

Inquiry into online gambling and its impacts on those experiencing gambling harm

NSW Government
Submission

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1. Introduction

This submission is structured to directly address the terms of reference of the inquiry. It has been prepared by Liquor & Gaming NSW (L&GNSW), with input from the NSW Office of Responsible Gambling (Office). L&GNSW is responsible for the regulation of liquor, wagering, gaming and registered clubs in NSW. This includes undertaking compliance and enforcement activities, providing policy advice to government, licensing certain activities and delivering industry support and education activities.

Responsibility for regulating gambling in Australia is a matter for the states and territories. NSW supports this model. There are significant benefits to this approach as the competitive tension between jurisdictions fosters improvements in regulatory practice.

In the wagering sector, L&GNSW:

- licenses the totalizator, operated by Tabcorp
- develops and administers the regulatory framework that applies to:
 - the totalizator licensee
 - on-course bookmakers, including those with remote betting operations
 - interstate bookmakers servicing customers in NSW.

The Office leads programs and initiatives to prevent and reduce gambling harm in the NSW community and provides public policy advice to the NSW Government. The Office supports the Responsible Gambling Fund (RGF) Trustees to provide advice and guidance to the Minister on funding responsible gambling initiatives consistent with the strategic direction, objectives and relevant governance arrangements.

In the wagering sector, the Office:

- develops information and awareness campaigns, including the *'Reclaim the Game'* initiative to challenge the normalisation of sports betting advertising and the *'Number that Changed My Life'* campaign to reach those experiencing harm in culturally and linguistically diverse (CALD) communities
- supports research to improve understanding of the impacts of gambling through literature reviews, academic and applied research projects, data analysis and data linkage studies, pilots and trials to test feasibility; and
- funds the GambleAware gambling support services which are available across the state.

2. The effectiveness of existing consumer protections aimed at reducing online gambling harm

The 2019 NSW Gambling Survey conducted among the NSW adult population measured the prevalence of gambling participation and the level of problem gambling. Just over half (53 per cent) of NSW adults surveyed had participated in at least one gambling activity in the last 12 months.

The prevalence of problem gambling was measured as part of that survey using the internationally recognised tool, the Problem Gambling Severity Index (PGSI) (Ferris & Wynne, 2001). This identified 1 per cent of the NSW population as problem gamblers, a slight but not statistically significant increase from the 2011 problem gambling prevalence rate of 0.8 per cent ($p = 0.089$). A further 9.4 per cent of the population were classified as being either low (6.6 per cent) or moderate (2.8 per cent) risk gamblers.

Consistent with previous prevalence studies, men in NSW are significantly more likely to be problem gamblers (1.7 per cent) compared to women (0.4 per cent).¹

Problem or moderate-risk gambling is more prevalent among people who gamble online (in addition to or instead of in venues) than among those who gamble at venues only. Problem gambling prevalence is twice as high among people who gamble online (4 per cent) compared with those who don't (2 per cent). Similarly, online gamblers were more than three times more likely to be in the moderate-risk category (14 per cent compared with 4 per cent of people who don't gamble online).

For many problem and moderate-risk online gamblers, their gambling activity includes land-based activities. For some, this may be their primary preferred form of gambling. Despite this, the increased levels of problem and moderate-risk gambling highlight the importance of having in place robust harm minimisation measures for online gambling.

It is difficult to prove a direct causal link between a particular consumer protection measure and reduction in online gambling harm. There are many factors that contribute to gambling harm and multiple regulatory contributors rarely occur in isolation. However, a visible weakness of current or pre-National Consumer Protection Framework (NCPF) measures is the lack of consumer engagement with them.

The national online survey undertaken as part of the Second National Study of Interactive Gambling in Australia (2019-20), found that only a minority of online bettors in the survey sample had used consumer protection measures in the past year. A little over one-third reported they had read responsible gambling messages, read terms and conditions for promotions, or unsubscribed from direct marketing. A little over one-quarter reported they had accessed regular financial statements, read information about customer verification periods and waiting times, set deposit limits, or set bet/spend limits.

