



Regulatory Impact Statement

Betting and Racing Regulation 2022

Public consultation process

This Regulatory Impact Statement (RIS) has been prepared to inform the consultation process for the making of the proposed Betting and Racing Regulation 2022.

Before the proposed Regulation can be made, consultation with the public, relevant interest groups, industry and commerce sectors is essential, and must occur in line with the requirements under the *Subordinate Legislation Act 1989*.

Notice of the availability of a public consultation draft of the proposed Regulation, together with the RIS, has been provided to relevant Government agencies and stakeholder groups. A full list of stakeholders notified is included at Annexure A.

Notice has been published in The Sydney Morning Herald, Daily Telegraph and in the NSW Government Gazette at <http://nsw.gov.au/gazette>. Public comment has also been invited via Liquor & Gaming NSW's [website](#) and the NSW Government's 'Have Your Say' public consultation [website](#).

Call for submissions and feedback

Interested individuals and organisations are invited to give feedback or provide a formal submission on any matter relevant to the Betting and Racing Regulation 2022, whether the matters are addressed specifically in this RIS. Participation is available on the Have Your Say consultation website, through the survey or a written submission that is in an 'accessible' format.

Accessibility is about making documents more easily available to members of the public who have some form of impairment (visual, physical, cognitive). More information on how you can make your submission accessible is available on the WebAIM website at <http://webaim.org/techniques/word>.

You can provide your input on the proposed Regulation in one of the following ways:

- Completing the online survey on the [NSW Government: Have your say](http://www.haveyoursay.nsw.gov.au/betting-racing-totalizator-regulation) website.
- Uploading your written submission on the [NSW Government: Have your say](http://www.haveyoursay.nsw.gov.au/betting-racing-totalizator-regulation) website
- By mail: 2022 Remake of the Betting and Racing Regulation
Liquor & Gaming NSW
GPO Box 7060
SYDNEY NSW 2001

Closing date for submissions: **5pm, Wednesday 22 June 2022**

All submissions may be published, unless the submission indicates that it is to be treated as confidential.

Requests for submissions to be treated as confidential must be accompanied by supporting reasons. They will be considered in light of Government principles and requirements relevant to the public release of and access to, information, including those established by the *Government Information (Public Access) Act 2009*. Should such a request not be granted, appropriate opportunity will be provided for the submission to be withdrawn.

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1 Introduction

1.1 Title and proponents of the proposed Regulation

The Betting and Racing Regulation 2022 (**‘the proposed Regulation’**), to be made under the *Betting and Racing Act 1998* (**‘the Act’**), has been developed by Liquor & Gaming NSW (**‘L&GNSW’**) in conjunction with the Office of the Parliamentary Counsel (PCO). The Act (previously known as the *Racing Administration Act 1998*) and the Betting and Racing Regulation 2012 (previously known as the *Racing Administration Regulation 2012*) (**‘the current Regulation’**) are administered by the Minister for Hospitality and Racing, the Hon. Kevin Anderson MP (the Minister). The Minister is proposing that the proposed Regulation be made.

1.2 Why is the proposed Regulation being made?

Section 10 of the *Subordinate Legislation Act 1989* provides for statutory rules to lapse after a set period of time. In most cases, regulations are automatically repealed after five years, though repeal of regulations may be deferred in certain circumstances. The current Regulation is due for automatic repeal on 1 September 2022.

When a Regulation is due for repeal, the responsible agency must review the regulation and its social and economic impacts to determine whether there is a need for the Regulation or whether it should lapse. The results of this review are typically required to be published in a Regulatory Impact Statement (**‘RIS’**), with submissions invited from the public.

This RIS has been prepared to inform public consultation on a draft of the proposed Regulation.

1.3 Status of the proposed Regulation

The proposed Regulation (ANNEXURE B) is a draft for the purpose of consultation. It has been released with this RIS so interested parties can review and provide any comments and suggestions. All submissions received will be considered and may result in amendments to the proposed Regulation. It is intended that the proposed Regulation will be finalised and published on the NSW Legislation website to enable it to commence on 1 September 2022.

2. Need for Government Action

2.1 Overview

Under the provisions of the *Subordinate Legislation Act 1989*, the current Regulation will lapse on 1 September 2022, unless the NSW Government takes action to replace it.

Many of the regulatory and procedural matters provided under the Act are required to be dealt with by regulation to ensure the efficient operation of the Act. Failing to make a regulation would leave these matters unspecified and impair the legislative framework of the Act. The loss of provisions designed to promote industry integrity and standards and protect the community would jeopardise the public confidence in wagering in NSW.

3. Objectives of the Proposed Regulation

3.1 Objectives explained

The principal objective of the proposed Regulation is to give full and proper effect to the Act and help secure the policy objectives of the Act by providing the necessary legislative support and administrative detail as required or permitted under the Act.

