



Regulatory Impact Statement

Proposed Community Gaming Regulation 2020



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1. Background information

1.1 Why the Community Gaming Regulation is being made

The NSW Parliament passed the *Community Gaming Act 2018* (Community Gaming Act) on 17 October 2018, replacing the *Lotteries and Art Unions Act 1901* (LAU Act). The Community Gaming Regulation 2020 (proposed Regulation) must be made to support the Community Gaming Act.

The existing Lotteries and Art Unions Regulation 2014 (LAU Regulation) made under the LAU Act will no longer have effect when the Community Gaming Act commences. The Community Gaming Act will not commence until there are appropriate regulations in place to support its operation.

The Community Gaming Act provides a new legislative framework for:

- community gaming activities in the charitable and not-for-profit sectors
- the broader community where such activities are conducted for social purposes
- trade promotions in the commercial sector.

The Community Gaming Act maintains the general prohibition on all gaming in the LAU Act, except for certain permitted gaming activities. The details, including definitions, conduct requirements and when an authority is required, are delegated to the regulation. This allows the Government to respond to growth and innovation in the sector and make timely changes to the regulatory framework.

The new legislation was developed following a comprehensive public review of the LAU Act by Liquor and Gaming NSW in 2016-17 ([OLGR Review](#)). The OLGR Review found that stakeholders find the LAU Act complex, confusing and overly prescriptive. NSW Fair Trading is the Regulator responsible for the LAU Act and LAU Regulation.

The proposed Regulation introduces a modern, streamlined, principles-based approach that is reflective of the risks associated with specific gaming activities. This Regulatory Impact Statement (RIS) contains detailed discussion on important aspects of the proposed Regulation and seeks feedback from stakeholders and the community.

1.2 Matters outside the scope of this consultation

Matters covered by the principal Act – the Community Gaming Act - are not the subject of the consultation process. This RIS only deals with matters within the scope of the proposed Regulation.

2. Consultation program

2.1 Public consultation on the proposed Regulation and RIS

The proposed Regulation and this RIS will be publicly exhibited until 7 February 2020. They are available on the 'Have Your Say' page of the NSW Fair Trading website at www.fairtrading.nsw.gov.au

A notice advising of the availability of the proposed Regulation and RIS was published in the NSW Government Gazette, and in the Daily Telegraph and the Sydney Morning Herald.

Copies of the proposed Regulation and this RIS have also been provided directly to some key stakeholder groups and organisations. A list of these stakeholders is provided at **Appendix 3**.

2.2 How to make a submission

Interested organisations and individuals are invited to provide a submission on any matter relevant to the proposed Regulation, whether or not it is addressed in this RIS.

We would prefer to receive submissions by email and request that any documents provided to us are produced in an 'accessible' format. Accessibility is about making documents more easily available to those members of the public who have some form of impairment (visual, physical, cognitive). Further information on how you can make your submission accessible is contained at <http://webaim.org/techniques/word/>.

Please forward submissions by:

Email: cgr@customerservice.nsw.gov.au

or by mail to:

Community Gaming Regulation 2020
Better Regulation Division, Regulatory Policy
Department of Customer Service
McKell Building
Level 5, 2-24 Rawson Place
SYDNEY NSW 2000

The closing date for submissions is 7 February 2020.

2.3 Confidential submissions

All submissions are generally made publicly available on the Fair Trading website. If you do not want any part of your submission published, please indicate this clearly in your submission. Automatically generated confidentiality statements in emails are not sufficient. You should also be aware that, even if you state that you do not wish certain information to be published, there may be circumstances in which the Government is required by law to release that information (for example, in accordance with the requirements of the *Government Information (Public Access) Act 2009*). It is also a statutory requirement that all submissions are provided to the Legislation Review Committee of Parliament (though not made public), with the final version of the Regulation.

2.4 Evaluation of submissions

All submissions received will be considered and assessed. The proposed Regulation may be amended, if necessary, to address issues identified in the consultation process. If further information is required, targeted consultation will be undertaken before the proposed Regulation is finalised.

2.5 Commencement of proposed Regulation

Once the proposed Regulation has been finalised it will be submitted to the Governor for assent.

The final Regulation will then be published on the NSW Government website for online publication at www.legislation.nsw.gov.au prior to commencing.

Depending on the nature and scale of issues raised in submissions, we anticipate that the Community Gaming Act and Regulation will commence in mid-2020.

3. Objective and rationale of the proposed Regulation

3.1 Need for government intervention

The proposed Regulation is a continuation of a regulatory scheme that has been in existence for over a century since the introduction of the LAU Act. The framework exists as it has long been acknowledged that the 'permitted gaming' activities it regulates are of a low risk profile (in terms of social harms) and have a number of social benefits. The proposed Community Gaming regime allows these activities to continue with flexible and appropriate checks and balances to effectively manage their risks. The long-term approach in NSW is to carefully regulate industry practice to minimise any potential harm that may arise.

It has been widely recognised and accepted that there are various social and charitable benefits associated with community gaming. This position is supported by the proposed Regulation which provides greater flexibility to encourage industry growth and innovation. The proposed Regulation aims to safeguard the integrity of community gaming activities by introducing more objective and appropriate compliance and enforcement provisions.

The primary objective of the proposed Regulation is to provide the legislative support and administrative detail for the operation of the Community Gaming Act. The objects of the Community Gaming Act are to:

- allow the conduct of gaming activities for charitable, social, not-for-profit or trade promotion purposes
- ensure that there are reasonable net public benefits obtained from the conduct of gaming activities
- ensure the integrity and fairness of permitted gaming activities
- assist the ongoing viability of organisations conducting gaming activities that contribute positively to the community
- minimise the regulatory burden required to sufficiently protect participants in gaming activities.

