

Liquor and Gaming Legislation Amendment Act 2018 No 7

[2018-7]



New South Wales

Status Information

Currency of version

Repealed version for 4 April 2018 to 2 July 2018 (accessed 18 November 2024 at 21:11)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

Provisions in force

The provisions displayed in this version of the legislation have all commenced.

Notes—

- **Repeal**

This Act was repealed by sec 30C of the [Interpretation Act 1987 No 15](#) with effect from 3.7.2018.

Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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Liquor and Gaming Legislation Amendment Act 2018 No 7



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Liquor and Gaming Legislation Amendment Act 2018 No 7



New South Wales

An Act to make miscellaneous amendments to certain gaming and liquor and other legislation.

1 Name of Act

This Act is the *Liquor and Gaming Legislation Amendment Act 2018*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

Schedule 1 Amendment of Acts and regulations

1.1 Betting and Racing Act 1998 No 114

[1]-[16] (Repealed)

[17] Part 4A

Insert after Part 4:

Part 4A Gambling advertising and inducements

33G Interpretation

(1) In this Part:

gambling advertisement means an advertisement that gives publicity to, or otherwise promotes or is intended to promote, participation in gambling activities, but does not include a totalizator advertisement within the meaning of section 79 of the *Totalizator Act 1997*.

(2) The publication of a gambling advertisement to a website that provides the opportunity for, or facilitates or enables, dissemination of information to the public or a section of the public (whether or not the particular publication results

in the dissemination of information to the public or a section of the public) constitutes the publication of gambling information for the purposes of this Part.

- (3) This Part does not limit the operation of any regulations relating to responsible practices in the conduct of gambling activities, including regulations restricting or prohibiting the conduct of promotions or other activities (including advertising).

33H Prohibitions on gambling-related advertisements

- (1) A non-proprietary association or licensed betting service provider or any other person must not publish or communicate, or cause to be published or communicated, whether from in or outside New South Wales, any gambling advertisement that may be accessible to a person in New South Wales and that contravenes any requirement of this section.

Maximum penalty:

- (a) for an individual—50 penalty units, or
(b) for a corporation—500 penalty units.

- (2) A gambling advertisement must not:

- (a) encourage a breach of the law, or
(b) depict children gambling, or
(c) be false, misleading or deceptive, or
(d) suggest that winning will be a definite outcome of participating in gambling activities, or
(e) suggest that participation in gambling activities is likely to improve a person's financial prospects, or
(f) promote the consumption of alcohol while engaging in gambling activities, or
(g) be published otherwise than in accordance with decency, dignity and good taste and, if the gambling advertisement takes the form of a television advertisement, in accordance with the *Commercial Television Industry Code of Practice* registered by the Australian Communications and Media Authority as in force on the day on which the gambling advertisement is published, or
(h) include any inducement to participate, or to participate frequently, in any gambling activity (including an inducement to open a betting account).

- (3) A reference to an inducement in subsection (2) (h):

- (a) includes an inducement that involves an offer that is not available to persons resident in New South Wales, and
 - (b) does not include an inducement published or communicated by a licensed betting service provider to a person who has a betting account with the licensed betting service provider at the time the advertisement is published or communicated to the person.
- (4) A non-proprietary association or licensed betting service provider or any other person must not publish, or cause to be published, any gambling advertisement in writing in a newspaper, magazine, poster or other printed form that does not contain the advisory statement prescribed by the regulations for the purposes of this subsection.

Maximum penalty:

- (a) for an individual—50 penalty units, or
 - (b) for a corporation—500 penalty units.
- (5) A non-proprietary association or licensed betting service provider or any other person must not enter into or extend the duration of any contract or arrangement for the publication or communication of any gambling advertisement that does not comply with this section.

Maximum penalty:

- (a) for an individual—50 penalty units, or
 - (b) for a corporation—500 penalty units.
- (6) A person (other than a betting service provider) does not commit an offence under this section in respect of the publication or communication of a gambling advertisement if:
- (a) the gambling advertisement was in the form provided (directly or indirectly) or approved by or on behalf of a betting service provider for the purposes of its publication or communication, and
 - (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.

33I Gambling-related advertisements during sporting fixtures

- (1) This section applies to a sporting fixture that is, or is part of, a sporting event for which there is a sports controlling body.
- (2) A person must not publish a gambling advertisement in relation to a sporting

fixture during the sporting fixture including during any breaks in the sporting fixture.

Maximum penalty:

- (a) for an individual—50 penalty units, or
- (b) for a corporation—500 penalty units.

(3) This section does not apply to an extended sporting fixture unless the Minister has published a notice in the Gazette that provides that this section is to apply to that fixture. The Minister may publish a notice if the Minister considers it to be in the public interest.