The proposed Regulation has the following specific objectives:

- to set out the procedures by which a person or body may be approved as the sports controlling body for a sporting event,
- to provide that a person or body who has been so approved (or has been approved under similar legislation in another Australian jurisdiction) may be prescribed as the sports controlling body for the sporting event,
- to require a sports controlling body to give notice of certain changes in circumstances,
- to provide for the publication of a notice that a sports controlling body and a bookmaker or licensee have entered an integrity agreement,
- to prescribe a fee in relation to the prescription of an event or class of events as a declared betting event,
- to clarify that any inducement to participate in gambling activities is prohibited in gambling advertising,
- to prohibit the publishing of gambling advertising in relation to certain sporting fixtures during those sporting fixtures,
- provide for fees, approval, variation and cancellation and the use of race fields information under Division 3 of the *Betting and Racing Act 1998*,
- responsible gambling practices, including the following:
 - the provision of problem gambling brochures
 - the information and warnings required to be printed on totalizator betting printed entry forms and betting tickets
 - the display of notices relating to counselling service,
- the prescription of certain persons as key employees in relation to the conduct of a wagering operations for the purposes of the Act,
- prescribing certain offences for the purposes of section 35A (Remedial orders) of the Act, which permits a court that finds a person guilty of a prescribed offence to make certain orders in respect of the person (in addition, or as an alternative, to any penalty that it may impose for the offence), including orders that the person undertake a specified course of training that the court considers will promote responsible practices in the conduct of betting activities by the person,
- prescribe penalty notice offences, for the purposes of 35AA of the Act,
- prescribe certain offers as inducements under 33GA(c) of the Act,
- matters of a savings or machinery nature, and
- provide a fee mechanism for the updating of fees annually to recognise increases in inflation.

The proposed Regulation has been prepared in accordance with the following criteria:

- to retain matters that are necessary and appropriate for the effective and efficient operation of the Act,
- to make amendments that are necessary as a result of changes to the Act,
- to make amendments necessary to maintain consistency with other relevant gaming and liquor legislation, and
- to reflect current best practise drafting conventions.

4. Assessment of Options to Achieve Objectives

4.1 Option 1 – Make the proposed Regulation

The proposed Regulation provides for the administrative and machinery matters contemplated by the Act. The proposed Regulation offers the best option to support a rigorous, risk-based regulatory approach that can also be flexible and responsive to changes in community expectations.

The proposed Regulation includes only those sections necessary to give effect to the proper administration of the Act, ensure the implementation of wagering harm minimisation measures and ensure the appropriate use of race fields information.

Without the proposed Regulation, there would be much less clarity and transparency about what is required to support the objectives of the Act.

The regulatory framework for the administration and oversight of the conduct of wagering in NSW through the Act and regulations is already in place. Therefore, the governmental costs of the proposed Regulation are low. Many matters not dealt with through the proposed Regulation will continue to be managed administratively where that is possible, in support of government policy to minimise the number and complexity of regulations.

4.2 Option 2 – Allow the current Regulation to lapse

Failing to remake the current Regulation in advance of its repeal on 1 September 2022 would impair the efficient operation of the Act.

The Act is written in a form that requires many of the matters necessary for its effective operation to be dealt with by regulation. The absence of a regulation to specify the related requirements would undermine the capacity of Government to fulfil the policy objectives of the Act and carry out its regulatory responsibilities under the Act.

Allowing the current Regulation to lapse without replacement would reduce transparency and accountability for government, community and industry stakeholders, which would not have access to clear statutory rules about crucial matters relating to the responsible conduct of wagering on or off a racecourse in NSW.

This option would lead to the loss of provisions designed to promote industry integrity and standards as well as community protection measures and may pose significant threats to public confidence in the conduct of betting services.

While the absence of a regulation would remove regulatory compliance costs in NSW, the potential costs to the community arising from an absence of mandatory gambling harm minimisation measures, or measures to ensure that the proper conduct of wagering remains in the public interest, are significantly greater.

4.3 Option 3 – Industry self-regulation or co-regulation

This option would involve a system of industry self-regulation. While a self-regulation approach would reduce the regulatory compliance costs, industry would have to meet the cost of developing appropriate codes of practice and implementing systems to ensure compliance with those codes.

Another factor to be considered is that self-regulation does not have the force of law. The community expects that there will be effective and appropriate controls where wagering is concerned.

The aim of maintaining the integrity of wagering would be difficult to achieve through self-regulation. Self-regulation would hinder the statutory powers of the regulator (L&GNSW), and the NSW Government generally, regarding the oversight of wagering.

Co-regulation could involve the industry developing and administering similar arrangements, with the government providing legislative backing to enable the arrangements to be enforced.

The costs of this option are high for the matters addressed by the proposed Regulation. The Act does not envisage, or provide for, self-regulatory or co-regulatory approaches as a primary regulatory method to achieve its objectives. There are, arguably, further costs to both NSW and the community through a possible increase in gambling harms under industry self-regulation or co-regulation.

4.4 Option 4 – Address matters in the Act, not by Regulation

To avoid significant deregulation, standards and requirements in the proposed Regulation could be stipulated in the Act, ensuring that they could be enforced. However, it is far more complex, costly and time-consuming to address the types of matters contemplated by the proposed Regulation through an Act of Parliament. It would greatly limit opportunities for government policy to adapt and be responsive to wagering-related issues affecting the public and the industry; changing expectations and needs; and to respond to genuine concerns raised by stakeholders.

Further, it is clear from the Act that it was not Parliament's intention to include machinery and procedural matters in the Act, and these matters were to be dealt with through regulations.

