



Treasury

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# **Point of Consumption Tax on wagering in NSW – Consultation Paper**

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**March 2018**

## **Invitation for stakeholder submissions**

The purpose of this paper is to seek stakeholder views on the design and other aspects of a potential point of consumption tax (PoCT) on wagering in NSW.

**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).**

**Submissions are due by 29 March 2018.**

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## Introduction

Wagering in Australian jurisdictions has historically been taxed to provide Governments with a revenue stream to fund a range of activities and services, including assistance for problem gamblers. In New South Wales, tax revenue from wagering represents a small portion (around 0.4 per cent) of total state tax revenue.

Changes in the way the wagering industry is structured, including the growth of online wagering, have led some jurisdictions to change the way they tax wagering - something the NSW Government is also considering.

Wagering tax in New South Wales is currently levied on a location of supply basis, i.e. on wagering operators located and licensed within the state.

In practice wagering tax on racing and sports betting is currently only paid by Tabcorp, the NSW retail wagering and totalizator licensee. All other bookmakers, including on-course bookmakers in NSW and corporate bookmakers that are licensed in other states and territories, do not pay NSW wagering tax. The place of consumption or location of a wagering customer, whether in NSW or another state or territory, is of no relevance to the way wagering taxation is currently imposed in NSW.

Historically, wagering has taken the form of in-person transactions in a retail outlet such as a TAB or at an on-course bookmaker, and the existing taxation model reflects this. However, considerable growth in online wagering in recent years has displaced the need for wagers to be placed in-person, and online wagering is not captured by the current wagering tax framework. That is, in the case of online wagering, there is now a disconnect between the location of wagering activity, the jurisdiction where the profits from wagering are being earned, and taxation revenue from wagering.

As part of the NSW Budget 2017-18, the NSW Government indicated that it:

*“...is assessing the impact of changing taxation on gambling from location of supplier to the point of consumption for New South Wales.”*

Other jurisdictions have responded to the changing landscape and shift in consumer preferences within the wagering industry, most notably in South Australia where a 15 per cent Point of Consumption Tax (PoCT) was introduced on 1 July 2017, applied to the net wagering revenue of operators above a tax-free threshold of \$150,000 that is derived from South Australian residents. Other examples include:

- In December 2014, the United Kingdom introduced a PoCT called the Remote Gaming Duty levied at a rate of 15 per cent of an operator’s net wagering revenue.
- In its 2017-18 Budget, Western Australia announced a 15 per cent PoCT to be introduced from 1 January 2019. This will replace all current wagering tax arrangements and apply to all forms of wagering. It will be of a similar structure to the South Australian PoCT.

- The recently re-elected Queensland Government committed in the election campaign to introducing a PoCT based on the South Australian model.
- Victoria has also committed to investigating the implementation of a PoCT and has recently completed a public consultation process on options.

This discussion paper has been prepared to facilitate consultation on the merits of a point of consumption tax on wagering in NSW, and the design and operation of any such tax if it were to be implemented.

## Existing Wagering arrangements

### Wagering and Racing in NSW

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The NSW racing industry is governed by three bodies - Racing New South Wales, Harness Racing New South Wales, and Greyhound Racing New South Wales. The industry supports around 30,000 full time equivalent jobs throughout the state.

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 Limited (TAB), to operate as the 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.

Tabcorp may offer wagering services through multiple channels including online, retail shop front (terrestrial), in clubs and hotels, on-course, and telephone wagering, on both racing and sporting events.

The only other licensed operators in NSW are on-course bookmakers. They are not liable to pay NSW wagering taxes. They can offer wagering services to customers on racing and sporting events, including on-course totalizator wagers.

Tabcorp is liable to pay state wagering tax in accordance with the *Betting Tax Act 2001*, levied on net wagering revenue (player loss). GST is also payable to the Commonwealth on net wagering revenue.

Interstate operators are not currently liable for NSW wagering tax on any product sold to NSW consumers. Overseas operators who do not have an Australian registered subsidiary cannot legally sell wagering services to Australian residents.

