



Regulatory Impact Statement

Proposed Racing Administration Regulation 2005



A NEW SOUTH WALES GOVERNMENT DEPARTMENT

*Department of Gaming and Racing
May 2005*

**REGULATORY IMPACT STATEMENT
PROPOSED RACING ADMINISTRATION REGULATION 2005**

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ANNEXURE - Public Consultation Draft Regulation

1. INTRODUCTION

1.1 Title and Proponent of the proposed Regulation

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| Title of Proposed Regulation | Racing Administration Regulation 2005 |
| Relevant Act | Racing Administration Act 1998 |
| Proponent | Department of Gaming and Racing |
| Responsible Minister | The Hon Grant McBride MP Minister for Gaming and Racing |

1.2 Interpretation

“**RIS**” means Regulatory Impact Statement

“**Subordinate Legislation Act**” means the *Subordinate Legislation Act 1989*

“**the Act**” means the *Racing Administration Act 1998*

“**the Regulation**” means the *Racing Administration Regulation 1999*

“**proposed Regulation**” means the *Racing Administration Regulation 2005*

1.3 What is a RIS?

The *Subordinate Legislation Act* controls the making of regulations in New South Wales. This Act aims to reduce unnecessary regulation by Government.

The *Subordinate Legislation Act* provides that regulations have a limited life so that their relevance and continued effectiveness can be assessed. In most cases, regulations are automatically repealed 5 years after they are made.

When a regulation is due for repeal, the responsible agency must review the regulation, weigh up the economic and social aspects of the regulation and decide whether there is a need for the regulation to be remade. The outcome of that review is required to be published in a RIS and submissions are invited from members of the public and relevant effected agencies and groups.

The *Subordinate Legislation Act* does not require a RIS to be prepared where the regulation deals with matters of a machinery nature, or it is not likely to impose an appreciable burden, cost or disadvantage on any sector of the public.

If a regulation is not remade, with or without amendment, it will lapse.

1.4 **The Regulation**

The repeal of the Regulation was postponed during 2004 to allow for the completion of a statutory review of the *Act*. The Regulation is now scheduled for repeal on 1 September 2005.

The RIS proposes that the Regulation be remade under the regulation making power set out in section 37 of the *Act*. The proposed Regulation repeals and remakes, with one addition but otherwise without substantive changes, the Regulation.

1.5 **Submissions**

Submissions are invited on any aspect of the proposed Regulation and can be forwarded in the following manner:-

Post: Racing Administration Regulation Review
Office of Racing
Department of Gaming and Racing
GPO Box 7060
SYDNEY NSW 2001

Delivery: Level 7, 323 Castlereagh Street
SYDNEY NSW 2000

Facsimile: (02) 9995 0466

Email: gsemmler@dgr.nsw.gov.au

The closing date for receipt of submissions is 31 May 2005

1.6 **Additional Information**

Copies of the RIS are available from the Department of Gaming and Racing's website at <http://www.dgr.nsw.gov.au>, from the above address, or by telephoning (02) 9995 0400.

Copies of the *Racing Administration Act 1998* and the *Racing Administration Regulation 1999* (if needed) are available from:

- Print: NSW Government Bookshop, Goodsell Building, 8-12 Chifley Square, Sydney [cnr Phillip and Hunter Streets]; telephone (02) 9238 0950, or if calling from outside Sydney 1800 463 955; email gisinfo@dpws.nsw.gov.au
- Internet: www.legislation.nsw.gov.au

2. THE REGULATORY PROPOSAL

2.1 Background

The *Racing Administration Act 1998*, which commenced on 1 March 1999, was part of a legislative package which comprised three interrelated Acts that were enacted to replace the *Gaming and Betting Act 1912* and to provide a modern framework for long-established prohibitions on certain gambling activities.

The *Act* carried forward many provisions of the 1912 legislation relating to the licensing of racecourses and other racing and wagering regulatory measures. At the same time, the provisions were modernised to take account of the use of new betting technologies, in particular the Internet.

When first promulgated in 1999, the *Racing Administration Regulation* solely dealt with providing members of the Internet Industry Association of Australia, who are bound by the Internet Industry Code of Practice, with an exemption from the offence of providing certain services relating to electronic access to gambling operations (current clause 5 of the Regulation).

Later in 1999, the *Act* was amended to enable a person or body prescribed by the Regulation to publish information in relation to dividends and betting odds payable in respect of an authorised totalizator operation conducted in another State or Territory. Clause 4 of the Regulation prescribes such bodies.

With the enactment of the *Gambling Legislation Amendment (Responsible Gambling) Act 1999*, the Government introduced landmark gambling harm minimisation amendments. This *Act* promoted gambling harm minimisation and responsible gambling across all forms of gambling.

