



# Gambling and Gaming Law and Regulation Australia 2021

A Comprehensive Guide



SENET

Legal | Advisory | Compliance

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## INTRODUCTION

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Gambling is firmly embedded in the Australian culture and is fuelled by an inherent passion for sports, racing and gaming. Gambling is an important industry in Australia and contributes significantly to the national Gross Domestic Product. Despite the sizable contribution of the gambling industry to the Australia economy, there exists social pressure on government and operators to heighten measures in relation to consumer protection and to minimise problem gambling.

Gambling laws in Australia are complex as there is no single overarching statute regulating gambling activities, nor is there a single overarching gambling authority. Instead, gambling in Australia is regulated at the State, Territory and Federal level. Each of Australia's eight mainland States and Territories separately regulates gambling activities within each of their respective jurisdictions. In addition, a series of Federal statutes also cover certain aspects of gambling activity throughout Australia.

The following is a comprehensive guide detailing the relevant regulatory framework in Australia.

## 1. REGULATORS: STATE AND TERRITORY

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Set out below are the regulators responsible for regulating gambling activity in each Australian State and Territory:

### 1.1. Victoria (Vic)

The Victorian Commission for Liquor and Gambling Regulation is Victoria's independent gambling authority responsible for licensing and compliance.

The Gambling Policy Unit in the Office of Liquor and Gaming is a division within Victoria's Department of Justice and Community Safety responsible for policy, legislation, regulation and major licensing.

### 1.2. New South Wales (NSW)

Liquor and Gaming New South Wales (**L&GNSW**) sits within the NSW Department of Customer Service and is responsible for policy, licensing and compliance. Separately, the Independent Liquor and Gaming Authority (**ILGA**) is an independent statutory decision maker responsible for a range of casino, liquor, registered club and gaming machine regulatory functions. A number of ILGA's routine licensing functions are delegated to L&GNSW.

### 1.3. Queensland (Qld)

The Queensland Office of Liquor and Gaming Regulation (**QOLGR**) is responsible for licensing and compliance and the Office of Regulatory Policy (**QORP**) is responsible for policy and legislative development for the regulation of liquor, gaming and fair trading, as well as harm minimisation programs for the liquor and gambling industries. The QOLGR and QORP sit within the State's Department of Justice and Attorney-General.

#### **1.4. Australian Capital Territory (ACT)**

The Gambling and Racing Commission sits within the portfolio of the Minister for Regulatory Services and is the ACT's independent gambling authority responsible for licensing, compliance and education.

#### **1.5. South Australia (SA)**

Consumer and Business Services sits within the Attorney-General's Department and is responsible for policy, licensing and compliance in relation to betting, casinos, gaming machines and lotteries.

The Lotteries Commission of South Australia sits within the Auditor General's Department and has the primary function of promoting and conducting lotteries in South Australia. It has appointed a master agent to operate the Commission's brands and products.

#### **1.6. Tasmania (Tas)**

The Tasmanian Liquor and Gaming Commission sits within the Department of Treasury and Finance and is Tasmania's independent gambling authority responsible for licensing and compliance.

#### **1.7. Western Australia (WA)**

The Western Australian Department of Racing, Gaming and Liquor sits within the portfolio of the Minister for Racing and Gaming and is responsible for policy, licensing and compliance matters.

#### **1.8. Northern Territory (NT)**

The Northern Territory Racing Commission (**NTRC**) is largely responsible for compliance matters.

Licensing NT is responsible for licensing matters affecting all gambling activities in the NT.

NTRC and Licensing NT sit within the NT Department of the Attorney-General and Justice.

For completeness, it is worth noting that, to a lesser extent, local government bodies in most States and Territories also regulate gambling from a local government and town planning perspective, but typically only as it relates to gaming machines and their operation within the relevant municipal district.

## 2. REGULATORS: FEDERAL

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The Australian Constitution provides the Federal government with powers to regulate and govern, among other things, telecommunications, money and trade amongst the States and Territories.

Using these powers, the Federal government has enacted legislation regulating, amongst other things, interactive gambling, anti-money laundering and counter-terrorism financing (**AML/ CTF**) and consumer and competition protections (also known as anti-trust matters in some other jurisdictions).

A summary is set out below.

### 2.1. Interactive gambling

ACMA is the body responsible for media and communications regulation throughout Australia, including monitoring and enforcing the regulation of gambling online and over the telephone (referred to as the interactive gambling laws).

