

Review of the *Racing and Betting Act*

Report for the Northern Territory Government

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EXECUTIVE SUMMARY

The *Racing and Betting Act* should be replaced by two new pieces of legislation.

A new Racing Act would focus on regulation of the racing industry without regard to gambling activities. The legislation would set out objects and slightly ease some regulatory provisions, allowing for some industry evolution or innovation while not upsetting a relatively traditional and well working industry structure. Current governance arrangements, including the Racing Commission, the role of controlling bodies and the Racing Appeals Tribunal would continue.

A new Gambling Regulation Act would be more far-reaching in simplifying and modernising betting regulation. Current licences, and the NT Internet Gaming Licence, would be replaced by a Gambling Licence and a 'light form' Racecourse Gambling Licence. Regulation would be sorted into 'provider regulation', concerned with licensees' suitability and conduct, and 'product regulation.' Product boundaries and classifications would become less important, and regulation more product-neutral so as to accommodate and facilitate technological and market evolution, and innovation.

Regulation of providers and products generally would not be tied (except in grandfathered existing licences) and divergences and anomalies between types of gambling products would be reduced. The basic, default and preferred form of new Gambling Licence would not be product-specific. Holders would be authorised to conduct any type of regulated gambling that is not the exclusive right of another NT licence holder nor prohibited by Commonwealth law, so long as the provider complies with the applicable product rules.

The new Act would set out objects and regulatory principles, establish a new Gambling Regulation Commission and governance safeguards, harmonise licensing processes, promote consistent regulation, integrate administration and neutralise language. The Act would contain major provisions – including some new overarching regulatory obligations – and move detail of regulation to a Conduct Code and a Product Code, which would replace licence conditions.

An efficient systemic approach would be facilitated for key regulatory features such as licensee suitability, associates and collaboration, approved contingencies and dispute resolution. The new Act would provide statutory certainty for the 2015 UBET retail exclusivity and tax cap. It would also harmonise with new national gambling regulation, promote harm minimisation enhancements and update fee and tax arrangements.

The new regulatory framework seeks to ensure that the NT remains the jurisdiction of choice for gambling businesses in Australia and its region by offering modern, flexible, effective and reliable regulation to the best of first-world standards.

PART A - INTRODUCTORY MATTERS

1. Introduction

HWL Ebsworth Lawyers has been engaged by the Northern Territory Department of the Attorney-General and Justice to review the *Racing and Betting Act* with a focus on best practice regulatory frameworks.

The purpose of the review is to ensure that the legislation is appropriate for current and evolving industry practices and needs, including:

- use of new technologies, including social media;
- best practice processes;
- maximising gambling harm minimisation measures, while;
- supporting the industries and encouraging new entrants, and
- appropriately reflecting the exclusive rights of the Totalisator Licensee in a retail context.

Identified specific practical issues are addressed in this report, including consumer protection, relationships among industry participants including affiliates, probity and suitability regulation, adaptability for innovation, and racing industry oversight.

2. Overall architecture - separate legislation

The *Racing and Betting Act* (**current Act**) should be replaced by two new pieces of legislation: a new Racing Act which deals only with racing industry regulation and dispute resolution (see Part B, chapters 3 to 6) and a new Gambling Regulation Act which is harmonised with other gambling legislation (see Part C, chapters 7 to 15).

Regulation of racing and betting should be totally separate, functionally and administratively. While traditional bookmaking in Australia was intrinsically connected with traditional regulated forms of racing, modern betting activities involve much wider contingencies, concepts and methods. Betting regulation needs to be encompassed in integrated gambling regulation, approached from a 'clean slate' and not fettered by historical concepts. Equally importantly, racing needs to be respected as an independent industry, not driven by gambling.

PART B - RACING

3. A new Racing Act

3.1 The need for regulation

Racing legislation generally seeks to promote 'orderly' industries in which horses and dogs compete for human entertainment. Orderly industries have rules of governance and operation, integrity systems, dispute resolution and avenues for interaction with government for industry assistance. Racing industries in Australia and internationally generate significant economic activity. As an object of gambling activity, there is an acute interest in race integrity (in common with 'integrity in sport' issues more widely).

A new Racing Act must address these issues, reflecting a policy outcome about the extent to which the industry is to be regulated, self-regulated or relatively un-regulated.

Our view is that a new Racing Act can involve lighter regulation than the current Act, particularly if issues relating to races' suitability for gambling products are appropriately dealt with in gambling legislation¹.

The thoroughbred and greyhound racing industries are working well in the NT on their current (relatively traditional) organisational structures, and the new Act should be less prescriptive and allow the controlling bodies (Thoroughbred Racing NT (TRNT) for thoroughbreds and the Racing Commission itself for greyhounds) to make relevant decisions as they judge appropriate.

3.2 Objects of the new Racing Act

The stated objects of the new Racing Act should be:

- (a) to promote probity and integrity in the racing industry and among its participants;
- (b) to promote the public interest, including fairness, in the conduct of races;
- (c) to facilitate an efficient system of racing industry governance, management and regulation;
- (d) to provide a fair system of appeals and resolution of disputes about racing industry governance and the conduct of racing;
- (e) to promote the efficient development of the racing industry and its economic benefits for the Territory; and
- (f) to provide for the welfare of participants and animals involved in the racing industry.

¹ There is an argument that racing industries in Australia are over-regulated. How many other industries have a dedicated government Minister, even if significantly government funded or a benefiting directly from government procured funding?

These objects are broadly consistent with those in other racing legislation around Australia (although they differ in expression) and correlate with the current endeavours of persons with regulatory or management functions under the current Act (even though, curiously, there is no reference in the current Act to the welfare of participants and animals).

4. Continuing industry structure, only minor deregulation

The new Act should slightly ease some regulatory provisions, allowing for some industry evolution or innovation while not upsetting a relatively traditional and well working industry structure.

Thoroughbred racing

In thoroughbred racing, TRNT is performing the traditional role of a non-governmental controlling body (currently referred to as the 'principal club') without an actual need for regulator intervention. Matters that currently must be put to the Racing Commission for approvals are almost invariably approved with little concern by the regulator. TRNT has appropriate incentives to act in the best interests of the industry, and has some constraints (in common with interstate equivalent bodies) by needing to adhere to the Australian Rules of Racing and needing to co-ordinate the timing of its product offering to fit into a national racing market. Given all that, the Act can be simplified and some of the regulatory hurdles and prescription of conduct can be eliminated. Specifically:

- (a) Racecourse licences (currently an annual routine process) should be abolished and replaced with a simple requirement that the controlling body must grant approval (which could be a standing approval) for a racecourse to be used by a registered club;
- (b) Race days should not require Commission approval, and the Act should not regulate the hours of racing, postponement or the conduct of trials (these should be matters for the controlling body);
- (c) The controlling body's power to register racing clubs should not be limited to non-proprietary clubs (again, registration should be a matter for the judgment of the controlling body, having regard to the objects of the Act);
- (d) The assessment, grant, duration and other attributes of permits (such as for trainers and jockeys) should be entirely a matter for the controlling body.

A controlling body and race clubs should have no role in the licensing or approval to operate of on-course bookmakers², other than having rights to admit them to racecourses, direct their location and behaviour (as they do for other service providers allowed into the premises) and as required by the Rules of Racing (essentially for racing integrity reasons).

² References and roles in relation to gambling and gambling providers should be removed (sections 17(2)(f), 18(2)(c)&(d), 20(1)(c), 22, 24, 26, 35, 44(2)(e), 52(2)(d), 57(2)(d) in the current Act).

The Commission should be given a reserve power to direct a controlling body if it were to act in a manner inconsistent with the objects of the Act (or fail to act). It should also have the power (currently vested in the Minister) to appoint or remove the controlling body. The current power of the Minister to specify the composition of a controlling body's committee should be deleted entirely.

The *Northern Territory Racing Review 2014* ('Monteith Report') made a large number of detailed recommendations about the governance of TRNT, integrity arrangements and operational matters. Putting aside recommendations (below) that are inconsistent with this chapter or have been overtaken by events of the last 4 years, the outstanding Monteith recommendations (on which we make no comment) are generally capable of being implemented consistently with the advice in this chapter.

Monteith's principal recommendation, from which we differ, was that TRNT should be enshrined in legislation as the thoroughbred racing controlling body. While sympathetic to his rationale, we consider it is preferable that the Commission have the ultimate power to remove a controlling body if it becomes unsuitable or dysfunctional (which is an unlikely event). This is preferable to the alternative, which is to have powers to dabble in the performance of its functions.

Monteith also made recommendations about the composition of the TRNT board and its governance practices. While they may be appropriate to be taken up by TRNT (possibly with the urging of the Minister or the Commission), we do not support a Ministerial or Commission role in selecting or managing the board. The Commission could indicate that it expects TRNT to adopt an appropriate system of governance (including for the management of potential conflicts of interest and requiring a majority of independent directors) in order to retain approval as the controlling body, but we see as many risks to stability and good governance from political involvement in TRNT as there are risks associated with independence.

Greyhound racing

The current Act is already light-handed in relation to regulation of greyhound racing, with broad discretionary power in the Commission as the controlling body for that industry segment. No changes to the Act are necessary in our view.

