

February 2021

# Review of the Point of Consumption Tax

Consultation Paper

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## Introduction

On 1 January 2019, the NSW Government introduced the point of consumption (PoC) tax — a 10 per cent tax on all wagers placed by NSW residents, regardless of the location of the wagering operator. This tax closed a loophole in wagering laws where most online NSW bets were not taxed.

At the time of implementation, the NSW Government announced that NSW Treasury will undertake a review of all aspects of the PoC tax after 18 months of operation.

The review will take account of:

- the PoC tax rate and threshold
- existing wagering tax arrangements
- racing industry funding arrangements implemented at the time of the PoC tax introduction<sup>1</sup>
- impacts on the wagering and racing industries; and
- any other policy or administrative issues associated with the PoC tax.

This consultation paper ('the paper') forms the first step in this review. It is expected that the NSW Government will report on outcomes of the review by July 2021.

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<sup>1</sup> The scope of the review does not extend to funding for racing industry bodies through tax parity payments by TAB, the NSW totalizator licensee.

## Consultation process

### Invitation for stakeholder submissions

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The purpose of this paper is to seek stakeholder views on the PoC tax on wagering in NSW and its associated arrangements, which have now been in operation for over 18 months.

Stakeholders are invited to comment or provide feedback on the issues outlined in this paper by submitting a written response to [tax.consultation@treasury.nsw.gov.au](mailto:tax.consultation@treasury.nsw.gov.au).

Stakeholders are invited to consider the questions outlined in this paper, which are designed to examine the impact of the PoC tax and outline areas of improvement or concern.

Submissions are due by 24 March 2021.

### Publication of submissions and confidentiality

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All information, including name and address details, contained in formal submissions will be made available to the public on the NSW Treasury website, unless you indicate that you would like your personal details or any part of your submission to remain confidential.

Please note: automatically generated confidentiality statements in emails do not suffice for this purpose. Respondents who would like part of their submission to remain confidential should provide this information marked as such in a separate attachment.

There may be circumstances where the Government is required by law to release the information in your submission, for example, in accordance with the requirements of the *Government Information (Public Access) Act 2009*.

### Further consultation process during the review

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In addition to receiving formal submissions, the review may involve consultation with representatives from the racing and wagering industries, including discussions with interested stakeholders on specific issues where the review requires more information or to seek further views.

## Wagering in NSW

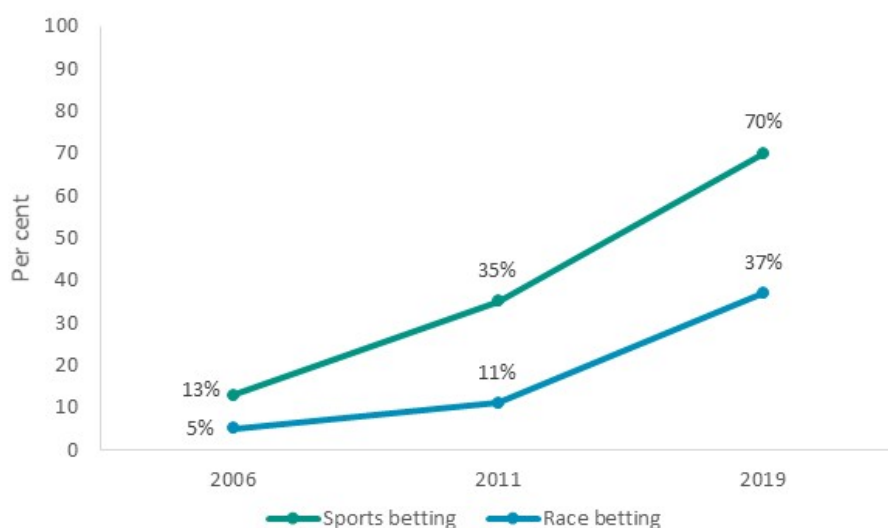
### Trends in wagering

Historically, most wagers were placed on races (thoroughbred, greyhound and harness racing) and took the form of in-person transactions in a retail outlet, such as a TAB outlet or with an on-course bookmaker. Prior to the introduction of the PoC tax and pursuant to the *Betting Tax Act 2001* (BT Act), wagering tax was only paid by TAB on a location of supply basis (the state the wagering operator is located and licensed in). On-course bookmakers were not liable for this tax.