ACMA monitors compliance with and enforces the interactive gambling laws.

Australia's Federal interactive gambling laws prohibit certain activities, such as:

- online casinos, slot machines and poker;
- online wagering services that accept 'in-play' betting on live sports events;
- online wagering services provided without a Licence issued by an Australian State or Territory;
- online instant lotteries; and
- providing or facilitating the provision of credit by certain interactive wagering service providers to their customers.

ACMA has the power to, amongst other things, instigate civil proceedings in Australia, notify border protection agencies of the names of directors/principals of offending illegal offshore operators (who may then be placed on a 'movement alert list' thereby disrupting any travel to Australia) and liaise with foreign regulators to stop alleged offenders.

## **2.2. Anti-Money Laundering and Counter Terrorism Financing (AML/CTF) Law and Regulation in Australia**

The Australian Transaction Reports and Analysis Centre (**Austrac**) is the regulator responsible for money laundering and terrorism financing.

Under the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth) (**AML/CTF Act**), certain gambling activities are classified as "designated services" and, as such, reporting entities are required to develop and maintain a compliant AML/CTF Program and report certain transactions to Austrac, including by way of threshold transaction reports (**TTRs**) and suspicious matter reports (**SMRs**).

Failure to comply with the AML/CTF Act, including not maintaining a compliant AML/CTF Program and not filing TTRs and/or SMRs (or filing them late), can result in large civil penalties and possible criminal exposure.

## **2.3. Relevant Competition Law**

The Australian Consumer and Competition Commission (**ACCC**) is responsible, under the Competition and Consumer Act 2010 (Cth) (**CCA**), for, amongst other things, enforcing Australian consumer protection laws. From a gambling perspective, the ACCC monitors compliance by gambling service providers of their obligations under the CCA, including gambling advertising (to ensure the consumer is not being treated unconscionably or unfairly, in breach of the CCA). It also takes appropriate enforcement action where it deems necessary.

### 3. HOW DIFFERENT TYPES OF GAMBLING SUCH AS GAMING, WAGERING, LOTTERIES AND SOCIAL & SKILL GAMING ARE REGULATED IN AUSTRALIA

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#### 3.1. Gaming

Casino gaming in Australia (including slots and casino table games such as roulette & blackjack) is regulated by the Australian Communications and Media Authority (**ACMA**).

Online casino gaming is prohibited in Australia under the Interactive Gambling Act 2001 (Cth) (**Interactive Gambling Act**). However, a person may still apply for an 'internet gaming licence' in the Northern Territory and offer their gaming products outside of Australia in certain circumstances.

#### 3.2. Poker

Online poker is prohibited in Australia under the Interactive Gambling Act. There has been recent lobbying seeking its approval, on the basis that it is a game of skill. There is a possibility that it could be legalised in the future.

Poker is typically played within casinos and is regulated as a table game by the State and Territory gambling regulators detailed below. In addition to casinos, poker is also played in hotels and clubs without generally being regulated in the same manner as a traditional casino table poker game, provided no third party (i.e., the venue owner/operator or tournament organiser) gains a percentage or share of any amount bet.

#### 3.3. Bingo

Online bingo is regulated by the State and Territory gambling regulators detailed below.

Bingo is regulated by State and Territory gambling regulators.



### **3.4. Betting (including sports betting, wagering, fantasy betting)**

Online and land-based betting is regulated by the regulators detailed in Sections 1 and 2.

Fantasy betting is offered by corporate bookmakers licensed in the Northern Territory (**Corporate Bookmakers**). The relevant regulatory bodies are the **NTRC** and Licensing NT. There is currently no land-based betting on fantasy sports in Australia.

### **3.5. Lotteries**

Online and retail lotteries are regulated by the regulators detailed above.

### **3.6. Social gaming with no prize in money or money's worth**

Social gaming (as described) is not generally regulated by gambling regulators, however age classifications and other restrictions apply to such games.

### **3.7. Skill based gaming and competitions with no element of chance**

Any skill games and competitions with no element of chance are not typically regarded as gambling but may fall within certain 'interactive gaming' regimes when operated online and be regulated by State and Territory gambling regulators.

Skill-based gaming machines (which are a mixture of skill and chance) are starting to emerge in casinos; however regulatory approvals have been slow to date as a result of the lack of available research on harm minimisation. If these games are not entirely skill-based (that is, there is an element of chance), then they will be subject to the relevant gaming laws.

