

Compliance policy

Compliance Division

Date: 18 June 2013
Version: 0.3



Victorian Commission for
Gambling and Liquor Regulation

Contents

1. Introduction	3
2. Purpose	3
3. Public value	3
3.1 Mission	3
3.2 Substantive value	3
3.3 Authorising legislation	4
3.4 Operational capability	4
4. Risk based approach to compliance	4
4.1 Compliance prioritisation and qualifying risk	4
4.2 Regular review of risk	4
5. Activities used to monitor compliance	5
5.1 Inspections	5
5.2 Inspector responsibilities	5
5.3 Information from the public	5
5.4 Intelligence gathering	5
5.5 Internal referrals	5
6. Enforcement tools and escalation for compliance	5
6.1 Chain of responsibility	6
6.2 Escalation of enforcement	6
6.3 Enforcement tools	6
7. Compliance measures	8
8. Relationship with other government agencies	8
9. Compliance standards	8
9.1 Inspector standards	8
9.2 Accountability	8
9.3 Other relevant legislation	9
10. Legal advice	9
11. Policy approval	9

1. Introduction

The Victorian Commission for Gambling and Liquor Regulation (VCGLR) is responsible for ensuring that gambling activities and the supply of alcohol are conducted in accordance with the *Victorian Commission for Gambling and Liquor Regulation Act 2011* (the Act).

The VCGLR's strategic priorities for 2012-2015 outline the key long-term strategies for delivering community-wide benefits to Victorians through the regulation of Victoria's gambling and liquor industries.

The four key priorities are:

- modern in our regulatory approach; demonstrating VCGLR's leadership and innovation
- efficient in our practices and in the way we regulate
- high performing and dynamic in our workplace; where our people are respected, supported and model integrity
- networked to improve our gambling and liquor regulatory outcomes.

2. Purpose

The purpose of this policy is to establish a fair, consistent and appropriate approach to the compliance activities undertaken by the VCGLR. The policy can be applied to the decision-making processes of those activities to ensure they are aligned with the VCGLR's intentions and priorities.

The VCGLR reserves the right to amend this document at any time.

3. Public value¹

Public value defines the responsibilities of an organisation carrying out activities on behalf of the public. It is about defining the 'social return on investment' for the expenditure of funds.

For this to occur it is important that the public body, in this case the VCGLR, follows a set of standards, which provide clear direction and intention when carrying out any compliance activities.

- Mission – what is it that is intended to be delivered?
- Value – what is the value in undertaking that intention with respect to community benefit?
- Authority – what formal authority exists to deliver on the mission?
- Capability – what capabilities are available to deliver on the mission?

3.1 Mission

The VCGLR will use 'effective compliance measures to ensure gambling activities and the supply of alcohol are done responsibly and in accordance with the requirements of the relevant legislation'.

3.2 Substantive value

To achieve this mission, the VCGLR works with the hospitality industry to ensure the responsible service of gambling and alcohol, and to minimise the harm associated with these activities.

This provides further focus on the VCGLR's compliance activities to ensure they are conducted in a way that supports the strategic priorities.

¹ Moore, M 1995, *Creating Public Value: Strategic Management in Government*, Harvard University Press, Cambridge

3.3 Authorising legislation

Should the VCGLR (when carrying out its regulatory function) become aware of potential breaches against other legislative or regulatory schemes, it will refer the issue to the appropriate enforcement agency. The VCGLR will cooperate with the requests of those bodies to provide statements and evidence if requested, and will ensure that it meets relevant privacy standards and confidentiality requirements.

Other legislative or regulatory schemes include:

- *Victorian Commission for Gambling and Liquor Act 2012*
- *Gambling Regulation Act 2003*
- *Liquor Control Reform Act 1998*
- *Casino Control Act 1991*
- *Casino (Management Agreement) Act 1993*
- *Racing Act 1958*.

3.4 Operational capability

In accordance with the *Victorian Commission for Gambling and Liquor Regulation Act 2012* inspectors are authorised to carry out compliance activities related to gambling and the supply of alcohol.

Compliance inspectors are Victorian Public Servants appointed under the *Public Administration Act 2004*, and are subject to the Victorian Public Sector Code of Conduct, and the VCGLR's Conduct and Ethics Policy.

The compliance inspectors must have detailed knowledge of the liquor and gambling legislations and be able to conduct risk assessment when carrying out compliance activities.

4. Risk based approach to compliance

The VCGLR apply a risk based approach to service delivery to produce a coordinated and effective compliance program.

The VCGLR identifies risk priority areas through a review of its intelligence gathering and engagement with industry, community and other regulators. These priority areas are then integrated into the key performance indicators for the Compliance Division.