Further, approximately one-fifth reported they had closed their account, excluded themselves from the app/website for a period of time, or permanently excluded themselves from the app/website. The figures on uptake of account closure and exclusion measures are less concerning as those measures are generally designed to address more severe instances of harm.

The NCPF provides evidence-informed improvements to many of the measures noted above, such as wagering activity statements, consistent gambling messaging and the national self-exclusion register. NCPF measures should lead to increased engagement with consumer protection measures and hence reduce online gambling harm.

¹ Browne M, Rockloff M, Hing N, Russell A, Murray Boyle C, Rawat V, Tran K, Brook K and Sproston K, (2019) NSW Gambling Survey 2019

The NCPF Implementation Governance Committee is expected to conduct a review into the effectiveness of NCPF measures around six months after all measures have been implemented. Based on the scheduled implementation of the NCPF, this review is due to commence in late 2023.

3. How to better target programs to address online gambling harm to reduce the potential exploitation of at-risk people, and protect individuals, families and communities

Gambling harm is a public health issue. Taking a public health approach means promoting the health of the entire population by raising general community awareness, as anyone in the community can be impacted by gambling. In supporting the community, we need to respond to the diverse needs of individuals and engage in culturally appropriate and safe ways which recognise the different needs, experiences, and perspectives of people from all walks of life.

The NSW Government's approach to targeting programs to address online gambling harm are informed by these principles. The Office educates and empowers individuals and the community so they can make informed decisions, take action to prevent and reduce gambling harm, and seek support when they need it. The Office develops, delivers and supports awareness and education campaigns for the general community and importantly, targeted campaigns for priority populations, such as culturally and linguistically diverse (CALD) communities, young people, Aboriginal communities, lower socio-economic and other at-risk groups.

The NSW Youth Gambling Study 2020 found that amongst past-year gamblers aged 12 to 17 years, almost one quarter had bet online. Online gambling was statistically significantly more likely amongst males and older respondents in this cohort. Whilst these results are based on small numbers and should be interpreted with caution, the study found that young people most commonly accessed online gambling by using a parent's account with permission, by paying someone else to gamble for them, or by having someone else set up an account for them. Over one-third of those who had gambled online reported they had set up an account in their own name.

Parents were found to have a strong influence on youth gambling and therefore should be targeted for education and awareness. Restrictions on minors gambling are a staple of gambling laws worldwide. This reflects conventional wisdom that the harms associated with gambling and the difficulty some individuals have controlling their gambling activity make these products unsuitable for children. Ensuring that children are protected from gambling related harm is a key driver of wagering policy in NSW.

Operators should at all times prevent underage access when young people try to open online accounts. Strategies, including regulation and changes to industry practices, are needed to reduce youth exposure to gambling advertising, particularly on television and in online and social media, and its normalising effects.

In relation to gambling related harm, community members from CALD backgrounds are a social group of particular concern. Compared to the general population, they have a much higher chance of exhibiting problem gambling behaviours.²

In response to this, the Office launched the 'Number that Changed Our Life' campaign in 2021, aiming to raise awareness about gambling support options for CALD communities and to encourage

² Dickins, M. Thomas A., (2016) Gambling in culturally and linguistically diverse communities in Australia, Australian Gambling Research Centre Discussion Paper No.7

help-seeking. The campaign was specifically designed to directly address individual CALD communities in NSW where problems with gambling are prevalent, building the campaign creative on cultural insights and tailoring messaging to individual language groups. This approach is a first in Australia, rather than the usual approach of directly translating a mainstream campaign. The campaign has performed very positively. The campaign has won multiple awards for innovation and excellence in multicultural communications.

4. The effectiveness of current counselling and support services to address online gambling harm

In July 2021, the Office launched the GambleAware support and treatment model which will reach more people experiencing gambling harm in NSW than its predecessor, NSW Gambling Help. Designed as a stepped model of care, clients can access services face-to-face, by telephone, video and online chat, as well as self-help on the GambleAware website.

The Office funds GambleAware providers across 10 regions in NSW to provide community awareness and education, support and treatment, as well as two specialist Aboriginal and multicultural services to work with GambleAware providers.