## 4. GAMBLING PRODUCT LICENSING REQUIREMENTS

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There is no single overarching statute regulating gambling activity in Australia. Legislation regulating gambling activity in Australia exists at the State, Territory and Federal level.

### 4.1. Operator Licence

An operator Licence is required to conduct the following gambling activities in Australia:

- casinos;
- retail wagering (**Retail Wagering**), under which Licence-holders (**Retail Wagering Licensees**) offer: (i) *pari-mutuel* (totalisator) betting on racing (thoroughbred, harness and greyhound); and (ii) fixed-odds betting on racing, virtual/simulated racing, sports and other approved events. With the exception of virtual/simulated racing (which is generally only offered in retail venues, including hotels and clubs), such betting is generally offered at racecourses, retail venues, online and by telephone. The Victorian Wagering and Betting Licence includes not only wagering and betting, but also a betting exchange;
- lotteries;
- keno; and
- instant lotteries to persons in Australia.

These operator Licences are nearly always State- or Territory-based and are typically monopolistic or very limited in numbers.

### 4.2. Bookmaker Licence

Aside from Retail Wagering conducted by Retail Wagering Licensees, bookmaking in Australia is only permitted under a sports bookmaker Licence issued in the Northern Territory (**Corporate Bookmaker Licence**), or alternatively an on-course bookmaker Licence issued in

a State or Territory (**On-course Bookmaker Licence**) to an individual (or sometimes incorporated) bookmaker licensed by the relevant racing controlling body (**On-course Bookmaker**).

There is no limit on the number of Corporate Bookmaker Licences the NT may issue and Corporate Bookmakers are only permitted to operate online and via telephone. By comparison, in a practical sense there is a limit on the number of On-course Bookmaker Licences which are capable of being issued (based on available stands). On-course Bookmakers can accept bets on-course, as well as over the telephone and via the internet where appropriately licensed.

Fantasy sports betting in Australia is typically permitted under a Corporate Bookmaker Licence.

#### **4.3. Licensed Gaming Venue and gaming machines**

A gaming venue Licence, as well as a permit/Licence for each gaming machine ('pokie' or 'slot' machine), is required to operate gaming machines in Australia.

The only exception to this is in relation to a casino operator Licence, which typically includes permission to operate gaming machines within the casino premises. The relatively new casino operator Licence in NSW, issued for the Barangaroo casino, does not include permission to operate gaming machines and that the NSW government has granted exclusivity to operate gaming machines to the other major NSW casino licensee until 2041.

#### **4.4. Poker**

Poker (outside of a casino) is typically permitted provided that no person (being the venue owner/operator or tournament organiser) gains a percentage or share of the amounts wagered.

#### **4.5. Bingo**

Laws differ between the States and Territories regarding bingo. If the gross proceeds are below a certain threshold, then in most States and Territories no Licence is required to offer bingo.

#### **4.6. Social Gaming and Skill Gaming**

As a general rule, social games (no prize money) and skill games (no element of chance) are not classified as being a gambling activity and, as such, are not generally regulated under the relevant gambling laws. Skill games with no element of chance may, when operated online, fall within certain 'interactive gaming' regimes regulated by State and Territory gambling regulators. For completeness, note that betting on fantasy sports in Australia is typically offered pursuant to a Corporate Bookmaker Licence.

## 5. APPLICATION FOR A LICENCE AND LICENCE RESTRICTIONS

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### 5.1. Regulatory licences, permits, authorisations or other official approvals (collectively, “Licences”)

Licences required for the lawful offer of the Relevant Products to persons located in Australia are set out below:

- Casino table gaming and gaming machines, Retail Wagering, lotteries and keno all require an operator Licence, which is typically long-dated and is granted by the relevant Australian State or Territory.
- Bookmaking requires a Corporate Bookmaker Licence or an On-course Bookmaker Licence. All Corporate Bookmakers are licensed in the Northern Territory, whereas On-course Bookmakers are licensed in the relevant State or Territory. Corporate Bookmakers offer fixed odds betting online and over the telephone on sport, racing and other approved events, whereas On-course Bookmakers offer fixed odds betting on-course and, subject to approval, also over the telephone and in some instances online on similar events as a Corporate Bookmaker. Sometimes an On-course Bookmaker will be licensed to offer fixed odds betting on racing only.
- Gaming machines are offered in casinos, hotels and clubs. In relation to hotels and clubs, a venue requires both a gaming venue Licence and also a permit/Licence for each gaming machine a venue operates. Gaming machines in WA can only be offered in the casino.
- Bingo is often regarded as minor gaming and may be conducted for fundraising or charitable purposes, typically by a community or other not-for-profit organisation. A State or Territory Licence is typically required to operate a bingo centre in the relevant jurisdiction.
- Social gaming with no prize, being either money or money’s worth, does not require any Licence, given that it is not regarded as gambling