The legislation seeks to achieve the objects by:

- restricting who may conduct and benefit from gaming activities
- establishing a principles-based framework for regulating permitted gambling activities according to the level of risk associated with the activities
- ensuring that the proceeds and profits of permitted gaming activities are applied to the particular purposes, or go to the persons or organisations, for which the activities are purported to be conducted.

Without the proposed Regulation, the Community Gaming Act could not be effectively administered or enforced.

The main objectives of the proposed Regulation are to provide for:

- which gaming activities are permitted
- key requirements that apply to permitted gaming activities
- when an authority is required to conduct a permitted gaming activity and the requirements for applying for and obtaining an authority
- how permitted gaming activities are conducted, including requirements as to fairness, rules, prizes, records and payment of proceeds
- restrictions on certain types of advertising
- auditing requirements
- authority fees
- penalty notice offences.

The Department of Customer Service takes a 'stewardship' approach to the administration of all legislation for which it is responsible. As such, new community gaming laws will be subject to ongoing monitoring and review once they commence, to ensure they remain fit for purpose.

3.2 Regulatory options

The primary purpose of the proposed Regulation is to support the operation of the Community Gaming Act on commencement. In considering whether the proposed Regulation should be made, there are three main options available.

Option 1: Take no action

The LAU Regulation would be automatically repealed under the *Subordinate Legislation Act 1989* on 1 September 2020 and the proposed Regulation would not be made. Taking no action would also result in the Community Gaming Act not commencing and the LAU Act remaining in force with no supporting regulations.

Option 2: Maintain the status quo

The proposed Regulation would not be made and instead the LAU Regulation would be re-made. Maintaining the status quo would result in the Community Gaming Act not commencing, meaning that the benefits of a modernised regulatory regime would not be realised.

Option 3: Make the proposed Regulation

Once made, the proposed Regulation would commence at the same time as the Community Gaming Act. Once commenced; a new, modern, more streamlined, less burdensome and more effective regulatory regime would be in place.

3.3 Criteria used to assess the regulatory options

The following criteria have been used to evaluate the options:

- the extent to which the option
 - modernises regulation
 - reduces red tape and minimises regulatory burden on gaming operators
 - ensures that participants are protected and games are conducted fairly and with integrity
 - supports the new parent Act
- the cost effectiveness of each option, in terms of costs and benefits to business, consumers and government.

4. Impact assessment of options

4.1 Assessment of option 1 – Take no action

Option 1, taking no action, would result in the LAU Regulation being automatically repealed as a result of the sunset provisions of the *Subordinate Legislation Act 1989*. Allowing repeal by way of the sunset provisions would result in the Community Gaming Act not commencing, and as such the LAU Act would continue to operate without regulations.

Under this option, the OLGR Review recommendations would not be enacted. There would be no supporting regulations for the LAU Act and permission to undertake community gaming activities would be limited. The requirements in the LAU Act would remain in place and operators would still need to comply with those requirements. The absence of regulations would result in confusion in the sector with operators burdened with determining how to implement the LAU Act without the detail of the LAU Regulation.

Without regulations in support of the LAU Act, essential provisions in the Act would be inoperable. This would result in diminished protection for participants and the wider community. Under this option the integrity of the regulatory scheme would likely be subject to negative public perception and experience.

This outcome is not supported.

	Business	Public	Government
Costs	<ul style="list-style-type: none">• Costs of determining how to meet LAU Act requirements• Increase in legal expenses defending action for non-compliance• Confusion and disruption	<ul style="list-style-type: none">• Weakened consumer protection against the harm of fraud and mismanagement• Confusion and disruption	<ul style="list-style-type: none">• Costs of assessing operators' compliance with the LAU Act• Likelihood of increased consumer complaints and compliance and enforcement activity• Unable to implement the recommendations of the OLGR Review and modernise the regulation
Benefits	<ul style="list-style-type: none">• Compliance costs savings from not having to comply with regulations	<ul style="list-style-type: none">• No identifiable benefits	<ul style="list-style-type: none">• Administrative cost savings from not having to review and remake regulation in the future

4.2 Assessment of option 2 – Maintain the status quo

The proposed Regulation would not be made. The LAU Regulation would need to be re-made to support the LAU Act. This is because the LAU Regulation will be automatically repealed on 1 September 2020 under the sunset provisions in the *Subordinate Legislation Act 1989*.

As a result, the recommendations from the OLGR Review would not be implemented and the existing regulatory regime would remain.

Maintaining the status quo would mean that the LAU Regulation continues to regulate the sector through the obligations imposed on operators. This means that the over-prescriptive and outdated clauses will continue to be in force. The reduced regulatory burden from a more effective and appropriate compliance and enforcement framework would not be realised.

