



New South Wales

Gambling Legislation Amendment (Online and Other Betting) Bill 2019

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The objects of this Bill are to amend the *Betting and Racing Act 1998* and the *Totalizator Act 1997* as follows—

- (a) to prohibit direct marketing to the holders of betting accounts without express consent,
- (b) to prohibit inducements being offered to persons to open a betting account, to invite another person to open a betting account or not to close a betting account,
- (c) to require providers of betting accounts to set up schemes to enable holders to limit deposits into their accounts unless the holder expressly refuses,
- (d) to require providers of betting accounts to provide a simple and easy to use process to close betting accounts, to improve the access to holders of betting accounts to information about how to close accounts and to require requests to close accounts to be dealt with immediately,
- (e) to make it clear that offers of gambling products with incentives relating to better odds and other advantages to holders of betting accounts (whether by advertisement or otherwise) will be prohibited inducements,
- (f) to provide for circumstances in which directors of corporations will be liable for betting account offences,
- (g) to make other consequential amendments and provision of a transitional nature consequent on the enactment of the proposed Act.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.

Schedule 1 Amendment of Betting and Racing Act 1998 No 114

Schedule 1[2] inserts a definition of *betting account*, being an account held with a person who is a bookmaker or licensed to operate a totalizator or a betting exchange (a *licensed betting service provider*) for the purposes of enabling the holder of the account to place a bet with the provider.

Schedule 1[3] clarifies the meaning of inducement for the purposes of prohibitions on offering inducements (including in advertisements). An inducement will include the offer of a credit, voucher, reward or other benefit and the offer of a gambling product that includes additional benefits or enhancements for betting account holders and other products declared by regulations to be prohibited inducements. **Schedule 1[4]** makes a consequential amendment.

Schedule 1[5] prohibits a body that promotes and conducts race meetings (a *non-proprietary association*) or a licensed betting service provider or other person from providing gambling advertisements directly to holders of betting accounts by email, SMS text message or other direct means unless express consent to receiving gambling advertisements directly by that means has been given and not withdrawn. There must also be a means by which a holder of a betting account can easily unsubscribe from receiving the advertisements. A withdrawal of consent will take effect 24 hours after it is notified to the non-proprietary association or licensed betting service provider.

Schedule 1[6] inserts provisions that regulate aspects of the conduct of betting accounts. It will be an offence for a non-proprietary association, a licensed betting service provider or other person to offer or supply, or cause to be offered or supplied, an inducement to a person to open a betting account, to invite another person to open a betting account, not to close a betting account or to consent to receive gambling advertisements or not to withdraw a consent. The amendment also makes it an offence for a licensed betting service provider to offer or supply a free bet to the holder of a betting account unless any payouts from the free bet can be withdrawn at any time. A licensed betting service provider that provides betting accounts will be required to establish a deposit limit scheme which will establish a maximum deposit limit for account holders nominated by the account holder unless the account holder expressly refuses to join the scheme. The scheme must include a 7 day wait before an increased maximum deposit can take effect. Information about the scheme must be displayed on the licensed betting service provider's website and the provider must ask the holder about the limit or having a limit at least once every 12 months. A licensed betting service provider will also be required to ensure that the process for closing a betting account is simple and easy to use and enables closure using the same means by which a bet may be placed as well as by telephone and email. Information about how to close a betting account must be displayed prominently on the provider's website and at the place where a bet may be placed by the account holder, if the provider has a website. It will also be a requirement for a licensed betting service provider to immediately cease to accept bets after a request is made by a holder of a betting account to close the account and to close the account after all previous bets are finalised. **Schedule 1[1]** makes a consequential amendment.

Schedule 1[7] and [8] include the offences to be inserted by the proposed Schedule as executive liability offences for which a director of a corporation or a person involved in the management of a corporation who is in a position to influence the corporation's conduct will be liable if the corporation commits one of the offences and the director or person knows or ought reasonably to know the offence is being committed or fails to take all reasonable steps to prevent or stop the offence from being committed.

Schedule 1[9] applies the proposed offences relating to betting accounts to accounts in existence when the offences commence and the holders of those accounts.

Schedule 2 Amendment of Totalizator Act 1997 No 45

Schedule 2[1] inserts a definition of *betting account*, being an account held with a licensed totalizator operator (a *licensee*) for the purposes of enabling the holder of the account to place a bet with the licensee. **Schedule 2[3]** makes a consequential amendment.

Schedule 2[2] clarifies the meaning of inducement for the purposes of prohibitions on offering inducements (including in advertisements). An inducement will include the offer of a credit, voucher, reward or other benefit and the offer of a gambling product that includes additional benefits or enhancements for betting account holders and other products declared by regulations to be prohibited inducements. **Schedule 2[5]** makes a consequential amendment.