under Federal, State and Territory law. Similarly, a skill game with no element of chance is also not considered gambling and does not require any Licence, unless it is operated online and falls within certain 'interactive gaming' regimes regulated by State and Territory gambling regulators.

- Gaming machine and other equipment manufacturers, software developers and technical services suppliers selling products and/or services used for gambling-related activities are also required to hold a relevant Licence.

## 5.2. Licencing regimes in Australia

Each State and Territory has a relevant Casino Control Act (or similar legislation) under which casino Licences have been issued. There are currently 14 casino Licences on issue, with a process underway for the expected development of an integrated resort and casino in northern Queensland. A casino Licence permits the relevant casino to typically offer traditional table games and gaming machines.

Retail Wagering is offered by State and Territory-based totalisator agency boards (**TABs**) pursuant to sole Licences in the relevant State or Territory, thereby providing them with a form of 'retail exclusivity'. There is co-mingling of State and Territory totalisator pools through pooling arrangements, with three Australian totalisator pools currently in existence. There is a proposal by the TAB for these totalisators to be combined to form a national pool.

Corporate Bookmakers offer online and telephone fixed-odds betting on racing, sports and other approved events. All fantasy betting typically occurs through Corporate Bookmakers in Australia.

On-course Bookmakers holding an On-course Bookmaker Licence offer fixed-odds betting at racecourses and, where appropriately licensed, over the telephone and via the internet.

Similar to State and Territory Licences issued to TABs for the purposes of Retail Wagering, most lotteries' Licences are also currently sole Licences enabling lottery tickets and other lottery products (including instant lottery tickets) to be sold in retail (through news agencies and other approved retail venues) and also online in some jurisdictions. State and Territory lotteries engage in pooling arrangements pursuant to what is known as 'bloc agreements', under which jackpots are pooled, making the customer offering more attractive.

Hotels and clubs hold a venue operator's Licence and a permit/ Licence to operate each gaming machine within the licensed premises. There are often strict local government planning requirements which must be met in relation to gaming machines.

Gaming machine and other equipment manufacturers, software developers and technical services suppliers selling products and/or services used for gambling-related activities are also required to hold a relevant Licence. Such Licences often require the licensee to comply with complex national standards, as adopted by the relevant State or Territory.

### **5.3. Licence application process**

Any applicant for a Licence is generally required to undergo a probity assessment to determine whether such applicant is 'fit and proper' to be granted a Licence. The processes are generally quite extensive, and it can sometimes take up to 12 months or longer for State and Territory gambling regulators to complete, in relation to new applicants seeking major Licences.

Casino Licences can typically only be applied for through a competitive tender process run by the relevant State or Territory. The same applies in relation to Retail Wagering Licences and also lotteries and keno Licences. The number of Licences available is limited (typically only one per State and Territory, except in the case of current casino Licences held in each of Qld, NT and NSW) and the processes are very infrequent.

An application for a Corporate Bookmaker Licence issued in the Northern Territory, or an application for an On-course Bookmaker Licence, typically takes between three and six months for approval and can be made at any time. There is no prescribed maximum number of Licences which can be issued, however in a practical sense there are limitations in respect of the number of On-course Bookmaker Licences which could be issued. The same applies in relation to any permit required to operate bingo.

The number of gaming machines available in each State and Territory is strictly regulated. In the case of a casino, it will depend upon the relevant casino Licence. In the case of a non-casino gaming venue (hotel or club), whilst a venue operator's Licence is relatively straightforward and readily available (but can still take six to twelve months for approval of new entrants), the number of gaming machines which such venue may be permitted to operate is limited based on the 'entitlement' or permit/Licence to operate those gaming machines. Various States (including NSW and Vic) have implemented harm minimisation measures to cap the number of gaming machine permits/Licences on issue in certain lower socio-economic areas.