	Business	Public	Government
Costs	<ul style="list-style-type: none"> No increase or reduction in actual costs Opportunity loss from not having a more modern regulatory system. Opportunity loss for a significant number of operators as they would not benefit from the reduced need to apply for authorities. 	<ul style="list-style-type: none"> No increase or reduction in actual costs Opportunity loss from not having clearer guidance about rules of games. Opportunity loss from not having a more effective compliance regime. 	<ul style="list-style-type: none"> No increase or reduction in actual costs Opportunity loss from not having a more modern regulatory system. Opportunity loss from not having a more effective and appropriate compliance and enforcement framework. Opportunity loss from not delivering reduced administrative costs.
Benefits	<ul style="list-style-type: none"> The provisions are already familiar to industry. No requirement to update any existing policies, processes or systems to adjust to new requirements 	<ul style="list-style-type: none"> No identifiable benefits 	<ul style="list-style-type: none"> Guidance and advice material for operators provided by the Regulator would not need to be updated, saving time and money Digital application systems would not need to be updated, saving time and money Operational staff would not require retraining, saving time and money

4.3 Assessment of option 3 – Make the proposed Regulation

If the proposed Regulation is introduced to support the Community Gaming Act, the Community Gaming Act and Regulation will replace the existing LAU Act and the LAU Regulation.

The proposed Regulation will provide an updated regulatory framework reflecting contemporary standards and approaches. It will replace outdated provisions with those that are less prescriptive and more principles-based. This will provide operators more flexibility when carrying out gaming activities.

The proposed Regulation removes or amends provisions that prescribe unnecessary, administrative and regulatory processes. This significantly minimises the regulatory burden, removes red tape and provides greater flexibility for operators.

Making the proposed Regulation will provide more effective and appropriate compliance and enforcement. This option also introduces penalty infringement notices for some offences which provides the Regulator, NSW Fair Trading with more options for enforcing the law. This option acts as a deterrent for operators and strengthens protection for consumers. The proposed Regulation introduces general fairness and transparency clauses which require operators to carry out gaming activities fairly and with integrity.

This is the preferred option.

The proposed Regulation would support the Community Gaming Act and enable it to commence.

	Business	Public	Government
Costs	<ul style="list-style-type: none"> Costs of updating existing policies, processes or systems to adjust to new requirements 	<ul style="list-style-type: none"> No costs 	<ul style="list-style-type: none"> Guidance and advice material for operators provided by the Regulator would need to be updated, taking time and money Digital application systems would need to be updated Operational staff would need some retraining
Benefits	<ul style="list-style-type: none"> Reduction in overall compliance costs Updated and modern regulation which is easier to understand and provides greater flexibility Overall reduction in number and types of games requiring an authority Eased administrative load for fundraising activities allowing organisations to direct more resources into supporting charities and non-profit organisations 	<ul style="list-style-type: none"> Updated and modern regulation which is easier to understand Continued public confidence in sector Continued consumer protection with new compliance and enforcement framework 	<ul style="list-style-type: none"> Updated and modern regulatory scheme which is easier to administer Having a more effective and appropriate compliance and enforcement framework in place. Decreased administrative costs from overall reduction in number and types of games requiring an authority, saving time and money Likelihood of reduced complaints and compliance and enforcement activity, saving time and money

4.4 Cost-benefit analysis

Note: The below analysis is based on collated data provided from internal sources.

Industry and Government cost savings

Based on recent permit application figures from January 2018 to July 2019 (see breakdown of applications in **Appendix 1**), a comprehensive analysis shows that the new regime under the proposed Regulation is likely to generate even more industry and government cost-savings at around \$1.41 million per year.

Based on the data for applications for community gaming permits received between January 2018 – July 2019, it is estimated that approximately 97% of these applications (excluding art unions) would no longer be required under the proposed Regulation. The administrative burden and costs associated with these applications will be significantly reduced under the proposed Regulation.

In relation to trade promotions that currently require a single permit under the LAU Regulation, there will be a reduction of approximately 70% of those applications as trade promotions with a total prize value under \$10,000 will no longer require an authority under the new regime. In 2018-19, an application for a single trade promotion permit for promotions under \$10,000 for a period of one year costs \$80 or \$138, dependant on how it is lodged. Based on application figures from January 2018 to July 2019, this translates to an industry cost saving of at least **\$569,500 per year** in application fees. Note, estimates for administrative and internal business cost savings of businesses are not within the scope of this document, but an assessment into these costs is provided below.

Currently, a significant number of multiple trade promotion permit holders under the LAU Regulation are businesses seeking to operate many promotions with relatively small prize values per promotion. The exact figure of savings are not quantifiable at this stage for these businesses. In 2018-19, an application for a multiple trade promotion permit for a period of one year costs between \$320 to \$660, dependant on the total prize values of all promotions run and the application lodgement method. This means that each individual business running many small trade promotions will therefore save **at least \$320 per year** in application fees.

Also, there will be additional savings for business' private operational costs such as reduced legal fees, clerical staff and salary, which are not captured in the figures provided in this analysis. Although internal business cost savings are not readily quantifiable as they depend on the nature and characteristic of each operator, cost savings will likely not be insignificant, especially for small organisations.

For all other trade promotions with a prize value over \$10,000 per promotion, a new proposed fees structure and its cost benefit is below:

Total prize value per promotion	Current costs – single permit (2019-2020 FY)	Proposed cost – one year authority	Difference in fees (\$)
\$10,001 to \$50,000	\$320/ \$385	4 fee units = \$400 (2020-21)	+ \$80
\$50,001 to \$100,000	\$585/ \$660		- \$185
\$100,001 to 200,000	\$1,120/ \$1,232		- \$720
\$200,001 or more	\$2,185/ \$2,400		- \$1,785

Based on the recent figures between January 2018 and July 2019, the proposed fee structure can bring about **\$611,200 savings per year** in application costs for businesses who want to continue to run high-value trade promotions, where each promotion has an accumulated prize value of more than \$10,000.

