**2019**

**THE LEGISLATIVE ASSEMBLY FOR THE**

**AUSTRALIAN CAPITAL TERRITORY**

GAMBLING AND RACING CONTROL (CODE OF PRACTICE) AMENDMENT REGULATION 2019 (NO 1)

**SL2019-10**

**EXPLANATORY STATEMENT**

**Circulated by the authority of  
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**OVERVIEW**

The *Gambling and Racing Control Act 1999* (the Control Act) provides the overarching legislative framework for gambling in the Territory. The *Gambling and Racing Control (Code of Practice) Regulation 2002* (the Regulation) has been made under section 54 of that Act.

The Gambling and Racing Control (Code of Practice) Amendment Regulation 2019 (No 1) (the Amendment Regulation) amends the Regulation to implement measures from the National Consumer Protection Framework (NCPF) for Online Wagering in Australia.

Background

Online wagering operators are currently subject to the regulatory requirements of the Commonwealth as well as the State or Territory in which they are licensed. The regulatory framework for online wagering is inconsistent across Australian States and Territories, which has led to increased compliance requirements for interactive wagering service providers in Australia and has impacted the effectiveness of the protections afforded to consumers.

The NCPF has been developed by the Commonwealth, States and Territories, in consultation with industry, community, academics and gambling harm reduction advocates. The NCPF consists of 10 consumer protection measures. These measures provide a suite of tools available for use by individuals, as well as requirements for ‘interactive wagering service providers’ (online wagering providers), to help mitigate the risk of harm through online gambling. The measures are to be implemented through a combination of Commonwealth, State and Territory regulatory changes.

The Commonwealth, State and Territory Ministers with responsibility for online wagering in their jurisdiction met on 8 September 2017 and provided in-principle support to the National Framework.

The NCPF for Online Wagering will be implemented through an agreed National Policy Statement (the Statement), which has been endorsed by all Ministers and was released on 26 November 2018. The Statement sets out the agreed policy commitments of Commonwealth, State, and Territory governments that underpin the introduction of the National Framework’s measures. The Statement also outlines the agreed implementation arrangements all Governments will use to deliver the National Framework.

A copy of the Statement is attached to this Explanatory Statement. Further information is available at: <https://www.dss.gov.au/communities-and-vulnerable-people-programs-services-gambling/national-consumer-protection-framework-for-online-wagering>.

Implementation timeframes as set out in the Statement provide that the NCPF’s measures will be progressively introduced over 18 months from the endorsement of the Statement.

Application in the ACT

The ACT’s measures will be implemented through amendments to the Regulation.

The measures within the NCPF to be implemented and regulated by States and Territories include:

1. Restrictions on inducements - This measure prohibits all specified inducements (e.g. incentivising the opening of an account or referring another person, encouraging gambling, bonus bet conditions, direct marketing).
2. Account closure - This measure ensures that closing/cancelling an online wagering account is readily available, and accessible by all customers.
3. Voluntary opt-out pre-commitment scheme (deposit limits) - This measure provides consumers with a tool to help them monitor and manage their gambling by pre-committing to deposit limits. These limits would apply on an operator basis.
4. Activity statements - This measure ensures customers receive meaningful statements on their wagering activity from each interactive wagering service provider.
5. Consistent gambling messaging - This measure provides for evidence‑based, consistent gambling messaging by interactive wagering service providers.
6. Staff training - This measure provides for the training of certain staff in the responsible service of online gambling.

In accordance with the obligations of the NCPF, the ACT Government will enact the measures in relation to restrictions on inducements, account closure and voluntary opt-out pre-commitment scheme (deposit limits) by 26 May 2019.

The other measures required to be progressed by States and Territories will be implemented over the next 12 months once the Commonwealth Government completes trials and testing to inform the roll out of activity statements and consistent gambling messaging, and once a national competency for staff training has been developed.

**HUMAN RIGHTS IMPLICATIONS**

The Amendment Regulation only imposes obligations on Tabcorp ACT (a corporation), the current sole online wagering service provider licensed in the ACT.

To the extent that the Amendment Regulation includes measures relating to individual gamblers, it does not require the disclosure of any additional personal information beyond that already provided by customers when opening an online betting account, which they do voluntarily. Tabcorp ACT is bound by the *Privacy Act 1988* (Cth) in collecting, storing and handling customers’ personal information.

