

Australian Capital Territory

Gambling and Racing Control (Code of Practice) Amendment Regulation 2023 (No 1)

Subordinate law SL2023–8

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 2023 (No 1)* (the Amendment Regulation) amends the *Gambling and Racing Control (Code of Practice) Regulation 2002* (the Regulation) to implement the consistent gambling messaging measure and staff training 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.

The Regulation was amended in 2022 to implement the NCPF activity statements measure in the ACT. The 2022 Amendment Regulation also updated the Regulation to provide that the Code of Practice applies to race bookmakers who have an online, phone or other form of remote telecommunication betting method. This update enabled the application of the NCPF in the ACT to be consistent with other State and Territory jurisdictions, such as NSW, and increased consumer protections in the Territory.

The Regulation was amended in 2019 to implement the following NCPF measures in the ACT:

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

The consistent gambling messaging measure under the NCPF requires a wagering service provider (WSP) to replace the existing tagline, ‘gamble responsibly’ in all instances where this is currently required or displayed with an evidence-based taglines and calls to action.

A WSP must use and rotate the specified tagline/s and call to action, depending on the advertising platform that the gambling advertisement is being shown on.

Evidence-based taglines

- Chances are you're about to lose.
- Think. Is this a bet you really want to place?
- What's gambling really costing you?
- What are you prepared to lose today? Set a deposit limit.
- Imagine what you could be buying instead.
- You win some. You lose more.
- What are you really gambling with?

Calls to action

- **The standard call to action is:** *For free and confidential support call 1800 858 858 or visit gamblinghelponline.org.au*
- **The modified call to action for TV and Video advertising is:** *For free and confidential support, call the number on the screen or visit the website.*
- **The modified call to action for Radio advertising is:** *For free and confidential support visit gamblinghelponline.org.au.*
- **The shortened call to action is:** *Set a deposit limit.*

The exceptions are:

- Short form TV and video advertising (15 seconds or less) do not require the call to action to be spoken, rather the call to action must be displayed on the screen.
- Radio advertising (15 seconds or less) only the tagline is to be spoken.
- Digital advertising and social media with very restricted character counts (such as Twitter, but not Facebook or Instagram etc.) for which a shortened call to action is to be used.

HUMAN RIGHTS IMPACTS

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

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)).

CONSISTENCY WITH HUMAN RIGHTS

International human rights law places obligations on governments to “respect, protect and fulfil” rights. The obligation to respect means governments must ensure its organs and agents do not commit violations themselves; the obligation to protect means governments must protect individuals and groups from having rights interfered with by third parties and punish perpetrators; and the obligation to fulfil means governments must take positive action to facilitate the full enjoyment of rights.

The European Court of Human Rights has considered the positive obligation of governments to uphold rights in depth, noting governments must put in place legislative and administrative frameworks to deter conduct that infringes rights, and to undertake operational measures to protect an individual who is at risk of rights infringement.

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.

The 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.

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 2023 (No 1)*.

Clause 2 – Commencement

Clause 2 provides that the Amendment Regulation commences on the day after its notification day.

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, section 1.1A, definition of *direct marketing*

Clause 4 omits ‘internet application’ and substitutes it with ‘app’.

Clause 5 – Schedule 1, section 1.1A

Clause 5 inserts that electronic sports bookmaking licensee means the holder of a sports bookmaking licence under the *Race and Sports Bookmaking Act 2001* who accepts a bet using a telecommunication service. Electronic totalisator licensee means the holder of a totalisator licence under the *Totalisator Act 2014* who accepts a bet using a telecommunication service.

Clause 6 – Schedule 1, section 1.5A and 1.5B

Clause 6, section 1.5A sets out training required for the responsible service of interactive wagering and betting services.

Section 1.5B sets out independent audits required for the training and refresher training.

Clause 7 – Schedule 1, new division 1.4.1 heading

Clause 7 inserts the heading ‘Advertising requirements – general’.

Clause 8 – Schedule 1, new section 1.29 (4)

Clause 8 provides that the definition for *gambling advertising* is provided at section 1.29B.

Clause 9 – Schedule 1, new division 1.4.2

Clause 9 provides the advertising requirements for electronic licensees.

Section 1.29A – Application – division 1.2.4

This clause sets out that the division applies to electronic licensees, including an electronic race bookmaking licensee, an electronic sports bookmaking licensee and an electronic totalisator licensee.

Section 1.29B – Definitions – division 1.2.4

This clause provides definitions for, app advertising, call to action, digital advertising, direct marketing, gambling advertising, print advertising, radio advertising, social media advertising, tagline, television, television or video advertising and website advertising.

Section 1.29C – Meaning of *tagline* – division 1.4.2

This clause provides a meaning of ‘tagline’ by inserting ‘Table 1.29C Taglines’ which includes;

1. You win some. You lose more.
2. Chances are you’re about to lose.
3. What’s gambling really costing you?
4. Imagine what you could be buying instead.
5. What are you really gambling with?
6. Think. Is this a bet you really want to place?
7. What are you prepared to lose today? Set a deposit limit.

Section 1.29D – Meaning of *call to action* – division 1.4.2

This clause the meaning of ‘call to action’ by inserting ‘Table 1.29D Calls to action’ which includes;

1. For free and confidential support visit gamblinghelponline.org.au
2. For free and confidential support, call the number on the screen or visit the website.
3. Set a deposit limit
4. For free and confidential support call 1 800 858 858 or visit gamblinghelponline.org.au

Section 1.29E – Statements to be included in *gambling advertising*

This clause sets out that a licensee must ensure that gambling advertising of a kind mentioned in column 2 of an item in table 1.29E includes—

- (a) a tagline mentioned in the item, column 3; and
- (b) the call to action mentioned in the item, column 4.

Section 1.29F – Additional requirements about taglines and calls to action

This clause sets out additional requirements about taglines and calls to action that a licensee must meet.

Section 1.29G – Electronic licensee must keep gambling advertising records

This clause sets out that a licensee must keep a copy of gambling advertising published or communicated by or for the licensee for at least 12 months after the day the advertising was last published or communicated.

Clause 10 – Schedule 1, new Division 1.4.3 heading

This clause inserts a new heading Division 1.4.3 Promotions and inducements.

Clause 11 – Schedule 1, new Division 1.4.4 heading

This clause inserts a new heading Division 1.4.4 Direct marketing.

Clause 12 – Schedule 1, Division 1.4.5 heading

This clause inserts a new heading Division 1.4.5 Miscellaneous.

Clause 13 – Dictionary, new definitions

This clause inserts new definitions into the Dictionary of the Regulation for app advertising, call to action and digital advertising.

Clause 14 – Dictionary, definition of direct marketing

This clause amends the definition of direct marketing.

Clause 15 – Dictionary, new definitions

This clause inserts new definitions into the Dictionary of the Regulation, for electronic sports bookmaking licensee, electronic totalisator licensee, gambling advertising, print advertising, radio advertising, social media advertising, tagline, television, television or video advertising and website advertising.