There is a slight fee increase on the face-value for businesses who run trade promotions with prize values between \$10,001 to \$50,000 as a one-off promotion. However, current industry practice seems to be that numerous high-value promotions are run concurrently, which under the LAU Regulation would require separate single authority applications. It is recognised that this process is inflexible and impractical and places considerable administrative burden on operators. The proposed Regulation introduces a duration-dependant authority framework, through which businesses can conduct multiple trade promotions with prizes over \$10,000 for the lifetime of the authority with just one application fee (offsetting the nominal fee increase). The option to apply for 1, 3 or 5 year authorities will provide for additional discounts and magnify cost savings for the industry in the long-run.

Lastly, industry can save significant costs through the abolition of amendment fees. Currently, an operator must pay a \$100 fee to amend the terms of an authority each time the rules, terms and conditions of a promotion changes. Between July 2018 and June 2019, around 7,000 of these applications were received for the amendment of trade promotion permits (both single and multiple). Moving forward, this will be replaced by a no-charge notification system under the proposed Regulation. This translates to **at least a \$700,000 saving per year** for industry and will provide maximum flexibility for different types of trade promotions to take place within the duration of an authority without incurring additional fees.

In terms of government costs, the total reduction of authorities required under the proposed Regulation will save a **minimum of \$229,500** in annual administrative costs associated with assessing authority applications.

Reduction in need to examine complaints

About 20 percent of all complaints received between October 2018 and September 2019 concerned trade promotions with prize values under \$10,000 not displaying a permit number. These complaints had no genuine mischief issues identified. Under the proposed Regulation, trade promotions would not require an authority as they are very low-risk activities.

This would mean a reduction in complaints that are merely related to purely administrative issues. This allows the Regulator to focus resources into conduct-related complaints (regardless of monetary threshold) instead.

4.5 Conclusion and preferred option

The preferred option is to make the proposed Regulation (Option 3). This option will ensure the objectives of the Community Gaming Act are met by providing an updated regulation that reduces regulatory and cost burden for operators and strengthens protection for consumers.

From an economic perspective, Option 3 provides the greatest net public benefit in comparison with the other options. In total, **industry and government savings are estimated to be \$1.41 million** resulting from reduced applications for gaming authorities and associated administrative costs.

Under Option 1 (taking no action) or Option 2 (maintaining status quo), the Community Gaming Act would not commence and we would be unable to implement the recommendations of the OLGR Review. The existing archaic regulatory regime would remain. Under Option 1, the LAU Regulation will lapse on 1 September 2020, severely affecting the operation of the LAU Act and increasing burden on industry to self-regulate. Similarly, remaking the LAU Regulation without amendment under Option 2 will not reduce red tape and costs for operators, and the benefits of the new Act and proposed Regulation would not be realised.

For these reasons, Option 3 is recommended.

5. Regulation making powers

The following table sets out the existing regulation making powers in the Community Gaming Act. It also identifies the regulations that are prescribed under these powers in the proposed Regulation.

Section of Act	Regulation making power under the Act	Clause
5(1)(c)	The definition of gaming activity may be expanded	See Part 2
5(4)	The definition of gaming activity may also be limited	Not prescribed
6(2)(e)	Prescribe a person or body able to conduct a gaming activity	Not prescribed
7(2)(b)	Prescribes other jurisdictions that are to be taken as corresponding law in relation to "external gaming activities"	Not prescribed
10	Permit gaming activities or specified classes of gaming activities and may permit a gaming activity unconditionally or subject to conditions and may require an authority to conduct a gaming activity	A number of clauses in Parts 2 and 3 permit classes of gaming activities and prescribe the scope of those activities
11(2)(a)	Prescribe a qualification necessary for a person to hold authority to conduct a permitted gaming activity	Not prescribed
11(2)(b)	Prescribe matters the Secretary must consider before granting authority to conduct a permitted gaming activity	Clause 19(2) prescribes that the Secretary may require an applicant for an authority to conduct an art union gaming activity to provide additional information
11(5)	Impose conditions upon an authority to conduct gaming activities is conferred	Clause 16 outlines the available durations of an authority
11(7)	Prescribe grounds on which an authority might be suspended or cancelled by the Secretary	Not prescribed
11(8)	The Regulation may regulate: <ol style="list-style-type: none"> 1. permitted gaming activities for which an authority is required 2. fees for authorities 3. duration of authorities 4. procedures relating to the proposed suspension or cancellation of an authority 5. reviewing or appealing a suspension or cancellation of an authority 	<ol style="list-style-type: none"> 1. Part 2 prescribes a number of permitted gaming activities for which authority is required 2. Clauses 17 and 51 prescribe fees for authorities by reference to Schedule 1. 3. Clause 16 outlines the available durations of an authority. 4. Not prescribed 5. Not prescribed

