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Government of South Australia
Attorney-General's Department

MEMORANDUM OF UNDERSTANDING

BETWEEN

THE AUSTRALIAN COMMUNICATIONS AND MEDIA AUTHORITY

AND

LIQUOR AND GAMBLING COMMISSIONER

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1. Background

1.1 The Australian Communications and Media Authority (the ACMA) is a statutory agency established by section 6 of the *Australian Communications and Media Authority Act 2005* (Cth) (ACMA Act). The ACMA regulates broadcasting and datacasting services, radiocommunications, telecommunications, nuisance telemarketing, spam and certain internet content in Australia.

1.2 Relevantly, the ACMA is responsible for:

- regulating telecommunications in accordance with the *Telecommunications Act 1997* (Cth);
- regulating interactive gambling under the *Interactive Gambling Act 2001* (Cth) (IGA), including the provision of the National Self-exclusion Register (also known as BetStop – the National Self-Exclusion Register™);
- managing the outsourced arrangements for the operation of BetStop – the National Self-Exclusion Register with the Register operator;
- monitoring and investigating compliance with the IGA and the *Interactive Gambling (National Self-exclusion Register) Rules 2022*;
- regulation and enforcement of commercial electronic messages under the *Spam Act 2003* (Cth); and
- the regulation of telemarketing within the meaning of, and in accordance with, the *Do Not Call Register Act 2006* (Cth).

1.3 The Liquor and Gambling Commissioner (Commissioner) is a statutory office pursuant to section 8 of the *Liquor Licensing Act 1997* (SA). Responsibilities include the regulation of the gaming, casino, racing and lottery industries.

1.4 The Commissioner's powers and functions are set out in several pieces of legislation. Relevantly, the Commissioner operates under, and enforces, the:

- *Authorised Betting Operations Act 2000* (SA); and
- *Gambling Administration Act 2019* (SA).

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2. Definitions

2.1 In this Memorandum, unless the context otherwise requires, the following words have the following meanings:

ACMA Act means the *Australian Communications and Media Authority Act 2005* (Cth);

authorised disclosure information has the same meaning as in section 3 of the ACMA Act;

authorised purpose, in relation to any documents or information provided pursuant to this Memorandum, means the purpose or purposes described by the Requesting Party in accordance with subclause 6.3(b), subject to:

(a) any conditions imposed by the Requested Party under clause 7.4;

(b) the terms of any written consent provided under clauses 8.1 or 9.3.

Business day means any day that is not a Saturday, Sunday or public holiday in the Australian Capital Territory, New South Wales, South Australia or Victoria;

Commissioner means the Liquor and Gambling Commissioner under the *Liquor Licensing Act 1997* (SA);

confidential information means information held or accessible by a Party in circumstances where the Party is subject to a duty of confidence, whether arising by the application of statute, common law or equity and includes authorised disclosure information and protected information;

IGA means the *Interactive Gambling Act 2001* (Cth);

IWP means a licensed interactive wagering service provider as that term is defined under section 61GB of the IGA;

Memorandum means this Memorandum of Understanding;

Party means either the ACMA or the Commissioner as the context allows, and parties shall be construed accordingly;

person includes an individual, a natural person, a body corporate, an unincorporated association, a partnership, a government or political subdivision, a statutory authority or instrumentality of a government;

personal information means personal information as that term is defined by the *Privacy Act 1988* (Cth);

protected information has the same meaning as in section 61NA of the IGA;

relevant ACMA legislation means the legislation referred to in clauses 1.1 and 1.2 and associated regulations, standards and codes of practice;

relevant Commissioner legislation means the legislation referred to in clauses 1.3 and 1.4 and associated regulations, codes of practice, directions and guidelines;

Requested Party means the Party:

(a) to which a request has been made under this Memorandum; or

(b) that is otherwise providing information, documents or assistance to the other Party under this Memorandum; and

Requesting Party means the Party:

(a) making a request under this Memorandum; or

(b) that is otherwise receiving information, documents, or assistance from the other Party under this Memorandum;

South Australian IWP means an IWP that is licensed by South Australia.

3. Purpose and Scope

3.1 The purpose of this Memorandum is to build a strategic relationship between the Parties and assist each Party in the performance of its regulatory responsibilities.

3.2 This Memorandum establishes a framework for mutual assistance to enable the Parties to effectively perform their respective duties according to law.

3.3 This Memorandum establishes the framework to facilitate strategic engagement, collaboration and the exchange of information between the Parties while recognising the legal, policy and administrative limits on the powers of each Party to exchange such information.

3.4 The general areas of mutual assistance, collaboration and information exchange under this Memorandum include compliance monitoring, enforcement and education in connection with:

(a) the ACMA's powers and functions under the relevant ACMA legislation; and

(b) the Commissioner's powers and functions under the relevant Commissioner legislation.