It is notable that greyhound racing differs from thoroughbred racing by the Commission being, rather than overseeing, a controlling body. This is necessary given the existence of only one greyhound club. It would not be appropriate to appoint the Darwin Greyhound Association (DGA) as the controlling body, because it would be both controller and operator (which poses more conflicts than the Commission being regulator and controller). It would be inefficient and uneconomic to interpose a new entity as controlling body between the Commission and DGA, where that body would deal only with the one club. If ever the number of greyhound clubs increased, a move to a structure like that for thoroughbreds would be appropriate.

Just as the Commission could effectively 'step in' if there were to be a regulatory failure in TRNT, the Minister should retain some powers to rectify any regulatory failure by the Commission as controlling body for greyhound racing,

General

In order to position the Racing Commission as a more conventionally empowered independent industry regulator, functions currently assigned to the Minister should be mostly given to the Commission. The Minister's power of direction of the Commission should be either removed (except in relation to greyhound racing) or subject to an express limit to only direct a change of policy of the Commission if a policy position or action of the Commission is considered contrary to the objects of the Act. Any direction must be published.

It is appropriate to continue the prohibition on Commission members having an association with gambling businesses (current section 8(b)).

5. Racing and sports information rights

There is no need for any material change to the provisions of Part IIIA of the current Act, because they are generally consistent with framework of product fee legislation across Australia.

One open question is who is the appropriate body to specify to which sporting events (other than racing) the provisions will apply, and to designate the applicable 'sports control body' for those events? Should a Racing Commission that has no role in the conduct of gambling business be the body to allocate powers in relation to sports? In some jurisdictions this role is given to a gambling regulator, although for the approach to gambling regulation that we propose in Part C of this report, we prefer that the management of information rights sit in legislation concerning the conduct of racing or sports rather than in legislation that regulates the users of that information.

The powers in relation to sports information could be given to the Minister responsible for sports policy (currently the Minister for Tourism and Culture). Alternatively, given that the new Racing Commission will not have a very large workload (the current Commission spends over 95% of its time concerned with gambling), the functions of the Racing Commission could be combined with any new statutory authority concerned with sport, if one was to be ever established³ (which is beyond our terms of reference).

This 'decision maker' issue, in turn, prompts the issue of whether these provisions should be located in a Racing Act or in some other place. For now, as between the Racing Act and gambling legislation, we prefer the former.

6. Racing appeals

The provisions of Part VIIA of the current Act about racing appeals are generally consistent with typical practice in other Australian jurisdictions, and represent fair and reasonable tribunal procedures.

³ This is not inconceivable given the current national policy debate about sports integrity. The functions of the Racing Commission are fundamentally about sports integrity. On one view, racing could become part of the portfolio of a Minister with responsibility for all sports, rather than being given separate treatment.

A few minor amendments could be made:

- (a) The monetary threshold for jurisdiction of the Racing Appeals Tribunal (RAT) should be raised, so that a fine that is appealed must be more than \$5,000 or more than \$1,000 if combined with suspension or disqualification of longer than one month;
- (b) Some provisions could be better drafted so that possible uncertainty or dispute about the operation of time limits is avoided (current sections 145D(4) and 145Q(2)) – in part by specified or deeming provisions about the service of notices;
- (c) An incentive could be introduced to commence hearings promptly (in compliance with section 145Q(5)), such by as providing for suspension of the decision that is the subject of the appeal until the hearing is convened.

Despite the current small number of matters dealt with in a typical year, there would be little or no efficiency or improvement in justice by replacing the current specialty tribunal with new jurisdiction vested in the larger and wider NT Civil and Administrative Tribunal. The only case for shifting the jurisdiction is that hearings might be convened with less delay – but this point could be addressed in other ways (also encouraged by our suggestion above). The RAT, as a specialty tribunal, has good stakeholder support, appropriate expertise and experience, and allows representation, which is important where potential loss of livelihood is in issue.

PART C - BETTING

7. A new Gambling Regulation Act

7.1 Reconceptualising betting

Historically betting, as viewed by regulation, has grown out of the product offerings of both totalisators and bookmakers to become a form of gambling generally involving bilateral contracts relating to the outcome of contingencies. A combination of historical development, social usage and imprecise labels have lead to a typical pattern of regulation which insufficiently recognises the functional similarity and overlaps of 'betting' with other types of gambling including 'gaming' and lotteries. This typical pattern of regulation has entailed and perpetuated some practical deficiencies in regulation, in part because of an undue emphasis on labels, delivery methods and predominant practice. [REDACTED]

Our proposal is to embed betting regulation in a fresh, simpler approach to gambling regulation, so that boundaries and classifications become less important, and regulation is more product-neutral.

The way forward must grandfather existing exclusivities (which generally bring historical labels and irrational boundaries) but otherwise pursue the objectives of gambling regulation by clearly addressing rational and consistent regulatory measures toward providers (suitability and conduct) and products (attributes).

Our proposal is for a new Gambling Regulation Act, instead of a new Betting Act, that replaces the current Act, the *Totalisator Regulation and Licensing Act* and parts of the *Gaming Control Act*.

7.2 Objects of the new Gambling Regulation Act

The stated objects of the new Gambling Regulation Act should be:

- (a) to promote probity and integrity in gambling and among gambling industry participants;
- (b) to promote the public interest, including consumer protection, in the conduct of gambling through fair and efficient regulation;
- (c) to provide a fair and efficient system of resolution of disputes about the conduct of gambling;
- (d) to foster responsible gambling in order to minimise harm and reduce any adverse social impacts of gambling;
- (e) to promote a balanced contribution of the gambling industry to the economy and general community benefit of the Territory.

The following regulatory principles should be set out in the Act, with a requirement that the regulator considers them in performing its functions and exercising its powers:

- (a) minimum regulatory intervention by government;
- (b) cooperation between industry and government;
- (c) accountability of all persons, including regulators;
- (d) competitive neutrality in regulation, to the maximum extent possible;
- (e) regulation framed to enable innovation and recognise evolution of technology and gambler preferences;
- (f) best practice regulation to promote the objects of the Act.

7.3 New Act, new framework

The new Act would feature simplified licences, harmonised licensing processes, consistent regulation, integrated administration and neutral language. Providers would hold gambling licences and consumers would gamble (rather than bet). Regulation of providers and products would not generally be tied (except in grandfathered existing licences).

Significantly, as explained below, divergences and anomalies between betting and lottery products, and between betting licences and internet gaming licences, would be reduced. Among other advantages, barriers to product innovation and difficulties in regulation relating to new technology would be reduced.

The new Act would involve a functional restructuring of the hierarchy of regulation and where measures fall within it. We suggest an Act containing overarching regulation and reflecting government policies (some of which can be adjusted by Regulations made by the Administrator), and codes made by the regulator applying consistently to all licensees. There would be very few licence conditions, confined to matters unique to a particular licensee (if any).

Figure 1 – Hierarchy of regulatory instruments

Gambling Regulation Act (with modifications by Regulations)	Major enabling provisions (licensing, governance, legal rights), reflecting policy decisions
Codes (Conduct Code, Product Code, Harm Minimisation Code)	Detailed provider and product regulation made by regulator, applicable to all licensees
Licence conditions	Tailored regulation for particular licensee (if any)

Regulator decisions or directions	Made under the Act or Codes and published
Guidance Notes (if any)	Best practice expectations of regulator, published (but only created where useful, for example dispute resolution by licensees)

Appendix A contains an outline of how the new Act should be structured. Later sections of this report address the function and content of codes (which are set out, in list form, in Appendices B and C). Appendix D provides an 'audit trail' showing where sections of the current Act and current standard licence conditions would be relocated under our proposed structure.

This scheme and hierarchy is consistent with modern industry regulation in other industries in many Australian jurisdictions.

7.4 New scheme of licences

The basic, default and preferred form of new gambling licence under the new Act would not be product-specific.

Named the Gambling Licence, holders would be authorised to conduct any type of regulated gambling that is not the exclusive right of another NT licence holder nor prohibited by Commonwealth law, if the provider complies with all applicable regulation including the product rules.

Type of licence	Currently known as	Current legislation
Gambling Licence	Bookmaker Licence	<i>Racing and Betting Act</i>
	Sports Bookmaker Licence	<i>Racing and Betting Act</i>
	Betting Exchange Licence	<i>Racing and Betting Act</i>
	Totalizator Licence	<i>Racing and Betting Act</i>
	Internet Gaming Licence	<i>Gaming Control Act</i>

The new Act would recognise the continuity of one existing form of betting licence, the 'Totalisator Licence' currently held by UBET (see next box). Conceptually this licence also could be replaced by a Gambling Licence, conferred on terms equivalent to those of the existing licence, but for legal risk management reasons (relating to UBET's special rights that are discussed in chapter 11) it is practical to simply recognise this 'one-off' licence (and treat it as having been issued under the new Act, with the repeal of the *Totalisator Regulation and Licensing Act*):

Type of licence	Currently known as	Current legislation
Totalisator (UBET) Licence	Totalisator Licence	<i>Totalisator Regulation and Licensing Act</i>

The new Act would also offer an alternative limited licence for on-course bookmakers and small race clubs conducting small totalizators. This would allow a 'lighter touch' approval and streamlined regulatory process for limited and low value activities conducted only on racecourses:

Type of licence	Currently known as	Current legislation
Racecourse Gambling Licence	Bookmaker Licence Totalizator Licence	<i>Racing and Betting Act</i>

The new Act would also recognise the continuity and possible future issue of the following product-specific licence types under the current *Gaming Control Act* (which could be renamed the *Casino and Lottery Act*) or the *Gaming Machine Act*.

