

Australian Capital Territory

Gambling and Racing Control (Code of Practice) Amendment Regulation 2022 (No 1)

Subordinate law SL2022–17

made under the

Gambling and Racing Control Act 1999, s 54 (Regulation-making power)

EXPLANATORY STATEMENT

OVERVIEW

The *Gambling and Racing Control (Code of Practice) Amendment Regulation 2022 (No 1)* amends the *Gambling and Racing Control (Code of Practice) Regulation 2002* (the Regulation) to implement the activity statements measure in the National Consumer Protection Framework for Online Wagering (NCPF).

The NCPF provides a nationally consistent framework to minimise gambling harm related to wagering activity. The NCPF was developed in response to the 2015 Review of Illegal Offshore Wagering and consists of 10 consumer protection measures for online wagering. The Commonwealth and all Australian States and Territories participate in the NCPF. Some of these measures have already been implemented, while others are yet to be implemented.

The Gambling and Racing Control (Code of Practice) Regulation was amended in 2019 to implement the following NCPF measures in the ACT:

- Restrictions on inducements
- Account closure
- Voluntary pre-commitment scheme.

The NCPF activity statements measure requires a wagering service provider (WSP) to give customers meaningful statements on their wagering activity. While the customer has an active account, the WSP must provide a monthly activity statement. The activity statement must outline the customer's betting activity and account transactions, including:

- Amount spent
- Wins and losses
- Overall net win/loss for the specified period of the activity statement
- Opening and closing balances
- Deposits and withdrawals
- The account balance

- A column graph to illustrate wagering activity comparing amount spent against net result over time for the last six months (cumulative) and shows a clear comparison tracking to the same time last year
- Links and information on support services and a safe gambling messaging that promotes available consumer protection tools

The regulation also updates the Code of Practice to provide that the NCPF applies to race bookmakers who have an online, phone or other form of remote telecommunication betting method. This makes the ACT application of the NCPF consistent with other State and Territory jurisdictions, such as NSW, and increases consumer protections in the Territory.

The regulation will commence on 14 November 2022. This date will align with the commencement of activity statement measures across all Australian State and Territory jurisdictions and recognises reciprocal arrangements under the NCPF.

REGULATORY IMPACT

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.

This RIS should be read in conjunction with the RIS prepared in 2019 when amendments were made to the Gambling and Racing Control (Code of Practice) Regulation to implement the first tranche of NCPF measures (see *Gambling and Racing Control (Code of Practice) Amendment Regulation 2019* (No 1) SL2019-10).

The 2019 RIS contained a comprehensive cost assessment and benefit analysis for each measure.

Tabcorp ACT is currently the sole online wagering service provider licensed in the ACT and is supportive of the implementation of the NCPF. Further it should be noted that currently no ACT licenced bookmakers operate online.

NOTES ON CLAUSES

Clause 1 Name of regulation

This clause provides that the name of the Regulation is the *Gambling and Racing Control (Code of Practice) Amendment Regulation 2022 (No 1)*.

Clause 2 Commencement

This clause provides that the Regulation commences on 14 November 2022.

Clause 3 Legislation amended

This clause provides that the Regulation amends the *Gambling and Racing Control (Code of Practice) Regulation 2002*.

Clause 4 Schedule 1, new section 1.1A

This clause inserts new section 1.1A into the Code of Practice at Schedule 1 of the Gambling and Racing Control (Code of Practice) Regulation. New section 1.1A provides definitions of ‘betting account’, ‘direct marketing’ and ‘electronic race bookmaking licensee’ for the whole Code of Practice. ‘Betting account’ is currently defined in Schedule 1, section 1.20B. ‘Direct marketing’ is currently defined in Schedule 1, section 1.30C. As these terms are now used in multiple parts of Schedule 1, this editorial amendment moves the definitions into a new section which defines the terms for the whole Code.

New section 1.1A defines ‘electronic race bookmaking licensee’ as the holder of a race bookmaking licence under the *Race and Sports Bookmaking Act 2001* who accepts a bet using a telecommunication service. Examples of a ‘telecommunication service’ include telephone, email and internet. This definition reflects that the NCPF measures in the Code of Practice apply to race bookmaking licensees who accept bets using a telecommunication service.

Clause 5 Schedule 1, section 1.4(1)(b)

This clause amends Schedule 1, section 1.4(1)(b) of the Regulation. Section 1.4(1)(b) currently refers to each staff member being aware of *his or her* obligations under the Code of Practice. This editorial amendment updates the gendered language in the section to refer to the staff member being aware of the *staff member’s* obligations under the Code of Practice.