3.5 The areas of priority concern under this Memorandum may include circumstances where a Party:

(a) receives a complaint or has information that suggests a South Australian IWP may have contravened relevant ACMA legislation or relevant Commissioner legislation;

(b) has commenced, or is considering commencing, an investigation into a South Australian IWP or other matters that it considers relevant to the other Party;

(c) is considering taking, or has decided to take, enforcement action against a South Australian IWP or an entity that it considers relevant to the other Party;

(d) becomes aware that a new entity is to be licensed as a South Australian LIWP or a South Australian IWP may be subject to licence cancellation or change by the Commissioner;

(e) has been notified by a South Australian IWP that an investigation has commenced by a regulatory or governing body; and

(f) identifies a matter for priority attention.

3.6 Information sharing under this Memorandum may also include circumstances where a Party has identified that an IWP registered elsewhere but providing gambling products to South Australians is suspected of contravening, or has contravened, relevant ACMA legislation or Commissioner legislation.

B. Provision of information and documents

4. Statement of Intent

4.1 This Memorandum is a voluntary statement of the intent of the Parties to cooperate with and assist each other, and accordingly does not create any enforceable rights or impose any legally binding obligations on either Party.

4.2 This Memorandum does not modify or supersede any laws in force applying to either Party.

4.3 This Memorandum does not affect the right or ability of either Party to obtain information from any person in connection with the powers and functions of either Party.

4.4 This Memorandum does not prevent either Party from collaborating or sharing information providing mutual assistance to the other Party on any other matter to the extent permitted by law.

5. Requests for information, documents or assistance

5.1 The Agencies will use their best endeavours to comply with the terms of this Memorandum.

5.2 Either Party may, in accordance with this Memorandum, request documents, information or assistance from the other Party relevant to the Requesting Party's powers and functions.

5.3 The Requested Party may, in the exercise of its discretion, decline a request, in whole or in part.

5.4 In deciding whether to accept or decline a request, the Requested Party will take into account whether:

(a) the request was made in accordance with this Memorandum, in particular clause 6; and

(b) the provision of the information, documents or assistance would or may:

(i) be contrary to the national or public interest, or to the law;

(ii) be beyond the statutory powers of the Requested Party;

(iii) involve dealing with the administration of a law, regulation or requirement that does not exist, and has no parallel within the jurisdiction of the Requested Party;

(iv) put the Requested Party in breach or at risk of being in breach of a legal or equitable duty owed to any person (particularly in relation to the treatment of confidential information and personal information, or an obligation to afford procedural fairness);

(v) expose the Requested Party to the threat of legal proceedings;

(vi) place a strain on its resources or substantially or unreasonably divert its resources from priorities; or

(vii) impact adversely on any enforcement or compliance action being undertaken or contemplated by the Requested Party.

5.5 A Party may provide information, documents or assistance to the other Party for the purpose of this Memorandum in the absence of a request as permitted by law and in accordance with its own processes.

6. Procedure for requests for information, documents or assistance

6.1 A Party may request information, documents or assistance from the other Party in the manner specified in this Memorandum.

6.2 Subject to clause 6.5, all requests for information, documents or assistance must be made in writing.

6.3 Requests should specify details of:

(a) the information, documents or assistance required;

(b) the purpose for which the information, documents or assistance is sought (identifying the provisions of any relevant law or other legal basis for the Requesting Party seeking the information);

(c) to whom, if anyone, the documents and information provided may be disclosed or released by the Requesting Party (specifying the reasons and legal basis for the on-disclosure);

(d) any information in the possession of the Requesting Party that may:

(i) assist the Requested Party in identifying persons who may be adversely affected by the disclosure; and

(ii) affect the Requested Party's obligations to afford procedural fairness (if any) (including specifying whether the request is confidential and the nature of any such affect); and

(e) the suggested period for reply and, if the request is urgent, the reasons for the urgency.

6.4 If the request for documents, information or assistance is for the purpose of actual or possible investigation and/or enforcement action, then the following details are also to be provided:

(a) a description of the conduct or suspected conduct which gave rise to the request;

(b) details of the relevant legislation (identifying provisions), laws or requirements

(c) where appropriate, the subject of the investigation or law enforcement activity;

(d) the role of the Requesting Party and the relevant regulatory functions to which the request relates; and

(e) the sanctions or penalties that may be imposed in the event of law enforcement action.

6.5 In urgent cases, a request for information, documents or assistance may be made orally provided that the request contains the information set out in clauses 6.3 and 6.4 (if applicable), to be followed by a written request containing all the required information within five (5) Business days.

7. Procedure for provision of information, documents or assistance

7.1 The Requested Party will consider each request on a case-by-case basis to determine whether the Requested Party is able to provide the information, documents or assistance requested under this Memorandum.

7.2 The Requested Party will use its best endeavours to advise the Requesting Party within five (5) Business days of receipt of the request, the estimated timeframe for responding to the request.