The NSW GambleAware Helpline provides NSW residents with telephone crisis support as well as the national Gambling Help Online service which delivered 2,163 online chat counselling sessions to NSW residents in 2021/22.

In 2021/22, 48 per cent of clients that accessed GambleAware services accessed services online through chat counselling or online telephone/video counselling. This has been an increase from previous years, with a shift in clients requesting online support, a natural trend that was accelerated by Covid-19. In 2021/22, 22.3 per cent of clients that accessed GambleAware services preferred gambling online as their mode of gambling.

Only a small proportion of the population who need help access it, therefore it is important that we continue to reduce the stigma associated with gambling harm, and raise awareness of the services that are available, and provide services in an accessible way in a range of formats to reflect our diverse community. Awareness campaigns, for example GambleAware Week in NSW, are critical in raising awareness of gambling and gambling harm in the community.

5. The quality of and access to protective online gambling education programs

There is limited research on the effectiveness of online gambling education programs or education programs more broadly aimed at preventing gambling harm. However, there is some research suggesting that it can be beneficial. Recent evaluations of two international school-based programs show some effectiveness in reducing gambling behaviours amongst school-aged adolescents.^{3 4}

³ Chóliz, M., Marcos, M., & Bueno, F. (2021). Ludens: A Gambling Addiction Prevention Program Based on the Principles of Ethical Gambling. *Journal of Gambling Studies*.

⁴ Tani, F., Ponti, L., Ghinassi, S., & Smorti, M. (2021). A gambling primary prevention program for students through teacher training: an evidence-based study. *International Gambling Studies*, 21(2), 272-294.

The Office addresses online gambling in several of its initiatives, including the GambleAware in Schools and Local Prevention Grants programs, as well as through resources on its website and through social media.

One of the benefits of a state and territory-based regulatory framework is the ability for individual jurisdictions to innovate and adopt novel approaches to addressing gambling harm, tailored to the needs of their population. Cooperation between jurisdictions also allows for successful programs to be adopted quickly. Below are examples of some current and upcoming initiatives the Office is implementing around gambling education programs.

GambleAware in Schools

The Office has developed classroom ready learning resources to enable secondary school teachers to deliver the curriculum required learning objectives through the lens of gambling related issues. The final package is targeted at grades 7-12 and includes:

- A facilitator pack and targeted resources
- English lessons and assessments addressing topics such as:
 - understanding skill and luck;
 - young people and gambling;
 - creating a podcast on gambling harm;
 - sports betting; and
 - gambling and video games.
- Maths lessons and assessments, addressing topics such as:
 - games of chance and randomness;
 - probability; and
 - understanding odds and applying algebra on a real issue.
- PDHPE lessons, addressing topics such as:
 - the convergence of gaming and gambling;
 - understanding risk and high-risk behaviour;
 - gambling and cultural identity; and
 - health promotion strategies for gambling harm.

The resources are currently being piloted in a live school environment with the aim of releasing the resources in the 2023 school year. The resources will also be published on the GambleAware website.

This project was informed by a literature review to determine international best practice in gambling education in schools. The literature review considered domestic and international sources from 2000-2020 and found:

- Teachers are important for any school-based prevention program.
- School programs which include a parent element are more likely to be successful.
- School-based programs are more likely to lead to knowledge, awareness and attitude change than behaviour change.
- Any program should look at the convergence of gaming and gambling.

A survey of teachers was also undertaken to inform the approach to the project.

Local Prevention Grants Program 2020

The Local Prevention Grants Program 2020 was a \$1.5 million initiative that awarded small and large grants to 14 local organisations to reduce and prevent gambling related harm. The Program broadly aimed to:

- Prevent and reduce gambling harm within local communities across NSW.
- Support community members to make informed decisions about gambling.
- Break down the stigma around gambling and encourage people to seek advice and support.

The Local Prevention Grants Program 2020 supports the Office's three-year Education and Awareness Strategy, which aims to:

- Work in partnership to develop health promotion initiatives.
- Create resilient communities by empowering them to take ownership over their own health.
- Develop the personal skills of individuals so they can avoid gambling harm.