Type of licence	Currently known as	Current legislation
Casino Licence	Casino Licence	<i>Gaming Control Act</i>
Gaming Machine Licence	Gaming Machine Licence	<i>Gaming Machine Act</i>
Keno Licence	Casino Licence	<i>Gaming Control Act</i>
Lotteries Licences	Lotteries Licences	<i>Gaming Control Act</i>

A further-developed version of this new regime could see gaming machine and lotteries licences also replaced by Gambling Licences, but that is beyond the scope of the current terms of reference⁴.

A single licensing process would apply to Gambling Licences under the new Act, with the possibility of a streamlined process for Racecourse Gambling Licences.

Transitional provisions should provide that existing 'registered bookmakers' and holders of Totalizator Licences under section 111 of the current Act should be automatically issued the new form of Racecourse Gambling Licence. Current holders of Sports Bookmaker Licences, Betting Exchange Licences and Internet Gaming Licences should be automatically issued the new full Gambling Licence.

⁴ The proposed architecture of the new Act would allow future extension of the concepts, regulatory techniques and institutional arrangements (such as the new Gambling Regulation Commission) to all types of gambling in the NT.

7.5 Provider regulation: suitability, conduct rules & dispute resolution regime

Provider regulation should focus on assuring the ongoing suitability of licence holders and regulating their conduct. This includes conduct in dealing with consumers from fair trading, dispute resolution and harm minimisation perspectives. The fundamentals of the regulatory measures in this domain should be contained in the new Act, and detailed regulation placed in a Conduct Code made by the regulator under the Act. This will allow the regulatory regime to evolve and adapt to changing industry structures, corporate behaviours and market practices (since the regulator could change the code relatively easily without the need for legislation).

The current Act has many detailed provisions that are based on outdated or limited business methods, while many important oversight activities are currently found in licence conditions or less-transparent regulatory activity. The new Act requires a functional restructuring of the hierarchy of regulation and where measures fall within it.

Appendix A shows how the fundamental parts of provider regulation sit in the new Act. Appendix B outlines the proposed content of the Conduct Code (referencing the current locations of those obligations (except where they would be new); many would be moved from current standard licence conditions).

7.6 Product regulation: product rules

The new framework will identify rules relating to the regulated terms and required attributes of gambling products that must be observed by a licensee if the licensee is to offer a gambling product to gamblers. Where those rules are common to the current and conceivable new range of gambling products (for example (1) must issue a ticket, receipt or statement, and (2) must have operating technology checked for integrity), they can be general provisions in the product code. Where they relate to a specific type of product (for example, eligibility rules for gamblers on a betting exchange), they would be in separate sections of the code or might be found in legislation (which could be 'signposted' in the code for convenience).

The Act should contain only headline or major provisions, and provide the framework for more detailed regulation in the Product Code.

Appendix C outlines the proposed content of the Product Code (referencing the current locations of those obligations (except where they would be new); many would be moved from the current Act because they need updating and locating in an instrument that is more readily amended).

8. Gambling regulator

The new Act should establish a consistent allocation of regulatory functions so as to retain major gambling policy decisions in the Parliament and the Minister (through the Act and any modification in Regulations) and effect arms'-length industry regulation of

suitability, conduct and products through an independent regulator.⁵ This dichotomy is the prevalent best practice in first-world jurisdictions.

Decisions on any limits on the number of licences on issue, on exclusivities (and the public interest commitments given to obtain exclusivities) and on regulatory arrangements should be matters for the Minister, but not much else.

A new Gambling Regulation Commission should replace the roles currently performed by the Racing Commission, the Director-General of Licensing and the Minister under the current Act, the *Totalisator Regulation and Licensing Act*, and Part 4 Division 5 of the *Gaming Control Act* (or even the whole *Gaming Control Act*, but that is beyond the scope of the current terms of reference).

The new Commission should have at least three members and should delegate most decision-making about the issue of licences and day-to-day regulation of licensees to its Chief Executive Officer⁶. The Commissioners should deal with:

- (a) Making and amendment of codes;
- (b) Establishing policies and procedures for licensing, supervision, dispute resolution;
- (c) Approving gambling contingencies;
- (d) New consumer protection and harm minimisation initiatives;
- (e) Disciplinary action against licensees and major enforcement action;
- (f) A decision to 'step-in' to manage a licensee;
- (g) Decisions that limit competition;
- (h) Decisions involving licence holders with exclusive rights⁷.

In doing so, the Commissioners should maintain a strong focus on balancing the objects of the legislation (including an accessible competitive industry) and their accountability for independence from undue influence by large stakeholders. Under the new regime it will be important that the Commissioners take a pro-active strategic approach, rather than being just reactive.

The following types of decisions should be appealable to the NT Supreme Court (exercising a 'merits review' jurisdiction):

- (a) Non-approval of a gambling contingency;

⁵ Currently the roles of the Minister, the Commission and the Director-General of Licensing are inconsistent across the *Racing and Betting Act*, the *Totalisator Regulation and Licensing Act* and the *Gaming Control Act*.

⁶ The Commission should have a CEO, who in turn can delegate functions to staff. It is a matter for the administrative arrangements of Government whether the CEO role is held by a senior public servant with other functions or is a dedicated position (the choice affected by resourcing considerations). The key feature is that the CEO, acting as such, is answerable to the Commission.

⁷ See chapter 11.

- (b) Suspension or cancellation of a licence;
- (c) A decision to 'step-in' to manage a licensee;
- (d) Decisions that have a material adverse impact on the competitive position of a licensee in relation to other licensees.

This limited range of appealable decisions has been chosen carefully, and represent 'governance safeguards' on regulatory powers with the greatest industry impact. While the number of types of decisions that are subject to appeal on their merits is limited, all decisions would be of course subject to judicial review on administrative law grounds.

The new Act would set out strong powers for Commission staff and inspectors⁸, but many of the evidentiary and procedural sections of the current Act concerned with unlawful betting should be moved to the Unlawful Betting Act⁹.

9. Provider regulation

9.1 Licensing process

Applications for Gambling Licences should be considered by the Commission based on the suitability of the applicant and their associates. This should involve fit and proper criteria and probity reviews in broadly the same manner as under the current Act, having regard to the factors currently in section 90(2A). Gambling Licences should not be limited to, or require, particular premises.

The Act should also allow the grant of Racecourse Gambling Licences that allow the offering of gambling products only at racecourses controlled under the Racing Act, and allow the Commission to process and consider such licences on a more limited or expedited assessment basis (given the more limited reach and therefore likely limited total turnover of these licensees). This would allow the Commission to more easily approve oncourse bookmakers and choose to grant licences in reliance on recognition of interstate bookmaker licences if they decide to do so.

In assessing the suitability of licence applicants the Commission should be empowered to carry out a more limited or expedited assessment process (if it judges it appropriate) if the applicant or a related corporation has a substantial gambling licence on issue and subject to current active regulation by an interstate or overseas gambling regulator that the Commission considers to be no less reputable and rigorous in its regulatory supervision. The Commission should be authorised by the Act to enter into cooperative arrangements with such regulators so that the Commission receives information and reports of regulatory non-compliance from the other regulator (with the NT licensee's consent).

Gambling Licences issued to corporations should ordinarily have a (long) 20 year term, but be subject to any shorter term specified by a special licence condition, and if issued

⁸ "Commission staff and inspectors" means persons authorised by the Commission or its CEO.

⁹ Incidentally, consequential amendments to the Unlawful Betting Act will be needed to reflect the new terminologies and provisions of the new Act.

to individuals should have a maximum term of 10 years. Racecourse Gambling Licences should have a term of 5 years whether issued to corporations or individuals.

Despite the concerns of some licensees, we are inclined to support the retention of the requirement for a security deposit by licensees. The alternatives would be some form of net tangible asset (NTA) requirement (such as ASIC imposes for Australian Financial Services Licence holders) or a parent company guarantee for a subsidiary of a large corporate group. Each of these would put more onus on the regulator to take action. An NTA requirement would not guarantee that obligations to gamblers are met if there were to be a sudden insolvency. A guarantee option would not produce a level playing field for smaller licensees.

Licences should not be transferable except to an ADI (bank) or another type of corporate financier approved in advance by the Commission for the purpose of using the licence as collateral for a security interest (mortgaging it, in old language).

9.2 Ongoing suitability

The Act should contain a range of measures to monitor each licensee's ongoing suitability, and empower the Commission to suspend or cancel a licence if a licensee is judged unsuitable after a show-cause process, or if it is materially non-compliant with the Act (similar to current section 80). Provisions of the Act should require approval of changes in capital structure, appointment of new directors and the acquisition of a 10% or higher interest by shareholders (as is currently a standard licence condition). The Conduct Code could contain other measures, which can be varied or enhanced from time-to-time, such as reporting obligations and a requirement to keep a register of associates and affiliates (including modern forms of current standard licence conditions of these types).

A general power should be conferred on the Commission to direct a licensee to discontinue an association with an associate or an arrangement or understanding with a substantial contractor if the associate or contractor does not meet the suitability criteria for holding a licence (not dissimilar to the typical power of casino regulators over 'associates' or 'controlled contracts'¹⁰).

9.3 Key employees

Regulatory approval of key employees must remain an important element of ensuring licensee suitability. Current arrangements could be replaced with a requirement for, and a system of, personal management licences modelled on the UK Gambling Act approach. Such licences would be personal to the person seeking appointment to a management role with the holder of a Gambling Licence, so could be applied for before any employment is imminent and would stand if a holder changed employment to another licensee.

