]’. Accordingly, the ACMA is of the view that:

- > the section 61NC requests submitted by Betfocus about Complainant 3 included unverified identity information about Complainant 3; and
- > Betfocus knew that the information it included about Complainant 3 in section 61NC had not been able to be successfully verified.

78. As noted in paragraph 37 using unverified information about a customer runs the risk of relying on inaccurate information and reducing the likelihood of a reliable response from the Register operator under section 61NC. Such behaviour is inconsistent with the compliance guidance issued by the ACMA, including on 19 March 2024, and

⁷ Section 64B of the IGA provides that each civil penalty provision of the IGA is enforceable under Part 4 of the *Regulatory Powers (Standard Provisions) Act 2014*

exposed Betfocus to the risk that it would act recklessly and send regulated electronic messages to a registered individual.

79. Submission 1 included a copy of an online chat conversation between a Betfocus representative and Complainant 3. Although Betfocus did not provide the exact date of this conversation, based on the content of this conversation, the ACMA is of the view that it was after Betfocus had sent Email 2 to Complainant 3. In this conversation, Complainant 3 complains of receiving an 'illegal email' from Betfocus. In response, the Betfocus representative stated

We sent our customers information around a legislation change (by the government) that means you can no longer use a credit card to make a Deposit. We have noted on your account you want Zero contact in the future. Have a nice day

80. The ACMA is satisfied that this conversation indicates that Betfocus:

- > only unsubscribed Complainant 3 from receiving communications after it had sent or caused to be sent Email 2 to Complainant 3 and Complainant 3 complained to Betfocus about this message being 'illegal'; and
- > had an account for Complainant 3 at the time it sent or caused to be sent Email 2 to Complainant 3.

81. The NSER was established to provide a one-stop process for consumers to exclude themselves from dealings with all IWP. Consumers registered with the service have a reasonable expectation that by registering, IWPs will comply with their legal obligations to not open wagering accounts, provide wagering services, or market to them.

82. Betfocus is a licensed IWP that operates in a regulated environment that requires it to put in place robust consumer protection measures under relevant Commonwealth, State and Territory law to protect its users, including the IGA.

83. From when it commenced providing services, and at the times it sent or caused to be sent Emails 1 and 2, any of Betfocus' current or prospective customers were able to become a registered individual at any time.

84. The ACMA and the Register operator assisted Betfocus with connecting to the NSER in February and March 2024, around when it commenced providing licensed interactive wagering services. This assistance included emails about the NSER service and Part 7B obligations, as well as a meeting with the Register operator in March 2024 about the NSER. Betfocus signed terms of use with the Register operator on 28 February 2024, before it connected with the NSER to submit section 61NC requests. These terms of use referred to the obligations under Part 7B, which include those in section 61LA. Furthermore, in signing the terms of use, Betfocus agreed to comply with the statutory provisions of Part 7B.

85. As referred to in paragraph 13, the ACMA published compliance guidance on 19 March 2024 that informed industry about the importance of identity verification and submitting names in section 61NC requests 'exactly as shown on an Australian Government identity document'. The update also advised the following: 'Wagering providers should engage with their identity verification provider on their identity verification processes and how they can ensure accurate customer records.' This

update also referred to an identified issue of a wagering provider marketing to a customer. This guidance was published on the ACMA website on 19 March 2024 and remained accessible from that date. This is in addition to the extensive guidance material the ACMA had also published on its website.

86. The ACMA considers that Submission 2 demonstrates that Betfocus understood at the times it sent or caused to be sent Emails 1 and 2 that it needed to have a system and process in place to prevent emails being sent to registered individuals:

Until 10 March 2025, Betfocus had a dynamic email filter control... That system control filtered against accounts that have registered with BetStop and excluded any email addresses that match with a Registered Person.⁸

87. Submission 2 also includes a statement from Betfocus that there was a process for Email 2 to not be sent to registered individuals, further demonstrating that Betfocus was aware of the substantial risk that an electronic address could belong to a registered individual and that its systems and processes needed to be configured to address the substantial risk of sending such messages to registered individuals:

This message was intended to be sent to all customers except BetStop registered persons and those who had unsubscribed from emails.⁹

88. Considering the above, the ACMA is of the view that, when it sent or caused to be sent Emails 1 and 2 to Complainant 3, Betfocus was aware of the substantial risk that a given electronic address could be the electronic address of a registered individual.

89. Further, as noted in paragraph 13, the ACMA is of the view that it is necessary for an IWP to take appropriate steps to satisfy itself that the information it includes about a customer in a section 61NC request is accurate. These steps would include undertaking a successful identity verification check of the customer to confirm that they are who they say are, and that the information provided by them matches their identity document. This may also include validating that the customer has access to the phone number and email address included in the section 61NC request.

90. The ACMA considers that, where an IWP has not taken such reasonable precautions to satisfy itself that the information included about a customer in a section 61NC request it makes to the Register operator is accurate, then that IWP would not reasonably be able to rely on the accuracy of the Register operator's response to the request that the customer is not a registered individual. In these circumstances, the IWP would reasonably be aware of the substantial risk that the response from the Register operator is not accurate or reliable, and therefore the substantial risk that the customer may be a registered individual.

91. By submitting section 61NC requests that included information Betfocus had been advised by its identity verification provider could not be verified, the ACMA is satisfied that Betfocus had not taken appropriate steps to confirm whether or not Complainant 3 was a registered individual before sending them Emails 1 and 2.