Clause 6 Schedule 1, section 1.4(2)(c)

This clause amends Schedule 1, section 1.4(2)(c) of the Regulation. Section 1.4(2)(c) currently provides that the licensee of a totalisator need only ensure that each person in charge of a gambling facility is made aware of *his or her* obligations under the Code of Practice. This editorial amendment updates the gendered language in the section to refer to the *person’s obligations* under the Code of Practice.

Clause 7 Schedule 1, section 1.4(3)(b)

This clause amends Schedule 1, section 1.4(3)(b) of the Regulation. Section 1.4(3)(b) currently provides that the person in charge of a gambling facility must ensure that each staff member is aware of *his or her* obligations under the Code of Practice. This clause updates the gendered language in the section to refer to the *staff member’s* obligations under the Code of Practice.

Clause 8 Schedule 1, division 1.2.4 heading

This clause substitutes the heading of Schedule 1, division 1.2.4 of the Regulation. The heading of Schedule 1, division 1.2.4 is currently ‘Betting accounts – totalisator and sports bookmaking licensees’. This clause updates the heading to ‘Betting accounts – electronic race bookmaking, totalisator and sports bookmaking licensees’. This reflects that the NCPF now applies to race bookmaking licensees who accept bets using a telecommunication service.

Clause 9 Schedule 1, sections 1.20A and 1.20B

This clause substitutes Schedule 1, sections 1.20A and 1.20B of the Regulation.

Section 1.20A – Application – div 1.2.4

Schedule 1, Section 1.20A currently provides that division 1.2.4 of the Regulation applies only to a totalisator licensee or a sports bookmaking licensee. This clause amends section 1.20A to provide that Division 1.2.4 also applies to an electronic race bookmaking licensee who accepts a bet using a telecommunication service. This reflects that the NCPF now applies to race bookmaking licensees who accept bets using a telecommunication service.

Section 1.20B – Meaning of deposit limit – div 1.2.4

Schedule 1, Section 1.20B currently provides definitions for ‘betting account’ and ‘deposit limit’. This clause amends section 1.20 to remove the definition of ‘betting account’, as this has been moved to Schedule 1, new section 1.1A.

Clause 10 Schedule 1, new division 1.2.5

This clause inserts new Division 1.2.5 into Schedule 1 of the Regulation. New division 1.2.5 applies to activity statements for betting accounts.

Section 1.20I – Application – div 1.2.5

Schedule 1, section 1.20I provides that division 1.2.5 applies to the following licensees: an electronic race bookmaking licensee who accepts a bet using a telecommunication service, a sports bookmaking licensee and a totalisator licensee.

Section 1.20J – Definitions – div 1.2.5

Schedule 1, section 1.20J provides a list of definitions for division 1.2.5. This clause refers to the definition of ‘account holder’ in section 1.20K, ‘activity statement’ in section 1.20K and ‘bonus bet’ in section 1.30(7).

This clause provides that ‘transaction’, in relation to a betting account, means any of the following activities: using the account to make or settle a bet including a bonus bet, depositing money into the account and withdrawing money from the account.

This clause provides that ‘transaction record’ for a betting account means a document setting out the following information in relation to each transaction made in relation to the account: the kind of transaction, the date of the transaction and the amount of the transaction.

Section 1.20K – Activity statements for betting accounts

Schedule 1, section 1.20K provides that each month, a licensee must give an activity statement to each person who holds a betting account. An activity statement sets out any transactions made in relation to the account for the month (i.e. the statement period).

The licensee does not need to give an account holder an activity statement if the account holder has not made any transactions in relation to the betting account during the statement period. An account holder may still ask a licensee for an activity statement at any time.

The licensee must give an account holder an activity statement by email, or by mail if requested to do so by the account holder.

The licensee must not charge a fee for giving an account holder an activity statement. If an account holder asks for an activity statement to be provided by mail, the licensee may charge the account holder a fee of not more than the cost of the postage.

Section 1.20L – Requests for activity statements

Schedule 1, section 1.20L provides that an account holder may, at any time, ask a licensee to give the account holder an activity statement for the account holder's betting account for any statement period within the last seven years, or if the account has been open for less than seven years, since the account was opened.

An account holder may make a request by email, by telephone or for an online betting account, through the account.