¹⁰ See, for example, the Casino Control Acts in NSW and Victoria. By comparison, the NT casino provision in section 31(4) of the *Gaming Control Act* (NT) is too wide and unconstrained.

9.4 Affiliates and white labelling

The rules relating to whether and how a licensee can collaborate with other persons in the delivery of gambling products need refinement. The existing rules are mostly found in section 81 of the current Act and in policy decisions of the Commission made in exercise of its discretionary power conferred by that section. There is some current uncertainty, flux and licensee anxiety in this area.

The starting point is to identify the reasons for regulatory involvement in licensee collaboration. These are, first, to ensure the suitability of the licensee (probity and fitness) and, secondly, to ensure that consumers are protected, including that they are not misled.

The general principles underlying elements (a) to (c) of current section 81 are therefore sound. However it would provide greater certainty to clarify that (if our view is adopted) a person that provides services to a licensee that are aimed solely at increasing revenue for the licensee, without giving the service provider any power over the management of the licensee's business, can be remunerated by fees that are volumetric or a proportion of incremental marginal revenue. Without more, such services and remuneration model should not be regarded as "sharing in the profits of the business" any more than any other service provider, because the total business strategy, conduct and resulting profitability are in the hands of the licensee.

Any concern about excessive influence of a service provider that generates significant revenue (such as the operator of an 'affiliate' website that directs traffic to the licensee) should be addressed through a broader 'suitability' power of the regulator to investigate and direct the licensee to discontinue an association with a substantial supplier if the supplier does not meet the suitability criteria for holding a licence (see above, this chapter). Importantly, this would be a reactive power of the regulator rather than a routine hurdle for the licensee. The regulator can be assisted by imposing reporting obligations and using information gathering powers, like the current requirement for licensees to maintain lists of affiliates.

To the extent that the regulatory concern relates to consumer protection, this should be generally satisfied by disclosure requirements (for example, the Conduct Code could require that a licensee must require, and enforce its requirement, that an affiliate disclose the identity, particulars and contact details of a gambling provider to whom the affiliate is directing third persons) and the overriding responsibility of the licensee for the lawful, fair and ethical conduct of its own business (under a number of existing laws and our proposed new overarching conduct obligation, set out below).

In relation to section 81(d), in our view a lay-off bet should be allowed with offshore licensed gambling providers (which is our reading of the current section but apparently not its current application). We see no problem with such transactions, and many offshore licensees are related entities of NT licensees.

The above approach deals with most of the regulatory issues about affiliates and white labelling. We see no reason to ordinarily prevent a licensee from having multiple technology platforms with different brand names, so long as each leaves an active user in no doubt as to whom they are transacting with (specifically, what licensed legal entity).

9.5 Major new or changed regulation of providers

Fair and ethical business obligation

The Act should contain an overarching conduct obligation on licensees to conduct their business in a fair and ethical manner. This should be a regulatory requirement but not a provision that, of itself, gives any private right of legal action against a licensee. Such a regulatory requirement is broad and, at the margins, imprecise, but it would provide a good statutory foundation for any specific provisions in codes and for related discretionary action by the Commission (which should be used sparingly). It would also encourage licensees to be pro-active in consumer dealings rather than taking a 'compliance' approach to regulation.

Integrated risk management obligation

The Act should contain an overarching conduct obligation on licensees to adopt, maintain and implement a risk management system that integrates normal business risk management, AML/CTF risk management and the management of the risk of gambling harm in the one endeavour. Inevitably each of the Conduct Code, Product Code and Harm Minimisation Code will contain specific obligations that relate to specific risks, but it is important (and could be transformative) to seek to ensure that gambling businesses do not consider risk in silos. Providers should know their customers for each of marketing, AML monitoring and problem gambling mitigation at the same time and through the same lens. Licensees should be required to actively monitor their customers' behaviour as part of their risk management system.

Conduct of business in the NT

The Act should require a licensee to have its registered office and a place of business in the NT and conduct a substantial amount of its business operations in the NT. The requirement for a 'nominee' is antiquated and unnecessary, and unlike in liquor law it should not in any way be a substitute for full corporate responsibility and liability of the directors of a licensee. While a 'substantial amount of its business operations in the NT' regulatory requirement is broad and imprecise, it can be given specific form in the Conduct Code.

We suggest replacing the current obligations about call centres and even IT systems with a requirement that at least (say) 20% of the total labour costs of a licensee (together with its related corporations in Australia that offer the same products as under the NT licence) be spent on labour located in the NT. A licensee could seek Commission approval for a substitute arrangement (such as contractors or other suppliers in the NT) or could instead pay an 'economic contribution levy' equal to three times the dollar amount of the local labour deficiency.

Other

The proposed power for the Commission to direct a licensee to discontinue an association with an associate or an arrangement or understanding with a substantial contractor (see above) is the fourth major change in regulation of provider conduct that we propose.

The implementation of the propositions in this report, such as obligations being generally medium-neutral, spatially-neutral and technology-neutral, will constitute an array of minor regulatory reforms (seen in the drafting of the new Act and the code provisions). These will represent a modern approach regulation that will promote efficiency.

10. Product regulation

10.1 Approach

The holder of a new form Gambling Licence would be authorised (unless the holder was subject to a restrictive special licence condition) to conduct any type of regulated gambling except to the extent that it is:

- (a) the exclusive right of another NT licence holder; or
- (b) prohibited by Commonwealth law,

so long as the provider complies with all applicable product rules.

What that means is that the licensee could act as a bookmaker, operate a betting exchange, offer lottery type products or conduct gambling on new products. It could conduct a totalisator on virtual events (except not contrary to UBET's 'public places' exclusivity, see chapter 11) or conduct some form of game if it fell outside the prohibition in the *Interactive Gambling Act 2001* (Cth).

The idea is that having passed probity and gained a Gambling Licence, the licensee has a wide degree of choice of conventional and innovative products (constrained only by current exclusive rights and Commonwealth law). In this context separate 'product rules' are necessary because the licence does not dictate the product character.

The first product rule is that, since the gambling will involve an element of chance (otherwise a licence would not be necessary), the element of chance must be a type of contingency that is acceptable under the Act or the rules ('approved contingency'). Other rules are that terms and conditions of the gambling product meet product code requirements, the product provider must give written or electronic acknowledgement of each transaction, and operating technologies must be checked for integrity according to the Commission's specification and method.

Appendix C outlines the proposed content of the Product Code.

Two key issues are the acceptable contingency and distribution channels.

10.2 Approved contingency

Currently a list of approved events is published for bookmakers (section 4(2), current Act) and is otherwise found in existing forms of licence. One option is to aggregate the current possibilities and publish them as a decision of the new Commission pursuant to

a power to approve contingencies. This would require applications to be made to add new contingencies and deliberation would follow.

An alternative, which we consider preferable, is to have a conceptual definition of approved contingencies, supplemented by a list of clarified inclusions (not unlike the legislative approach to the definition of “financial products” in Chapter 7, Division 3 of the Corporations Act). Under either option the Commission could disallow a contingency on public interest criteria.

An advantage of the conceptual definition is that innovative licensees would be able to plan, create and adapt new products more easily.

The conceptual definition could be expressed in terms such as:

“An approved contingency is an event or outcome for which the occurrence cannot be affected or materially influenced by the gambling provider or a gambler transacting with that provider (other than by the act of gambling). This definition includes:

- a) races and sporting events conducted or overseen by a governing body;*
- b) outcomes of decisions or events declared, recognised or adjudicated by a governmental or public body;*
- c) statistics or scientific observations published by a governmental or public body;*
- d) outcomes of activities in live broadcast entertainment industries;*
- e) outcomes of contingencies produced by gambling activities regulated by a governmental gambling regulator in Australia or an OECD member state (or a country that formally adheres to the OECD Guidelines)¹¹;*
- f) other contingencies approved by the Commission.”*

If the Commonwealth were to proceed to establish a National Sports Integrity Commission, as has been recently advocated, an example of an exercise of the proposed power in (f) above would be to approve: “sports conducted by bodies subject to the jurisdiction of the National Sports Integrity Commission.” Of course the power could also be exercised on a tailored application for a single specific contingency, including the conduct of a game that did not breach Commonwealth law.

Approved contingency ‘events’ and ‘outcomes’ would almost invariably be publicly known or discernible, but the Commission could make a Product Code rule requiring the licensee to publish such results.

10.3 Distribution channels

Allowable gambling activities would not be defined or limited by the distribution channel, applicable technology or method of customer interaction (except as dictated by current

¹¹ OECD membership or adherence is a good measure of a non-corrupt nation with reliable regulation.

exclusive rights and Commonwealth law). Product rules would be written in as technology-neutral a way as possible (for example, requiring informed consent recorded in a permanent reliable retrievable manner, rather than a paper consent form) and, being set out in a code rather than legislation, could be changed readily by the Commission.