Facilitated by new technologies and better accessibility to gambling, sports betting has become an increasingly large part of the betting industry. In the past decade, online wagering has experienced significant growth. In 2019, 70 per cent of NSW residents surveyed who bet on sports placed their bets online, double the comparable figure from 2011 (see Chart 1).

Even higher growth in online betting use was found for race betting, with 37 per cent of NSW residents surveyed who bet on races in 2019 placing their bets online, compared with 11 per cent in 2011. This growth is expected to continue due to the increased accessibility, convenience, and greater competition and breadth of offerings available through online wagering.

**Chart 1: Online betting use by NSW sports and racing gamblers**



Source: NSW Gambling Survey, 2019

Prior to the introduction of the PoC tax, because most online operators were located and licensed outside of NSW, they were not required to pay the betting tax. The changes in the

structure of the wagering industry, including the growth of online wagering, led NSW as well as other jurisdictions to introduce point of consumption taxes. These taxes ensure that bets are taxed in the jurisdiction in which they are placed.

Now, under the NSW PoC tax arrangements, corporate bookmakers licensed in NSW or other jurisdictions, and potentially on-course bookmakers in NSW, are liable to pay the PoC tax on net wagering revenue (NWR) derived from NSW residents.<sup>2</sup>

The shift from retail to online wagering has continued since the introduction of the PoC tax. This may have even accelerated due to COVID-19, which prevented spectators from attending races or restricted attendance levels, as indicated by TAB.<sup>3</sup> Furthermore, on-course bookmakers have adapted to the changing market environment, and have expanded with digital platforms, sometimes in partnership with racing clubs.

## **Wagering and racing**

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The racing industry in NSW includes the activities of the three codes of racing: thoroughbred, harness and greyhound. The industry supports around 30,000 full time equivalent jobs throughout the State.<sup>4</sup>

Wagering on the races forms part of racing customers' experience. In addition, it also provides a source of funding for the industry.

Wagering on the NSW racing industry occurs through the following channels:

- totalizator and fixed-odds wagering – operated by Tabcorp and available through on-course and off-course channels (such as retail shops, online, clubs and hotels)
- on-course bookmaker wagering via individual bookmakers; and
- corporate and betting exchange wagering – operated by wagering businesses, licensed in NSW and other jurisdictions.

Tabcorp currently holds the sole retail wagering and totalizator licence in NSW, with retail exclusivity to June 2033. The licence entitles Tabcorp's subsidiary, TAB, to operate as the

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<sup>2</sup> For more information on how NWR is calculated, see the Revenue NSW website at: <https://www.revenue.nsw.gov.au/taxes-duties-levies-royalties/gaming-wagering-tax/point-of-consumption-tax/calculate>.

<sup>3</sup> TAB Annual Report 2020.

<sup>4</sup> IER (2014) Size and scope of the NSW racing industry. Commissioned by the NSW Office of Liquor, Gaming and Racing.

sole provider of totalizator and fixed odds betting in a retail environment until June 2033. The licensee paid a premium payment on award of the licence.

Other licensed wagering operators in NSW include on-course bookmakers and corporate bookmakers (e.g. BlueBet and EliteBet).

## **Wagering on other sports**

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Sports betting has experienced significant growth over recent years. Across Australia, sports betting made up over 30 per cent of total racing and sports betting turnover in 2017-18 — more than double the comparable figure from 2007-08.<sup>5</sup> As shown in Chart 1, sports betting is mainly conducted online.

Wagering on sports is subject to the same NSW tax rates as wagering on racing, under the BT Act and the PoC tax regime. The *Betting and Racing Act 1998* allows for wagering on declared betting events for sports other than racing. It also allows for the relevant sport controlling bodies to charge wagering operators a fee to fund the costs of sports integrity programs.

These programs are intended to limit the incidence of match-fixing and other activities that would compromise the integrity of the sport. There are no legislative provisions for sport controlling bodies, unlike with racing, to allow for product fees to be imposed on wagering operators.

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<sup>5</sup> Australian Gambling Statistics, 35th Edition.

## Point of Consumption (PoC) tax

On 1 January 2019, the NSW Government introduced the point of consumption tax,<sup>6</sup> a 10 per cent tax on all wagers placed by NSW residents, regardless of the location of the wagering operator.

