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# NORTHERN TERRITORY RACING COMMISSION

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## REASONS FOR DECISION

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<b>Licensee:</b>	NTD Pty Ltd trading as 'betr'
<b>Proceedings:</b>	Consideration of Disciplinary Action Pursuant to section 80(1)(d) of the <i>Racing and Betting Act 1983</i>
<b>Heard Before: (on papers)</b>	Mr Alastair Shields (Presiding Member) Ms Cindy Bravos Ms Amy Corcoran Mr Kristopher Evans Ms Susan Kirkman
<b>Date of Decision:</b>	09 February 2023

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### Background

1. On 5 October 2022, the Northern Territory Racing Commission (**the Commission**) granted a licence to NTD Pty Ltd trading as betr (**betr**) to conduct the business of a sports bookmaker, pursuant to section 90 of the *Racing and Betting Act 1983* (**the Act**). betr commenced accepting wagers on 12 October 2022.
2. The Commission considers that it is important that the adverse impacts of gambling are taken seriously and that licensees have in place effective processes to interact with those of its customers and others who may be at risk of experiencing harm from their gambling activity. Both the Act and all Northern Territory licensed sports bookmakers' licence conditions require licensees to comply with the Northern Territory Code of Practice for Responsible Service of Online Gambling 2019 (**the Code**), which was approved by the Commission on 26 May 2019. The 2019 Code provides practical guidance to licensees on responsible gambling practices that are to be implemented so as to minimise the harm that may be caused by online gambling.
3. On 10 October 2022, after the date that betr was granted an unconditional licence, but before betr commenced accepting wagers, the Commission received a complaint from a self-excluded person, Mr M, who stated that he had been contacted by an affiliate of betr, Mr L, and a betr Relationship Manager, Mr W, on 5 and 10 October 2022 respectively, for the purposes of inviting him to open an account with betr. The breach of clause 8.9(c) of the Code by betr in contacting Mr M while he was a self-excluded person was dealt with by the Commission in a published decision dated 25 November 2022 – see [https://industry.nt.gov.au/data/assets/pdf\\_file/0020/1179011/decision-notice-ntd-pty-ltd-ta-betr.pdf](https://industry.nt.gov.au/data/assets/pdf_file/0020/1179011/decision-notice-ntd-pty-ltd-ta-betr.pdf). This decision notice deals with the unsolicited nature of the approach to Mr M, and the failure to obtain his consent before sending him direct marketing material.
4. On 11 October 2022, the Commission received a further complaint from a legal firm representing a NSW licensed sports bookmaker, to the effect that betr representatives had made unsolicited approaches to four of their client's customers or former customers to encourage them to sign up with betr.

5. On 11 November 2022, the Commission sent betr a “show cause” notice, to the effect that the Commission had formed the view that the unsolicited approaches detailed above may be in breach of the following clauses of the Code:

8.6 Urging to buy

Online gambling providers are not to call or otherwise urge non-gambling customers to use their gambling services

8.9 Direct marketing

(a) Online gambling providers must not send any direct marketing material to a person without their express consent to receive such material.

6. On 25 November 2022, betr provided a detailed response to the show cause notice.

**Consideration of the Issues**

7. In response to the show cause notice, betr submitted that:
- a. betr takes its obligations under the Code seriously;
  - b. betr employees, Business Development Manager (BDM) affiliates and contractors of BDM affiliates are all subject to strict contractual obligations which require them to comply with all applicable laws and regulations applying to betr, including but not limited to, its obligations under the Code:
    - not to offer or supply any inducements to open a betting account;
    - not to contact any individual without their consent;
    - not to contact any customer who has self-excluded; and
    - to ensure that all customer communications are recorded (including phone calls, emails, text messages).
  - c. All BDM affiliates and personnel are required to undergo legal and regulatory training prior to the commencement of their role;
  - d. No further communications were sent to any of the affected persons once they indicated they did not wish to receive communications; and
  - e. The underlying circumstances were isolated, confined in number and time period, being the period immediately prior to betr's launch.
8. betr further advised that, since receiving the complaints, it has:
- a. Written to all BDM affiliates and their personnel to reinforce their obligations;
  - b. Issued a direction to all of its BDM affiliates that they and their personnel must refrain from contact with any customer until they have validated that the person is contactable; and
  - c. Updated the legal and regulatory training undertaken by BDM affiliates and their personnel.