Probably the most difficult issue for regulation, once this medium-neutral approach is adopted, will be the 'boundaries' of retail exclusivity that is an element of UBET's current exclusivity rights under its Totalisator Licence (see chapter 11). Apart from a retail exclusivity in relation to race and sports totalisator betting (which poses no 'channel issues' because the off-course totalisator exclusivity is absolute), there is the issue of the exclusivity in 'public places' for 'virtual events' and for fixed price race and sports wagering. Interpretation of what the public places exclusivity means is important for the methods available to other licence holders. For all practical purposes, given the breadth of the definition of 'public place' agreed by the NT Government in 2015, UBET has close to full retail exclusivity throughout the Territory with exceptions in racecourses and conceivably some private clubs. The very act of offering of face-to-face gambling is likely to bring the place within the special definition of a 'public place'. This issue is explored further in chapter 11, where we recommend that this be the subject of a Guidance Note issued by the Commission.

10.4 Consumer protection

The approach to consumer protection provisions in the new Act and in the Conduct Code should be based on the usual principles of consumer protection that underlie general consumer law, such as proper disclosure by providers, informed consent and fair dealing. Any temptation to be overly detailed in regulation should prompt a reminder that general consumer law – such as the *Australian Consumer Law* including the unfair contracts regime – applies to gambling products and their applicable terms and conditions.

The Act should contain an overarching conduct obligation on licensees to conduct their business in a fair and ethical manner. This should be a regulatory requirement but not a provision that, of itself, gives any private right of legal action against a licensee.

The Act would require compliance with all laws (including national gambling laws¹²) and also deal with dispute resolution (see chapter 12).

Each new code would contain consumer protection provisions that are gambling practice-specific (matters for which general law is insufficiently targeted), including:

Conduct Code

- Security deposit lodged with Commission;
- Record keeping;
- Holding customer funds in separate accounts.

¹² Which are becoming increasingly significant, such as the new credit prohibition.

Product Code

- Terms and conditions of products, and Commission approval or disapproval;
- Transaction statements/information;
- Deadlines for payments to gamblers;
- Product integrity provisions (eg operating technology standards and approvals);
- Regulation of loyalty programs.

The ACCC has jurisdiction in relation to the application of national consumer laws, and the Gambling Commission could enter a MOU with the ACCC to defer to it in areas of overlapping jurisdiction.

10.5 **Product integrity – approved software suppliers and testers**

Licensees should be limited in their use of outsourced software and system suppliers, and providers of system integrity assurance, to persons who are listed in a new Roll of Approved Software and Integrity Services Suppliers maintained by the Commission. Inclusion in the Roll would require satisfying the Commission that the supplier is a fit and proper person and has the competency claimed. The list would include persons currently engaged by NT regulators. The regulatory burden associated with this safeguard can be lessened by 'light touch' approval or mutual recognition of firms that have been approved by other Australian gambling regulators.

10.6 **Advertising**

We do not recommend introducing any new regulation of advertising (but if it was devised the Conduct Code would be the instrument in which to effect it). Currently general consumer law applies, most providers have a stated commitment to one or more of the various ACMA-approved industry codes of practice or ethics, and harm minimisation regimes to which providers are subject generally address advertising to a material extent.

10.7 **NCPF harmonisation**

Although not yet settled in design or anywhere near enactment or commencement, the proposed National Consumer Protection Framework (NCPF) for online wagering is likely to be another 'layer' of regulation, operating either as a Commonwealth law or cooperative scheme national legislation. While the new Act should be harmonised with it, it is most likely that harmony, efficiency and simplicity will be achieved by the new Act simply 'withdrawing' from direct regulation of the specific subject matters in the ultimate NCPF instrument (be it an Act, Law or Code).

In the unlikely event that the national agreement outcome is that NCPF measures are to be direct provisions of each state or territory, our proposed regulatory framework set out in this report would accommodate that by giving the NT regulator the power to include NCPF measures in its binding codes.

Since the vast majority of online wagering businesses are licensed under NT law (and substantial harmonisation would involve just NT and NSW reaching the same outcomes), there is an opportunity for the NT to take a lead in implementation of NCPF measures. This could benefit the national industry, but would generate a significant resource and funding need for the Territory (particularly the operation of a national self-exclusion register). This should be considered by the NT Government (and we expect that it has been).

Under our model the 9 NCPF measures could be addressed as follows:

- (a) Self-exclusion register: Conduct Code requirement on licensees to participate in a scheme administered by a company appointed by the NTGRC with ACCC clearance (to overcome any competition law issues). NTGRC approval would ensure that the agreed register standards and procedures are met and the funding of the company by licensees (of cost recovery and a reasonable profit to the monopoly service provider) is regulated.
- (b) Pre-commitment: Product Code requirement on licensees.
- (c) Credit prohibition: Product Code requirement on licensees.
- (d) Inducement regulation: Product Code requirement on licensees.
- (e) Activity statements: Only a small change to currently proposed Product Code obligation.
- (f) RG messaging: Harm Minimisation Code requirement on licensees.
- (g) RG staff training: Conduct Code requirement on licensees.
- (h) Reduced account verification period: Conduct Code requirement on licensees, although a change to Commonwealth AML/CTF Rules would be simpler.
- (i) Payday lender link prohibition: Conduct Code requirement on licensees.

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12. Dispute resolution

The new Act needs to allow an overhaul of the system of resolution of disputes by giving the Gambling Commission power to determine the requirements, procedures and cost allocation for it acting to resolve disputes reported to it by gamblers. The overhaul would seek to:

- (a) provide incentives for resolution of disputes at the gambling provider level;
- (b) optimise the allocation of resources by the Commission by reducing complaint numbers and deterring vexatious and unmeritorious complaints;
- (c) ensure swifter dispute resolution, and
- (d) promote systemic improvements to business practices based on learnings from complaints.

The Act should provide that the Commission can hear and resolve complaints made and disputes communicated by gamblers within defined jurisdictional limits:

- (a) gambling transactions involving an outlay by the gambler that is greater than \$100 and up to \$20,000 or another maximum amount set by Regulations made under the Act;
- (b) alleged systemic failures or repeated breaches of terms and conditions by a gambling provider, or
- (c) transactions that involve a possible infringement of the Harm Minimisation Code.

The Commission would set procedural requirements, fees and make cost orders:

- (a) the gambler must have used best endeavours to resolve the matter with the gambling provider, otherwise the Commission can decline to deal with it;
- (b) the gambler must pay an application fee set by the Commission (proposed: \$100) which is refundable if the gambler's complaint is partly or fully upheld;
- (c) the Commission may waive the fee if the matter involves a Harm Minimisation Code issue; and
- (d) the Commission can require the gambling provider to contribute to the Commission's costs, up to an amount of \$10,000, if there is an adverse finding in a complaint about systemic failure or repeated breaches of terms and conditions.

These arrangements should provide appropriate incentives to both gamblers and licensees to resolve complaints directly and should reduce the amount of Commission resources devoted to dispute resolution. Large disputes would become matters for traditional dispute resolution by courts or NT CAT (according to their existing jurisdictions for contractual disputes).

The workload of the Commission would also be reduced if the new Act omitted the requirement (current section 85) that the Commission determine whether a bet is lawful before court or NT CAT proceedings can be pursued. On the approach to regulation set out in this report, any gambling product of, or transaction by, a licensee should be presumed lawful for the purpose of private rights of action. This would focus the work of the court or tribunal on the gambling product's terms and conditions and gambler rights under consumer law.

A more radical solution, which would save government resources but shift the cost to industry, would be to mandate that licensees sign up to an external Alternative Dispute Resolution scheme approved by the Commission. This is the UK model. In the near term this may be an excessive burden for the industry, but might be considered if a few years of experience with our model suggested above proves materially deficient in meeting its objectives.

13. Harm minimisation

Efforts to minimise gambling harm can take one or more of three broad forms:

- (a) Regulation of the conduct of gambling providers (type 1);
- (b) Regulation of the nature, terms, attributes and explanation of gambling products (type 2);
- (c) The offering of advice, support and services (type 3).

Types 1 and 2 are best embedded in conduct and product regulation, because they would mostly apply in an untargeted way to all gamblers and should become mainstream behaviour and culture of providers, rather than a siloed or 'additional' endeavour.

Type 3 is most effective when it involves a particular focus on identified or presumed potential vulnerable or problem gamblers. Type 3 measures can be provided by licensees or third parties.

This report is not primarily about harm minimisation measures (the Government has other advice on that). It does, however, make some observations about best practice and, importantly, suggests how type 1 and 2 efforts should be embedded into the regulatory framework.

We have suggested:

- (a) the adoption of objects for the new Act and regulatory principles for the regulator that include harm minimisation (chapter 8);
- (b) an overarching conduct obligation on licensees to conduct their business in a fair and ethical manner (section 9.5);
- (c) an integrated risk management obligation so that licensees must consider business risks, AML/CTF risks and problem gambling risks as part of an integrated process (section 9.5);
- (d) 'leadership' by the Act and the Commission in using neutral language (section 15.2).

It is fundamentally important that harm minimisation is not just the concern of a small, siloed team employed by a gambling provider. It must become central and inherent in all of the product design, marketing and business activities of a licensee, to achieve a true cultural shift.

Regulator prescription of specific harm minimisation measures of types 1 and 2 should sit in the Conduct Code and Product Code, as much as possible (to emphasise non-siloing).

A Harm Minimisation Code should contain:

- (a) Principles and guiding sentiment.

- (b) Pointers to provisions in the other codes.
- (c) Additional binding obligations on licensees, most likely of type 3.
- (d) Any non-binding recommendations or guidance.

The document should be structured so that these four different types of content, with their different legal status, are not confused.