A licensee must, as soon as practicable after receiving a request, give the account holder the activity statement, and the accompanying transaction record, in the way requested by the account holder.

In this section, 'account holder' includes a person who previously held a betting account with a licensee that is now closed.

Section 1.20M – Contents of activity statements

Schedule 1, section 1.20M prescribes the contents of activity statements.

Activity statements must include the following information:

- the opening and closing balances of the account for the period
- the total amount spent on betting during the period
- the number of bets made on the account during the period
- the number of winning bets settled using the account during the period
- the net amount spent on, or gained from, betting, taking into account all wins and losses, during the period
- any amounts deposited into, withdrawn from, the account for the period
- a column graph comparing the total amount spent on betting with the net amount spent on, or gained from, betting for
 - the period
 - each of the previous five activity statement periods
 - the same statement period in the previous year

An activity statement must be accompanied by the transaction record. If the activity statement is provided electronically, it must be accompanied by an online link to a transaction record for the betting account for the statement period. If the activity statement is provided by mail, it must be accompanied by a paper copy of the transaction record.

An activity statement must not include any direct marketing or any other advertising, promotion or offer from the licensee, or any information in relation to making or settling a bonus bet.

Section 1.20N – Form of activity statements

Schedule 1, section 1.20N provides that an activity statement must be in writing and must be simple and easy for an account holder to read.

An activity statement must set out the following information in legible black text on a white background: the number of winning bets and the net amount gained from betting. An activity statement must set out the following information in legible red text on a white background: the number of losing bets, the net amount spent on betting and the total amount spent on betting. An activity statement must not include any green text.

Section 1.20O – Access to activity statements and transaction records for online betting accounts

Schedule 1, section 1.20O applies if an account holder holds an online betting account with a licensee. The licensee must ensure that the account holder can access, through the online betting account, all activity statements and transaction records for each active statement period, within the last seven years, or if the account has been open for less than seven years, since the account was opened.

An account holder includes a person whose account has been closed.

Section 1.20P – Requests for transaction records for accounts other than online betting accounts

Schedule 1, section 1.20P applies if an account holder holds a betting account with a licensee and the account is not an online betting account.

The account holder may, at any time, ask the licensee to give the account holder a transaction record for the betting account for any statement period within the last seven years, or if the account has been open for less than seven years, since the account was opened.

A licensee must, within 14 days after the licensee receives a request for a transaction record, give the account holder the transaction record in the way requested by the account holder.

An account holder includes a person whose account has been closed.

Section 1.20Q – Access to activity statements

Schedule 1, section 1.20Q applies if the licensee gives an account holder an activity statement by email or through an online betting account.

The licensee must ensure the account holder can access the activity statement without needing to use any kind of additional security measure, such as a password, other than a security measure used to access the email account or online betting account.

Clause 11 Schedule 1, section 1.30(6) and (7)

This clause amends Schedule 1, sections 1.30(6) and (7) of the Regulation. Section 1.30 restricts the use of promotions and inducements by the licensee. This clause adds an electronic race bookmaking licensee to the list of licensees who are regulated under this section. This reflects that the NCPF now applies to race bookmaking licensees who accept bets using a telecommunication service.

Clause 12 Schedule 1, section 1.30(10), definition of *betting account*

This clause omits the definition in schedule 1, section 1.30(10) of the Regulation, as this definition has been moved.

Clause 13 Schedule 1, section 1.30C, heading

This clause substitutes the heading of Schedule 1, section 1.30C of the Regulation. Section 1.30C is currently headed ‘Direct marketing – totalisator and sports bookmaking licensees. This clause updates the heading to include electronic race bookmaking licensees. This reflects that the NCPF now applies to race bookmaking licensees who accept bets using a telecommunication service.

Clause 14 Schedule 1, section 1.30C(1)

This clause substitutes Schedule 1, section 1.30C(1) of the Regulation. Section 1.30C regulates direct marketing by licensees. This clause updates section 1.30C provide that the section also applies to electronic race bookmaking licensees. This reflects that the NCPF now applies to race bookmaking licensees who accept bets using a telecommunication service.

Clause 15 Schedule 1, section 1.30C(4)

This clause omits Schedule 1, section 1.30C(4). This section provided a definition of ‘direct marketing’. This definition has been moved.

Clause 16 Schedule 1, section 1.30D heading

This clause substitutes the heading of Schedule 1, section 1.30D of the Regulation. The heading of section 1.30D is currently, ‘Guidelines for direct marketing by totalisator and sports bookmaking licensees. This clause updates the heading to reflect that the NCPF now applies to electronic race bookmaking licensees who accept bets using a telecommunication service.