### **5.4. Summary of Licence features**

The duration of major operator Licences depends upon the legislative framework in the relevant State or Territory and is subject to possible change upon a Licence renewal or new Licence being issued.

There are various current casino Licences which are perpetual, whereas a number of others currently expire between 2050 and 2093. In relation

to wagering and betting, apart from Vic and NT (where the Licences expire in 2024 and 2035, respectively) and WA (where retail wagering and betting is operated by the State but is currently being considered for privatisation, with a formal process now underway), the expiry dates of current Retail Wagering Licences are also similarly long-dated and range between 2062 and 2100.

In the case of lotteries, aside from Tas (where the form of Licences are foreign games permits) and WA (where lotteries are owned and operated by the State), the expiry dates are generally shorter than in relation to Retail Wagering; however, they still range between 2028 and 2072. Keno, as a similar product to lotteries, has a similar Licence duration. Apart from Vic (where the Licence expires in 2022), the key keno Licences in Qld, NSW and ACT expire in 2047, 2050 and 2064, respectively.

Gaming machine permits/Licences have typically been perpetual in Australia, other than in certain States such as Vic, which currently run for a period of 10 years (however, the term has been extended to 20 years in relation to entitlements which operate from August 2022 onwards).

Gaming machine and other equipment manufacturers, software developers and technical services suppliers selling products and/or services used for gambling-related activities typically have perpetual Licences, which are often administrative in nature and remain on issue subject to the payment of periodic fees.

Casinos are generally subject to periodic Licence reviews (often every five years).

The vulnerability of the above Licences to revocation or suspension is generally low. It is rare for material proceedings or other materially adverse action to be initiated by gambling regulators against major licensees.

## **5.5. Key advertising restrictions**

Casino Licences provide that casinos are only permitted to offer casino games and gaming machines to patrons present within the casino. It is illegal to offer online casino gambling in Australia.

Retail Wagering Licensees offer: (i) pari-mutuel (totalisator) betting on racing (thoroughbred, harness and greyhound); and (ii) fixed-odds betting on racing, virtual/simulated racing, sports and other approved events. With the exception of virtual/simulated racing (which is generally only offered in retail venues including hotels and clubs), this betting is generally offered at racecourses, retail venues, online and by telephone. The Vic Licence includes not only wagering and betting but also a betting exchange.

Corporate Bookmakers can offer fixed-odds betting on racing, sport and other approved events online and over the telephone. On-course Bookmakers offer substantially the same betting on-course and, subject to approval, also over the telephone and in some instances online.

Lotteries licensees can offer their approved lottery products through retail news agencies, other approved retail venues, third-party agents and also online. Keno licensees can offer their products through retail venues, online in-venue only (in the case of NSW) and online (in the case of the ACT).

Hotels and clubs are permitted to provide approved gaming machines in the licensed premises.

There are comprehensive Federal, State and Territory advertising restrictions which apply to the lawful advertising of gambling services. In addition to the usual responsible gambling warnings, it is an offence to advertise an inducement to open a betting account and, in some jurisdictions, to gamble.

The Federal government has recently enacted new 'rules' which restrict gambling advertising and odds promotion during broadcasts of live sport, with one key objective being to limit its exposure to children. These rules have recently been extended to online streaming of live sport.

Separately, the CCA imposes penalties for, amongst other things, misleading and deceptive conduct (including through advertising).

## **5.6. Taxation**

The State and/or Territory taxes which apply to gambling products depend upon the relevant Licence under which the product is being offered, the type of product and also the jurisdiction in which the product is offered.

State and Territory taxation on casinos is determined on a case-by-case basis (typically during negotiations with the relevant State or Territory government at the time). By way of example, putting aside a Federal company tax of either 27.5% or 30% on profits and a goods and services tax (GST) of 10% on gross revenue, the sole casino licensee in Victoria paid a multi-million dollar Licence fee to the State for the right to operate the only casino. In addition, that licensee currently pays the State a tax of 21.25% of its gross gaming revenue from table games and 31.57% of its gross gaming revenue from gaming machines in respect of regular players, together with a 1% community benefit levy. The sole casino licensee also pays a tax of 9% on 'high roller' gaming revenue, together with a 1% community benefit payment. Finally, the sole casino licensee pays an additional casino 'super tax' based on gross gaming revenue, which increases depending upon gaming revenue levels, with a maximum tax payable of 20%. The relevant taxation amounts are reduced by the GST paid by the casino licensee in relation to these services.