11(9)	To amend Schedule 1 of the <i>Licensing and Registration (Uniform Procedures) Act 2002</i> by reference to section 11 or a provision of the Regulation	Clause 18 amends the <i>Licensing and Registration (Uniform Procedures) Act 2002</i> to clarify what provisions apply to an authority granted pursuant to section 11 of the Act
12(1)	Prescribe that a gaming activity is not a permitted gaming activity if any of the prizes consist of any item or service prescribed by the Regulations	Clause 42 prescribes classes of goods and services that are prohibited prizes
12(2)	Provide for exceptional circumstances in which a contravention of section 12(1) will not result in a gaming activity no longer being a permitted gaming activity	Not prescribed
13(4)	Specify additional circumstances in which there is a defence to an offence under section 13	Clause 43 prescribes defences in relation to offences under section 13 of the Act
46(2)	Prescribe offences that are penalty notice offences	Schedule 2 prescribes offences that are penalty notice offences
46(4)	Prescribe the amount payable under a penalty notice.	Schedule 2 prescribes the amount payable for penalty notice offences
47(1)	The Minister may delegate the exercise of their functions under the Act to person/s authorised by the Regulation	Not prescribed
47(2)	The Secretary may delegate the exercise of their functions under the Act to person/s authorised by the Regulation	Not prescribed
48(1)(f)	The Regulations may authorise methods of service for documents authorised/required by the Act or Regulations	Not prescribed
49(1)	General regulation making power (with particular matters for which power may be exercised at section 49(2))	The general regulation making power has been used throughout the proposed Regulation. For example, it has been used to: <ul style="list-style-type: none"> regulate liquor prizes (at clauses 40 and 41); prescribe guidance for the payment of monetary prizes above \$2,000 (at clause 44); and conduct an audit relating to the conduct of a person or body conducting a gaming activity (clause 53)
49(3)	Create an offence punishable by a penalty not exceeding 50 penalty units	Clauses 22, 23, 41, 52 and 53 create offences
Sch 1, Pt 1, s1	General power to prescribe provisions of a savings or transitional nature	Not prescribed
Sch 1, Pt 2, s4	Specify that gaming activities once permitted under the Existing Gaming Activities Clause in Part 2 of the Act are no longer permitted	Not prescribed

6. Discussion of the proposed Regulation

Community gaming activities in NSW have important social benefits such as raising much needed funds for charitable and non-profit organisations and fostering a sense of community. As previously stated, the framework exists to regulate 'permitted gaming' activities of a low risk profile (in terms of social harms) and have a number of social benefits.

The proposed Regulation employs a principles-based regulatory approach. It aims to minimise the regulatory burden while maintaining sufficient checks and balances to ensure the fairness and integrity of gaming activities. This fosters community confidence in the conduct of operators and helps prevent harm and misuse of funds.

The proposed Regulation aims to modernise the existing regulatory framework. Key elements of the existing framework have been retained but many of the archaic and over-prescriptive elements have been revised or removed. The updated regulatory framework is flexible and adaptable to emerging technologies and games.

The proposed Regulation outlines the generic requirements for all gaming activities, including fairness and accountability measures, in Part 4. Game specific requirements are set out in Part 2. The development of this new coherent regulatory framework means that operators and participants will be able to locate their obligations and rights in one place. Guidance material will be available on the NSW Fair Trading website. However, there will no longer be an extra layer of rules and conduct requirements in game specific permit annexures. Operators will be able to determine their own gaming activity rules and individual prize limits as long as they comply with the requirements of the Community Gaming Act, the proposed Regulation and other relevant legislation.

Under the proposed Regulation the type and number of gaming activities requiring authorities has been reduced. This has led to new prescribed thresholds for the total prize value (before an authority is required). These thresholds ensure that the higher risk involved in higher prize limits are addressed and potential harms minimised. The proposed Regulation encompasses a risk-based regulatory approach reflecting the general low risk of community gaming activities. It minimises regulatory burden while ensuring gaming activities with high prize values are subject to a higher level of regulatory oversight.

Submissions are welcome on any aspect of the proposed Regulation or any other relevant issue. Feedback on issues is encouraged regardless of whether the issue has been specifically raised in this RIS.

The following discussion points provide greater context for some provisions in the proposed Regulation and seek feedback on some important aspects.

6.1 Date of commencement

It is proposed that the Community Gaming Act and Regulation will commence in mid-2020. Information will be made available to help industry and the community adjust to the new requirements before commencement.

6.2 Permitted gaming activities

While the Community Gaming Act generally prohibits the conduct of gaming activities certain gaming activities are permitted. However, these 'permitted' games must be carried out in accordance with the Community Gaming Act and the regulations.

Section 10 of the Community Gaming Act creates the regulatory regime, allowing the regulations to prescribe the permitted gaming activities and the authorities required. The proposed Regulation permits the following gaming activities:

- art unions
- charity housie, social housie and club bingo
- draw lotteries (includes raffles and guessing competitions)
- no-draw lotteries (includes football doubles)
- mini-numbers lotteries
- progressive lotteries
- free lotteries
- promotional raffles conducted by registered clubs
- other gaming activities for charitable purposes (includes lucky envelopes and chocolate wheels)
- sweeps and calcuttas
- trade promotions (includes card jackpot games)

6.3 Permitted gaming activities which do or do not require an authority

Under the proposed Regulation, permits have been replaced by "authorities" bringing the legislation in line with other related legislation (for example, the *Charitable Fundraising Act 1991*).

Under the proposed Regulation only the following gaming activities will require an authority:

- community gaming activities with a total prize value of \$30,000 or more per session
- trade promotions with a total prize value of \$10,000 or more per session.

A 'session' is defined in the proposed Regulation as the "number of games of the activity played in succession on the same occasion at the same place".

This was one of the key recommendations of the OLGR Review. These thresholds reflect the fact that gaming activities with high prize values have a higher level of risk to the community. The intention is to reduce the regulatory burden on operators of low risk activities while maintaining appropriate oversight of high risk activities.