Through reducing the risk of gambling harm, the measures included in the Amendment Regulation can be considered to support the right to the protection of the family and children (section 11 of the *Human Rights Act 2004* (HRA)).

It might be suggested that the right to privacy and reputation (section 12 HRA) is engaged by the proposed transitional provision, which requires licensees to make contact with all existing account holders within six months of commencement to ask if they would like to set a deposit limit. To the extent that this engages that right, any impact is considered reasonable and proportionate noting the potential protective effect of deposit limits in reducing the risk of gambling harm.

**REGULATORY IMPACT STATEMENT**

Section 34 of the *Legislation Act 2001* requires the preparation of a Regulatory Impact Statement where a subordinate law is likely to impose appreciable costs on the community, or a part of the community.

Since the Amendment Regulation will place additional obligations on online wagering service providers licensed in the ACT, a Regulatory Impact Statement has been prepared as required. However, it should be noted that Tabcorp ACT is currently the sole online wagering service provider licensed in the ACT and is supportive of the implementation of the NCPF.

**NOTES ON CLAUSES**

**Clause 1** **–** **Name of regulation**

Clause 1 is a formal provision setting out the name of the Amendment Regulation as the *Gambling and Racing Control (Code of Practice) Amendment Regulation 2019 (No 1).*

## Clause 2 – Commencement

## Clause 2 provides the commencement date for the Amendment Regulation, being 26 May 2019. This date is six months after the National Policy Statement was endorsed.

## Clause 3 – Legislation amended

## Clause 3 provides that the Amendment Regulation amends the *Gambling and Racing Control (Code of Practice) Regulation 2002.*

## Clause 4 – Schedule 1, new division 1.2.4

Clause 4 inserts a new division into the Regulation - division 1.2.4 ‘Betting account–totalisator and sports bookmaking licensees.’

*New section 1.20A*

New section 1.20A limits the application of the new division to a totalisator licensee or sports bookmaking licensee.

*New section 1.20B*

New section 1.20B sets out definitions for new division 1.2.4 of the Regulation. The terms ‘betting account’ and ‘deposit limit’ are defined as follows:

* *betting account* means an account held by a person with a totalisator or sports bookmaking licensee into which funds are or can be deposited and used by the person to place a bet with the licensee.
* *deposit limit* means a limit to the amount that can be deposited into a person’s betting account during a stated period or periods. Under new section 1.20E(1)(b), the person must be able to choose the period or periods to which the limit applies, including 1 day (daily), 7 days (weekly), 14 days (fortnightly) or 28 days (monthly).

*New section 1.20C*

New section 1.20C provides for information about deposit limits.

Under new section 1.20C(1), a licensee must not open a betting account for a person unless the licensee has told the person they can set a deposit limit for the account and asked the person whether they want to set a limit, and the person has either set or declined to set a deposit limit. The licensee must comply with any guidelines made under new section 1.20G in telling or asking the person about deposit limits.

New section 1.20C(2)(a) provides that a licensee must, at least once each year, tell a person with a betting account that has no deposit limit that the person can set a deposit limit, and ask the person if they want to set a limit. The licensee must comply with any guidelines made under new section 1.20G (see below).

New section 1.20C(2)(b) provides that a licensee must, at least one each year, ask a person with a betting account that has a deposit limit whether they want to change the deposit limit. The licensee must comply with any guidelines made under new section 1.20G (see below).

Under new section 1.20C(3), the requirements in subsection (2) above to engage with betting account holders once each year does not apply if the account has not been used to make or settle a bet within the previous 12 months. Depositing funds into, or withdrawing funds from, a betting account will not constitute account activity for this provision.

New section 1.20C(4) provides that a licensee must publish information promoting deposit limits on the licensee’s website and on each communication channel a person can use to place a bet with the licensee. The licensee must comply with any guidelines made under new section 1.20G (see below).

*New section 1.20D*

Under new section 1.20D, the licensee must not a allow a person to deposit money into a betting account held by the licensee if depositing the amount would result in the deposit limit for account being exceeded.

An example is provided under new section 1.20D to show how this provision will work in practice. It is important to note that an attempted transaction which would result in a customer’s deposit limit being exceeded must be rejected as a whole, the licensee cannot accept part of the transaction up to the amount remaining under the deposit limit. The person making the deposit will have to attempt a new transaction with an amount that would not exceed the deposit limit.