Schedule 2 [4] prohibits a licensee from providing advertisements relating to totalizator betting directly to holders of betting accounts by means of email, SMS text message or other direct means, unless express consent to receiving totalizator advertisements by that means has been given and not withdrawn. There must be a means by which a holder of a betting account can easily unsubscribe from receiving the advertisements.

Schedule 2[6] applies the proposed offences relating to direct marketing to betting account holders to holders of accounts in existence when the offences commence.



New South Wales

Gambling Legislation Amendment (Online and Other Betting) Bill 2019

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New South Wales

Gambling Legislation Amendment (Online and Other Betting) Bill 2019

No. , 2019

A Bill for

An Act to amend the *Betting and Racing Act 1998* and the *Totalizator Act 1997* with respect to advertisements and betting accounts; and for other purposes.

The Legislature of New South Wales enacts—

1

1 Name of Act

2

This Act is the *Gambling Legislation Amendment (Online and Other Betting) Act 2019*.

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2 Commencement

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This Act commences on the date of assent to this Act.

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Schedule 1	Amendment of Betting and Racing Act 1998	1
	No 114	2
[1] Part 4A, heading		3
	Omit “and inducements”. Insert instead “, inducements and betting accounts”.	4
[2] Section 33G Interpretation		5
	Insert in alphabetical order in section 33G(1)—	6
	<i>betting account</i> means an account held with a licensed betting service provider for the purposes of enabling the holder of the account to place a bet with the provider.	7
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[3] Section 33GA		10
	Insert after section 33G—	11
33GA Inducements		12
(1)	In this Part, <i>inducement</i> includes—	13
(a)	the offer of a credit, voucher, reward or other benefit, or	14
(b)	the offer of a gambling product, or the offer of a condition or other aspect of a gambling product, that includes additional benefits or enhancements, or	15
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(c)	the offer of a gambling product, or the offer of a condition or other aspect of a gambling product, that is declared by the regulations to be a prohibited inducement.	18
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(2)	A reference to an inducement in this Part includes an inducement that involves an offer that is not available to persons resident in New South Wales.	21
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(3)	A reference to an inducement in this Part (other than in sections 33J and 33JA) does not include an inducement published or communicated by a licensed betting service provider to a person who has a betting account with the provider at the time an advertisement containing the inducement is published or the availability of the inducement is communicated to the person.	23
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[4] Section 33H Prohibitions on gambling-related advertisements		28
	Omit section 33H(3).	29
[5] Section 33HA		30
	Insert after section 33H—	31
33HA Prohibition on direct marketing		32
(1)	A non-proprietary association or licensed betting service provider or other person must not provide a gambling advertisement directly to a betting account holder by email, SMS text message or other direct means, unless the holder has expressly consented to receiving gambling advertisements directly by that means and has not withdrawn the consent.	33
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(2)	A non-proprietary association or licensed betting service provider or other person must not provide a gambling advertisement directly to a betting account holder by email, SMS text message or other direct means, unless the holder is provided with a means by which the holder can easily unsubscribe from receiving gambling advertisements.	38
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(3)	A person who requests a licensed betting service provider to close the person's betting account is taken to have withdrawn consent to receive all gambling advertisements from or on behalf of the provider.	1 2 3
(4)	For the purposes of this section, the withdrawal of consent to receive gambling advertisements takes effect 24 hours after a betting account holder notifies the licensed betting service provider that provides the account of the withdrawal of consent.	4 5 6 7
(5)	A person (other than a non-proprietary association or a licensed betting service provider) does not commit an offence under this section in respect of the provision of a gambling advertisement if—	8 9 10
(a)	the gambling advertisement was in the form provided (directly or indirectly) or approved by or on behalf of a non-proprietary association or a licensed betting service provider for the purposes of being provided, and	11 12 13 14
(b)	the person has not been notified by or on behalf of the Minister that the publication or communication of the gambling advertisement may contravene this section.	15 16 17
	Maximum penalty—	18
(a)	for an individual—50 penalty units, or	19
(b)	for a corporation—500 penalty units.	20
[6] Sections 33JA–33JC		21
	Insert after section 33J—	22
33JA Prohibited inducements		23
(1)	A non-proprietary association or licensed betting service provider or other person must not offer or supply, or cause to be offered or supplied, an inducement to a person for that person—	24 25 26
(a)	to open a betting account, or	27
(b)	to invite another person to open a betting account, or	28
(c)	not to close a betting account.	29
(2)	A non-proprietary association or licensed betting service provider or other person must not offer or supply, or cause to be offered or supplied, an inducement to a person for that person to consent, or to not withdraw the person's consent, to receiving gambling advertisements.	30 31 32 33
(3)	Without limiting subsection (1), a licensed betting service provider must not offer or supply, or cause to be offered or supplied, a free bet to the holder of a betting account, unless all payouts from the free bet may be withdrawn from that account at any time.	34 35 36 37
(4)	A person (other than a non-proprietary association or a licensed betting service provider) does not commit an offence under this section in respect of the provision of offering an inducement or causing an inducement to be offered if—	38 39 40 41
(a)	the offer was in the form provided (directly or indirectly) or approved by or on behalf of a non-proprietary association or a licensed betting service provider for the purposes of being offered, and	42 43 44
(b)	the person has not been notified by or on behalf of the Minister that the offer may contravene this section.	45 46
(5)	In this section—	47