9. betr has advanced an interpretation of clause 8.6 of the Code that is at odds with the Commission's view. betr submitted that, because none of the individuals were customers of betr at the time of the communications, clause 8.6 of the Code, which according to betr's view "is directed to 'non gambling customers' (i.e. customers with an account which has been dormant for a period of time)", has no application. The Commission rejects this interpretation of clause 8.6 of the Code because it is inconsistent with the core harm minimisation strategies contained in the Code.
10. The betr interpretation assumes that the qualifying word "non" in clause 8.6 applies only to the descriptor "gambling", such that the code only prevents licensees from urging existing customers with dormant accounts to use their gambling services. The Commission considers that this interpretation is inconsistent with the context and purpose of the Code as a whole, and that to interpret clause 8.6 as only having application to existing customers who are not currently gambling creates an artificial distinction between such existing customers and persons who are not customers (and are therefore not gambling customers).
11. The Commission considers that it must have been intended that both categories of persons should receive equal protection under the Code, and that the correct interpretation must therefore be that the Code prevents licensees from urging any person who is not a "gambling customer" to utilise their gambling services.
12. betr also queried whether the approaches to the four persons can be categorised as 'direct marketing material' for the purposes of Clause 8.9(a) of the Code, given that each of the persons were known, to some extent, by the person who initiated the contact. In this regard, the Commission notes that it has been provided with a number of text messages sent to Mr M. The text of one of these messages from 5 October 2022 states:

"Hi [Christian name of Mr M],  
[M] from betr here. Just giving you a quick call as we are a new sportsbook launching next week.  
We are backed by Newscorp and Matt Tripp.  
I was reaching out to see if you like a punt and would be interested in trying us when we launch? I am one of the Relationship Managers and personally manage key accounts.  
I'll send over a link on the day we launch, which you can use to signup if you want to try us and have a punt with me.  
If you do sign-up, please send back your username so I can ensure you are tracked to me.  
If you have any questions, please sing out or give me a call at a time that suits.  
Look forward to hearing back from you soon"
13. The Commission is satisfied that the text message outlined in paragraph 12 above is 'direct marketing material' within the meaning of that term in Clause 8.9(a) of the Code.
14. Finally, betr submitted that if the Commission finds that the Code had been breached by betr, the circumstances do not warrant any further regulatory action being taken against betr.

## **Decision**

15. It would appear to the Commission from the complaints received, and the responses provided by betr, that there were unsolicited approaches (by telephone and in at least one case, text messages) made by both employees of betr and contractors of betr's affiliates, to persons who were not, at the time that the approaches were made, customers of betr, nor had those persons provided consent to receive marketing material.

16. The Commission has previously held that licensees should accept responsibility for the activities of their affiliates, and that an unwillingness to do so does not reflect well on a licensee. The Commission understands that this position is accepted by betr, and notes that the contractual arrangements between betr and betr's BDM affiliates require the affiliates to comply with the Code. This decision therefore does not differentiate between the activities of betr employees and BDM affiliates and their contractors.
17. The Commission is satisfied that betr was in breach of clause 8.6 of the Code when its employees and contractors made unsolicited approaches to the 4 persons mentioned in the correspondence referred to in paragraph 4. The Commission is also satisfied that betr was in breach of clause 8.9(a) of the Code when the text message set out in paragraph 12 above was sent to Mr M on 5 October 2022.
18. The Commission has therefore determined that betr did not comply with clauses 8.6 and 8.9(a) of the Code and, as a result, pursuant to section 80(1)(d) of the Act, has failed to comply with condition 16 of its licence.
19. Disciplinary actions available to the Commission for non-compliance with a condition of licence range from the issuing of a reprimand, imposing a fine not exceeding 170 penalty units, or suspending or cancelling the sports bookmaker's licence.
20. Notwithstanding betr had yet to commence trade when the four persons mentioned in the complaints were contacted, betr was fully licensed and subject to all of the applicable regulatory obligations, including licence conditions and the Code. As noted in the Commission's decision notice dated 25 November 2022, although betr is a new licensee, the management of betr including the Chief Executive and Head of Legal & Regulatory Affairs have been in the industry for many years holding similar positions within other Territory licensed bookmakers. The Commission is therefore very disappointed that, under their leadership, affiliates and employees were permitted to contact any persons in breach of the requirements of the Code.
21. In all of the circumstances, the Commission has determined to impose the maximum fine of 170 penalty units for the breach of clause 8.6 of the Code, and the maximum fine of 170 penalty units for the breach of clause 8.9(a) of the Code. This is a total of 340 penalty units, which equates to \$55,080.00. Should betr breach clauses 8.6 or 8.9 of the 2019 Code again, the Commission will consider carefully whether other disciplinary options under section 80(1)(d) of the Act should be imposed.
22. The Commission has also determined that given the serious nature of these breaches, this decision will be published on the Commission's website so as to place all Northern Territory bookmakers on notice that the Commission treats such breaches very seriously.

Alastair Shields



Chair  
Northern Territory Racing Commission