*New section 1.20E*

New section 1.20E provides for setting and changing deposit limits. Under subsection (1), a licensee must ensure that the process for setting and changing a deposit limit is simple and easy for a person to use. The customer must also be able to choose the time period for which the deposit limit applies, including at a minimum, options for 1 day (daily), 7 day (weekly), 14 day (fortnightly) or 28 day (monthly) limits. At least once each year the customer will need to be asked if they wish to change their deposit limit, under the provisions of new section 1.20C.

The process to set and change a deposit limit must also comply with any guidelines made by the Minister under section 1.20G (see below).

New section 1.20E(2) provides that a licensee must set or lower the deposit limit for a person’s betting account with the licensee immediately when the licensee receives a request from the person to do so.

Under new section 1.20E(3), a licensee must not increase the deposit limit for a person’s betting account with the licensee until at least 7 days after the licensee receives a request to do so.

Subsections (2) and (3) of new section 1.20E work together to ensure that if a customer wishes to set or reduce their deposit limit (and therefore reduce their risk of gambling harm), the licensee must do so immediately. In the event that the customer wishes to increase their deposit limit (and therefore increase their risk of gambling harm), a cooling-off period applies and the license must not increase a deposit limit until at least one week after receiving a request to do so.

*New section 1.20F*

New section 1.20F provides for closing betting accounts.

Under new section 1.20F(1), a licensee must ensure that the process for a person to close their betting account:

* is simple and easy for the person to use; and
* is prominently and clearly communicated on the licensee’s website and through any communication channel the person can use to place a bet with the licensee.

New section 1.20F(2) provides that a licensee must ensure that a person can ask to close their betting account by email, phone or any other communication channel that the person can use to place a bet with the licensee.

New section 1.20F(3) provides that after a person’s request to close their betting account is received by the licensee, the licensee must not accept a bet using the account, and must close the account as soon as practicable after all bets made using the account have been settled. This provision strikes a balance between requiring the licensee to immediately stop accepting bets on the person’s account, with providing reasonable time for the licensee to undertake account closure activities, including settling any bets.

Under new section 1.20F(4), a licensee is prohibited from encouraging or inducing a person to cancel a request to close their betting account. The licensee may, however, explain to the person the effects of closing the account and ask the person whether they want to proceed with closing it.

A note below subsection (4) alerts the reader to new section 1.30C(3)(b), which provides that a licensee must not send direct marketing to a person after the person has asked to close their betting account.

*New section 1.20G*

Under new section 1.20G(1), the Minister may make guidelines about betting accounts. Specifically, the guidelines may provide for:

* the information licensees must provide in relation to setting, changing and promoting deposit limits and closing betting accounts; and
* the process for setting and changing deposit limits and closing betting accounts.

New section 1.20G(2) provides that a guideline may include requirements for:

* the content or form of information to be provided by licensees;
* when information must be communicated by licensees and to whom;
* where or how information must be communicated by licensees.

Under new section 1.20G(3), a guideline is a notifiable instrument, which must be notified under the *Legislation Act 2001*.

*New section 1.20H*

New section 1.20H provides that the ACT Gambling and Racing Commission may give a written direction to a licensee to ensure compliance with new division 1.2.4, and that if a direction is given, the licensee must comply with the direction. This section mirrors existing provisions in the Code of Practice, for example, sections 1.27 and 1.31.

Failure to comply with a direction may be grounds for disciplinary action under the *Totalisator Act 2014* or the *Race and Sports Bookmaking Act 2001* (see the existing note under section 7 of the Regulation).

**Clause 5 – Schedule 1, section 1.30 (6)**

Clause 5 repeals and replaces existing section 1.30(6) to provide that a totalisator or sports bookmaking licensee must not offer an inducement to a person:

* to open a betting account with the licensee; or
* to refer another person to open a betting account with the licensee.

Two examples of inducements are provided under subsection (6), being free or discounted gambling credits, and vouchers or other rewards.

New section 1.30(6A) provides that a totalisator or sports bookmaking licensee must not give or offer a person a complimentary or discounted betting credit or token (a *bonus bet*) unless any winnings from the bonus bet can be withdrawn by the person and are not subject to a requirement that they be used to place further bets. This means that a person can be required to turnover (i.e. bet) a bonus bet (or another similar inducement) once in order to be eligible to claim a bonus bet, but cannot be subject to any further turnover requirements before being able to withdraw their winnings.