free bet has the same meaning as it has in Part 4 of the *Betting Tax Act 2001*. 1

Maximum penalty— 2

(a) for an individual—50 penalty units, or 3

(b) for a corporation—500 penalty units. 4

33JB Deposit limits for betting accounts 5

(1) A licensed betting service provider that provides betting accounts must establish a scheme in accordance with this section that provides for the following— 6
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(a) before the account is opened, the provider must require the potential betting account holder to indicate the limit on the amount of money that the holder may deposit into the betting account in a specified period and the period for which the particular limit is to apply (a *deposit limit*) or, if the potential holder does not wish to apply a limit, to expressly refuse to apply a deposit limit, 9
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(b) a betting account opened with the provider must be subject to the limit so specified by the holder, unless the holder has expressly refused to apply a deposit limit, 15
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(c) the provider must not accept an amount from the holder that exceeds the deposit limit, 18
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(d) the holder may decrease the deposit limit at any time, with immediate effect, 20
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(e) the holder may increase the deposit limit at any time, but an increase does not take effect until 7 days after the increase was requested. 22
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(2) The licensed betting service provider must ensure that the process for setting or changing a deposit limit is explained in plain language to a betting account holder or potential betting account holder and is prominently displayed— 24
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(a) on the licensed betting service provider's website, and 27

(b) if the holder is able to place a bet using an internet application, website or datacasting service, at the place at which the holder accesses the holder's account or via a single link from that place. 28
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(3) At the time a person opens a betting account and at least once every 12 months after a betting account is opened, the licensed betting service provider must provide information about the scheme and how it works to the person. 31
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(4) At least once every 12 months after a betting account is opened, the licensed betting service provider must— 34
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(a) if the holder has set a deposit limit under the scheme—ask the holder if the holder wishes to change the deposit limit, and 36
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(b) if the holder has refused to apply a deposit limit to the betting account—ask the holder if the holder wishes to set a deposit limit. 38
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(5) However, the licensed betting service provider must not provide the information under subsection (3) to a holder, or ask a holder about the matters specified in subsection (4), if the holder has not placed a bet using the account within the previous 12 months. 40
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(6) The regulations may provide for the manner in which information is to be provided, or a request or refusal made, under this section. 44
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Maximum penalty— 46

(a) for an individual—50 penalty units, or 47

(b)	for a corporation—500 penalty units.	1
33JC	Closing betting accounts	2
(1)	A licensed betting service provider that provides betting accounts must ensure that the process for closing a betting account—	3 4
(a)	is simple and easy for the holder to use, and	5
(b)	permits the account to be closed using any means by which the holder may place a bet and by telephone and email.	6 7
(2)	A licensed betting service provider that provides betting accounts must ensure that the process for closing a betting account is prominently displayed—	8 9
(a)	on the licensed betting service provider’s website, and	10
(b)	if the holder is able to place a bet using an internet application, website or datacasting service, at the place at which the holder accesses the holder’s account or via a single link from that place.	11 12 13
(3)	If the provider of a betting account that enables the holder to place a bet only by telephone does not have a website, the licensed betting service provider is not required to comply with subsection (2) but must provide details of the process for closing the account if requested to do so by the holder.	14 15 16 17
(4)	If a licensed betting service provider receives a request from a betting account holder to close the holder’s account, the provider must—	18 19
(a)	immediately cease to accept new bets from the holder, and	20
(b)	close the account as soon as practicable after all bets made before the request are finalised.	21 22
(5)	The regulations may provide for the manner in which information is to be provided, or a request made, under this section.	23 24
	Maximum penalty—	25
(a)	for an individual—50 penalty units, or	26
(b)	for a corporation—500 penalty units.	27
[7]	Section 36AA Liability of directors etc for offences by corporation—offences attracting executive liability	28 29
	Insert after section 36AA(1)(a)(iii)—	30
	(iia) section 33HA,	31
[8]	Section 36AA(1)(a)(vi)–(viii)	32
	Omit “or” from section 36AA(1)(a)(v). Insert instead—	33
	(vi) section 33JA,	34
	(vii) section 33JB,	35
	(viii) section 33JC, or	36
[9]	Schedule 1 Savings and transitional provisions	37
	Insert at the end of the Schedule, with appropriate Part and clause numbering—	38