The NSW racing industry's wagering related revenue is derived from the following sources:

- a share of Tabcorp's total profit from all wagering activities;
- product fees paid by corporate bookmakers, betting exchanges, Tabcorp NSW and Interstate TABs in exchange for race field information; and
- revenue from Tabcorp equal to the percentage of the tax reduction amount via the 'tax parity' arrangement (see below).

Distributions of Tabcorp's profit share and the amount charged for use of race fields information are in commercially negotiated agreements between licensed operators and the racing industry controlling bodies. The Government is not a party to these agreements. The *Betting and Racing Act 1998* makes it an offence for a gambling operator to use NSW race field information unless they are authorized to do so. The *Betting and Racing Regulation 2012* sets out the maximum rate that a racing controlling body may charge for the use of race field information.

NSW wagering tax rates are being reduced over five years to achieve parity with rates in Victoria, as shown in Table 1 below (the ‘tax parity’ arrangement).

Under the *Totalizator Act 1997*, the funds created by the tax reductions are passed on in full by the TAB to the three racing industry controlling bodies. The TAB does not directly benefit from the reduced tax rates. This additional funding is being provided to help secure the industry's ongoing sustainability, including through supporting industry development initiatives and strategic priorities.

The resulting shares of net wagering revenue payable to the racing industry each year are shown in columns (3) and (4) of the table. These cover all net wagering revenue from racing in NSW, racing in other jurisdictions, and all other sports wagering.

**Table 1**

Year	Totalizator tax rate (%)	Fixed odds tax rate <sup>1</sup> (%)	Tax parity payments to racing controlling bodies – share of net wagering revenue		Start of rate reduction
			Totalizator (%)	Fixed odds (%)	
	(1)	(2)	(3)	(4)	(5)
2014-15	19.11	10.91	0	0	-
2015-16	16.2	9.2	2.91	1.71	1 July 2015
2016-17	13.5	7.43	5.61	3.48	1 July 2016
2017-18	13.5	7.43	5.61	3.48	1 July 2016
2018-19	12.17	6.6	6.94	4.31	1 July 2018
2019-20	10.7	5.8	8.41	5.11	1 July 2019
2020-21 onwards	7.6	4.38	11.51	6.53	1 July 2020

Table 2 shows NSW 2017-18 Budget wagering tax revenue projections, reflecting the lower tax rates and increasing parity payments. Wagering tax revenue is projected to fall from 6 per cent of total gambling tax revenue in 2015-16 to 2.5 per cent in 2020-21.

<sup>1</sup> The fixed odds tax rates are applicable to racing and all other sports betting.

**Table 2**

	2015-16 Actual (\$m)	2016-17 Revised (\$m)	2017-18 Budget (\$m)	2018-19 (\$m)	2019-20 (\$m)	2020-21 (\$m)	Average growth 2016-17 to 2020- 21 %
Wagering Tax	134	112	111	99	87	65	(12.8)

### **Wagering on Other Sports**

In contrast to totalizator wagering, fixed odds betting on sports and racing has experienced significant growth over recent years (albeit off low bases). Wagering on sports is subject to the same tax rates as fixed odds wagering on racing.