This strategic approach aims to support responsible gambling through adopting a health promotion approach towards community education. Four of the grant projects addressed online gambling and gaming specifically. Reach of the program is as follows:

- Over 500,000 people and an estimated 1,174 organisations, including schools, have been reached through mass media, print and social media.
- An estimated 3,360 people and 60 organisations have been reached through information sessions, workshops and meetings.
- An estimated 628 people and 202 organisations have been reached through more in-depth training, and face-to-face repeat interactions.

6. The impact of current regulatory and licensing regimes for online gambling on the effectiveness of harm minimisation and consumer protection efforts

Online Betting Service Providers (BSPs) are licensed and primarily regulated by Australian states and territories. They are also subject to Commonwealth laws such as the *Interactive Gambling Act 2001* (Cth). In NSW, on-course bookmakers (other than the totalizator) are licensed by the racing codes. L&GNSW authorises bookmakers licensed in NSW to accept or make bets 'electronically by means of the Internet'.

Online BSPs licensed in NSW are subject to the:

- *Betting and Racing Act 1998 (BAR Act)*
- *Totalizator Act 1997*
- Betting and Racing Regulation 2022
- Minister's Conditions imposed under section 16(5) of the *BAR Act*
- Rules or conditions imposed for declared betting events under Part 3 Divisions 2 & 2A of the *BAR Act*
- Rules or conditions imposed by a relevant controlling body

In addition, bookmakers licensed in other jurisdictions must comply with certain NSW laws, including those that implement the NCPF and NSW's restrictions on gambling advertising. These restrictions prohibit advertising that:

- publishes live odds during a sporting event; and
- offers inducements to gamble or set up gambling accounts.

As mentioned above, there are many factors that contribute to gambling harm and multiple regulatory contributors rarely occur in isolation. The most recent NSW Gambling Survey 2019 found that online gamblers are more likely than non-online gamblers to be moderate risk or problem gamblers (18 per cent compared with 5 per cent). That said, it is difficult to isolate and examine the effect of a particular regulatory and licensing regime on harm minimisation and consumer protection.

Responsibility for regulating gambling in Australia is a matter for the states and territories. NSW supports this model. There are significant benefits to this approach as the competitive tension between jurisdictions fosters improvements in regulatory practice. Jurisdictions can simultaneously experiment with different regulatory approaches, with real time evidence on which approach works

best. Meanwhile, jurisdictions with less effective protections face pressure to adopt policies developed by their peers.

Under a state and territory-based regime, a progressive jurisdiction may decide to go first and lead the way. By demonstrating to other jurisdictions that a proposal works, other more hesitant jurisdictions can be encouraged to catch up and implement reforms.

Importantly, a state and territory-based regime is not mutually exclusive with a coordinated national approach where appropriate. The NCPF is a clear example of how jurisdictions can work together when there are benefits in doing so. Conversely, a single overarching national regulator is unable to harness the ‘best of both worlds’ flexibility that state and territory-based regulators have in being able to choose between a coordinated or unique approach.

7. The appropriateness of the definition of ‘gambling service’ in the *Interactive Gambling Act 2001* (Cth), and whether it should be amended to capture additional gambling-like activities such as simulated gambling in video games (e.g. ‘loot boxes’ and social casino games)

Whether the definition of ‘gambling service’ in the *Interactive Gambling Act 2001* (Cth) needs to be changed to include gambling-like activities is a matter for the Commonwealth. However, the following questions are relevant:

- What harms would be addressed by such a change?
- Are these harms best addressed through the regulatory framework for gambling or through other regulatory interventions?
- How would gambling-like activities be defined and how can the Government ensure that other similar activities are excluded from this definition? For instance, existing chance-based mechanisms that are better accepted by the community.

There are legitimate concerns around consumer protections for games with gambling-like features. However, it does not automatically follow that gambling legislation is the appropriate avenue to address these concerns – particularly given there are existing regulatory bodies responsible for gaming and consumer protection.