4.5 Option 5 – Address matters through administrative procedures

This option would address matters through administrative procedures rather than through the proposed Regulation.

This approach has been adopted as far as possible. Matters that may be properly controlled by administrative and accounting procedures, have been identified. However, there are limits to the matters that can be dealt with administratively, as the Act requires that regulations be made in some circumstances.

Administrative procedures may provide greater flexibility to adapt to future changes in circumstances, as they can be more readily approved and implemented compared to regulatory changes. However, any benefits are likely to be outweighed by increased legal uncertainty and industry non-compliance.

4.6 Recommendation

The preferred option for supporting the objectives and provisions of the Act is to make the proposed Regulation (Option 1). It is considered that this is the only option that will provide a net social and economic benefit, based on the evaluation of the respective impacts on government, community and industry stakeholders and overall comparison of options below (Table 1).

Table 1: Assessment of costs and benefits of regulatory options

Option	Costs	Benefits	Overall Benefit
Option 1	Medium	High	Positive
Option 2	High	Low	Negative
Option 3	High	Low	Negative
Option 4	Medium	Low	Negative
Option 5	Medium	Low	Negative

5. Summary of primary changes

5.1 Parliamentary Counsel's approach to regulation drafting

PCO is the NSW Government body responsible for drafting legislation and regulations. While L&GNSW has sought a 2022 Regulation that essentially remakes the 2012 Regulation with minor amendments, current PCO drafting practice is to approach every regulation from first principles and draft them anew.

As such, while the proposed 2022 Regulation shares common elements of the 2012 Regulation, the proposed 2022 Regulation should be read as a new Regulation.

L&GNSW also notes that PCO has refreshed its approach to drafting style and structure, with the goals of improving clarity, condensing related concepts and applying current drafting practices.

An outcome of this is that multiple individual provisions in the Regulation have been collapsed into a single provision. Plain English words have been preferred over existing terms familiar to industry, and the structure of the Regulation has also changed to improve comprehension and flow.

Another outcome of this process is that the term 'section' is now used to refer to a provision in both the Act and the Regulation. Previously, the term 'clause' was used to refer to a provision in the Regulation and 'section' to a provision in the Act.

In addition, the hierarchy of the Regulation has also changed. Previously, 'Parts' of the Regulation were sub-divided using 'Divisions'. The proposed Regulation removes Divisions and uses only Parts.

5.2 Prescribing of Penalty Notice Offences (PNOs)

In March 2018, the NSW Government introduced the Liquor and Gaming Legislation Amendment Bill 2018 – a package of reforms to ensure that the regulatory arrangements for liquor and gaming remain relevant amid changes to the liquor and gaming industries.

A key feature of these reforms was the updating of penalties to provide consistency of penalties for similar offences across liquor and gaming legislation. They also ensure that penalties for misconduct are not seen by industry as an insignificant ‘business expense’ or ‘cost of doing business’ by betting service providers (BSPs).

Notably, the Bill significantly increased penalties under the Act – including those related to gambling advertising and inducements – and strengthened executive liability of directors and other corporate officers.

These reforms – and subsequent legislative reforms in 2019, which further increased penalties – were aimed at addressing penalties determined by the courts that were treated by industry as a “cost of doing business” rather than an incentive to comply with the law. The changes were intended to indicate to the courts that Parliament and the regulator view these breaches of gambling laws to be serious offences.

At the same time, L&GNSW has increased its industry engagement, focussing on education on the principles underpinning its risk-based decision making and stepped up its enforcement action. Despite these actions, industry has continued to push the boundaries of acceptable conduct.

To address this issue, L&GNSW proposes to use powers provided through the 2018 reforms to the Act to prescribe in the Regulation, certain offences under the Act and Regulation, as PNOs for which penalty infringement notices (PINs) – fines – may be issued.

While the regulator may still opt to take serious breaches of the gaming laws to court, the ability to issue fines for infrequent, inadvertent, or lower-risk breaches provides a lower-cost and more flexible and efficient alternative to prosecution of wayward operators.

PNOs also enable the regulator to adopt an escalating approach to issues of non-compliance or repeated non-compliance. This begins at education support, then scales up to compliance notices, the issuing of PINs, then moving to prosecution or disciplinary action for the most serious of offences.

Consistent with practices across regulated industries in NSW, the minor prescribed PNOs have been set at 10 percent of the maximum penalty for each offence. For more serious offences, including those around advertising and inducements, PNOs have been set at higher rates to recognise the seriousness of these offences and the need for penalties to be sufficient deterrents to non-compliance.

PNOs can also benefit industry. This is chiefly through providing a lower-cost route to resolving a penalty compared to court. Previously, BSPs, whether contesting or accepting a penalty, were required to incur the time and cost burden of attending court. PNOs may be accepted without the court process and without directly accepting liability.

The following table (Table 2) lists the offences prescribed under section 35AA of the Act as offences for which a penalty notice may be issued and the amount payable. The table also lists a penalty notice offence under *Gaming and Liquor Administration Act 2007*, as applied by section 330 of the Act.