Prior to the introduction of the PoC tax, the NSW wagering tax only captured bets placed with the totalizator licensee in NSW, TAB, but many online betting operators located interstate offered bets in NSW. The growth of online wagering had therefore resulted in a significant disconnect between the location of wagering activity and taxation revenue from that activity for the NSW Government. The PoC tax sought to update and modernise the tax framework to reflect the current wagering environment. The new tax regime is in line with similar changes implemented in other jurisdictions.

The new tax arrangements:

- rebalance the disconnect between wagering operators' place of operation and taxation
- close the loophole in previous NSW wagering tax laws, where taxes on racing and sports betting were levied at the physical point of sale but did not capture most online wagering
- increase the equity and integrity of wagering tax arrangements by ensuring Australian wagering operators are subject to consistent tax arrangements for equivalent bets made by NSW residents; and
- support harm minimisation through the recognition of the harm caused by online wagering, taxing it at the point at which the harm occurs, and provided additional funding towards harm minimisation strategies.

*Questions for Stakeholders*

**How has the PoC tax performed against the outcomes suggested above?**

### Tax rate and tax-free threshold

A PoC tax rate of 10 per cent applies to all bets made by customers located in NSW at the time the bet was placed, including bets made in-person, online or by phone. The PoC tax applies to all types of wagering products, including totalizator (pari-mutuel), fixed-odds,

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<sup>6</sup> See the *Betting Tax Amendment (Point of Consumption) Act 2018*.



lay-off bets and bets facilitated by a betting exchange or bookmaker, or any other commission-based agency or approved betting activities.

A tax-free threshold of \$1 million applies for all operators liable for the PoC tax. In NSW, the threshold is applied to each licensed betting service provider and does not consider 'grouping' arrangements.<sup>7</sup> Grouping provisions, such as those in Victoria, remove any incentive for a wagering operator to set-up multiple entity structures that each have a threshold, to minimise their overall tax liability.

All jurisdictions with a PoC tax have generally implemented a similar tax structure under which a uniform tax rate is applied to NWR above a tax-free threshold.

New South Wales's tax rate of 10 per cent is currently the second lowest in Australia. Victoria, the only jurisdiction with a lower tax rate, currently imposes a tax rate of 8 per cent, however they recently announced changes to increase the rate to 10 per cent from 1 July 2021. Queensland, South Australia, Western Australia, the Australian Capital Territory (ACT) and Tasmania impose a rate of 15 per cent.

NSW's tax-free threshold is the equal highest (with Victoria) compared to other jurisdictions, which range from \$300,000 in Queensland to \$150,000 in South Australia, Western Australia, the ACT and Tasmania.

On 19 January 2021, the Victorian Government announced that they will lift their PoC tax rate from 8 to 10 per cent from 1 July 2021, bringing Victoria into line with the rate that applies in NSW.

The additional proceeds from the full increase in the tax rate will be passed through to the Victorian Racing Industry, lifting the proportion of derived NWR for the industry from 1.5 to 3.5 per cent. The balance of the tax revenue (6.5 per cent of NWR) will continue to be distributed to the Hospitals and Charities Fund. These changes follow the findings of a review of the Victorian PoC tax framework which assessed the implementation and impact of the tax, and was tabled in the Victorian Parliament in November 2020.

*Questions for Stakeholders*

**Is the current tax rate and tax-free threshold appropriate? Why or why not?**

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<sup>7</sup> Under grouping arrangements, related businesses are treated as a single entity and applied one tax-free threshold. Related businesses are usually grouped when they have a holding or subsidiary relationship or where a single person or group has a controlling interest in multiple businesses.

## The tax base

An operator's PoC tax liability is calculated based on NWR, which is generally defined as the sum of all bets, and fees or commissions related to those bets, received from NSW resident customers (customers located in NSW at the time the bet was placed), less winnings paid out to those residents.<sup>8</sup>

The NWR tax base definition is broadly similar across the jurisdictions except in relation to the treatment of the face value of free bets. In NSW, free bets,<sup>9</sup> as well as winnings paid in relation to free bets (excluding winnings that cannot be converted to money), are included in the calculation of NWR.

This treatment is consistent with that taken in Victoria, Western Australia and the ACT. However, Tasmania and Queensland explicitly exclude free bets from NWR.

### *Questions for Stakeholders*

**Is the current tax base and definition of net wagering revenue appropriate? Why or why not?**

## Who is liable?

The PoC tax is payable by all betting or wagering service providers licensed in Australia whose NWR in NSW exceeds the threshold for a financial year.