The Regulation was amended to reflect the intention of the abovementioned *Act*. What is now the bulk of the Regulation, ie provisions dealing with responsible gambling practices such as the display of problem gambling information, the inclusion of problem gambling information in the advertising of wagering services and prohibitions relating to the offering of inducements to participate in wagering (current Division 1 & 2 of the Regulation), commenced on 1 May 2001. Provisions dealing with the display of problem gambling information on bookmaker's betting tickets commenced on 9 November 2001.

The Regulation was developed in consultation with the racing and wagering industries, ie the TAB, NSW Bookmakers' Co-operative Ltd and the controlling bodies for the three codes of racing - Racing NSW, and the then Harness Racing Authority and Greyhound Racing Authority.

The Regulation represents an element in the statutory framework which aims to regulate the racing and wagering industries in a manner which is of mutual benefit to industry participants, the Government and the community as a whole, while fostering the responsible conduct of gambling across the State's racecourses.

2.2 Objectives of the Regulation

The objectives of the Regulation are as follows:-

- (a) to require the display of brochures approved by the Minister, that contain information about problem gambling, at racecourses where betting is conducted,
- (b) to enable a person to request at those racecourses a copy of such a brochure in a community language,
- (c) to require that each betting ticket supplied by a bookmaker to a person contains problem gambling information,
- (d) to require notices containing information on problem gambling to be displayed at the main entrances to racecourses where betting is conducted and in places at those racecourses at which betting is conducted,
- (e) to prevent certain types of inducements being offered to participate in racecourse betting,
- (f) to place restrictions on the way in which racecourse betting can be advertised and to require problem gambling information to be included in such advertising,
- (g) to enable a person or body prescribed by the regulations to publish information in relation to dividends and betting odds payable in respect of an authorised totalizator operation conducted in another State or Territory, and
- (h) to provide that members of the Internet Industry Association of Australia who are bound by the Internet Industry Code of Practice as in force from time to time are exempt from the offence of providing certain services relating to electronic access to gambling operations.

2.3 Options Available

- Option 1 - Do nothing and allow the Regulation to lapse
- Option 2 - Remake the Regulation with major amendments
- Option 3 - Remake the Regulation with minor amendments

Having reviewed the Regulation the proponent is of the view that the preferred course of action is Option 3.

2.4 Object of the proposed Regulation

The object of the proposed Regulation is to remake, with one addition but otherwise without substantive changes, the *Racing Administration Regulation 1999*. Accordingly, the proposed Regulation will deal with those issues outlined in point 2.2 above, with the inclusion of an additional provision.

The additional matter is a clause prescribing certain offences for the purposes of section 35A of the *Act*.

Section 35A permits a court that finds a person guilty of an offence so prescribed 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). The orders may require, for example, the person to undertake a specified course of training that the court considers will promote responsible practices in the conduct of betting activities by the person.

3. DISCUSSION – Is the Regulation Still Needed?

3.1 General

Like most gambling legislation, the *Act* and the Regulation generally aim to minimise negative social impacts such as problem gambling and to ensure integrity of the gambling activity. To this end, the objects of the *Act* are:

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

These objects are consistent with the following community expectations:

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

They recognise the 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.

3.2 Responsible Gambling Practices

The principles upon which the responsible gambling provisions in the Regulation are based have been welcomed by the community and by organisations that deal with the social and economic fall out from problem gambling, and by the racing industry itself.

It must be remembered that these provisions have only been in existence for a relatively short period of time, having commenced on 1 May 2001. These measures form part of a package of legislation that deals with harm minimisation in all forms of gambling, from poker machines in clubs, hotels and the Casino, to lotteries, two-up and to bookmaker and totalizator betting on racing and sporting events.

In its July 2004 report on the findings of its inquiry into responsible gambling, the Independent Pricing and Regulatory Tribunal (IPART) recommends that the Government should develop a coherent and integrated responsible gambling policy framework which encourages a culture of responsibility in gambling.

In this regard IPART recommends that, as a general principle, the measures implemented under this policy framework should aim to reduce the likelihood that gambling will become a problem for participants, without imposing unnecessary limits on people's general right to enjoy gambling as a legitimate social activity.

In addition, IPART suggests that a culture of responsibility should recognise and clarify the roles and responsibilities of various stakeholders in reducing problem gambling – including the general community, gamblers themselves, the gambling industry, counselling services and the Government.

It is felt that the Regulation makes a positive contribution to the policy framework that encourages responsible gambling, and therefore this aspect should be retained. To allow the Regulation to lapse would be a retrograde step to "self regulation" of harm minimisation within the wagering industry and would fly in the face of community expectations and the IPART report recommendations.

3.3 Exemption From Offence Provisions

An offence provision in the *Act* (section 30(3)) targets non-New South Wales licensed wagering operators and bookmakers operating on-line, whose service is provided to a person in New South Wales via a New South Wales-based Internet service provider.

