



Regulatory Impact Statement

Proposed Totalizator Regulation 2005



A NEW SOUTH WALES GOVERNMENT DEPARTMENT

Department of Gaming and Racing
May 2005

**REGULATORY IMPACT STATEMENT
PROPOSED TOTALIZATOR REGULATION 2005**

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1. INTRODUCTION

1.1 Title and Proponent of the proposed Regulation

Title of Proposed Regulation	Totalizator Regulation 2005
Relevant Act	Totalizator Act 1997
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 *Totalizator Act 1997*

“**the Regulation**” means the *Totalizator Regulation 1998*

“**proposed Regulation**” means the *Totalizator 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 In most cases, regulations are automatically repealed 5 years after they are made.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 2003 to allow for the completion of a statutory review of the *Act*. A second postponement was granted in deference to legislative proposals in 2004 dealing with the merger of TAB Limited with other entities. 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 117 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: Totalizator 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 Tuesday 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 *Totalizator Act 1997* and the *Totalizator Regulation 1998* (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: <http://www.legislation.nsw.gov.au>

2. THE REGULATORY PROPOSAL

2.1 Background

The *Totalizator Act 1997*, which commenced on 6 March 1998, was part of a legislative package together with the *Totalizator Agency Board Privatisation Act 1997*, which were enacted to provide for the privatisation of the New South Wales TAB and for a modern framework for long-established prohibitions on certain totalizator gambling activities.

The *Act* repealed the *Totalizator Act 1916* and the *Totalizator (Off-course) Betting Act 1964* and consolidated many provisions of the 1912 and 1916 legislation relating to the licensing of totalizators and other wagering regulatory and probity measures. At the same time, the provisions were modernised to take account of the use of new betting technologies and included provisions with respect to the privatisation and ownership of the TAB.

When first promulgated in 1998, the *Totalizator Regulation 1998* solely dealt with exemptions from the provisions of the *Act* restricting the total number of voting shares in TAB Limited that a person may hold.

Later in 1998, the Regulation was amended to provide for the disbursement of funds upon the winding up of the former Racecourse Development Fund.

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 TAB betting tickets commenced on 9 November 2001. On the same date provision was also included in the Regulation relating to prescribing certain persons as “key employees” for the purposes of the *Act*.

The Regulation was developed in consultation with the racing and wagering industries, ie the TAB 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 TAB outlets.

2.2 Objectives of the Regulation

The objectives of the Regulation are as follows:-

- (a) to provide an exemption from section 33 of the *Act* dealing with the prohibition on the number of voting shares a person is entitled to hold in TAB,
- (b) to require the display of brochures approved by the Minister, that contain information about problem gambling, at places where totalizator betting is conducted,
- (c) to enable a person to request at those places a copy of such a brochure in a community language,
- (d) to require totalizator entry forms and betting tickets to contain certain information in relation to problem gambling,
- (e) to require notices containing information on problem gambling to be displayed in places at which totalizator betting is conducted,
- (f) to prevent certain types of inducements being offered to participate in totalizator betting,
- (g) to place restrictions on the way in which totalizator betting can be advertised and to require problem gambling information to be included in such advertising, and
- (h) to prescribe certain persons as key employees in relation to the conduct of a totalizator for the purposes of the *Act*.

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 *Totalizator Regulation 1998*.

The proposed Regulation deals with the following matters:

- (a) an exemption from section 33 of the *Totalizator Act 1997* (being the provision that prohibits a person being entitled to more than 10% of the total number of voting shares in the licensee under that *Act* (being TAB Limited),
- (b) responsible gambling practices, including the following:
 - (i) requirements relating to the provision of problem gambling brochures,
 - (ii) information and warnings printed on totalizator betting entry forms and betting tickets,
 - (iii) the display of notices relating to the G-line counselling service,
 - (iv) controls on advertising and inducements relating to totalizator betting.
- (c) the prescription of certain persons as key employees in relation to the conduct of a totalizator for the purposes of the *Totalizator Act 1997*.
- (d) matters of a savings or machinery nature.

The additional matter is a clause prescribing certain offences for the purposes of section 103A of the *Act*. That section 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 make provision for the proper conduct of totalizator betting in the public interest and to minimise any harm associated with such betting, and
- (b) to ensure that revenue derived from the conduct of totalizator betting is accounted for in a proper manner.

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 Exemption From Shareholding Restrictions

An original 5% shareholding limitation was adopted at the time of the privatisation of the NSW TAB in 1988 as part of the Government's policy to ensure that TAB shares were widely held, and to prevent any individual shareholder or group of shareholders from obtaining control or a significant influence over TAB Limited.

Since that time the market had changed and the shareholding limitation was increased to 10% to attract institutional investors, both domestic and off-shore. This amendment was made with the intention of increasing the value of TAB shares for all shareholders, while retaining adequate safeguards in the Regulation to ensure that individual investors are not adversely affected.

Section 33 of the *Act* refers to a prohibited shareholding in the licensee - TAB Limited, which was acquired by TABCorp Holdings Pty Ltd in 2004. The intent of Section 33 is reflected in the conditions of the totalizator licence issued to TAB Limited, ie it is a condition of the licence that there be no prohibited shareholdings. It might be noted that Victorian legislation has a similar provision with respect to shareholdings in TABCorp.

It is considered that the provision providing an exemption from the 10% minimum shareholding remains valid to attract institutional investors, while at the same time protecting smaller investors.

3.3 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 TAB 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 recommendations.

3.4 Prescription of Key Employees

The prescription of “key employees” is an important tool for the purpose of enabling probity checks of certain employees of a licensee to be undertaken. The classes of persons and the integrity expected of them as key employees of a licence holder are paramount and the current provisions reflect the heavy emphasis that the legislation places on the probity of the licensee, its management and its staff.

Similar provisions exist in respect of the Casino and gaming machine industries and are predicated on the need to ensure the integrity of betting activities and in turn foster the community's confidence in such activities.

The provisions are an effective means to identify senior management and staff within the employment of a licensee or associated with a licensee, whom would be closely involved in the conduct of the totalizator betting activities.

The prescription of key employees of a licensee for probity purposes is in keeping with community expectations that betting activities should be closely supervised and it is therefore proposed that these provisions be remade.

3.5 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:
 - (j) 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 *Totalizator Act 1997*.

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:

TABCorp
Wesley Community Legal Service
Salvation Army
Racing NSW
Greyhound & Harness Racing Regulatory Authority
Harness Racing NSW
Greyhound Racing NSW

Enquiries to:
Greg Semmler (02) 9995 0491

Submissions to:
Totalizator Regulation Review
Office of Racing
Department of Gaming and Racing
Business: Level 7, 323 Castlereagh Street, SYDNEY NSW 2000
Postal: GPO Box 7060, 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