The Commonwealth Parliament has previously reviewed the regulatory treatment of ‘loot boxes’.⁵ In its submission to that review, the NSW Government agreed that these products raise significant concerns relating to consumer protection, particularly in relation to children. However, these concerns are likely better addressed through a consumer protection lens, via the existing regulatory and classification framework for gaming.

These concerns are not limited to video games. From time to time, L&GNSW receives correspondence from the community arguing that certain risky financial products constitute gambling and should be prohibited under existing gambling laws. L&GNSW does not consider this appropriate as financial regulators are better equipped to regulate these products.

⁵ https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Environment_and_Communications/Gamingmicro-transactions

Simulated gambling in video games

'Loot boxes' are often chance-based, with players generally having no control or visibility over the virtual items contained within 'loot boxes'. They may also be gambling-like by having features that mirror or are similar to those included in-game on electronic gaming machines. For example, 'slot-based' features to award prizes, or features that use sensory effects to encourage participation in the feature, such as flashing lights and reward-based sounds. An important distinguishing feature of 'loot boxes' from traditional forms of gambling is that the contents of 'loot boxes' generally cannot be monetised or traded outside video games.

As noted in the submission to the previous Senate Inquiry into gaming micro-transactions for chance-based items, NSW is particularly concerned with 'skins betting' where in-game items are used as virtual currency for betting. Where these products are based overseas, offer casino-style games and allow minors to gamble, they are clearly acting in opposition to the efforts of Australian Governments to maintain a responsible online gaming industry.

NSW continues to be supportive of additional protections for consumers to reduce the risk of normalising gambling to minors, including from the features of some games (such as loot boxes). NSW also continues to support efforts that improve consumer understanding of the likelihood of gaining a prize, the relative value of that prize, the risk of loss of control over expenditure, and also measures that provide the consumer with adequate information to make an informed decision on whether to participate in the game.

As noted above, it is important to consider whether there is existing legislation or regulators in other areas that may already have jurisdiction over gambling-like activities. For example, as a feature of video games, 'loot boxes' and other chance-based items, may fall under the *Classification (Publications, Films and Computer Games) Enforcement Act 1995* (Cth), for which the Commonwealth Government has responsibility through the Classification Board. This point was noted in the NSW Government submission to the Inquiry into gaming micro transactions for chance-based items.

The NSW Responsible Gambling Fund (RGF) Trust, which provides independent and expert advice to the NSW Government on the promotion of responsible gambling, has previously considered this issue in the Commonwealth's Review of Australian Classification Regulation.⁶ The RGF Trust recommended more guidance on gambling and gambling-like content and mechanisms in the classification guidelines in relation to computer games. The RGF Trust also recommended that an R18+ classification be applied to games which incorporate actual gambling, or gambling-like mechanisms, and the disclosure of odds associated with loot boxes.

In relation to social casino games, as noted by the RGF Trust in their previous submission, there is a growing body of evidence that early engagement in social casino type games is a popular activity among children and that young adults who participate in these games are also more likely to engage in actual gambling activities and experience gambling-related problems.

8. The appropriateness of current gambling regulations in light of emerging technologies, payment options and products

The *Betting and Racing Act 1998* and *Totalizator Act 1997* outline the basic regulatory framework for online gambling in NSW. The two Acts provide for Minister's Conditions and various betting rules to be issued to provide for finer regulatory requirements. The Conditions and rules provide flexibility

⁶ <https://www.infrastructure.gov.au/have-your-say/review-australian-classification-regulation>

for NSW gambling regulations to be updated in light of emerging technologies, payment options and products. The Conditions and rules are drafted in consideration of the public interest and factors such as integrity concerns, harm minimisation, and impact on minors.

While the existing regulatory framework can be easily amended to adopt new technologies, payment options and products, these changes are overseen by the Minister for Hospitality & Racing and L&GNSW. This is appropriate, as it ensures that technology changes not in the public interest, for instance because they would result in excessive increases in gambling related harm, are not adopted.

A key regulatory concern in light of evolving technology is illegal online gambling offered by offshore providers, such as those involving skins betting. This area is a Commonwealth responsibility, managed by the Australian Communications and Media Authority.