Table 2: Offences proposed to be prescribed

Act section	Short title	Desired outcome from prescribing PNO	Fine
Offences under the <i>Gaming and Liquor Administration Act 2007</i>, as applied by the Act, section 330			
Section 34(4)	Offences under this Part	Effective and proportionate deterrence for the offence of impersonating an inspector	\$1,100
Offences under the <i>Betting and Racing Act 1998</i>			
Section 14(1)	Punter's club	Effective and proportionate deterrence for a minor offence	\$220
Section 17	Offence of conducting unauthorised telephone or electronic betting	Efficiency in action against operators without requiring escalated enforcement action such as prosecution	for a corporation: \$1,100 for an individual: \$550

Section 18C(1)	Certain sports betting services prohibited	Efficiency in action against operators without requiring escalated enforcement action such as prosecution	for a corporation: \$2,750 for an individual: \$550
Section 19(1)	Declared betting event authority	Offences relate to bookmakers accepting bets. Offence has strict liability and would result in efficient regulation of the industry	for a corporation: \$2,750 for an individual: \$550
Section 26GA	Returns by racing clubs	Offences relate to racing clubs and is strict liability. Would result in efficient regulation of the industry	\$1,100
Section 26GB	Returns by bookmakers	Offences relate to bookmakers and is strict liability. Would result in efficient regulation of the industry	\$1,100
Section 26GC	Bookmaker to keep records	Offences relate to bookmakers and is strict liability. Would result in efficient regulation of the industry	\$1,100
Section 29(1)	Publication of betting information	Efficiency in action against operators without requiring escalated enforcement action such as prosecution.	for a corporation: \$2,750 for an individual: \$550
Section 30(1)	Advertising betting information and betting services	As for 29(1)	for a corporation: \$2,750 for an individual: \$550
Section 30(3)	Advertising betting information and betting services	As for 29(1)	for a corporation: \$2,750 for an individual: \$550
Section 31(1)	Premises used for publishing betting information or betting services	As for 29(1)	for a corporation: \$2,750 for an individual: \$550
Section 33H(1)	Prohibition on gambling related advertisements	Six-month statute of limitations on offences gives time sensitivities to successful prosecutions and as such, use of PNOs will allow efficiency in action against operators without requiring escalated enforcement action such as prosecution	for a corporation: \$15,000 for an individual: \$5,500
Section 33H(4)	Prohibition on gambling related advertisements	As for 33(H)1	for a corporation: \$15,000 for an individual: \$5,500
Section 33H(5)	Prohibition on gambling related advertisements	As for 33(H)1	for a corporation: \$15,000 for an individual: \$5,500
Section 33HA	Prohibition on direct marketing	As for 33(H)1	for a corporation: \$15,000 for an individual: \$5,500
Section 33I	Gambling-related advertisements during sporting fixtures	As for 33(H)1	For a corporation: \$13,750 for an individual: \$2,750
Section 33J	Gambling-related advertisements during sporting fixtures	As for 33(H)1	For a corporation: \$13,750 for an individual: \$2,750
Section 33JA	Gambling inducements	As for 33(H)1	for a corporation: \$15,000 for an individual: \$5,500
Section 33JB	Prohibited inducements	As for 33(H)1	for a corporation: \$15,000 for an individual: \$5,500

Section 33JC	Deposit limits for betting accounts	As for 33(H)1	for a corporation: \$15,000 for an individual: \$5,500
Section 33JG [Proposed]	Betting accounts	As for 33(H)1	for a corporation: \$15,000 for an individual: \$5,500
Section 33JK [Proposed]	Responsible gambling training	As for 33(H)1	for a corporation: \$15,000 for an individual: \$5,500
Offences under the Regulation			
Section 6(1)	Sports controlling body to inform Minister of change in circumstances	Lower-risk offence suitable for prescribing as PNO; efficiency of industry regulation	\$550
Section 17(1)	Problem gambling information brochures—the Act, s 37(3)	As for 6(1)	\$550
Section 18(1)	Counselling and gambling help notices to be displayed—the Act, s 37(3) and (4)(c)	As for 6(1)	\$550
Section 19	Gambling information and warnings—the Act, s 37(3) and (4)(d)	As for 6(1)	\$550

5.3 Changes based on legislative amendments to the Act

The NSW Government has introduced amendments to the Act that have the following impacts on the 2022 Regulation:

- enable the Regulations to require a sports controlling body, prescribed under the section 17B of the Act, to notify the Minister of a change in the sports controlling body's circumstances,
- permit the Regulations to require BSPs to issue an advisory statement on certain communications, and
- prescribe two additional PNOs. These relate to two new measures under the National Consumer Protection Framework (NCPF) for online wagering – activity statements and responsible gambling training – implemented by the insertion of new provisions in the Act.

L&GNSW notes the finalisation of the NCPF may require further amendments to the Regulation.

5.4 Prescription of certain offers as inducements under 33GA(1)(c)

Section 33GA(1)(c) of the Act allows for certain offers to be prescribed in the Regulation as being offers falling under the definition of an *inducement*. The purpose of this power is to provide some flexibility to the gambling regulator to prohibit new or existing offers from wagering providers should they be considered by L&GNSW to be harmful. The industry has also indicated that there is some confusion as to whether these offers are captured by the existing definition of inducement.

In L&GNSW's view, offers promoting free entry into a competition, conditional on having a betting account, are harmful offers and are proposed to be prescribed. L&GNSW is concerned that requiring a person to open a betting account to join a free competition exposes that person to gambling advertising in the form of direct and indirect marketing. This presents new opportunities for gambling-related harm.