92. In order to address the substantial risk referred to in paragraph 71, the ACMA is of the view that Betfocus should have been aware of not only the importance of submitting a section 61NC request before sending a regulated electronic message to an electronic

⁸ Submission 2, pg 2

⁹ Submission 2, pg 5

address, but also the importance of including verified, validated and reliable customer information in said requests. In the absence of being able to verify the identity of Complainant 3, the ACMA is satisfied that it was not justifiable to take the substantial risk of sending regulated electronic addresses to an individual where Betfocus could not be certain that the individual was not a registered individual.

93. Betfocus submitted in Submission 2 that Email 2 was sent to Complainant 3 because a third-party supplier 'encountered an isolated technology issue'. Betfocus submitted that this 'issue' prevented the compiling of the marketing list which would 'exclude BetStop registered persons and those who had unsubscribed from emails.' Betfocus submitted that a workaround was found for this issue through a filter, but that this filter 'did not exclude all appropriate accounts,' resulting in Email 2 being sent to Complainant 3.

94. Betfocus did not include information in its submissions about why Complainant 3 was recorded on a list of 'BetStop registered persons and those who had unsubscribed from emails'. The ACMA notes that:

- > Betfocus otherwise submitted that it had not received a response from the Register operator that Complainant 3 was a registered individual;
- > NSER records demonstrate that the Register operator had not notified Betfocus that Complainant 3 was a registered individual; and
- > as referred to in paragraph 80, the ACMA is satisfied that evidence indicates that Complainant 3 was only unsubscribed for communications from Betfocus after it sent Email 2.

95. The ACMA considered Betfocus' claim *'that the message was intended for all customers except those registered with BetStop or who had unsubscribed from emails'*. If the ACMA accepted this claim, the fact that Complainant 3 was listed among those excluded highlights Betfocus' awareness of the significant risk that Complainant 3's electronic address could belong to a registered individual. Therefore, the message should not have been sent to that address.

96. Based on these circumstances, including Betfocus's:

- > awareness of the risks that a given electronic address may belong to a registered individual;
- > understanding of the need to have effective systems and processes in place to comply with its marketing obligations;
- > awareness that the identity of Complainant 3 had not been able to be verified; and
- > understanding of the need to successfully verify a customer before providing them services or marketing,

the ACMA is satisfied that it was unjustifiable for Betfocus to take the risk of sending or causing to be sent to Complainant 3:

- > Email 1, a regulated electronic message, on or around 25 March 2024

- > Email 2, a regulated electronic message, on 5 June 2024.

Summary

97. The ACMA finds that Betfocus contravened subsection 61LA(4) on 2 occasions.

Finding 4 – No breach: Licensed interactive wagering service providers must promote the NSER (Section 61JP)

Regulatory obligation

98. Under section 61JP, an IWP is required to promote the NSER in accordance with the Register Rules.

99. Subsection 25(3) of the Register Rules requires that an IWP promote the NSER in regulated electronic messages by including:

- > a reference to 'BetStop;'
- > a statement to the effect that BetStop is the National Self-exclusion Register; and
- > a hyperlink to the BetStop website.

Did Betfocus engage in conduct that contravened the Register rules?

100. Finding 3 established that Betfocus sent two regulated electronic messages within the scope of the investigation. The ACMA has reviewed the content of the emails and is satisfied that Betfocus included references to the NSER as required by the Register Rules.

Conclusions

101. The ACMA finds that Betfocus:

- > Has contravened subsection 61MA(2) on 3 occasions in relation to 3 licenced interactive wagering service accounts that it opened for registered individuals.
- > Has contravened subsection 61KA(3) on 3 occasions in relation to the provision of licensed interactive wagering services to a registered individual over 3 days.
- > Has contravened subsection 61LA(4) in relation to 2 regulated electronic messages that it sent to an electronic address that was the electronic address of a registered individual where Betfocus was reckless as to the fact that the electronic address was the electronic address of the registered individual.
- > Has not contravened subsection 61JP(5) in relation to failing to promote the NSER in accordance with the Register Rules.

Attachments

Attachment A – Extract of relevant provisions

Attachment A

Key provisions of the IGA

Interactive Gambling Act 2001 Section 61KA Prohibition of the provision of licensed interactive wagering services to registered individuals*Offence*

(1) A person commits an offence if:

- (a) the person is a licensed interactive wagering service provider; and
- (b) the person provides a licensed interactive wagering service to an individual; and
- (c) the individual is a registered individual.

Penalty: 500 penalty units.

(2) A person who contravenes subsection (1) commits a separate offence in respect of each day (including a day of conviction for the offence or any later day) during which the contravention continues.

Civil penalty provision

(3) A licensed interactive wagering service provider must not provide a licensed interactive wagering service to a registered individual.

Civil penalty: 750 penalty units.

(4) A person who contravenes subsection (3) commits a separate contravention of that provision in respect of each day during which the contravention occurs (including the day the relevant civil penalty order is made or any later day).

Exception

(5) Subsections (1) and (3) 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 (3), a defendant bears an evidential burden in relation to the matter in this subsection (see section 96 of the Regulatory Powers Act).

Offence—extended geographical jurisdiction

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

Interactive Gambling Act 2001 61MA Licensed interactive wagering service account must not be opened for a registered individual

Offence

(1) A person commits an offence if:

- (a) the person is a licensed interactive wagering service provider; and
- (b) the person opens a licensed interactive wagering service account for an individual; and
- (c) the individual is a registered individual.

Penalty: 120 penalty units.

Civil penalty provision

(2) A licensed interactive wagering service provider must not open a licensed interactive wagering service account for a registered individual.

Civil penalty: 180 penalty units.

Exception

(3) Subsections (1) and (2) 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), a defendant bears an evidential burden in relation to the matter in this subsection (see section 96 of the Regulatory Powers Act).

Offence—extended geographical jurisdiction

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

Interactive Gambling Act 2001 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).