These provisions recognise the use of emerging technologies and assists in ensuring that the provision of information and advertising using the Internet are subject to an equivalent regulatory environment as the traditional controls on printed matter.

The clause in the Regulation (clause 5 of the Regulation) provides an exemption from such offences to on-line service providers who are members of the Internet Industry Association of Australia and are bound by the Internet Industry Interactive Gambling Industry Code as in force from time to time.

Prescribing such on-line service providers in the Regulation recognises industry standards and provides an exemption from prosecution for on-line service providers who adhere to those standards.

A further offence provision (section 29) essentially prohibits the publication of any betting information.

However, Section 28(1) of the *Act* permits the publication or advertising of any information relating to the dividends or betting odds, or probable dividends or betting odds, payable in respect of any betting conducted in accordance with the *Totalizator Act 1997*, ie TAB Limited.

Section 28(2) and (3) of the *Act* provides an exemption from an offence under section 29 for a person or body prescribed by the regulations, who publishes information relating to the dividends or betting odds, or probable dividends or betting odds, payable in respect of a totalizator operation conducted in another State or Territory by a person or body authorised under the law of that other State or Territory to conduct totalizator operations.

Prescribing the various electronic media outlets in clause 4 of the Regulation enables these outlets to advise New South Wales punters of betting information in respect of totalizators operating in other jurisdictions. This information is used by some punters as a guide to assist them in making informed decisions when betting. At the same time a measure of regulation of the provision of such information is maintained.

3.4 Proposed Minor Amendments

The proposed Regulation has been drafted by the Parliamentary Counsel in accordance with current drafting practices and a renumbering of the provisions has been made.

The inclusion of a new clause dealing with remedial orders (proposed clause 16) corrects an omission in the drafting of the Regulation relating to the prescribing of offences under the *Act* for which the Court may make either or both of the following orders:

- (a) an order requiring the person to publish an advertisement correcting any information contained in any betting information or advertisement published by the person that the court is satisfied on the evidence before it is false, misleading or deceptive and giving directions (if any) that the court considers appropriate as to the time, form, extent and manner of publication,
- (b) an order requiring any one or more of the following:
 - (i) the person,
 - (ii) if the person is a corporation, a director of the corporation or a person concerned in the management of the corporation,
 - (iii) an employee of the person,

to undertake any specified course of training that the court considers will promote responsible practices in the conduct of betting activities by the person.

4. CONCLUSION

It is felt that remaking the Regulation with minor amendments will retain the basis of a policy framework to encourage a culture of responsibility in gambling harm minimisation as is expected of Government by the community and as recommended by IPART.

The Regulation and proposed action is in keeping with the principle that the provisions aim to reduce the likelihood that gambling will become a problem for participants, without imposing unnecessary limits on people's general right to enjoy gambling as a legitimate social activity.

However, it is recognised that gambling harm minimisation measures should be continuously reviewed and evolved as new challenges are faced with changing technologies and community expectations. In this respect, the Government will be announcing its response to the IPART report recommendations in the near future.

Once the Government has given its response to the IPART recommendations, the need to implement any additional measures to promote responsible gambling initiatives will be explored.

Further, the remaking of the Regulation is in keeping with the policy aims and objectives of the substantive legislation, being the *Racing Administration Act 1998*, the relevance of which were recently confirmed in a statutory review of that Act.

5. CONSULTATION

In accordance with section 5(2) of the *Subordinate Legislation Act*, advertisements were published in the Government Gazette of 6 May 2005 and Daily Telegraph of 7 May 2005 announcing the intention to make the proposed Regulation and inviting submissions on any aspect of the RIS.

The RIS and proposed Regulation have also been circulated to the following agencies and groups that have an identifiable interest in the proposed Regulation:

Racing NSW
Greyhound & Harness Racing Regulatory Authority
Harness Racing NSW
Greyhound Racing NSW
NSW Bookmakers Co-operative Limited
Internet Industry Association of Australia
TABCorp
Wesley Community Legal Services
Salvation Army

Enquiries to:
Greg Semmler (02) 9995 0491

Submissions to:
Racing Administration Regulation Review
Office of Racing
Department of Gaming and Racing
Business: Level 7, 323 Castlereagh Street, SYDNEY NSW 2000
Postal: GPO Box 2060, SYDNEY NSW 2001
Facsimile: (02) 9995 0466
Email: gsemmler@dgr.nsw.gov.au

Final Date for Submissions:
Tuesday 31 May 2005

Additional copies of this Regulatory Impact Statement and the draft Regulation can be obtained:

- from <http://www.dgr.nsw.gov.au>
- from the above business address; or
 - by telephoning (02) 9995 0400