In relation to Retail Wagering in Vic, NSW and Qld (by way of example):

- the current totalisator commission (take-out rate) charged by the relevant licensee in respect of key Licences in Vic, NSW and Qld varies depending upon bet type, but may be up to 25% with a maximum rate of 40% in Vic for international pooling;
- there is no wagering and betting tax payable by the licensee in Vic as the Vic government has imposed an 8% point of consumption tax (POCT) on 'net wagering revenue' exceeding a threshold of AUS \$1 million in respect of all bets placed by Vic residents through the Retail Wagering Licensee, Corporate Bookmakers and other relevant betting operators licensed in Australia. This framework commenced on 1 January 2019 with an initial rate of 8% and will increase to 10% on 1 July 2021;
- the taxation payable by the relevant licensee in NSW is 7.6% of player loss, 13.5% of commission and 14% of commission (with a GST offset in relation to the latter);
- the current taxation payable on fixed-odds racing and sports for NSW is 4.38% of net investment (with an increased rate of 10.91% of net investment for simulated racing), 7.43% of net investment (with an increased rate of 10.91% of net investment for simulated racing, after the first AUS \$255 million bet per annum), with a proposed reduction up until 2020–21 to reduce taxes and achieve 'racing tax parity' with Vic, and 10% of gross revenue (with a GST offset);
- the NSW government has imposed a 10% POCT on 'net wagering revenue' exceeding a threshold of AUS \$1 million in respect of all bets placed by NSW residents through the Retail Wagering Licensee, Corporate Bookmakers and other relevant betting operators licensed in Australia. This framework commenced on 1 January 2019. The wagering and betting taxes payable in NSW by the relevant Retail Wagering Licensee have remained in place (unlike, for example, Vic and Qld), with a corresponding POCT offset; and
- there is no wagering and betting tax payable by the Retail Wagering Licensee in Qld as the Qld government has imposed a 15% POCT on 'net wagering revenue', exceeding AUS \$300,000 in respect of all bets placed by Qld residents through that licensee, Corporate Bookmakers and other relevant betting operators licensed in Australia. This framework commenced on 1 October 2018.

In addition to Vic, NSW and Qld, most States and Territories have recently introduced a POCT in respect of bets placed by their residents (which is payable by the Retail Wagering Licensee, Corporate Bookmakers and any other relevant betting operator licensed in Australia, irrespective of

the location of the relevant entity). This is a departure from the previous 'point of supply' regime, under which States and Territories derived no betting tax revenue from Corporate Bookmakers and other licensed betting operators taking bets online in the relevant jurisdiction. The POCT rates for these other jurisdictions are currently 15% of 'net wagering revenue' or some other similar revenue base, with various compensatory arrangements in place to ensure that the racing industry is not adversely impacted. Vic, NSW and Qld also have similar compensatory arrangements.

Retail Wagering Operators, Corporate Bookmakers and On-course Bookmakers are also required to pay race field fees/product fees to racing controlling bodies and sports controlling bodies, respectively, in relation to bets taken on their product. These fees are generally a percentage of turnover, or the greater of a percentage of turnover and gross margin, and depend upon the relevant product.

Lotteries are subject to relatively high State and Territory taxation rates. For example, in the key States of Vic, NSW and Qld, respectively, the rates are 79.40% of player loss where GST is payable and 90% of player loss where GST is not payable, 76.918% of player loss (player subscriptions net of prize liability) less GST payable on subscriptions and sales commissions and 73.48% of monthly gross revenue for declared lotteries (with lower rates for instant scratch-its and soccer pools). By contrast, taxation of keno across the same three key States is 24.24% of player loss, 8.91% of player loss (increasing to 14.91% where player loss exceeds AUS \$86.5 million) and 29.40% of monthly gross revenue after deducting any casino commissions. Various States also set minimum player returns.

State and Territory taxes on gaming machine revenue are complicated and vary significantly. By way of example, in Vic where average revenue per gaming machine is greater than AUS \$12,500 per month, the tax rate is 54.20%.

There is also a Federal Goods & Services Tax of 10% payable on gambling products; however, State and Territory taxation rates often take this into account and it is off-set against taxation payable to State and Territory governments.