L&GNSW believes that these promotions breach the Act by inducing non-members to open a betting account. These non-members, through opening a betting account, may later be exposed to both direct and indirect marketing of betting products that would otherwise be contrary to legislation.

In addition, it is proposed to prescribe offers of 'special odds' as an inducement. Special odds are any instance where BSPs offer increased odds above their standard pricing. This is often identified where BSPs are providing more than one price for the same outcome. L&GNSW believes these offers are harmful because, unlike standard odds, special odds can encourage consumers to make bets or open accounts that they otherwise wouldn't. Special odds can also encourage consumers to alter their gambling behaviour.

L&GNSW believes these offers breach the Act because, as opposed to standard odds, special odds alter the odds on a gambling product as a method of inducing persons to participate, or to participate frequently, in gambling activity (including an inducing someone to open a betting account).

6. Impact assessment of the proposed Regulation

This section of the RIS will provide an overview of the proposed provisions and note amendments relative to the current regulation. Where appropriate, it will also consider costs of the proposed Regulation on the Government, industry and the general community.

Like most gambling legislation, the Act and the proposed Regulation generally aim to minimise negative social impacts, notably problem gambling and ensure the integrity of gambling activity.

Accordingly, the objects of the Act are:

- to ensure the integrity of racing in the public interest,
- to ensure that certain betting activities by licensed bookmakers are conducted properly,
- to minimise the adverse social effects of lawful gambling, and
- to protect a source of public revenue that is derived from lawful gambling.

These objects are consistent with the following community expectations:

- that there must be a balance between the freedom of choice for individuals to pursue leisure and entertainment activities, which includes gambling, and
- that Government and the gambling industry have a responsibility to provide appropriate and responsibly delivered gambling services.

These objects recognise a balance between the vast majority of those in the community who participate in gambling as an enjoyable and harmless pastime, and those for whom gambling causes significant problems.

The proposed Regulation is broken up into Parts, with each Part analysed separately below.

7.1 Part 1 – Preliminary

7.1.1 Overview of provisions

Part 1 provides essential machinery and procedural provisions. Section 1 specifies the name of the proposed Regulation as the Betting and Racing Regulation 2022. Section 2 provides for the commencement of the proposed Regulation on 1 September 2022. Section 3 contains definitions of terms used throughout the proposed Regulation.

There are no economic and social costs or benefits associated with Part 1 of the proposed Regulation. These are machinery matters that are necessary for a proper understanding and functioning of the proposed Regulation.

7.1.2 Proposed amendments

Section 3 contains a more expansive set of definitions, consolidating the definitions used across the current Regulation in one place, providing the relevant sections and the context in which they are used.

7.2 Part 2 – Sports controlling bodies—the Act, s 17B(3) and (4)

7.2.1 Overview of provisions

The proposed regulation makes changes to the order of parts to improve reading flow. This means that the Part 2 of the current Regulation – which provides for responsible gambling practices – has been moved to Part 4. The proposed new Part 2 deals with sports controlling bodies under sections 17B(3) and (4) of the Act, which are dealt with under Part 3A of the current Regulation.

Under 17B of the Act, the Minister may prescribe a single person or body – typically the person or body involved in the administration of a given sporting code – as a sports controlling body for a given sporting event. Section 17B(3) provides that the regulations can make rules around how bodies can be prescribed, including how applications should be made, what information should be provided, and any fees that should accompany an application.

As noted above, introduced amendments to the Act change section 17B of the Act to create a new sub-section (4), providing that the regulations may require a sports controlling body to notify the Minister of a change in the sports controlling body's circumstances. This amendment is reflected in the renaming of the Part.

In the proposed Part 2:

- Section 4 defines a sporting event.
- Section 5 provides who may apply to become a sports controlling body and requirements for the application itself. It also provides which matters the Minister must consider when deciding if the applicant is the most appropriate person or body to be the sports controlling body for the sporting event.
- Section 6 provides that a sports controlling body must notify the Minister, in writing within 14 days of any of the listed change of circumstances occurs.

7.2.2 Proposed amendments

The proposed section 6 reworks section 20C of the current Regulation to place the onus to report a change in circumstances onto sports controlling bodies. In practice, sports controlling bodies are better placed to be aware of, and so notify the Minister of, changes that may impact whether a person or body remains the most appropriate person or body to continue as the sports controlling body. Any other changes in this part are intended to be mechanical only or have been made to improve clarity.

7.3 Part 3 – Use of NSW race field information

7.3.1 Overview of provisions

The use of NSW race field information ('race fields') without first obtaining approval is an offence under section 33 of the Act. A betting service provider using race fields is required to apply to the relevant racing control body for approval. Such approval may be subject to conditions, including the payment of a fee. The fundamental principle underlying the offence is that those who profit from using race fields should pay their way and that they should make fair compensation to the racing industry for using racing as a wagering platform.