Under the proposed Regulation, the following will apply:

Gaming activities that will require an authority

- Art unions (as the value of the prizes always exceeds \$30,000)
- Progressive lotteries – where the total value of the prizes exceeds \$30,000
- Sweeps and calcuttas – where the total value of the prizes exceeds \$30,000
- Trade promotions – where total value of the prizes exceeds \$10,000

Gaming activities that will no longer require an authority

- Charity housie, covering minor, major and super housie
- Chocolate wheels
- Lucky envelopes
- Progressive lotteries – where the total value of the prizes does not exceed \$30,000 (under the LAU Regulation the threshold is total sales less than \$25,000)
- Sweeps and calcuttas – where the total value of the prizes does not exceed \$30,000 (under the LAU Regulation the threshold is total sales less than \$20,000)
- Trade promotions – where total value of the prizes does not exceed \$10,000 (under the LAU Regulation, permits are required for all trade promotions, regardless of total sales or prize value).

Please note that charity housie, chocolate wheels and lucky envelopes will not require authorities under the new law as the total value of prizes for those gaming activities cannot exceed \$30,000 and the gaming activities present a low risk profile.

Gaming activities that will continue not to require an authority (as the total value of prizes cannot exceed \$30,000 and the low risk profile of the gaming activities remain unchanged)

- Social housie
- Club bingo
- Draw lotteries
- No-draw lotteries
- Mini-number lotteries
- Free lotteries
- Promotional raffles conducted by registered clubs

- Other gaming activities conducted for charitable purposes

Operators who are not required to obtain an authority will still need to abide by requirements in the proposed legislation. The new compliance and enforcement framework applies to all persons who conduct gaming activities.

This proposed approach will result in a significant overall reduction in red-tape as less types of activities will require an authority. Business and community organisations will gain savings from eased administrative costs associated with submitting applications (see cost-benefit analysis in **Part 4.4**).

6.4 Key requirements

A table outlining the proposed key requirements for each permitted gaming activity is attached at **Appendix 2**. Discussion in relation to those key requirements and other important matters are set out in the following discussion points.

6.5 Purpose of gaming activities – Clauses 4–14

Section 3(1)(a) of the Community Gaming Act states that the Act allows the conduct of gaming activities for charitable, social, not-for-profit or trade promotion purposes.

Clauses 4 to 14 of the proposed Regulation specify the intended purpose for each permitted gaming activity. Some gaming activities such as social housie can only be conducted for social purposes and cannot be used to raise funds. Other gaming activities, such as progressive lotteries and sweeps and calcuttas can be conducted for both social and charitable purposes.

A full list of the prescribed purposes for each permitted gaming activity is provided in **Appendix 2**.

6.6 Allocation of proceeds – Clauses 4–14

The proposed Regulation maintains the current allocation of proceeds requirement under the LAU Regulation. This requirement ensures that the intended purpose for each gaming activity is met. For example, gaming activities conducted for social purposes such as draw lotteries, no-draw lotteries and mini-numbers lotteries must allocate at least 40% of gross proceeds to the benefiting organisation(s). For activities conducted for social purposes only, such as social housie, operators must distribute remaining funds to participants after the costs of prizes and expenses have been deducted. A full list of the proceeds allocation requirement for each permitted gaming activity is provided in **Appendix 2**.

Clause 50 of the proposed Regulation allows operators to apply to vary or remove the application of the proceeds requirements when conducting their gaming activities. The Secretary may vary or remove the requirement if the specified amount cannot be paid or if the Secretary considers that it is not reasonable to apply the requirement in the applicant's circumstances.

6.7 Prize limits – Clauses 4–14

The existing requirements for total prize limits and the monetary component of prizes have mostly been adopted by the proposed Regulation.

However, for charity housie, clause 5(2)(d) now prescribes that the total prize value for one session (excluding jackpot prizes) cannot exceed \$5,000. This limit replaces the prize limits that currently apply to minor, major and super housie sessions. Under the proposed Regulation, these three types of charity housie sessions are now collectively called ‘charity housie’. The proposed \$5,000 prize limit reflects the highest prize value that currently applies to the three types of charity housie sessions.

The proposed Regulation removes restrictions on individual prize limits and spending money for travel prizes, to provide greater flexibility to operators. The prize limits for each permitted gaming activity are provided in **Appendix 2**.

6.8 Ticket prices and ticket sale limits – Clauses 4–14

The proposed Regulation carries across most of the requirements in the LAU Regulation that prescribe the maximum number and price for ticket sales. For example, operators must not charge more than \$2 per ticket for no-draw lotteries and mini-numbers lotteries. For charity housie, each ticket must not exceed 40 cents and ticket sales are limited to 48 per player.

A full list of the prescribed ticket prices and sale limits are provided in **Appendix 2**.

6.9 Conduct location and conduct frequency – Clauses 5, 11

Under the proposed Regulation, there are no prescribed locations for gaming activities except for club bingo and promotional raffles conducted by registered clubs. Registered clubs conducting club bingo and promotional raffles will be required to conduct them in registered clubs.

The proposed Regulation does not adopt the majority of the conduct frequency requirements from the current regulatory regime. The requirements represent historical consumer protections that applied before the expansion of commercial gambling.

6.10 Other gaming activities for charitable purposes – Clause 12

Clause 12 of the proposed Regulation allows for other games to be ‘permitted gaming activities’ provided they meet certain criteria. These games must only be conducted by or for a charitable organisation and

meet the definition of 'gaming activity' in clause 5 of the Community Gaming Act. The total prize value for a session must not exceed \$5,000 and at least 40% of the gross proceeds must be allocated to charity.