4.1 Compliance prioritisation and qualifying risk

The VCGLR places great priority on:

- the actions of licensees and approved parties that place any person at risk of significant harm
- matters of significant public concern
- matters demonstrating deliberate disregard for the law
- systemic or industry wide compliance issues
- matters which have the potential to become industry wide
- matters that are associated with a person, licensee or business with a history of licence infringements
- matters that the Commission or the Chief Executive Officer of the VCGLR requests action on.

4.2 Regular review of risk

Every financial year the VCGLR reviews its compliance activities and develops a service delivery position, which provides a description of the compliance risk priorities for the next 12 months.

Focusing on the specific risk priorities does not mean that other breaches will not be dealt with should they be identified. The VCGLR will focus activities on risk priorities and, if other breaches are detected then they too will be resolved.

5. Activities used to monitor compliance

The VCGLR carries out a number of activities to monitor compliance. These activities, include, but are not limited to the following.

5.1 Inspections

There is an inspection program aimed at addressing risks associated with gambling and the supply of alcohol. This program is reviewed every 12 months and is captured in a service delivery document, which is approved by the Commission.

5.2 Inspector responsibilities

Compliance inspectors are required to:

- conduct inspections and monitor licensees to ensure they are compliant with the gambling and liquor legislation in accordance with inspection system
- conduct investigations into gambling and liquor matters (as required, and when approved)
- contribute to the assessment and development of ongoing compliance programs
- ensure they meet relevant standards and guidelines
- identify and recommend appropriate compliance strategies and outcomes
- provide relevant information to assist in compliance
- work with other regulatory agencies in addressing gambling or liquor compliance issues.

5.3 Information from the public

The VCGLR welcomes any information from the public about gambling or liquor compliance issues. This information can be provided either by:

- email at contact@vcglr.vic.gov.au
- post to Director, Compliance Division, Victorian Commission for Gambling and Liquor Regulation, GPO Box 1988, Melbourne, Victoria, 3001
- phone on 1300 182 457.

5.4 Intelligence gathering

The VCGLR gathers information from a range of different sources including other law enforcement bodies. The intelligence is analysed on whether a further investigation and/or enforcement action is required.

5.5 Internal referrals

On occasion internal referrals are made to those responsible for compliance activities in the VCGLR. The source of these requests or directions can range from the Commission, the Chief Executive Officer, or in other areas of the VCGLR. Any such referral or direction is prioritised in accordance with this policy.

6. Enforcement tools and escalation for compliance

When responding to breaches of legislation, the VCGLR must:

- consider the risk or harm to the community, industry or integrity of the regulatory framework
- ensure the conduct has stopped
- deter future breaches for similar behaviour by those responsible for the regulated activity or employees
- use enforcement tools appropriately and proportionately

- consider the circumstances of the breach
- consider the culpability of the regulated entity
- send a clear message to the industry as to acceptable standards of conduct.

6.1 Chain of responsibility

The chain of responsibility is to ensure that all who bear responsibility for conduct that affects compliance, should be made accountable for failure to discharge that responsibility.²

For example, if an employee commits a breach, the licensees or approved party may also be required to face review and possible enforcement action from the VCGLR. This applies to both the gambling and liquor industries.

The VCGLR focuses its compliance activities on those who are given authority in the liquor and gambling industry to ensure they meet their obligations.

6.2 Escalation of enforcement

In the case that the desired outcome is not achieved or if the circumstances require a different approach, the type of enforcement may need to be escalated.

6.3 Enforcement tools

There are specific enforcement tools that the Compliance Division use when carrying out compliance activities. These tools are provided in detail on page 7.

Note: These tools may be used independently or in combination to achieve the appropriate outcome of compliance. There may be some cases where these enforcement tools are not required.