Clause 17 Schedule 1, section 1.30D(1)

This clause amends Schedule 1, section 1.30D(1) of the Regulation. Section 1.30D(1) currently provides that the Minister may make guidelines about direct marketing by a totalisator licensee or sports bookmaking licensee. This clause updates section 1.30D(1) to provide that the Minister may also make guidelines about direct marketing by an electronic race bookmaking licensee. This reflects that the NCPF now applies to electronic race bookmaking licensees who accept bets using a telecommunication service.

Clause 18 Schedule 1, section 1.30D(3)

This clause omits Schedule 1, section 1.30D(3) of the Regulation. Section 1.30D(3) currently provides a cross-reference to the definition of ‘direct marketing’ in section 1.30C. This cross-reference is no longer required, as the definition has been moved.

Clause 19 Dictionary, notes 1 to 3

This clause substitutes notes 1 to 3 in the Dictionary of the Regulation. Note 1 of the Dictionary currently states that the Legislation Act contains definitions and other provisions relevant to this Regulation. This clause revises Note 1 to provide the following examples of relevant definitions: ACAT, amend, contravene, may, month, must and reviewable decision notice.

Note 2 of the Dictionary currently includes the following examples of Legislation Act definitions and other provisions relevant to the Regulation: ACAT, amend, contravene and reviewable decision notice. These terms have been incorporated into revised Note 1. The clause revises Note 2 to state that terms used in the Regulation have the same meaning that they have in the *Gambling and Racing Control Act 1999*. The following terms are listed as examples: casino, commission and gaming law.

This clause removes Note 3, which contains the statement about terms with the same meaning in the Regulation as the Act, as this information has been incorporated into new Note 2.

Clause 20 Dictionary, new definitions

This clause inserts new definitions into the Dictionary of the Regulation, which cross-reference other amendments discussed above.

This clause provides that ‘account holder’ for a betting account for schedule 1, division 1.2.5 is defined in Schedule 1, section 1.20K(1) of the Regulation ‘Activity statement’ for a betting account for schedule 1, division 1.2.5 is defined in Schedule 1, section 1.20K(1) of the Regulation. ‘Bonus bet’ for schedule 1, division 1.2.5 is defined in Schedule 1, section 1.30(7) of the Regulation.

Clause 21 Dictionary, definition of deed of exclusion

This clause makes minor editorial changes to the definition of ‘deed of exclusion’ in the Dictionary of the Regulation.

Clause 22 Dictionary, new definitions

This clause inserts new definitions into the Dictionary of the Regulation, which cross-reference other sections of the Regulation. ‘Deposit limit’ for schedule 1, Division 1.2.4 is defined in schedule 1, section 1.20B of the Regulation. ‘Direct marketing’ for Schedule 1 is defined in schedule 1, section 1.1A of the Regulation. ‘Electronic race bookmaking licensee’ for schedule 1 is defined in schedule 1, section 1.1A of the Regulation.

Clause 23 Dictionary, definition of *exclusion register* etc

This clause inserts new definitions into the Dictionary of the Regulation, which cross-reference other sections of the Regulation. This clause provides that ‘exclusion register’ is defined in section 20 of the Regulation. ‘Gambling problem’ for schedule 1 is defined in schedule 1, section 1.2 of the Regulation. ‘Licensee’ is defined for the Regulation at section 5 of the Regulation and is defined for schedule 1 of the Regulation at schedule 1, section 1.1. ‘Notice of exclusion’ is defined in schedule 1, section 1.14(2)(a).

Clause 24 Dictionary, new definitions

This clause inserts new definitions into the Dictionary of the Regulation, which cross-reference other sections of the Regulation and relevant ACT gaming law. This clause provides that ‘online betting account’ for schedule 1, division 1.2.5 is defined in schedule 1, section 1.20J. ‘Race bookmaking licensee’ is defined as the holder of a race bookmaking licence under the *Race and Sports Bookmaking Act 2001*. ‘Statement period’ for an activity statement for schedule 1, division 1.2.5 is defined in schedule 1, section 1.20K(1). ‘Transaction’ in relation to a betting account for

schedule 1, division 1.2.5 is defined in schedule 1, section 1.20J. 'Transaction record' for a betting account for schedule 1, division 1.2.5 is defined in schedule 1, section 1.20J.