## **5.7. Consumer Protection and Responsible Gambling**

All gambling-related Licences issued by a State or Territory are subject to strict requirements relating to consumer protection, responsible gambling and harm minimisation. Included in this are restrictions at a State and Territory level in relation to gambling advertising and also inducements to open an account and, in some jurisdictions, to gamble. In addition,

the Federal government has introduced amendments to the Interactive Gambling Act to restrict gambling advertising and odds promotion during broadcasts and online streaming of live sport, with more stringent restrictions occurring during the hours of 5.00am to 8.30pm.

In November 2018, all State and Territory gaming Ministers agreed to a National Consumer Protection Framework (**NCPF**) for online wagering, which is in the process of being progressively implemented with the objective of having a nationally consistent approach to harm minimisation measures, such as a prohibition on inducements (such as first deposit bonuses) being offered to a prospective customer to open a betting account, mandatory opt-out pre-commitment and a national self-exclusion register (which is expected to be established in 2021).

## **5.8. Anti-Money Law and Counter Terrorism Financing**

Austrac is the money laundering and terrorism financing regulator in Australia.

Under the AML/CTF Act, certain gambling activities are classified as “designated services” and, as such, reporting entities are required to develop and maintain a compliant AML/CTF Program and report certain transactions to Austrac, including by way of TTRs and SMRs.

Failure to comply with the AML/CTF Act, including not maintaining a compliant AML/CTF Program, and not filing TTRs and/or SMRs (or filing them late), can result in large civil penalties and possible criminal exposure. For example, in 2017 a large Australian gambling company paid a AUS \$45 million civil penalty to Austrac for the failure to comply with certain requirements under the AML/CTF Act.

Virtual currencies are not currently used as a real-money alternative for gambling in Australia by any of the major operator Licence holders. They are currently the subject of consideration by the various State and Territory gambling regulators. In 2018, a Corporate Bookmaker proposing to be Australia’s first bookmaker to accept ‘crypto-currency’ was prevented from doing so by the NTRC. Notwithstanding the ongoing consideration by gambling regulators, Austrac regulates virtual currencies as a designated service.

## 6. DIGITAL OFFERINGS

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### 6.1. Online gambling

Online gambling is the fastest growing gambling segment in Australia (growing at approximately 15% *per annum*) and is likely to continue. Only local operators holding relevant Licences may offer gambling products to Australian residents. The Interactive Gambling Act provides that it is unlawful for overseas-based operators not holding a relevant State or Territory Licence to provide online gambling services to Australian residents.

The regulator responsible for enforcing the Interactive Gambling Act, ACMA, was recently given extended consumer protection responsibilities and powers as part of the Review of Illegal Offshore Wagering, relating to the enforcement of prohibitions on providing or advertising illegal interactive gambling services. Included in this is the ability to notify border protection agencies of the names of directors/principals of offending illegal offshore operators (who may then be placed on a 'movement alert list' thereby disrupting any travel to Australia) and other disruption measures, such as requiring Internet Service Providers to block illegal sites.

Casino licensees cannot offer online casino games in Australia (it is prohibited under the Interactive Gambling Act, which also prohibits online poker). Retail Wagering Licensees, Corporate Bookmakers, On-course Bookmakers and other licensed betting operators can offer online betting.

Lotteries licensees can also offer their products online. The ACT keno licensee can offer its product online and the NSW keno licensee can offer its product online in hotel and club venues only (using geo-fencing technology).

In January 2019, legislation commenced prohibiting bets being taken by a Corporate Bookmaker on the outcome of a lottery (that is, 'synthetic lotteries').

## **6.2. Digital gambling restrictions**

The Interactive Gambling Act contains restrictions which apply to Retail Wagering Licensees, Corporate Bookmakers and On-course Bookmakers in relation to live (or 'in the run') betting on sport. Such betting is limited to telephone betting and betting within a Retail Wagering environment.

## **6.3. Terminal and machine based gaming**

Gaming machines operate in all Australian casinos (except the ACT) and licensed hotels and clubs (except WA). Some Australian casinos have started introducing skill-based gaming machines.

Aside from gaming, Retail Wagering Licensees own and operate electronic betting terminals (**EBTs**) in retail venues (in a TAB, on-course, in hotels and in clubs) to facilitate totalisator and fixed-odds betting. EBTs may be used to place live bets on sport. Most Retail Wagering Licensees also offer virtual racing in retail venues.

Keno licensees offer self-service terminals for their keno products in hotels and clubs.