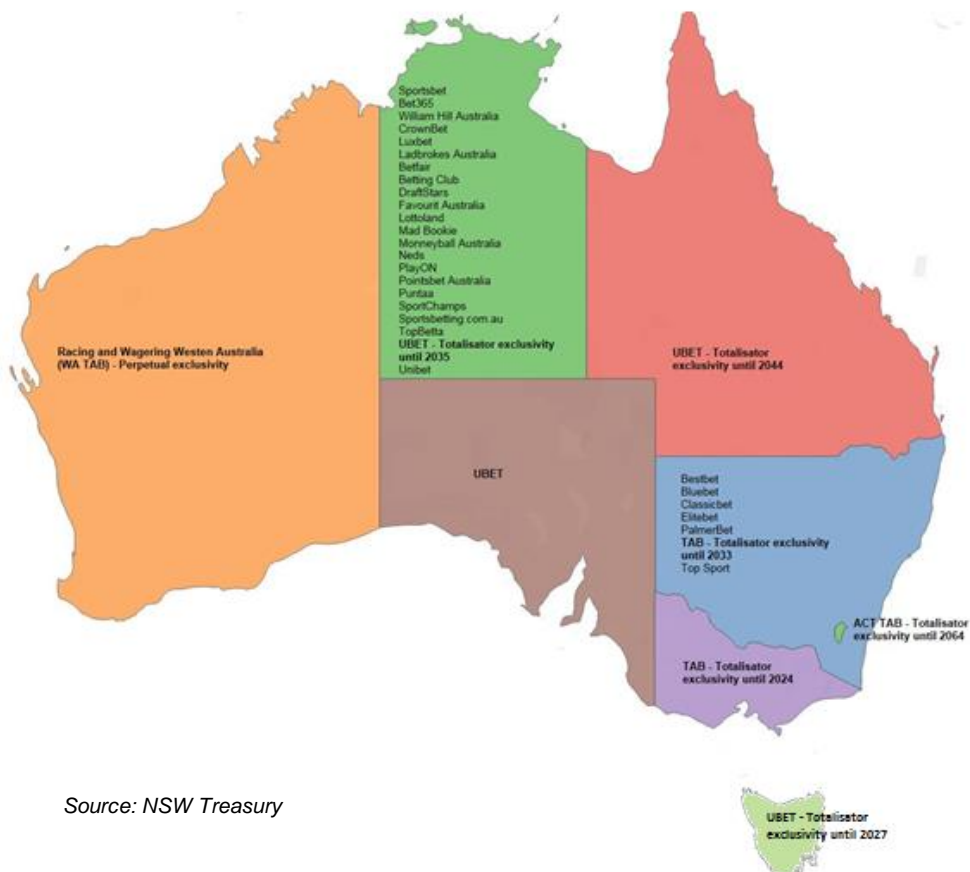
The *Betting and Racing Act 1998* allows for wagering on declared betting events for sports other than racing, and for the relevant sport controlling bodies to charge gambling operators a fee to fund the costs of sports integrity programs. These programs are intended to limit the incidence of match-fixing and other activities that would compromise the integrity of the sport. There are no legislative provisions for sport controlling bodies other than racing to levy product fees on gambling operators.

### **Wagering Operators**

The map below shows the wagering operators currently licenced in each jurisdiction. Tabcorp is the dominant wagering operator in NSW. There are also around 180 licensed on-course bookmakers in NSW, some of which have a significant online operation.

There is no direct measure available of the total amount of wagering undertaken by NSW residents. Based on indirect information, it is estimated that around two-thirds of wagering expenditure by NSW residents is with NSW operators and one-third with operators in the Northern Territory.





Source: NSW Treasury

## Why Consider a Point of Consumption Tax?

### Changes in the wagering industry

Online wagering is the fastest growing segment of the Australian gambling market, worth approximately \$1.4 billion in net wagering revenue in 2014. Between 2004 and 2014, online wagering grew at around 15 per cent annually compared with just 3 per cent growth in the general gambling market.

The shift towards online wagering is expected to continue due to increased accessibility and convenience, as well as increased competition and breadth of offerings available to consumers.

Much of the growth in wagering activity in NSW is occurring outside NSW point of supply wagering tax and regulatory structures. This means that although online wagering continues to grow, wagering tax revenue on a point of supply basis will not reflect this growth.

A PoCT could treat all operators and wagers on a similar basis, improving the integrity of the NSW taxation system and reflecting the change towards a more digital wagering framework.

#### Question

1. Should NSW introduce a PoCT on wagering? If so, why? If not, why not?

## Harmonisation of taxation of wagering across jurisdictions

In November 2017, the Board of Treasurers agreed to explore opportunities to harmonise the taxation of wagering activities across states and territories, having regard to the South Australian model. It is within this context that the NSW Government is considering the merits of taxing wagering on a point of consumption basis.