Division 3 of the Act provides that certain matters related to the use of race fields may be prescribed. Part 3 prescribes these matters:

- Section 7 – provides definitions used in the Part.
- Section 8 – defines the factors considered in determining whether a person is a "close associate" of an applicant or approval holder.
- Section 9 – prescribes fees for approvals that may be charged under s 33A(2)(a) of the Act. Section 9(1) provides that a relevant racing control body may impose a condition for an approval

holder pay certain fees. Section 9(2) provides constraints on the fee that may be charged under section 9(1). Section 9(3) provides definitions of terms used in the section.

- Section 10 – with reference to 33A(2)(a) of the Act – provides the conditions that are allowed to be imposed on a race fields fee approval. These conditions relate to duration, uses authorised, notification requirements, information access, and specific conditions applying to betting service providers.
- Section 11 – with reference to section 33A(2)(b) of the Act – prescribes conditions that may be applied to a race fields approval to preserve the integrity and reputation of racing NSW. These condition relate to information access, information delivery, monitoring, cooperation, restrictions on maintaining and opening accounts, information security, participation in online monitoring and accepting certain bets.
- Section 12 – with reference to section 33A(4) of the Act – prescribes grounds for cancelling or varying an approval. Section 12(1) prescribes grounds including: a breach of condition, a change in controlling interests, conviction of approval holder or key employee, the taking of disciplinary action and employing a key employee with a criminal record or who has been subject to disciplinary action. Section 12(2) provides that a change in financial circumstances of the approval holder or change in maximum race field information use fee are grounds for varying an approval.
- Section 13 – with reference to section 33B(2) of the Act – relates to applications for approvals. Section 13(1) – with reference to section 33B(2)(a) of the Act – provides how applications must be made. Section 13(2) – with reference to section 33B(2)(b) of the Act – prescribes the information that must accompany an application, including: classes of races, wagering types, the betting service provider's information and history of wagering services, criminal activity, disciplinary action and relevant copies of policies and procedures.
- Section 14 – with reference to section 33B(3)(b) and (4) of the Act – prescribes criteria a racing control body must consider when determining an application for approval. Section 14(1) provides that this includes: a fit and proper person test, any impacts on integrity and the requirement to hold as licence. Section 14(2) provides criteria racing control body is to consider, including: location of premises or a head office and the applicant's licensing jurisdiction.

7.3.2 Proposed amendments

Current section 15 has been removed from the proposed Regulation. The primary function of section 15 is to authorise certain uses of race fields information by non (BSPs) or for non-bookmaking purposes. This section was originally introduced when the application of race fields was much broader than it is today. At the time it was important that those people not involved in wagering activity could use race field information for administrative or social and charitable purposes.

Changes to the Act since the introduction of this section now limits the race fields provisions to BSPs and prescribed persons. To date, the Regulation has never included any prescribed persons authorised to use race fields information under section 33(1)(b) of the Act. This makes much of current Section 15 unnecessary.

Proposed sections in this Part are largely equivalent to the existing Part 3 in the current Regulation. Minor changes have been made for improved clarity.

7.4 Part 4 – Responsible gambling practices

7.4.1 Overview of provisions

Part 4 provides the framework for responsible gambling practices, comprising information for players.

- Section 15 – defines Liquor & Gaming NSW.
- Section 16 – with reference to section 33H of the Act – prescribes an advisory statement.

- Section 17 – with reference to section 37(3) of the Act – provides that non-proprietary associations that conduct race meetings at a licensed racecourse must provide problem gambling information brochures, and the manner in which they must do that. Terms relevant to the section are also defined.
- Section 18 – with reference to sections 37(3) and (4)(c) of the Act – sets out obligations and the way a non-proprietary association that conduct race meetings at a licensed racecourse must display counselling and gambling help notices. Terms relevant to the section are also defined.
- Section 19 – with reference to sections 37(3) and (4)(d) of the Act – prescribes the gambling information and warnings that licensed bookmakers must ensure are on each ticket sold or given to a person for the purposes of placing a bet.

7.4.2 Proposed amendments

Proposed sections in this Part are equivalent to the existing Part 2 in the current Regulation. Minor changes have also been made for improved clarity and a more logical ordering of sections.

7.5 Part 5 – Miscellaneous

7.5.1 Overview of provisions

Part 5 provides miscellaneous provisions:

- Section 20 – for the purposes of sections 17B(3), 18(6) and 19(3) of the Act – prescribes fees specified in Schedule 2.
- Section 21 – with reference to section 30(4) of the Act – exempts members of the Communications Alliance from the offence of allowing access to illegal gambling, under section 30(3) of the Act.
- Section 22 – with reference to section 35GA(1)(c) – prescribes offers that are declared to be prohibited inducements to gamble.
- Section 23 – with reference to section 35A(1) – prescribes offences under the Act for which a remedial order may be issued.
- Section 24 – with reference to section 37(3) of the Act – provides that the Minister must be notified of new integrity agreements, and that sports controlling bodies may be required to publish notice of the new agreement.
- Section 25 – provides a savings provision, allowing any act, matter or thing that, immediately before the repeal of the 2012 Regulation, had effect and continues to have effect under the proposed Regulation.

7.5.2 Proposed amendments

Section 22 is new to the proposed Regulation. The section exercises the power in Act section 33GA(1)(c) to prescribe harmful offers to gamble as prohibited inducements. The power to prescribe these offers has been unused to date. However, in L&GNSW's view, industry is increasingly using these offers to induce people to gamble. As such, prescribing the offers is now warranted.