Part	Provisions consequent on enactment of Gambling Legislation Amendment (Online and Other Betting) Act 2019	1
		2
		3
	Application of amendments relating to betting accounts	4
(1)	Sections 33HA and 33JA, as inserted by the <i>Gambling Legislation Amendment (Online and Other Betting) Act 2019</i> , extend to betting account holders who held an account with a licensed betting service provider immediately before the commencement of the section concerned.	5
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(2)	Sections 33JB and 33JC, as inserted by the <i>Gambling Legislation Amendment (Online and Other Betting) Act 2019</i> , extend to betting accounts held by persons with a licensed betting service provider immediately before the commencement of the section concerned.	9
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Schedule 2	Amendment of Totalizator Act 1997 No 45	1
[1] Section 79 Interpretation		2
Insert in alphabetical order in section 79(1)—		3
<i>betting account</i> means an account held with a licensee for the purposes of enabling the holder of the account to place a bet with the licensee.		4 5
[2] Section 79A		6
Insert after section 79—		7
79A Inducements		8
(1) In this Part, <i>inducement</i> includes—		9
(a) the offer of a credit, voucher, reward or other benefit, or		10
(b) the offer of a gambling product, or the offer of a condition or other aspect of a gambling product, that includes additional benefits or enhancements, or		11 12 13
(c) the offer of a gambling product, or the offer of a condition or other aspect of a gambling product, that is declared by the regulations to be a prohibited inducement.		14 15 16
(2) A reference to an inducement in this Part includes an inducement that involves an offer that is not available to persons resident in New South Wales.		17 18
(3) A reference to an inducement in this Part (other than in section 80B) does not include an inducement published or communicated by a licensee to a person who has a betting account with the licensee at the time an advertisement containing the inducement is published or the availability of the inducement is communicated to the person.		19 20 21 22 23
[3] Section 80 Prohibitions on totalizator advertisements		24
Omit section 80(3).		25
[4] Section 80AA		26
Insert after section 80A—		27
80AA Prohibition on direct marketing		28
(1) A licensee or other person must not provide a totalizator advertisement directly to the betting account holder by email, SMS text message or other direct means, unless the holder has expressly consented to receiving totalizator advertisements directly by that means and has not withdrawn the consent.		29 30 31 32
(2) A licensee or other person must not provide a totalizator advertisement directly to the betting account holder by email, SMS text message or other direct means, unless the holder is provided with a means by which the holder can easily unsubscribe from receiving totalizator advertisements.		33 34 35 36
(3) A person who requests a licensee to close the person's betting account is taken to have withdrawn consent to receive all totalizator advertisements from or on behalf of the licensee.		37 38 39
(4) For the purposes of this section, the withdrawal of consent to receive totalizator advertisements takes effect 24 hours after the holder of the betting account notifies the licensee that provides the account of the withdrawal of consent.		40 41 42 43

(5)	A person (other than a licensee) does not commit an offence under this section in respect of the provision of a totalizator advertisement if—	1
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(a)	the totalizator advertisement was in the form provided (directly or indirectly) or approved by or on behalf of a licensee for the purposes of being provided, and	3
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		5
(b)	the person has not been notified by or on behalf of the Minister that the publication or communication of the totalizator advertisement may contravene this section.	6
		7
		8
	Maximum penalty—	9
(a)	for an individual—50 penalty units, or	10
(b)	for a corporation—500 penalty units.	11
[5]	Section 87 Offence of unauthorised use of betting accounts	12
	Omit “telephone betting credit account maintained”.	13
	Insert instead “betting account held”.	14
[6]	Schedule 2 Savings, transitional and other provisions	15
	Insert at the end of the Schedule, with appropriate Part and clause numbering—	16
Part	Provision consequent on enactment of Gambling Legislation Amendment (Online and Other Betting) Act 2019	17
		18
		19
	Application of amendments relating to betting accounts	20
	Section 80AA, as inserted by the <i>Gambling Legislation Amendment (Online and Other Betting) Act 2019</i> , extends to betting accounts held by persons with a licensee or other person immediately before the commencement of the section.	21
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