## 7. ENFORCEMENT AND LIABILITY

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State and Territory laws contain a broad range of provisions relating to gambling which imposes obligations on licensees, associates of licensees, staff, suppliers and sometimes customers. Federal law also applies in respect of the Interactive Gambling Act, the AML/CTF Act and the CCA.

Whilst Federal, State and Territory laws and regulations are often capable of being contravened by directors and other officers of licensees, recent regulatory action has been taken against corporate licensees only. As regulation tightens, it is expected that this will change going forward and that directors and other officers will be actively pursued in relation to alleged breaches of relevant gambling and related laws.

State and Territory laws often also contain a range of offences in relation to unlawful gambling, which can include organising the unlawful event, as well as participating in it.

State and Territory licensees are expected to have appropriate controls in place to ensure that they comply with their Licence obligations, including relevant laws and any conditions attaching to their Licence.

State and Territory-based gambling regulators have shown a willingness to work cooperatively with licensees in relation to possible breaches of local laws, however, recent prosecutions for breaches of advertising restrictions relating to inducements demonstrate that some offences will not be tolerated where appropriate warnings have been given and operators fail to meet the necessary standards.

In the case of breaches of the AML/CTF Act by gambling service providers, Austrac has recently shown that it will prosecute civil penalty offences. The AML/CTF Act also contains criminal provisions and it is possible that Austrac may seek to apply these provisions in relation to non-compliance going forward.

Enforcement action by ACMA is also likely to increase given the breadth of their powers in relation to gambling advertising and odds promotion during live sport. The recent and proposed implementation of the various NCPF measures will also most likely result in increased enforcement action.

There are no international laws which would impact on liability or enforcement of local Federal, State or Territory laws in Australia relating to gambling service providers.

Notwithstanding this, local regulatory authorities work closely with their international counterparts, including in relation to intelligence and information sharing. This may have a direct impact on the ongoing suitability of a licensee, associate of a licensee, staff, supplier or other person, including whether they are 'fit and proper' for the purposes of local law.

Gambling debts legally incurred are enforceable in Australia, however, any such debts are only likely to arise in relation to casinos (in particular, with their VIP clients).

Corporate Bookmakers and On-course Bookmakers operating online were banned from offering credit to their customers in 2018 as part of the implementation of measures announced in relation to the NCPF.

Recent action by State and Territory based gambling regulators against Australian licensees have included a breach of Licence conditions by a casino and also breach of advertising restrictions by Retail Wagering Licensees, Corporate Bookmakers and other licensed Australian betting operators.

It is rare for material proceedings, or other materially adverse action, to be initiated by gambling regulators against major licensees. However, the authors note that the NSW and Vic gambling regulators commenced formal inquiries in relation to a major casino licensee in 2019 and 2020, in respect of various allegations relating to money laundering and other potential offences concerning 'junket operators'. In NSW an inquiry by ILGA in respect of this major casino licensee has occurred with The Hon. Justice Patricia Bergin finding that Crown is not currently a suitable person to continue to give effect to its licence. Victoria and Western Australia governments have also announced they are conducting Royal Commissions in respect of Crown.

At a Federal level, a large Australian gambling company paid a civil penalty of AUS \$45 million to Austrac in relation to admitted breaches of the AML/CTF Act. Further, ACMA has also been very active in engaging with overseas regulators and other parties concerning the illegal offering of online gambling products in Australia. Enforcement action by ACMA is likely to increase given the breadth of their powers in relation to gambling advertising and odds promotion during live sport. The implementation of the NCPF will also most likely result in increased enforcement action.

## // . ABOUT SENET

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### **Australia's leading specialist gambling law, regulatory and compliance advisory**

Senet is a multidisciplinary group with senior industry and regulatory experience and deep knowledge and expertise across the gambling sector. Senet brings top tier law firm, significant in-house experience and senior gambling regulator and public sector leadership experience.

Our services are underpinned by a comprehensive appreciation of the legal public policy, regulatory and compliance environment and the strategic and operational challenges our client confront.

Senet is deeply immersed within the industry, as opposed to being just an external advisor and we are here to inform better regulatory, corporate and commercial outcomes that are paramount to our client's needs and expectations.

Principal, Julian Hoskins, is ranked as a leading gambling law and regulation expert in the prestigious Chambers & Partners Global and Asia Pacific guides.





## // CONTACT DETAILS

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