A common definition of the tax base would ensure that all jurisdictions are taxing the same thing, while avoiding any overlap between any jurisdictions' wagering taxes – i.e. any wager is only subject to wagering tax in one jurisdiction. The potential for overlap between a PoCT and a place of supply wagering tax relates to online and telephone wagers only, as wagers placed through the local terrestrial wagering operator can only be taxed in the home jurisdiction.

A common tax rate being applied to online and terrestrial wagers would ensure competitive neutrality between the different platforms. Alternatively, jurisdictions could choose to differ in their treatment of terrestrial wagering.

Other aspects that could be harmonised include the tax rate, the tax-free threshold for each operator, tax administration arrangements, and legislation. However, there is a trade-off between consistency and simplicity for operators and consumers, and policy flexibility and autonomy for jurisdictions.

A consideration of harmonisation necessarily starts with the South Australian PoCT model now in place. Western Australia and Queensland have committed to the introduction of a PoCT based on South Australia's approach.

### **Question**

2. If NSW was to introduce a PoCT, which PoCT design elements **should be** harmonised across jurisdictions, and why?

## The South Australian model

On 1 July 2017, South Australia became the first jurisdiction in Australia to implement a PoCT on wagering (legislated under the *Authorised Betting Operations Act 2000*). The tax is levied at 15 per cent of a betting operator's annual net wagering revenue. Wagering operators with net wagering revenue less than \$150,000 in a financial year are not liable for PoCT. Most or all on-course bookmakers in South Australia are likely to be below this threshold.

Wagering operators are expected to self-assess their tax liability and lodge their returns to the South Australia revenue office on a monthly basis. On-course bookmakers are required to lodge annual returns and make relevant payments annually if above the threshold.

Net wagering revenue is defined as the sum of all bets, fees or commissions less winnings paid out to all customers who were in South Australia at the time of making the bets. This covers all wagering types and bets placed on betting exchanges. It does not cover lay-off bets by a bookmaker, which are not subject to tax.

The South Australia approach does not depend on knowing the real-time location of the consumer placing a bet, as it allows for betting operators to determine location based on a person's registered residential address. The operator is required to have sufficient safeguards in place to ensure that registered residential address information is accurate.

## **The design for a NSW PoCT**

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NSW's current wagering tax is a percentage of the operator's net wagering revenue, and applies equally to all bets irrespective of platform - online, telephone and terrestrial.

An alternative base for a wagering tax is turnover (total bets placed). A PoCT on turnover would be a departure from existing arrangements and gambling legislation. All other NSW gambling taxes (on poker machines, lotteries, and the casino) are applied to net wagering revenue. All states and territories currently apply wagering tax to net wagering revenue (other than Western Australia for fixed odds wagers).

Considerations regarding a net wagering revenue tax base include:

- It does not distort a businesses' approach to profit maximisation, and high turnover products such as a betting exchange are not penalised.
- New entry and competition is better supported than with a tax on turnover, as new entrants usually incur losses to build turnover and market share. Likewise, innovation that takes time to generate a profit is not taxed.
- It is consistent with the basis on which GST is levied.

Considerations regarding a turnover tax base include:

- A turnover tax may be more stable and predictable than a tax on net wagering revenue.
- Turnover is a better measure of the value of a product such as a high-profile race than net wagering revenue. As such product fees are usually based on turnover.

A PoCT could be introduced for **online and telephone wagering only**, retaining the existing rates for in-person wagering.

- This would require less change, and be more consistent with the racing industry tax parity funding arrangement.
- A different tax rate would apply to Tabcorp's wagers placed online versus those placed over the counter.
  - This potentially raises the issue of different odds being offered for online and terrestrial wagers on the same event.
  - The consequences for the operation of the totalizator would need to be considered. Tabcorp is the sole operator of the off-course Totalizator for NSW.

### **Questions**

*If NSW was to introduce a PoCT:*

3. *Should a PoCT be levied on the operator's net wagering revenue (player loss) or on the operator's wagering turnover? Why?*
4. *Should all forms of wagers (online and terrestrial) be captured by a PoCT at a common tax rate?*
5. *Should a common PoCT rate apply to all wagering types (fixed odds, totalizator, betting exchange etc.)?*

## **Location of the customer**

Under a PoCT, operators would need to determine consumers' location when placing a wager in order to determine the level of wagering revenue generated by NSW residents for the purposes of the tax.