(4) This section does not apply to the following advertisements:

- (a) an advertisement to the extent that it is published on the internet,
- (b) an advertisement to the extent that it is published in gambling premises.

(5) For the avoidance of doubt, an advertisement that is in place before a sporting fixture commences (such as an advertisement on a billboard) is taken, for the purposes of this section, not to be published during the sporting fixture.

(6) In this section:

extended sporting fixture means:

- (a) a sporting fixture that is scheduled to take place over a period exceeding 4 hours, or
- (b) a sporting fixture that takes place on multiple days.

gambling premises means a hotel, racing club or registered club within the meaning of the *Liquor Act 2007* or premises operated by a licensee (or an agent of a licensee) under the *Totalizator Act 1997* for the purposes of the conduct of a totalizator under that Act.

sporting fixture means a single match, game, contest, race (but not a race as defined in section 4) or fight, whether taking place on a single day or multiple days.

33J Gambling inducements

A non-proprietary association or licensed betting service provider or any other person must not offer or supply, or cause to be offered or supplied, any free or discounted liquor as an inducement to participate, or to participate frequently, in any gambling activity conducted at a racecourse.

Maximum penalty:

- (a) for an individual—50 penalty units, or
- (b) for a corporation—500 penalty units.

[18]-[21] (Repealed)

[22] Section 36AA

Insert after section 36A:

36AA Liability of directors etc for offences by corporation—offences attracting executive liability

- (1) For the purposes of this section, an ***executive liability offence*** is:
 - (a) an offence against any of the following provisions of this Act that is committed by a corporation:
 - (i) section 18C,
 - (ii) section 19,
 - (iii) section 33H,
 - (iv) section 33I,
 - (v) section 33J, or
 - (b) an offence against the regulations:
 - (i) that is prescribed by the regulations as an offence to which this section applies, and
 - (ii) that is committed by a corporation.
- (2) A person commits an offence against this section if:
 - (a) a corporation commits an executive liability offence, and
 - (b) the person is:
 - (i) a director of the corporation, or
 - (ii) an individual who is involved in the management of the corporation and who is in a position to influence the conduct of the corporation in relation to the commission of the executive liability offence, and
 - (c) the person:
 - (i) knows or ought reasonably to know that the executive liability offence (or an offence of the same type) would be or is being committed, and

- (ii) fails to take all reasonable steps to prevent or stop the commission of that offence.

Maximum penalty: The maximum penalty for the executive liability offence if committed by an individual.

- (3) The prosecution bears the legal burden of proving the elements of the offence against this section.
- (4) The offence against this section can only be prosecuted by a person who can bring a prosecution for the executive liability offence.
- (5) This section does not affect the liability of the corporation for the executive liability offence, and applies whether or not the corporation is prosecuted for, or convicted of, the executive liability offence.
- (6) This section does not affect the application of any other law relating to the criminal liability of any persons (whether or not directors or other managers of the corporation) who are accessories to the commission of the executive liability offence or are otherwise concerned in, or party to, the commission of the executive liability offence.
- (7) In this section:

director has the same meaning as in the *Corporations Act 2001* of the Commonwealth.

reasonable steps, in relation to the commission of an executive liability offence, includes, but is not limited to, such action (if any) of the following kinds as is reasonable in all the circumstances:

- (a) action towards:
 - (i) assessing the corporation's compliance with the provision creating the executive liability offence, and
 - (ii) ensuring that the corporation arranged regular professional assessments of its compliance with the provision,
- (b) action towards ensuring that the corporation's employees, agents and contractors are provided with information, training, instruction and supervision appropriate to them to enable them to comply with the provision creating the executive liability offence so far as the provision is relevant to them,
- (c) action towards ensuring that:
 - (i) the equipment and other resources, and

- (ii) the structures, work systems and other processes, relevant to compliance with the provision creating the executive liability offence are appropriate in all the circumstances,
- (d) action towards creating and maintaining a corporate culture that does not direct, encourage, tolerate or lead to non-compliance with the provision creating the executive liability offence.

[23], [24] (Repealed)

1.2 Betting and Racing Regulation 2012

[1] Clause 10A

Insert after clause 10:

10A Advisory statement

The following advisory statement is prescribed for the purposes of section 33H (4) of the Act:

Think! About your choices

Call Gambling Help

1800 858 858

www.gamblinghelp.nsw.gov.au

[2] Part 2, Division 2 Gambling advertising and inducements

Omit the Division.

[3] Clause 22 Remedial orders

Omit “and 33” from clause 22 (a). Insert instead “, 33, 33H and 33J”.

[4] Clause 22 (b)

Omit “9, 10, 12 and 13”. Insert instead “9 and 10”.