To avoid double taxation, TAB is entitled to offset any PoC tax liability against their existing betting tax arrangements liability, which includes payments to racing industry bodies. In practice, this means the licensee does not pay the PoC tax. See the section, 'Offsets and interactions with the PoC tax' for further information.

Additionally, any on-course bookmakers whose NWR in NSW falls under the \$1 million tax-free threshold are not required to pay the PoC tax.

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<sup>8</sup> See Section 13A of the *Betting Tax Amendment (Point of Consumption) Act 2018* for the full definition of net NSW wagering revenue.

<sup>9</sup> The *Betting Tax Amendment (Point of Consumption) Act 2018* defines a free bet as a bet made wholly or partly without the person making the bet paying any monetary amount for the bet or part of the bet.

## Compliance and administration

Revenue NSW has responsibility for administering the PoC tax, including the receipt of returns, collection of tax, issuance of notices of assessment and reassessment (if needed), and approval of any payment arrangements.

All taxpayers, except TAB as the totalizator licensee, are required to lodge monthly returns to Revenue NSW and make any payment of tax within 21 days after the end of the month in relation to which it is payable. The June return is used as an annual reconciliation to ensure the correct amount of tax is paid for the financial year.

Under an arrangement with Revenue NSW, TAB lodges an annual return instead and would only pay tax if their PoC tax liability exceeded the offset from their betting tax arrangements.

Liquor & Gaming NSW is responsible for ensuring betting service providers comply with the PoC tax requirements.

### *Questions for Stakeholders*

**Are there any opportunities for efficiencies in the collection and administration of the tax?**

**Are there any ways the compliance or administrative arrangements could be simplified or improved?**

## Interactions with the Totalizator Licensee Tax Arrangements

As a totalizator licensee, TAB is required to pay wagering tax in accordance with the BT Act, levied on commission, roundings and NWR.

From 2020-21 onwards, the licensee is liable to pay wagering tax of 7.6% on totalizator bets and 4.38% on fixed odds bets. As part of the tax parity arrangements introduced in the 2015-16 Budget, wagering tax rates were reduced over five years to these current rates. The difference between the headline rates prior to 2015-16 and the current rates is 11.51% for totalizator bets and 6.53% for fixed odds bets. The equivalent amount of the difference between the previous and current tax rates is passed on directly and in full by TAB in fixed proportions to the three racing industry controlling bodies (Racing NSW, Harness Racing NSW and Greyhound Racing NSW), and is referred to as the 'tax reduction amount' or 'tax parity payments'.

To avoid double taxation with the PoC tax, the licensee can offset any PoC tax liability against their wagering tax arrangements liability, including payments to racing industry bodies under tax parity arrangements. Since wagering tax arrangements liability always exceeds PoC tax liability, TAB does not in practice pay the PoC tax.

In addition, the licensee is entitled to two offsets against their wagering tax liability:

- The licensee can offset their fixed odds tax liability by 0.91 per cent. This was included in the PoC tax reforms in order to equalise the tax rate for fixed odds bets prior to 2015-16 to the PoC tax rate of 10 per cent applying to other providers also offering fixed odds bets.
- To avoid double taxation where the licensee could be liable for point of consumption taxes imposed by other jurisdictions for bets placed by interstate residents, the licensee can offset the following amounts against their wagering tax liability for totalizator and fixed odds bets (referred to as 'excluded commission' and 'excluded net earnings' in the legislation):
  - 19.11 per cent of totalizator commission from outside NSW (up to 5.5 per cent of total totalizator commission)
  - 10 per cent of fixed odds NWR from outside NSW (up to 4 per cent of total fixed odds NWR).

It is noted, for the purposes of these offsets afforded to TAB, there are no provisions for an offset of roundings.

## **Compliance and administration**

Revenue NSW has responsibility for administering the betting tax, including the collection of tax, provision of revenue reports to Liquor & Gaming NSW, issuance of notices of assessment and reassessment (if needed) and approval of any payment arrangements.

The licensee self-assesses the amount of tax payable in monthly returns lodged with Liquor & Gaming NSW. Payments are made on a weekly basis for totalizator betting activities and monthly for fixed odds betting activities. Revenue NSW provides a monthly report to Liquor & Gaming NSW detailing total revenue collected from the licensee to reconcile against the returns data they receive.