In terms of a general observation on harm minimisation measures, we believe the NT would do well to look to the *Responsible Gambling Mandatory Code of Practice for Tasmania*, to achieve 'best practice ballpark' in a business-efficient manner.

There is no shortage of individual measures that could be mandated, but we consider the most useful addition to the suite of NT measures is a binding obligation on gambling providers to actively monitor the actual activities of their account holders, including through use of data analytics. Some licensees do this to some extent now. This can be reasonably imposed through our proposed integrated risk management obligation.

We also float the future idea of a social responsibility levy in section 14.5, which could affect the behaviour of gambling providers.

14. Taxation

14.1 Licence fees

Licensees should pay an annual licence fee that goes a reasonable way toward covering the costs of regulatory supervision. The fee should be a flat amount, and would be deductible from the calculation of any NT gambling tax to be paid (and it would be a deduction for Commonwealth income tax assessment). The fee should be substantially lower for Racecourse Gambling Licences, possibly initially just covering the amount currently paid annually for licence applications and renewals.

The quantum of the fee for a Gambling Licence is beyond our terms of reference, but we note that even a fee in the order of \$100,000 would generate a significant contribution to the costs of regulatory supervision. The current betting exchange licence attracts an annual fee of 200,000 revenue units (currently equalling \$236,000), and with a single form of licence a different fee could only be sustained by having a supplementary licence fee for any licensee that offered the relevant designated product type (peer to peer gambling). The fact that the current betting exchange licence holder can viably operate with its current fee suggests that a standard licence fee of 200,000 revenue units (particularly with some adjustments as contemplated below) could be a reasonable starting point in formulating a fee proposal¹⁶.

Without creating too much complexity, there could be a small number of factors that each attract a small discount on the fee (for example, no gambler complaints requiring substantial investigation or dispute resolution by the Commission in the year, and a

discount for the first year for a new licensee) or a small additional increment (for example, the need for a regulatory investigation of a breach of a provision of the Act, rather than of a code).

Licence fees should not be considered a tax for the purposes of *UBET's* tax cap (chapter 11).

Licensees would also be the subject of monetary penalties for material regulatory breaches (similar to current section 80).

14.2 Economic contribution levy

In section 9.5 we suggest an economic contribution levy as an alternative for licensees to choose if they are unwilling to meet in-kind requirements to contribute to the NT economy through the conduct of business in ways specified in the Conduct Code.

14.3 Gambling taxes

It is not within our terms of reference to make recommendations about changing the rates or thresholds for turnover based gambling taxes. We observe, however, that with new substantial licence fees and the roll out of 'point of consumption' taxes in the states, the case for any increase in NT tax is weaker than it would otherwise be.

[REDACTED]

14.4 Tax administration

In drafting the new Act, the opportunity should be taken to modernise reporting, collection and adjustment provisions for taxes on licensees (but not licence fees) by making relevant provisions a 'Taxation Act' within the meaning of the Taxation Administration Act, and by that means apply the machinery of that act for administration by the Commissioner for Territory Revenue.

14.5 Future directions – a social responsibility levy?

While there is mainstream public finance logic in gambling taxes being volumetric (state and territory taxes based on turnover, race and sports product fees related to turnover or profit, and company tax related to profit), there is also a social policy case for the public revenue contribution of gambling businesses having some relationship with a business' social impact as measured by achievement of regulatory compliance and harm minimisation (assuming regulation is directed at the desired social outcomes).

In crude economic terms, if some attributes of gambling represent or produce a negative externality, then a business that breaks the rules and does less to reduce harm should be taxed more heavily than one that is a 'model citizen', treats gamblers ethically, and works hard and effectively to identify and reduce problem gambling.

Fines and penalties are not enough to drive good behavioural outcomes, because the 'triggers' for them are based on narrow, negative and often forgiving criteria.

While just floating it as an idea for future analysis (rather than a current recommendation), a social responsibility levy could be imposed on gambling licensees that requires an annual tax-like payment that can be reduced by achieving certain performance measures that are tested annually or on a rolling basis. The levy could be set at a level that, if actually paid, would represent a significant tax impost but not one that would make the conduct of the business unviable. The factors that produce tax credits could be (each of course needing carefully crafted definitions): no breaches of the Act, Conduct Code or Product Code; no regulatory investigations that produce adverse findings; no more than \$X awarded against the business in dispute resolution conducted by the Commission; 100% adherence to the self-exclusion and voluntary pre-commitment schemes (that is, no one 'slips through a crack'). The credit factors would be cumulative (each having a % weighting of the amount of the prima facie levy) so that achieving all would leave no levy payable for the relevant year.

Apart from being externality-based taxation, this approach could reconcile dual objectives of the NT being attractive to businesses as a moderate tax jurisdiction while being a jurisdiction that promotes the best possible regulatory outcomes.

15. Other issues

15.1 Innovation and new product development

The more far-reaching changes in our proposed new regulatory framework are the elements of separating provider and product regulation and creating a new form of generic Gambling Licence. These are important to set the scene for regulation that is medium-neutral, spatially-neutral and technology-neutral, because current regulation is bogged down in old concepts. Any attempt to 'modernise' regulation incrementally would be complex, suboptimal and prone to medium-term deficiency.¹⁷

A key to enabling innovation is that the new Gambling Licence would not be product-specific. Holders would be authorised to conduct any type of regulated gambling that is not the exclusive right of another NT licence holder nor prohibited by Commonwealth law, so long as the provider complies with the applicable product rules. Products are not the creation of legislation, they are the work of providers.

Under the new regime, new gambling product development would be essentially a three to four step process:

- (a) Obtain a Gambling Licence (if one is not already held by the proposed provider).

¹⁷ Incremental reform was what created the bolt-on of sports bookmakers to racing legislation which for a long time has perpetuated over-regulation of on-course bookmakers and protection of a big tote operator for mixed and sometimes conflicting objectives (such as racing industry funding).

- (b) Check that the proposed new product would not infringe the exclusivity of UBET, a casino (including SKYCITY's keno rights), lottery regulation or the *Interactive Gambling Act 2001* (Cth).
- (c) Check that the element of chance meets the new Act's definition of approved contingency, and seek approval if it does not. If it meets the conceptual definition but is not in the list of 'specific inclusions' seek regulator confirmation of your view if complete certainty is desired.
- (d) Obtain all necessary IT system approvals as required by the Product Rules.

Of course product design will need to plan to comply with all applicable requirements of the Act and the codes, which will be generally medium-neutral and published to see.

This flexibility would allow NT licensees to stay up-to-date, or even lead, international developments (subject to fetters of Commonwealth law).

On the current issue of digital currencies and associated block-chain technology, there is no reason why the new Act should not allow transactions to be made and settled in a specified digital currency or technological method (if both parties wish that and the applicable rules are covered by the licensee's approved terms and conditions). Also, the movement in value of a digital currency could be an approved contingency for a gambling product provider.

15.2 Neutral language

The new Act, codes, guidance notes and other documents produced by the regulator should adopt the 'neutral' language used in this report and set out in the following table.

We believe this is important for two reasons. First, it is consistent with promoting an understanding of the product neutral and integrated approach to regulation that would flow from the new Act. Secondly, it is consistent with the view that it is desirable to eliminate language that 'normalises' gambling in the minds of people, predominantly by use of the word 'bet' given that it has other non gambling uses ("I bet you will..."). Gambling and being a gambler is almost unambiguous, and will not be confused with social gaming and mere personal predictions. In our view governments generally should not legislate to prohibit or regulate the use of words, but they can exercise leadership in their own use of labels and avoid soft euphemisms that might be designed to increase social acceptability.

Preferred	Current
Gamble	Bet, wager, game (verbs)
Gambler (or, if the context requires, user)	Customer, punter, bettor, patron, consumer ¹⁸
Gambling product	Bet, wager, game, lottery (nouns)

¹⁸ But statutory use of the well-recognised term 'consumer protection' is justifiable, because of the need to draw connections between this regulatory regime and wider consumer protection laws.

Preferred	Current
Gambling provider	Bookmaker, operator
- Gambling product provider <i>(a person who carries on a business of offering gambling products)</i>	Bookmaker, operator
- Gambling facility provider or Gambling intermediary <i>(a person who carries on a business of facilitating the offer of gambling products)</i>	Betting exchange operator
Peer to peer gambling	Betting exchange

15.3 Other factors not addressed

This report has sought to address the major and obvious concerns with the current Act and the current regulatory framework for betting as a form of gambling. Apart from re-engineering the framework and modernising regulatory measures, it proposes some new measures in the quest for efficient best practice. To the extent that there are further concerns (now or in the future) in the nature of policy, regulatory detail or administration that our report does not discuss, they should be able to be considered and resolved in an efficient manner (almost inevitably without requiring further amendment to legislation) through the framework that we are proposing.

The last three decades alone have shown the massive change that can occur in gambling markets. Further change is inevitable, involving changed gambler preferences and available technologies (and even further Commonwealth dabbling). For that reason legislators need to resist prescriptive legislation, but instead guide and empower appropriate regulators with clear objectives, discretions and sufficient resources. A corollary is that business certainty, which is required for investment, demands that regulators act rationally, consultatively, with sufficient notice where possible, and be subject to adequate safeguards and review mechanisms. Our proposed framework adopts that approach.

15.4 Approach to supervision and enforcement

It is essential that the new regulator take a strategic and pro-active approach to the supervision of licensees. This requires that it be adequately resourced and, to the maximum extent possible, allocate its compliance resources to investigating, reviewing and analysing rather than administering routine processes. Our suggested approach to the issue of affiliates is an example of that.