As the pace of technological change continues to increase, it is important that all jurisdictions regularly review their regulations to ensure that they remain fit for purpose.

9. The effectiveness of current gambling advertising restrictions on limiting children's exposure to gambling products and services (e.g. promotion of betting odds during live sport broadcasts), including consideration of the impact of advertising through social media, sponsorship or branding from online licenced gambling operators

The prevalence of gambling advertising is a key concern of the community. L&GNSW receives frequent correspondence raising concerns with the pervasiveness of gambling advertising, particularly on broadcast television. This is particularly the case during times when children and families are likely to be exposed to these ads, for example during news broadcasts. Recent changes to rules around advertising during live sporting events have not been sufficient to address community concern about the prevalence of these advertisements.

The NSW Government has taken steps where it is able to address this issue. The NSW Government prohibits gambling advertising that it sees as particularly harmful which includes:

- publishing live odds during a sporting event, and
- offers of inducements to gamble or set up gambling accounts.

The NSW Government actively enforces these restrictions. However, this can be difficult, given the dynamic nature of the industry and a willingness of some operators to push the boundaries of the legislation. NSW restrictions also do not address the key community concerns related to advertising prevalence.

As the regulator of broadcast media, actions to limit gambling advertising more broadly are a matter for the Commonwealth. The NSW Government is willing to work with the Commonwealth to better understand this issue.

Key findings from research on gambling advertising in NSW

Young people participating in the NSW Youth Gambling Study 2020 reported frequent exposure to gambling advertising. On a weekly basis, young people most commonly noticed gambling

advertising on television during sports and racing events (46.1 per cent), on television except during sports and racing events (42.9 per cent), and in online and social media (34.8 per cent).

Exposure to gambling advertising in both traditional and digital media and thinking more positively about gambling due to seeing gambling advertisements, were associated with gambling participation, intentions and problems.

Qualitative research conducted in 2022 on behalf of the Office has also found frequent exposure of young people to promotional gambling messages in their everyday gaming, online and social media activities. All participants recalled being exposed to gambling advertising since childhood. There appears to be a proliferation of new and emerging online advertising for simulated gambling, such as social casino games and loot boxes, that most young people cannot distinguish from advertising for monetary gambling.

Young people also routinely see sponsored gambling content from social influencers. YouTube was the most common social media channel for gambling-themed advertising. These were mainly advertisements that played before videos and sponsored content by online influencers. This is of particular concern as these platforms are not traditionally the focus of regulatory effort. In addition, they are more likely than more traditional channels to include messaging from illegal offshore gaming and wagering operators.

Reclaim the Game

Commencing in late 2020, the NSW *Reclaim the Game* initiative challenges and tackles the normalisation of gambling advertising in sport. By partnering with elite sporting organisations like the Sydney Swans and the South Sydney Rabbitohs, Reclaim the Game partners forgo sports betting sponsorship and instead commit to providing their fans with gambling awareness messaging and a sporting experience with reduced gambling advertising and, at times, free of gambling advertising. There are currently fourteen Reclaim the Game partners across five sporting codes committed to this initiative. An annual survey of Reclaim the Game partners' members and fans show there is strong support for the initiative, with results from the 2021 survey showing:

- 86 per cent believe there is too much gambling advertising.
- 88 per cent believe children and young people are exposed to too much gambling advertising.

Market research conducted by YouGov Sport in 2021 has shown fans and the general public view sports betting as one of the least suitable types of sponsorship for a sports club. The research found for both the general population and sports fans, perceptions of a sports league or team are more likely to worsen than improve if they affiliate themselves with a betting service provider. The research also reported:

- 3 in 5 sports fans believe betting brands logos should NOT be allowed on team uniforms.
- 4 in 5 sports fans want stronger regulation for sports betting advertising in Australian sport.

Whilst the initiative is an important step forward in challenging the normalisation of gambling advertising in sport, there are nonetheless limitations to this voluntary initiative. The Reclaim the Game partners are ultimately still individual clubs competing in codes that continue to receive very large sponsorships from gambling companies.

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