7.3 Where the Requested Party must consult on a request, requires the consent of a person or is otherwise required to advise a person of the request before it is able to comply with the request, the Requested Party will advise the Requesting Party of this fact before contacting that person.

7.4 The Requested Party may provide information, documents or assistance to the Requesting Party subject to any conditions that the Requested Party considers appropriate, including:

(a) written restrictions or limitations as to the use, access to or storage of the requested information or documents;

(b) confidentiality requirements relating to the information or documents provided; and

(c) if the Requested Party is likely to incur significant costs and expenses in complying with the request, a requirement that the Requesting Party contribute to the costs and expenses.

7.5 Where the Requested Party seeks to impose a condition it must advise the Requesting Party of that condition prior to providing the information, documents or assistance. If the Requested Party seeks to impose a condition of the kind described in clause 7.4(c) it must:

(a) provide the Requesting Party with an estimate of costs and expenses; and

(b) obtain an agreement from the Requesting Party as to a contribution to the costs and expenses.

7.6 The Parties will make best endeavours to ensure that information shared or exchanged under this Memorandum is complete, accurate and up-to-date; however, the Parties acknowledge that errors may occur.

8. Permissible use of information or documents

8.1 The Requesting Party shall not use any documents or information provided pursuant to this Memorandum for any purpose other than the purposes stated in the request or any applicable conditions imposed under clause 7.4, unless:

(a) it has asked the Requested Party for its consent to use the information or documents for the other purpose; and

(b) the Requested Party has indicated its consent in writing to such use.

9. Confidentiality of requests and information or documents provided

9.1 The Requested Party shall endeavour to keep confidential all requests made under this Memorandum, the content of such requests and any other matters arising from consultation about the requests, if requested to do so by the Requesting Party.

9.2 The Requesting Party shall, subject to any legal obligations requiring or authorising the disclosure or production, maintain the confidentiality of the information or documents supplied by the Requested Party under this Memorandum.

9.3 In exchanging confidential information, the Parties acknowledge the confidentiality requirements of the laws and regulations under which each Party operates. The Requesting Party will comply with any confidentiality conditions and will not, subject to clause 9.4, release or disclose information or documents supplied to it under this Memorandum to a third party without the express written consent of the Requested Party or as specified in the Request.

9.4 The Requesting Party will notify the Requested Party of any legally enforceable demand for disclosure of confidential information or documents supplied under this Memorandum before complying with the demand and will assert such appropriate legal exemptions or privileges with respect to such information as may be available.

9.5 Each Party must report to the other Party as soon as possible after becoming aware of any unauthorised use or disclosure of information exchanged under this Memorandum.

10. Retention of information

10.1 The Parties acknowledge and agree that information provided to the Requesting Party pursuant to this Memorandum will be retained by the Requesting Party for the authorised purpose, and the Requesting Party will retain the information for as long as necessary to comply with South Australian or Commonwealth records requirements, audit requirements or as required by law.

10.2 The Requesting Party will securely store the information provided so that it is only accessible for the authorised purpose.

10.3 Once the information no longer needs to be retained, the Requesting Party will dispose of the information so that it is no longer possible or reasonably practicable to reproduce a whole or part of the information.

C. Miscellaneous provisions

11. Contact points

11.1 So far as is practicable, all communications between the Parties associated with matters under this Memorandum should be between the principal points

of contact as notified by either Party in writing, which may be amended by written advice provided by either Party to the other Party from time to time.

12. Term of Memorandum

12.1 This Memorandum will be ongoing and subject to periodic review unless terminated in accordance with clause 15.

13. Commencement date

13.1 This Memorandum commences on and from the date when it has been signed by both Parties.

14. Review of Memorandum

14.1 The Parties will keep the operation of this Memorandum under periodic review and will consult with a view to improving its operation and resolving any matters or differences that may arise as a result of the interpretation, construction, or operation of this Memorandum.

14.2 The Parties will consult for the purpose of reviewing this Memorandum at a time mutually agreed between both parties.

14.3 Any term of this Memorandum may be amended or waived by the Parties' mutual consent in writing.

15. Termination of Memorandum

15.1 Either Party may terminate this Memorandum by giving 30 days' written notice to the other Party.

15.2 In the event that this Memorandum is terminated, this Memorandum shall continue to have effect with respect to all requests for information or documents that were made before the date of such notice of termination, and with respect to the confidentiality of all documents and information supplied under this Memorandum.

Signed on this 16 day of December 2024

Signed for and on behalf of the ACMA

[redacted]

Nerida O'Loughlin (Dec 16, 2024 12:20 GMT+11)

Nerida O'Loughlin

Chair and Agency Head

Australian Communications and Media Authority

Signed by the Acting Liquor and Gambling Commissioner

[redacted]

S Halliday (Dec 13, 2024 13:04 GMT+10.5)

Steph Halliday

Acting Liquor and Gambling Commissioner