**Clause 6 – Schedule 1, section 1.30 (9)**

Clause 6 inserts two new definitions in existing section 1.30(9), which includes definitions for section 1.30. The new defined terms are ‘betting account’ and ‘winnings’.

*Betting account* is defined with a signpost to the definition in section 1.20B.

*Winnings*, from a bonus bet by a person, means the amount to be paid or credited to the person if the bet is successful.

**Clause 7 – Schedule 1, section 1.30B heading**

**Clause 8 – Schedule 1, section 1.30B (1)**

Clauses 7 and 8 repeal and replace the heading of section 1.30B and subsection (1) of that section, as a consequential amendment to clause 9 below. The application of section 1.30B is now limited to gaming machine and casino licensees.

**Clause 9 – Schedule 1, new section 1.30C and 1.30D**

Clause 9 inserts new sections 1.30C and 1.30D into the Code of Practice, and introduces new restrictions on direct marketing by totalisator and sports bookmaking licensees. These licensees were previously subject to restrictions on sending on personally-addressed promotional material under section 1.30B. As set out above, the application of section 1.30B is now limited to gaming machine and casino licensees.

*New section 1.30C*

New section 1.30C sets out restrictions on direct marketing for totalisator and sports bookmaking licensees. Subsection (1) provides that the section applies only to a totalisator licensee or sports bookmaking licensee.

Under new section 1.30C(2), the licensee must ensure that the licensee’s direct marketing is not sent to a person unless the person has expressly consented to receive the direct marketing. In addition, any direct marketing must comply with any guidelines made under section 1.30D.

New section 1.30C(3) provides that the licensee must ensure that the licensee’s direct marketing is not sent to a person from five business days after a request is received from the person:

* to stop getting the direct marketing; or
* to close their betting account.

New section 1.30C(4) provides a definition of the term ‘direct marketing,’ meaning any advertising, promotion or offer from a licensee, or from a person on the licensee’s behalf, that is made directly to a person by telephone, SMS, email, internet application, post or other direct means.

*New section 1.30D*

New section 1.30D(1) provides that the Minister may make guidelines about the direct marketing by a totalisator or sports bookmaking licensee.

Under new section 1.30D(2), a guideline is a notifiable instrument, which must be notified under the *Legislation Act 2001*.

**Clause 10 – Schedule 1, section 1.31 (1)**

Clause 10 is consequential to the insertion of new sections 1.30C and 1.30D by clause 9 above.

Section 1.31 of the Regulation already provides that the ACT Gambling and Racing Commission may give a written direction to a licensee to ensure compliance with a number of listed sections about advertising, promotions and inducements.

All the sections in part 1.4 have been listed in existing subsection (1). This means that, in practice, the Commission may give a written direction to ensure compliance with that part.

Clause 10 repeals and replaces section 1.31(1) to provide that the Minister may give a written direction to ensure compliance with that part (part 1.4 of the Code of Practice).

**Clause 11 – Schedule 1, new part 1.10**

Clause 11 inserts new part 1.10 into the Regulation – ‘Transitional-Gambling and Racing Control (Code of Practice) Amendment Regulation 2019 (No 1)’.

Part 1.10 consists of new sections 1.100 and 1.101.

*New section 1.100*

New section 1.100 provides a transitional provision in relation to the setting of deposit limits by existing account holders of totalisator and sports bookmaking licensees.

Within six months of the commencement day (i.e. before 26 November 2019), the licensee must tell all existing account holders that they can set a deposit limit for their betting account and ask the existing account holders whether they want to set a limit.

Under the transitional provision, the initial 12-month review period for an existing account holder starts on the day the licensee asks the account holder, under this provision, whether they want to set a deposit limit.

An example of how this provision is intended to operate is as follows. Anna is an existing betting account holder and is asked on 20 July 2019 if she wishes to set a deposit limit on her account. Assuming Anna has used her account in the past 12 months to make or settle a bet, the licensee must ask Anna again whether she would like to set a deposit limit no later than 19 July 2020, and no later than every 12 months after that.

*New section 1.101*

Under new section 1.101, the transitional provision expires on 26 May 2021, two years after the commencement of the Amendment Regulation.











