This allows the proposed Regulation to be responsive to new and emerging innovative gaming activities while retaining protections for consumers and the ongoing viability of charitable organisations. Like all other gaming activities conducted by or on behalf of benefiting organisation, these games must comply with clause 36 of the proposed Regulation which requires that the gaming activity have written authorisation from the benefiting organisation.

6.11 Sweeps and Calcuttas – Clause 13

The proposed Regulation provides a new regulatory regime for sweeps and calcuttas by clarifying and streamlining the current requirements.

Redefining the circumstances in which sweeps and calcuttas can be conducted

The existing regulatory regime only allows sweeps and calcuttas to be conducted on a "prescribed event". Currently, events prescribed for this purpose include the Melbourne Cup or a specific event or class of events authorised by a Ministerial order published in the Gazette. The proposed Regulation defines sweep and calcutta to refer to a "sporting or racing event". This means they can be conducted on any sporting or racing event.

It is no longer necessary to fix the conducting of sweeps or calcuttas to a 'prescribed event'. There is now a proliferation of sporting and racing events where it would be appropriate to allow the holding of a sweep or calcutta. It is not possible to prescribe all of these events. The removal of the requirement reduces an extra administrative burden on both operators and the NSW Government.

Benefiting organisations

Clause 13(2) of the proposed Regulation provides a list of organisations that may benefit from funds raised in the conduct of a sweep or a calcutta.

The organisations are:

- a charitable organisation or non-profit organisation;
- a political party or trade union;
- a registered club;
- a club registered under the Rules of Racing of Racing New South Wales;
- a greyhound racing club within the meaning of the *Greyhound Racing Act 2017*;
- a harness racing club within the meaning of the *Harness Racing Act 2009*.

This list largely reflects the current definition of “prescribed organisation” in section 4D of the LAU Act. However, clause 13(2) of the proposed Regulation replaces “any organisation not formed or conducted for private gain” in the LAU Act with “a charitable organisation or non-profit organisation”. This provides greater clarity and consistency to the definition of benefiting organisations.

Distribution of proceeds to benefiting organisations

If a sweep or calcutta is conducted wholly or partly for one or more of the organisations listed in clause 13(2), a “reasonable amount” must be paid to the benefiting organisation. The amount to be paid must be settled in advance by written agreement. This goes to ensure that the proportion of the gross proceeds is reasonable. Any excess funds, after expenses are met must be paid to the benefiting organisations. This helps to ensure the intended charitable purpose is met.

6.12 Authority duration, fees and renewals – Clauses 16, 17, 20

Duration – 1, 3 and 5 year authorities

Under the proposed Regulation operators who require an authority will be able to apply for authorities for a duration of 1, 3 or 5 years. This requirement aligns with the new standard created by the Department of Customer Service Better Business Reforms program. Providing choice for longer periods reduces costs and complexity without reducing consumer protections.

This new application scheme will replace the existing scheme of “single” or “multiple” permits and the different permit categories depending on ticket sales. The application form will be simplified and annexures will no longer be issued. This is a fundamental change to the regulation of community gaming activities. It allows for various games to be held over the course of an authority provided any substantial changes are notified to the Regulator.

In practice this provides flexibility to operators who plan to run a series of similar games over a fixed period. They can keep the Regulator notified of changes to the games without submitting a new application for each new game. So long as the rules for the game remain unchanged, operators can run as many sessions of the same game as they want within the period allowed by the authority and subject to other conditions under the proposed Regulation. This reduces the administrative burden for operators to apply for a new authority each time they want to run a session.

Fees – Schedule 1

The total fees for application, restoration or renewal of a gaming authority for the 2020-21 financial year will be:

Authority type	2020-2021 FY
1 year authority	\$400
3 year authority	\$600
5 year authority	\$800

Fees will be updated in accordance with any changes to the Consumer Price Index each financial year after the 2020-21 financial year. Updated fees will be included on the Regulator's website.

Schedule 1 of the proposed Regulation sets out the components of the fees. The processing component represents the costs for processing the fees. This will be the same amount for every application regardless of requested duration. The fixed component is the authorisation component, effectively the permit fee. The fixed component is tiered to provide a discount to those operators who require authorities for longer than one year.

Under the existing regulatory regime, permit fees only apply for trade promotion operators. Under the proposed Regulation all authority holders, including art union operators, must pay fees. However, the fees remain low and the new scheme means that overall the number of authorities required is reduced.

Renewals

The proposed Regulation allows authority holders to opt-in to automatically renew their authorities.

When an authority is about to expire, a notification will be sent to the authority holder informing them of the option to electronically opt-in for authority renewal. If this option is taken, the authority will be renewed for the same duration and under the same rules that applied to the holder's previous authority. Where an authority holder does not opt-in, clause 20 of the proposed Regulation allows extra time for the authority to be restored.

The electronic opt-in function responds to the OLGR Review recommendation to provide more access to online tools that are aligned with the digital transformation agenda of the NSW Government.

6.13 Public Register – Clause 21

Clause 21 of the proposed Regulation requires the Secretary to maintain a register available on the internet for access by members of the public free of charge. The register may contain the following information about authority-holders:

- Name;
- Business address;

- Authority number and the authorised gaming activity;
- Issue and expiry date of the authority;
- Conditions (if any) of the authority;
- Any enforcement actions related to the conduct of the gaming activity.

Maintaining a public register enables information transparency which increases consumer confidence in operators and encourages public scrutiny. In turn it will increase awareness and self-regulated accountability within the industry. Operators will also benefit from having quick access to their own authority details.