Liquor & Gaming NSW is responsible for regulatory and compliance aspects of the totalizator licensee. This includes regulatory approvals for changes to the NSW Totalizator Betting rules, and changes to the licensee's regulated systems. Liquor & Gaming NSW also undertakes assurance and compliance activities regarding the licensee's obligations, including its financial obligations.

## Racing industry funding arrangements

As part of the PoC tax reforms, the NSW Government also agreed to provide additional funding to the racing industry equal to 2 per cent of taxable NSW NWR from all Australian-licensed wagering operators, including TAB.

The PoC tax legislation requires the funding be distributed between the three peak racing industry bodies, being Racing NSW (receiving 72 per cent), Harness Racing NSW (receiving 15 per cent), and Greyhound Racing NSW (receiving 13 per cent).

The proportion that each racing industry body receives is specified in subclause 13M(2) of the BT Act and aligns with the proportions for distribution outlined in the Racing Inter-Code Deed, a commercial agreement between the three racing industry bodies. The NSW Government is not a party to this agreement.

When introducing the PoC tax, the NSW Government did not alter the tax parity payments to the racing industry that were introduced in the NSW Budget 2015-16.

### Greyhound Welfare & Integrity Commission funding

In addition to the racing industry funding, the legislation also provided for funding of \$2 million in 2018-19 and \$4 million per year from 2019-20 to 2021-22 for the Greyhound Welfare & Integrity Commission (GWIC). The GWIC was established to promote and protect the welfare of greyhounds, safeguard the integrity of greyhound racing and betting, and maintain public confidence in the industry.

The NSW Government is currently conducting a review of the Greyhound Racing Act 2017 to ensure that the Act is appropriate to uphold high standards of animal welfare and support the economic sustainability of the greyhound racing industry and its governing bodies. The final report is due to be tabled in the NSW Parliament by 9 April 2021. The review will consider funding arrangements for GWIC. Its outcomes will inform the PoC tax review.

#### *Questions for Stakeholders*

**Are the hypothecated funding arrangements appropriate?**

**What have been the impacts on the racing industry from the PoC tax?**

## Funding for harm minimisation

Online wagering has experienced rapid growth in NSW and is a relatively high-risk form of gambling, with a higher proportion of those who gamble online being problem gamblers.<sup>10</sup> According to the NSW Gambling Survey 2019, 22 per cent of sports bettors and 14 per cent of race bettors are problem or moderate-risk gamblers (compared, for example, with 5 per cent of lottery ticket purchasers).<sup>11</sup> While problem gambling prevalence within the NSW community was stable at 1 per cent, it is higher among online gamblers, at 4 per cent.

The survey also found that while most forms of gambling in NSW are declining, online betting is increasing with more people placing their sports and race bets online.<sup>12</sup> The COVID-19 pandemic has also coincided with retail or on-course gamblers migrating online, with large increases in customers signing up to online wagering platforms.<sup>13</sup>

In recognition of the growing harm related to online wagering, the PoC tax legislative amendments provided funding of \$2.5 million in 2018-19 and \$5 million per year from 2019-20 to 2021-22 to the Responsible Gambling Fund to address, prevent and minimise gambling-related harm associated with online wagering.

From 2018-19 to 2020-21, the RGF has allocated \$19.9 million for initiatives and services directly related to online wagering, with \$12.5 million of PoC tax revenues contributed to the Fund over this period.

This funding has been directed towards:

- research directly related to online wagering, including the Interactive Gambling in Australia study
- community education and awareness, such as the Betiquette awareness campaign targeting young male sports bettors
- support and treatment services, with free face-to-face, telephone and online support available across the State; and
- support for regulatory effectiveness.


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<sup>10</sup> Central Queensland University (2020) NSW Gambling Survey 2019, as revised 6 March 2020. Commissioned by the NSW Responsible Gambling Fund, Sydney.

<sup>11</sup> Ibid.

<sup>12</sup> Ibid.

<sup>13</sup> Harris R (2020) Australian punters propping up global bookmaker profits, 3 August 2020, Sydney Morning Herald.



These measures deliver upon the NSW Government's and the Office of Responsible Gambling's broader commitment to gambling harm minimisation. The NSW Government is committed to promoting responsible gambling and addressing gambling harm within the State. The Government recognises that for some people gambling is a serious problem and that gambling harm extends beyond the individual.