² www.vicroads.vic.gov.au

Enforcement tools

No action	<p>Inspectors may not find any breaches or they may use their discretion in reviewing the circumstances of the breach to take no further action.</p> <p>Note: The use of discretion by inspectors is qualified. If inspectors intend to use discretion, they are required to record the breach and detail the reason for using discretion.</p>
Risk management discussion	<p>This highlights areas of operation that need to be addressed voluntarily. This includes improvement of practices or environment identified by information and intelligence gathering. This may include a verbal warning. This also provides an opportunity to document the avenues available and used to educate licensees or approved parties.</p>
Written warnings	<p>These relate to identified breaches that are deemed to be relatively minor in nature and the relevant facts of the case, including the history of the party, deem a written warning sufficient. They do not form an official part of the legislation. However, they are an important method in tracking the history of parties in terms of non-compliance. They may be used in later proceedings if the non-compliance continues.</p>
Infringement notices³	<p>These will be used when the offence is a prescribed offence for which an infringement notice can be issued. They are used for breaches that are deemed not to require a court appearance and where there are no special circumstances in relation to the breach.</p>
Enforceable undertakings⁴	<p>Enforceable undertakings are designed to acknowledge and remedy the behaviour causing concern. They also allow consensual programs to be developed to avoid a repeat of the behaviour while avoiding formal court/tribunal proceedings. These programs may range from a technical response to identified breaches through to lifting the level of understanding through formal education of licensees or approved parties. They are a public record document.</p>
Disciplinary action	<p>Disciplinary action is focused on altering the behaviour for the protection of the public through a more tailored response. It is used to produce outcomes that include (but not limited to) censure, suspension, disqualification or the imposition or variation of licence conditions.</p>
Criminal prosecution	<p>These matters are heard in the Magistrates' Court. This will be restricted to matters deemed serious in nature and/or where the behaviour is conscious and deliberate.</p>
Injunction	<p>An injunction is a court order requiring a party to do or refrain from doing specific acts. For gambling and liquor matters they will only be considered in the most serious of matters, where a party has failed to heed all other warnings or instructions from the VCGLR. Failing to comply with an injunction may result in the imposition of significant financial penalties or arrest and a period of incarceration.</p>

³ *ibid*

⁴ Only available for breaches of the *Liquor Control Reform Act 1998*

7. Compliance measures

The VCGLR measures its compliance activities in two ways:

1. by meeting the service delivery requirements of the Victorian Government (these are measured by outputs, e.g. number of compliance activities)
2. by meeting internal service delivery requirements developed through a review of previous activities and intelligence gathering, (these are measured by outcomes, e.g. focusing on risk priority areas to change behaviour).

8. Relationship with other government agencies

The VCGLR collaborates with other statutory authorities and government to ensure that the most effective method of behavioural change is used. This also ensures that gaming and liquor venues are managed in accordance with the relevant legislation.

9. Compliance standards

The VCGLR is committed to continuous improvement and as such aligns its compliance activities to the following standards and guidelines:

- Australian Government Investigation Standards
- Australian Standard AS8000 – 2003 Fraud and Corruption Control
- Director of Public Prosecutions (Victoria) – Prosecutorial Discretion Guidelines
- Administrative Review Council (Australia) – The Coercive Information-gathering Powers of Government Agencies.

9.1 Inspector standards

Inspectors must follow a code of conduct that demands the highest levels of professionalism and etiquette when carrying out compliance activities on behalf of the VCGLR.

- Ethics and integrity – Act with integrity at all times, and demonstrate the highest standards of ethical behaviour.
- Transparent – Work in a transparent and open fashion, by being clear about how compliance activities work within the VCGLR and the industry.
- Firm but fair – Make appropriate decisions and enforce the law in a manner consistent with the objectives of the Act and with the right of fair process.
- Constructive relationships - Work in a constructive and positive manner with industry and VCGLR partners to achieve beneficial outcomes for the community.
- Professionalism – Deliver an accountable and well-led compliance service on behalf of the VCGLR.

These standards are designed to support the VCGLR's organisational values and strategic priorities.

9.2 Accountability

Most enforcement tools used by the VCGLR have systemic rights of appeal or review included. The employment of these tools will be communicated either in writing or in person. Most enforcement actions undertaken by the VCGLR are subject to review by the courts and the *Infringements Act 2006*.

If it is believed the actions of the VCGLR or employees are unjust and there is no mechanism to address through a right of appeal or review then the VCGLR encourages, in the first instance, write to:

Director Compliance Division
Victorian Commission for Gambling and Liquor Regulation
GPO Box 1988
Melbourne VIC 3001

Alternatively, email the VCGLR at contact@vcglr.vic.gov.au.

Details about the nature of the enforcement action, the outcome, how the concerns were not addressed by existing systems, the basis of the request for review and how the circumstances support a review should be provided.

It is strongly recommended that contact is made with the Compliance Director to raise any concerns about a Compliance Inspector's behaviour.

However, contact may also be made with the following integrity bodies:

- Independent Broad-based Anti-corruption Commission
- Ombudsman Victoria.

9.3 Other relevant legislation

When conducting compliance activities, the VCGLR is committed to meeting its requirements under the following legislation:

- *Criminal Procedure Act 2009*
- *Evidence Act 2008*
- *Charter of Human Rights and Responsibilities Act 2006*
- *Information Privacy Act 2000*
- *Freedom of Information Act 1982*
- *Public Administration Act 2004*.

10. Legal advice

The information in this policy is not intended to constitute legal advice, but is for interested parties. Readers of this policy should seek their own legal advice if necessary. The VCGLR and its employees are not legally bound to the contents of this document.

11. Policy approval

This policy was approved by the Commission on 14 May 2013.