Proposed sections in this Part are equivalent to the existing Part 4 in the current Regulation. Minor changes have been made for improved clarity.

7.6 Schedule 1 – Penalty Notice Offences

7.6.1 Overview of provisions

Schedule 1 – with reference to section 35AA of the Act – establishes that each offence listed in the Schedule may have a PIN issued for it, the amount to be issued under the PIN and limitations on the issuing of PINs.

7.6.2 Proposed amendments

The Schedule is new to the 2022 Regulation. As stated in 6.2 *Prescribing of Penalty Notice Offences* above, the intent of prescribing certain offences as penalty notice offences is intended to improve the efficiency of the Compliance efforts of L&GNSW and provide betting service providers a lower-cost route to resolving an offence. The decision by L&GNSW to prescribe a greater number of offences as PNOs for which PINs may be issued, requires a dedicated schedule to be created. Currently, only two PNO are prescribed in the current regulation, at existing section 22A.

7.7 Schedule 2 – Fees

7.7.1 Overview of provisions

Schedule 2 creates a new schedule to the proposed Regulation to provide for:

- fees to be expressed as a multiple of a single fee unit,
- prescribe certain application fees expressed in fee units, and
- establish a mechanism for the fee unit to be adjusted annually for inflation.

7.7.2 Proposed amendments

Schedule 2 is new to the 2022 Regulation. It provides an efficient mechanism to ensure that fees are kept in line with inflation. Inclusion of the mechanism also aligns the treatment of fees, with regard to inflation, as well as other liquor and gambling-related regulations overseen by L&GNSW.

7. Summary of the proposed changes

7.1 Table of changes

The proposed Regulation remakes the current Regulation with a number of changes aimed at meeting the objectives outlined in the RIS. A summary of the proposed changes is set out below (Table 3). In addition, sections that have been removed from the Regulation are also listed.

Table 3: Summary of proposed changes and reasons for changes

Current Regulation	Proposed Regulation	Reason for Change
Part 1–Preliminary	Part 1–Preliminary	No change.
1 – Name of the Regulation – the name of the Regulation is the Betting and Racing Regulation 2012	1 – Name of Regulation – the name of the Regulation is the Betting and Racing Regulation 2022	Correctly reflect the name of the Regulation.
2 – Commencement – The Regulation commences on 1 September 2012	2 – Commencement – The Regulation commences on 1 September 2022	Correctly reflect the commencement date of the Regulation.
3 – Definitions – ‘sports controlling body’ and ‘the Act’ defined	3 – Definitions – The Regulation refers to Parts in which the following terms are defined: applicant, approval, approval application, approval holder, close associate fee unit, key employee, race field information use approval, Secretary, sporting event, sports controlling body, the Act, and wagering turnover	Improved brevity and clarity of the overall regulation. Ties definitions to the specific provisions and the context in which they are used.
Part 2 – Responsible gambling practices	Part 4 – Responsible gambling practices	Improved flow and logic of the Regulation.
4 – Definitions – Liquor & Gaming NSW, problem gambling information and Secretary are defined	15 – Definition – <i>Liquor & Gaming NSW defined</i>	Brevity.
5 – Approval of gambling information brochures – the manner in which gambling information brochures may be approved	16 – Problem gambling information brochures—the Act, s 37(3) – re-orders sections and collapses current sections 6 and 7 into new section 5. Defines the following terms: foreign language problem gambling brochure, Gambling Help NSW, problem gambling information brochure. Ability for Secretary to approve brochures at 16(2)(a)	Changes improve clarity, condense related concepts and apply current drafting practices.
6 – Provision of problem gambling information brochures		
7 – Provision of community language problem gambling information brochures		
8 – Gambling information and warnings	19 – Gambling information and warnings – the Act, s 37(3) and (4)(d)	Improved flow and logic of the Regulation.
9 – Counselling signage—notice to be displayed	18 – Counselling and gambling help notices to be displayed—the Act, s 37(3) and (4)(c) – Current section 10 has been collapsed into proposed section 18	Changes improve clarity, condense related concepts and apply current drafting practices.
10 – ATM and EFT signage		
10A – Advisory statement	17 – Advisory statement	Changes improve clarity, condense related concepts and apply current drafting practices.
Part 3 – Use of NSW race field information	Part 3 – Use of NSW race field information	N/A