We have proposed that licensees have some broad new obligations (fair and ethical conduct; and integrated risk management) and the regulator have some strong new powers (requiring disassociation or the end of contracts with unsuitable persons). This will necessitate the regulator engaging in qualitative review of information gathered from

licensee's reporting, commissioning thorough regulatory audits and even having its own program of rolling reviews of particular licensees or industry handling of issues.

As part of the modernisation represented by the new Act we have recommended discontinuation of the current Act's requirement for approval of premises and location of computer servers in the Territory. Those elements are not necessary for regulatory enforcement. As with many other industry regulators around Australia, the Commission will have powers to direct the production of records and information and has the ultimate powerful sanction of licence suspension or cancellation. The new Act can also provide for various offences for contravention of regulatory requirements, giving NT police power to investigate and prosecute alleged offences¹⁹.

15.5 Best practice model, for future guidance

Our proposed regulatory framework seeks to be a manageable (rather than radical) evolution in approach that draws on features of other Australian and overseas regulation for gambling and other regulated industries. We have also sought to keep it as simple as possible.

In our view there is no one jurisdiction that provides a single best model for the circumstances of the NT, but we think that the UK model (UK Gambling Act and Gambling Commission) is the best place to look for inspiration on how to handle new issues and regulatory challenges. In our view the UK regulator takes a more balanced and rational approach to many issues than other Australian gambling regulators. The UK Gambling Commission's website is also a good model for organisation of regulatory information for public consumption.

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8 November 2018

¹⁹ Statutory offences would invoke various police powers relating to data on servers, including proposed new powers in the *Telecommunications and Other Legislation Amendment (Assistance and Access) Bill 2018* which is currently before the Commonwealth Parliament.

Appendix A - Outline of new Gambling Regulation Act

Introductory provisions

Objects

Definitions

NT Gambling Regulation Commission (NTGRC)

Constitution, functions, regulatory principles, powers, procedures

Regulator may make codes

Functions and powers of inspectors, law enforcement provisions

Power to step in to gambling business

Appeals to Supreme Court

Gambling Licences

Offence to carry on business without licence

Authority conferred by licence

Licence eligibility – major criteria (including probity and security deposit)

Licence application, grant, renewal, variation

General power to impose conditions on licences

Licensee obligation to comply with law, codes, licence conditions

Change of directors & large shareholders need regulator approval

Power to require disassociation/termination of contracts *

Suspension or cancellation of licence

Licence not transferable (and encumbrances require approval)

Provider regulation - conduct

- Conduct business in fair and ethical manner *
- Maintain an integrated risk management system *
- Conduct substantial amount of business in NT *
- General record keeping obligation
- Meet reporting obligations required by regulator
- Audits as required by regulator
- Key employee licensing
- No gambling transactions with persons under age 18
- Liability of licensees' employees
- Offences by licensees

Product regulation

- Refers to authority conferred by licences (above, Gambling Licences part)
- Refers to product code compliance (above, Gambling Licences part)
- Approved contingencies
- Roll of Approved Software and Integrity Services Suppliers

Consumer protection

- Licensee's terms & conditions to be approved by regulator and published
- Must notify customers of transactions and give access to records
- Procedures for consumer dispute resolution *
- Legal proceedings/legal rights in respect of bets
- Offences by gamblers

Taxation

Licence fees

Tax

Miscellaneous provisions

Special rights given to Preferred Licensee (UBET) **

Transitional

Automatic issue of new licences to holders of existing licence types

Recognition of Totalisator Licence, deemed to be issued under this Act

* Indicates major new provision, see section 9.5 and chapter 12 of this report

** See chapter 11 of this report

Appendix B - Conduct Code contents

Code provision	Derivation*
Must operate from office in NT and spend 20%+ of its Australian group labour costs on employees in NT	SBL conditions 1, 2 & 28
Must lodge security deposit with Commission	SBL condition 35
Must not divert business to another entity	SBL condition 13
Details of record keeping obligations (elaborating on Act)	Sections 76, 77 & 109S; SBL condition 19
Must establish compliance program and report regulatory breaches (inc for NT legislation, other gambling legislation and requirements of AUSTRAC, ACMA & ASIC)	SBL condition 22
Details of integrated risk management system (elaborating on Act)	SBL conditions 44, 45
Must maintain register of affiliate arrangements and brands	SBL condition 17 & 18
Must maintain separate account equalling total customer account balances	SBL condition 37
<i>Suitability</i>	
Details of audit requirements	SBL conditions 8, 9 & 40
Reporting requirements	
- increases in integrity risk or integrity breaches	SBL condition 22
- changes in shareholdings > 10%	SBL condition 30
- copies of ASX, ASIC, AUSTRAC and ACMA notices	SBL condition 32
- legal proceedings	SBL condition 33
- investigations	SBL condition 34
- copies of audited accounts	SBL condition 38
- cloud data centre use	SBL condition 46
- data security breach	SBL condition 47

Code provision	Derivation*
- monthly report	SBL condition 49
- fee and gambling tax returns	Sections 107, 108
- activity/other finance reports	Section 117

* Section references are to the current Act unless otherwise indicated, and 'SBL condition' refers to a standard condition of the current Sports Bookmaker Licence. A proposed provision could be broader or updated from a referenced current provision.

Appendix C - Product Code contents

Code provision	Derivation*
All products	
Approved contingencies – list any additional approvals	4(2); <i>Totalisator Licensing and Regulation Act s 13</i>
Requirements about terms and conditions of gambling products – substantive (minimum or mandated terms) and procedural (must submit for Commission approval and publish)	SBL conditions 7, 10 & 11; <i>Gaming Control (Internet Gaming) Regulations</i>
Requirements for gambler registration	<i>Gaming Control (Internet Gaming) Regulations</i>
Must give written or electronic acknowledgement of each transaction to gambler (and give continuing right of access to records)	Evolution from sections 73-75, 109Q; SBL condition 42
Return to gambler (payout/prize) timing requirements	<i>Gaming Control (Internet Gaming) Regulations</i>
Must comply with technical standards	SBL condition 40
Operating technologies must be checked for integrity according to the Commission’s specification and method (as set out)	Section 113; SBL conditions 39–40, 43–46, 48
Must record customer conversations	SBL condition 20
Loyalty programs must be approved by Commission	SBL condition 24
[Total \$ amount of long term contingencies to be held in separate account]	[SBL condition 36]
All products – harm minimisation inspired	
Must offer periodic deposit option	SBL condition 15
Product specific - products based on NT race and sport contingencies	

Code provision	Derivation*
Must pay NT sports information fees under Racing Act	SBL condition 23
If licensee has only Racecourse Gambling Licence, must have arrangements with race club	Sections 112(1), 116
Product specific – peer to peer gambling (currently named Betting Exchanges)	
Mandatory design elements	
Product specific - totalisator	
Mandatory design elements	Sections 112(2), 114 - 115; Sections from <i>Totalisator Licensing and Regulation Act</i>

* Section references are to the current Act unless otherwise indicated, and 'SBL condition' refers to a standard condition of the current Sports Bookmaker Licence. A proposed provision could be broader or updated from a referenced current provision.

[Square brackets] indicate current regulatory measures that should be subjected to further consideration before being retained in the new regulatory regime.

Appendix D - Relocation of current regulatory provisions

Current Act

Section	New Location
Part IVA Bookmakers	
Division 2 General	
70 Licensing of bookmakers, &c	New Act, 'Gambling Licences'
71 Person to whom licences or permits under this Part may not be granted	New Act, 'Gambling Licences'
72 Security may be required	New Act, 'Gambling Licences'
73 Supply and control of betting tickets	Delete – unnecessary
73A Commission to determine purchase price	Delete – unnecessary (price or 'unit' regulation, if any, would be in Product Code)
74 Bookmakers to issue betting tickets	New Act, 'Consumer Protection' and Product Code (transaction notifications, not tickets)
75 Supply and control of betting sheets	Delete – unnecessary (new record keeping obligations in Act and Conduct Code)
76 Bookmakers to account for records	New Act, 'Provider Regulation - Conduct' and Conduct Code (record keeping)
77 Bookmakers to record all bets on approved betting sheets	New Conduct Code (record keeping)
78 Supervision of bookmakers	New Act, 'NT Gambling Commission'
79 Offences by bookmakers	New Act, 'Gambling Licences' and 'Provider Regulation - Conduct'
80 Suspension or cancellation of licence or permit	New Act, 'Gambling Licences'
81 Licensed or registered bookmakers not to do certain things	New Act, 'Gambling Licences', 'Provider Regulation - Conduct' and 'Consumer Protection'
82 Special betting permitted	Delete – unnecessary (otherwise Product Code)