The definition of location of the point of consumption could be based on usual place of residence, or on actual location at the time of placing a bet.

Indicators such as geo-location or IP address tracking technology and customers residential address registered to their betting account are options that could be used to determine the location of consumption.

Experience in other jurisdictions suggests using actual location would be more complex to implement.

### **Questions**

6. *Should a customer's location be defined through their usual residential address for the purpose of a PoCT, or should it be based on where the bet was made? How should this be verified and updated?*

## The tax rate and threshold

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A NSW PoCT could retain different rates for different types of wagering products (fixed odds, totalizator, betting exchange, synthetic lotteries), or have a common rate or rates for all types. Currently there are different tax rates applicable to fixed odds wagers on racing and sports, and for totalizator betting (see Table 1).

South Australia has a single rate of 15 per cent on net wagering revenue for all wagering products with a tax-free threshold of \$150,000 per year.

NSW does not currently levy wagering taxes on on-course bookmakers. The presence of on-course bookmakers makes attendance at race meetings more attractive for customers. On-course bookmakers are (largely) limited to generating revenue from bets on racing events and are historically family operated businesses with limited or no online footprint. Increased competition in both wagering on racing events online and an increase in wagering on sports other than racing has seen the number of on-course bookmakers decline over time.

### Questions

*If NSW was to introduce a PoCT:*

7. *What should the PoCT rate/s for NSW be? For which reasons?*
8. *Should there be a tax-free threshold? If so, at what level? Should on-course bookmakers be exempt from a PoCT?*
9. *Estimates of the take-up of illegal offshore wagering are uncertain. Stakeholders are encouraged to provide any relevant information or evidence on the sensitivity of punters to changes in odds and shifting to offshore operators.*

## Implementation and administration

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Wagering operators in South Australia are expected to self-assess their tax liability and lodge returns to the South Australia revenue office on a monthly basis. On-course bookmakers are required to lodge returns and make relevant payments if above the \$150,000 threshold on an annual basis. While administration of a PoCT in NSW would be expected to be straightforward, consideration could be given to a coordinated tax collection approach across jurisdictions that are implementing a PoCT.

### Questions

10. *What has been the experience of operators in complying with South Australia's PoCT administration procedures?*
11. *What are the practical issues and challenges for stakeholders in implementing a PoCT, and what would an appropriate implementation timeframe be in NSW?*
12. *Is there a preference for coordinated PoCT collection by a single state or revenue office?*

## Summary of targeted questions

1. *Should NSW introduce a PoCT on wagering? If so, why? If not, why not?*

*If NSW was to introduce a PoCT:*

2. *Which PoCT design elements **should be** harmonised across jurisdictions, and why?*
3. *Should a PoCT be levied on the operator's net wagering revenue (player loss) or on the operator's wagering turnover? Why?*
4. *Should all forms of wagers (online and terrestrial) be captured by a PoCT at a common tax rate?*
5. *Should a common PoCT rate apply to all wagering types (fixed odds, totalizator, betting exchange etc.)?*
6. *Should a customer's location be defined through their usual residential address for the purpose of a PoCT, or should it be based on where the bet was made? How should this be verified and updated?*
7. *What should the PoCT rate/s for NSW be? For which reasons?*
8. *Should there be a tax-free threshold? If so, at what level? Should on-course bookmakers be exempt from a PoCT?*

*Considering the potential impact of a PoCT on wagering practices and the wagering industry:*

9. *Estimates of the take-up of illegal offshore wagering are uncertain. Stakeholders are encouraged to provide any relevant information or evidence on the sensitivity of punters to changes in odds and shifting to offshore operators.*
10. *What has been the experience of operators in complying with South Australia's PoCT administration procedures?*
11. *What are the practical issues and challenges for stakeholders in implementing a PoCT, and what is an appropriate implementation timeframe in NSW?*
12. *Is there a preference for coordinated PoCT collection by a single state or revenue office?*