Current Regulation	Proposed Regulation	Reason for Change
14 – Interpretation	7 – Definitions – introduce the terms: applicant, approval, approval application, approval holder close associate, key employee, race field information use approval, relevant racing control body, and wagering turnover	Improved clarity. Ties definitions to the specific provisions and the context in which they are used.
	8 – Meaning of “close associate” – definition of a close associate.	Definition has been moved out of current section 14 to improve clarity and capture definitions relevant to operation of the section.
15 – Authorisations to use NSW race field information: section 33(1)(b)	Removed from the proposed regulation	The provisions of section 15 are redundant as they have never been used to prescribed persons authorised to use race field information.
16 – Fees for race field information use approvals: section 33A(2)(a)	9 – Fees for approvals—the Act, s 33A(2)(a)	Improved flow and logic of the Regulation.
17 – Other conditions on race field information use approvals: section 33A(2)(b)	10 – Permissible conditions for approvals—the Act, s 33A(2)(b)	Improved flow and logic of the Regulation.
	11 – Permissible conditions for approvals to preserve integrity of racing in NSW—the Act, s 33A(2)(b)	Provisions at 17(1)(h) and 17(3) have been moved to the proposed section 11 as these conditions are specific to preserving the integrity and reputation of racing, so merit their own section. The current 17(2) is now at proposed section 12(2)(a)(i) as this function is a ground to cancel or vary an approval so is more appropriate to be listed there.
18 – Grounds for cancellation or variation of approvals: section 33A (4)	12 – Grounds for cancelling or varying approvals – the Act, s33A(4)	Improved readability and flow; to contain provisions relating to grounds for cancelling or varying an approval in the one section. To move definitions out of the section to the proposed section 7– Definitions.
19 – Applications for race field information use approvals: section 33B (2)	13 – Applications for approvals– the Act s 33B(2)	Improved flow and logic of the Regulation.
20 – Criteria for determination of applications: section 33B (3) (b) and (4)	14 – Criteria for determining applications – the Act 33B(3)(b) and (4).	Improved flow and logic of the Regulation.
Part 3A – Sports controlling bodies	Part 2 – Sports controlling bodies—the Act, s 17B(3) and (4)	Improved flow and logic of the Regulation.
20A – Sports controlling body to be prescribed by Minister	4 – Definition – define <i>sports controlling body</i>	Pointing to the definition of a sports controlling body in the Act improves clarity.
20B – Application for approval in New South Wales	5 – Application to be sports controlling body	Improved flow and logic of the Regulation.
20C – Change in circumstances of sports controlling body	6 – Sports Controlling body to inform Minister of change in circumstances	Proposed section 6 reworks current section 20C to recognise that sports controlling bodies are better placed than the Minister to

Current Regulation	Proposed Regulation	Reason for Change
		communicate relevant changes that may impact a person or body's ability to continue as an approved sports controlling body.
Part 4 – Miscellaneous	Part 5 – Miscellaneous	Improved flow and logic of the Regulation.
21 – Exemption from offence provision relating to on-line service providers: section 30 (4)	21 – Exemption from offence for giving access to unlicensed betting service providers – Communications Alliance prescribed.	The Internet Industry Association has merged under the Communications Alliance, the peak body of the telecommunications industry.
21A – Application fee to prescribe declared betting event	20 – Fees; Schedule 2 – Fees	Improved clarity through consolidating fee provisions in dedicated fee schedule.
21B – Notice of integrity agreement	24 – Notice of integrity agreement—the Act, s 37(3)	Improved flow and logic of the Regulation.
22 – Remedial orders	23 – Remedial orders	Improved flow and logic of the Regulation.
22A – Penalty notices	Schedule – 1 Penalty notice offences	The decision by L&GNSW to prescribe a greater number of offences as PNOs for which PINs may be issued, requires a dedicated schedule rather than a single section.
23 – Savings	24 – Savings	Improved flow and logic of the Regulation.
24 – Transitional	N/A	Section cut as is redundant.

Removed sections

Current Regulation	Reason for Removal
15 – Authorisations to use NSW race field information: section 33 (1) (b)	The provisions of section 15 are redundant as they have never been used to prescribed persons authorised to use race field information.
20A – Sports controlling body to be prescribed by Minister	Removing this section clarifies that the Minister has discretion to approve sports controlling bodies.
24 – Transitional	The transitional arrangements apply to races held in 2013 and earlier, so are no longer of relevance in 2021 and beyond.
25 – Transitional—Gambling Legislation Amendment Regulation 2021	This section only has effect only for the period of 6 months from the 22 January 2021 commencement of the amending Regulation. The 1 September 2021 commencement of the proposed Regulation is after this six-month period, so the section has no effect and has been removed.

ANNEXURE A – List of Key Stakeholders notified

The organisations that have been informed of the release of this RIS and the consultation draft of the proposed Regulation include:

Industry and Community Organisations:

- ❖ Alliance for Gambling Reform
- ❖ Anglicare
- ❖ Australasian Gaming Council
- ❖ Catholic Care
- ❖ Centre for Gambling Research, School of Sociology, ANU
- ❖ Communications Alliance
- ❖ Financial Counselling Australia
- ❖ Gambling and Social Determinants Units, Monash University
- ❖ Gambling Help NSW
- ❖ Gambling Impact Society
- ❖ Gambling Research and Treatment Clinic, University of Sydney
- ❖ Greyhound Welfare and Integrity Commission (GWIC)
- ❖ Harness Racing NSW (HRNSW)
- ❖ NSW Bookmakers' Co-operative
- ❖ NSW Council for Social Services (NCOSS)
- ❖ Racing NSW (RNSW)
- ❖ Red Cross
- ❖ Relationships Australia NSW
- ❖ Responsible Wagering Australia (RWA)
- ❖ St Vincent de Paul
- ❖ Tabcorp
- ❖ The Salvation Army
- ❖ Wesley Mission

Government Agencies:

- ❖ Department of Premier and Cabinet
- ❖ NSW Police
- ❖ NSW Department of Communities and Justice
- ❖ Office of Responsible Gambling
- ❖ Office of Racing
- ❖ NSW Treasury