Section		New Location
83	Commission may make rules	New Act, 'NT Gambling Commission'
85	Legal proceedings in respect of bets	New Act, 'Consumer Protection'; delete sub-s 85(2)
87	Liability of bookmakers' employees	New Act, 'Provider Regulation - Conduct'
88A	Licence and permit not transferable	New Act, 'Gambling Licences'
Division 2 Sports bookmakers		
89	Applications for licences	New Act, 'Gambling Licences'
89A	Licensing under this Part of person holding licence under Totalisator Licensing and Regulation Act	New Act, 'Gambling Licences'
90	Commission may grant licence	New Act, 'Gambling Licences'
91	Renewal of licences	New Act, 'Gambling Licences'
92	Variation etc. of licences	New Act, 'Gambling Licences'
93	Special permit	Delete – unnecessary (otherwise Product Code)
96	Power to exclude or remove persons from licensed premises	Delete – unnecessary (premises no longer licensed)
97	Approval of sports bookmaker's agent	Delete – unnecessary (premises no longer licensed and key employee licensing applies)
Division 3 Registered bookmakers		
100	Control by control bodies and clubs over registered bookmakers	Delete – unnecessary (but Product Code to require bookmakers on racecourses to have arrangements to operate at race meetings)
102	Registered bookmakers	New Act, 'Gambling Licences' (either Racecourse Gambling Licence or Gambling Licence available)
102B	Renewal of licences	New Act, 'Gambling Licences'
Division 4 Key employees		
103	Licensing of key employees	New Act, 'Provider Regulation - Conduct' (but no longer spatial connection; reformed)

Section		New Location
104	Remote clerks	Delete – unnecessary (no longer spatial regulation)
105	Suspension of licence	New Act, 'Provider Regulation - Conduct' (reformed)
Division 5 Bookmaker tax		
106	Bookmaker's liability to pay tax	New Act, 'Taxation'
107	Bookmaker's obligation to lodge returns	Conduct Code
108	Procedure for payments and returns	Conduct Code
109	Suspension of licence or permit	New Act, 'Gambling Licences'
Part IVA Betting exchange operators		
Division 1 Definitions		
109A Definitions		
Division 2 Betting exchange licences		
109B	Application for betting exchange licence	New Act, 'Gambling Licences'
109C	Commission may grant betting exchange licence	New Act, 'Gambling Licences'
109D	Persons to whom betting exchange licence must not be granted	New Act, 'Gambling Licences'
109E	Licensed premises and conditions	New Act, 'Gambling Licences' (but no longer spatial connection)
109F	Endorsements	Redundant – various other provisions apply
109G	Renewal of betting exchange licence	New Act, 'Gambling Licences'
109H	Variation of betting exchange licence or conditions	New Act, 'Gambling Licences'
Division 3 Employees and betting exchange agent		
109J	Key positions and key employee licence	New Act, 'Provider Regulation - Conduct'

Section	New Location
109K Offences in relation to employees	New Act, 'Provider Regulation - Conduct'
109L Person may act for betting exchange operator	Delete – unnecessary (no longer spatial connection; employee licensing will apply)
109M Liability of betting exchange operator for employees and betting exchange agent	Delete – unnecessary
Division 4 Matters relating to operating a betting exchange	
109N Operator of betting exchange must be licensed	New Act, 'Gambling Licences'
109P Security must be given to Commission	New Act, 'Gambling Licences'
109Q Issue of betting receipt	New Act, 'Consumer Protection' and Product Code (transaction notifications, not receipts)
109R Audit log of bets	New Act, 'Provider Regulation - Conduct' and Conduct Code (record keeping)
109S Betting exchange operator to account for records	New Act, 'Provider Regulation - Conduct' and Conduct Code (record keeping; reformed)
109T Supervision of betting exchange operators	New Act, 'NT Gambling Commission'
109U Prohibited conduct	New Act, 'Provider Regulation - Conduct' (broadened)
109V Discipline of betting exchange operator and cancellation of licence	New Act, 'Gambling Licences'
109W Business arrangements to be approved by Commission	New Act, 'Gambling Licences' and 'Provider Regulation - Conduct'
109X Commission may make rules	New Act, 'NT Gambling Commission'
109Y Legal proceedings in respect of bets	New Act, 'Consumer Protection'
Division 5 Betting exchange tax	
109Z Liability to pay tax	New Act, 'Taxation'
109ZA Lodgement of returns	Conduct Code
109ZB Procedure for payments and return	Conduct Code

Section	New Location
109ZC Suspension of licence	New Act, 'Gambling Licences'
Part V Totalizators	
110 Applications for licences	New Act, 'Gambling Licences'
111 Totalizator licences	New Act, 'Gambling Licences'
112 Conditions of use of totalizators	New Act, 'Gambling Licences'
113 Remote control of totalizator	Unnecessary (Product Code can address if necessary)
114 Application of revenue from totalizators	Product Code
115 Recovery of dividends	Product Code
116 Dividends Adjustment Fund	Product Code
117 Returns of moneys received through totalizators	Conduct Code
119 Commission may assume control of totalizator	New Act, 'NT Gambling Commission'
119AA Licence not transferable	New Act, 'Gambling Licences'
Part VAA Appeals from decisions of Commission	
119A Right to appeal to Local Court	New Act, 'Gambling Licences'
119B Stay of operation of decisions	New Act, 'Gambling Licences'
119C Powers of Local Court on appeal	New Act, 'Gambling Licences'
Part VI Unlawful betting	
124 Unlawful use of totalizator	New Act, 'Gambling Licences'
132 Betting with person under 18 years prohibited	New Act, 'Provider Regulation - Conduct' and 'Consumer Protection'
133 Money stolen, &c., paid in bets recoverable	New Act, 'Consumer Protection'
134 False pretences	New Act, 'Consumer Protection'

Section		New Location
135	Betting contracts	New Act, 'Consumer Protection'
136	Powers of betting inspectors	New Act, Part 'Gambling Commission' or Unlawful Betting Act
137	Special powers relating to searches, &c	New Act, Part 'Gambling Commission' or Unlawful Betting Act
138	Not necessary to prove that person found betting for money, &c	Unlawful Betting Act
139	Effect of discovery of instruments of betting	Unlawful Betting Act
140	Evidence that place used for unlawful betting	Unlawful Betting Act
141	Act not to extend to stakes payable to winner of lawful game or race	Delete - unnecessary
Part VII Evidence, procedure &c.		
142	Offences by clubs, &c	New Act, 'Provider Regulation - Conduct'
143	Evidence as to offences	Unlawful Betting Act
144	Reasonable suspicion sufficient	Unlawful Betting Act
145	Forfeiture	Unlawful Betting Act
145A	Regulatory offences	Unnecessary

Relocations above would, of course, involve updating for new concepts, approaches, regulatory techniques, definitions and for harmonised licences and medium neutrality – major elements of which are explained in this report.

Current standard licence conditions - Sports Bookmaker Licences (SBL)

SBL clause	Essence of provision	Future regulatory provision and location
1	Conduct business from approved premises in NT	Updated, Conduct Code
2	Call centres & call takers must be located in NT	Delete, or Conduct Code
3	May conduct business 24/7, 365	Unnecessary
4	Must comply with all applicable laws	Act
5	Must comply with licence and ensure nominees and key employees aware	Act (but no nominee)
6	May accept bets on approved events	Act, with other requirements
7	Must explain in Ts & Cs how customer funds protected from insolvency	Updated, Product Code
8	Audit at licensee expense on Commission request	Act, with Conduct Code
9	Audit results to Commission	Conduct Code
10	Ts & Cs to be given to Commission, published, notified. Commission can require amendment	Act, with Product Code
11	Ts & Cs to be accessible	Act, with Product Code
12	KYC ID before customer account withdrawal	Unnecessary (AML/CTF Act applies)
13	No diversion of bets to another business	Conduct Code
14	Comply with Commission direction about NOSBM (regulatory model)	Redundant
15	Must offer customers periodic deposit option	Product Code or Harm Minimisation Code
16	Comply with codes and guidelines under Act	Act
17	Register of affiliate arrangements	Conduct Code
18	White label arrangements need approval	Delete
19	Keep records of bets	Act, with Conduct Code
20	Record customer conversations	Product Code

SBL clause	Essence of provision	Future regulatory provision and location
21	Must have internal policies and procedures to cooperate with inspectors	Unnecessary
22	Give information about possible offence/integrity risk to Commission	Conduct Code
23	Must pay NT race fields levies	Product Code
24	Commission may authorise loyalty program	Product Code
25	Licence non-transferable, no goodwill	Act
26	No bets after beginning of event unless telephone voice conversation	Updated, Product Code
27	Alignment of principal place of business per licence and ASIC records	Unnecessary
28	Nominee must be in NT, contactable	Delete
29	Change of directors, nominees and key employees needs Commission approval	Act (except nominee)
30	Notify 10%+ change in interest in shares	Act
31	Change to structure of capital or ownership needs Commission prior approval	Updated, Act
32	Provide Commission copies of ASX and ASIC notices	Conduct Code
33	Notify Commission of legal action	Conduct Code
34	Notify Commission of investigation	Conduct Code
35	Lodge [\$200,000] security	Updated, Conduct Code
36	Separate account for long term bets	Product Code
37	Separate account to equal customer balances	Conduct Code
38	Lodge audited accounts	Conduct Code
39	Betting system needs approval	Product Code
40	Commission may audit systems at licensee cost	Product Code
41	Comply with technical standards	Product Code

SBL clause	Essence of provision	Future regulatory provision and location
42	Must provide customer bet confirmation (in lieu of ticket)	Updated, Product Code
43	3 rd party access to gambling systems needs approval	Product Code
44	Annual ISO/IEC 27001 review of systems at licensee expense	Product Code
45	Risk assessment for cloud hosting	Conduct Code
46	Cloud data centre disclosure	Conduct Code
47	Notify Commission of data security breach	Conduct Code
48	Maintain independent audit log with approved NT host	Product Code
49	Monthly financial report	Conduct Code