[5] (Repealed)

1.3-1.13

(Repealed)

1.14 Totalizator Act 1997 No 45

[1]-[4] (Repealed)

[5] Section 80

Omit the section. Insert instead:

80 Prohibitions on totalizator advertisements

- (1) A licensee or any other person must not publish or communicate, or cause to be published or communicated, whether from in or outside New South Wales, any totalizator advertisement that may be accessible to a person in New South Wales and that contravenes any requirement of this section or the rules.

Maximum penalty:

- (a) for an individual—50 penalty units, or
 - (b) for a corporation—500 penalty units.
- (2) A totalizator advertisement must not:
- (a) encourage a breach of the law, or
 - (b) depict children gambling, or
 - (c) be false, misleading or deceptive, or
 - (d) suggest that winning will be a definite outcome of participating in gambling activities, or
 - (e) suggest that participation in gambling activities is likely to improve a person's financial prospects, or
 - (f) promote the consumption of alcohol while engaging in gambling activities, or
 - (g) be published otherwise than in accordance with decency, dignity and good taste and, if the totalizator advertisement takes the form of a television advertisement, in accordance with the *Commercial Television Industry Code of Practice* registered by the Australian Communications and Media Authority as in force on the day on which the totalizator advertisement is published, or
 - (h) include any inducement to participate, or to participate frequently, in any gambling activity (including an inducement to open a betting account).
- (3) A reference to an inducement in subsection (2) (h):
- (a) includes an inducement that involves an offer that is not available to

persons resident in New South Wales, and

(b) 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 the advertisement is published or communicated to the person.

(4) A licensee or any other person must not publish, or cause to be published, any totalizator advertisement in writing in a newspaper, magazine, poster or other printed form that does not contain the advisory statement prescribed by the regulations for the purposes of this subsection.

Maximum penalty:

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

(b) for a corporation—500 penalty units.

(5) A licensee must not enter into or extend the duration of any contract or arrangement for the publication or communication of a totalizator advertisement that contravenes this section.

Maximum penalty:

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

(b) for a corporation—500 penalty units.

(6) A person (other than a licensee) does not commit an offence under this section in respect of the publication or communication of a totalizator advertisement if:

(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 its publication or communication, and

(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] Sections 80A and 80B

Insert after section 80:

80A Totalizator advertisements during sporting fixtures

(1) This section applies to a sporting fixture that is, or is part of, a sporting event for which there is a sports controlling body.

(2) A person must not publish any totalizator advertisement in relation to a sporting fixture during the sporting fixture including during any breaks in the sporting

fixture.

Maximum penalty:

- (a) for an individual—50 penalty units, or
- (b) for a corporation—500 penalty units.

(3) This section does not apply to an extended sporting fixture unless the Minister has published a notice in the Gazette that provides that this section is to apply to that fixture. The Minister may publish a notice if the Minister considers it to be in the public interest.

(4) This section does not apply to the following advertisements:

- (a) an advertisement to the extent that it is published on the internet,
- (b) an advertisement to the extent that it is published in gambling premises.

(5) For the avoidance of doubt, an advertisement that is in place before a sporting fixture commences (such as an advertisement on a billboard) is taken, for the purposes of this section, not to be published during the sporting fixture.

(6) In this section:

extended sporting fixture means:

- (a) a sporting fixture that is scheduled to take place over a period exceeding 4 hours, or
- (b) a sporting fixture that takes place on multiple days.

gambling premises means a hotel, racing club or registered club within the meaning of the [Liquor Act 2007](#) or premises operated by a licensee (or an agent of a licensee) for the purposes of the conduct of a totalizator.

sporting event has the same meaning as in section 17A of the [Betting and Racing Act 1998](#).

sporting fixture means a single match, game, contest, race (but not a race within the meaning of the [Betting and Racing Act 1998](#)) or fight, whether taking place on a single day or multiple days.

sports controlling body for a sporting event means the sports controlling body prescribed for the sporting event under section 17B of the [Betting and Racing Act 1998](#).

80B Gambling inducements

A licensee or any other person must not offer or supply, or cause to be offered or

supplied, any free or discounted liquor as an inducement to participate, or to participate frequently, in any totalizator betting.

Maximum penalty:

- (a) for an individual—50 penalty units, or
- (b) for a corporation—500 penalty units.

[7]-[14] (Repealed)

1.15 Totalizator Regulation 2012

[1] Clause 10A

Insert after clause 10:

10A Advisory statement

The following advisory statement is prescribed for the purposes of section 80 (4) of the Act:

Think! About your choices

Call Gambling Help

1800 858 858

www.gamblinghelp.nsw.gov.au

[2] Part 3, Divisions 2 Totalizator advertising and inducements

Omit the Division.

[3] Clause 15 Remedial orders

Omit “section 80 (1)” from clause 15 (a). Insert instead “sections 80, 80B”.

[4] Clause 15 (b)

Omit “7, 9, 12 and 13”. Insert instead “7 and 9”.

[5] (Repealed)