6.14 Requirements to ensure the fairness and integrity of gaming activities – Clause 24

One of the objectives of the Community Gaming Act is to ensure the integrity and fairness of permitted gaming activities.

Clause 24 of the proposed Regulation requires that operators must conduct gaming activities in a manner that a reasonable person would consider fair and impartial. The clause sets out a non-exhaustive list of minimum conduct requirements that must be met to ensure fairness. This includes requirements regarding selection of prize winners, cost of participation and providing notice about changes to the way a game will be conducted.

Clause 25 of the proposed Regulation sets out the minimum requirements that operators must take reasonable steps to meet to ensure that gaming activities are conducted with transparency. The clause prescribes that operators must prepare gaming activity rules that comply with the matters set out. These requirements apply regardless of whether the operator is required to apply for an authority. Clause 26 imposes additional requirements for rules for certain gaming activities.

There may be additional measures that operators wish to implement to ensure the integrity and fairness of the games they operate.

6.15 Eligibility to participate in gaming activity – Clause 25

Under the existing regulatory regime, participation in various gaming activities is subject to eligibility restrictions based on a participant's relationship with a benefitting organisation or operator.

Eligibility restrictions strengthen consumer protection by helping to prevent perceived or real conflicts of interest. Such conflicts may arise from participation in gaming activities by people associated with a benefitting organisation or operator.

The proposed Regulation refines and extends the existing restrictions by prescribing the restrictions that

must be included in the rules of all gaming activities. Clause 25(k) of the proposed Regulation requires that all gaming activity rules must prohibit the following people from participating in gaming activities:

- a person involved in the management of the benefiting organisation (if applicable);
- an employee of the benefiting organisation (if applicable);
- a person who conducts the gaming activity (section 6 of the Community Gaming Act clarifies this to include a person who authorises or assists in conducting or organising the gaming activity).

Under the existing regulatory regime, it is a rule in some gaming activities (such as sweeps and calcuttas, club bingos and promotional raffles) that the spouse, de-facto partner or family members of a person involved in the benefiting organisation or the conduct of the gaming activity be ineligible to participate in the that gaming activity. The restriction applies to where the spouse, de-facto partner or family members of that person occupy the same house. Under the proposed Regulation, this restriction has been removed. Family members of, or people who live with, persons in these prohibited categories are not specifically excluded, unless they themselves fit into the prohibited categories. Removing these wider groups from being excluded prevents the restriction being applied in an overly-broad and over-prescriptive manner.

Under the LAU Regulation, participation in various gaming activities is subject to various eligibility restrictions dependant on a participant's age (e.g. the miscellaneous rules, not-for profit promotional raffles rules and club bingo rules all require that the conditions of entry stipulate a minimum age of the participants). No specific age limits have been prescribed in the proposed Regulation. This is a more principles-based and less prescriptive approach which places the onus on operators to determine appropriate age limits for their gaming activity (if any) (e.g. as at clause 25(g) of the proposed Regulation). The exclusion of this requirement illustrates the shift of the proposed Regulation away from over-prescriptive regulatory requirements towards a system that allows operators to exercise their own judgment and industry knowledge.

It is noted that, despite there being no obligation to limit participation on the basis of age in their gaming activity rules, operators will still be required to adhere to any obligations under relevant gambling and other legislation and comply with liquor prize restrictions (discussed at 6.23).

6.16 Dispute resolution – Clause 25

Under the LAU Regulation, a dispute resolution process is only required in the rules of certain gaming activities. The dispute resolution process relates to the conduct of a gaming activity or the claiming of a prize (e.g. for club bingo and housie rules).

In the proposed Regulation all gaming activity rules must include a dispute resolution process. Clause 25 sets out a list of the mandatory requirements to be covered in the rules. Clause 25(i) makes provision for

dispute resolution processes to be included in the rules. Dispute resolution processes must provide coverage for circumstances involving disputes related to the conduct of a gaming activity of the claiming of a prize.

The purpose of including this dispute resolution rule requirement is to ensure that gaming activity operators have appropriate measures and systems in place to adequately deal with complaints. The broad requirement also provides operators with the freedom to determine these measures and systems on their own terms.

6.17 Rules of permitted gaming activities – Clauses 25–27 and 29

Under the current regulatory regime, authorities are issued with ‘standard conditions’. These are called ‘Terms and Conditions Annexures’ and authorities of the same type are subject to the same conditions. The proposed Regulation brings these requirements into the Regulation and applies them to all operators. The new requirements are less prescriptive and allow operators to set their own rules, provided they comply with certain criteria. Clauses 25 and 26 of the proposed Regulation prescribe the types of information that must be included in the rules. Clause 27 requires operators to take all reasonable steps to ensure the rules are made publicly available on the organisation’s website.

Under the existing regime, the LAU Regulation prescribes different sets of requirements for different gaming activities. This is both impractical and confusing for operators who are required to review different sets of requirements to identify those that may apply to them. Under the proposed Regulation, clauses 25 and 26 standardise the types of information that must be included in the rules.

The proposed changes aim to:

- put in place **less prescriptive** requirements for how permitted gaming activities are run by allowing operators to determine rules as long as they comply with the relevant requirements in the proposed Regulation and the Community Gaming Act;
- ensure rules are communicated in a **clear and transparent** manner;
- ensure that the rules are **freely accessible** to consumers;
- require operators to be **upfront** about rules which affect consumers;
- allow consumers to make **meaningful and well-informed decisions** about whether to participate in a permitted gaming activity based on its rules; and
- hold operators to account for breaches of their own published rules.

In addition, any substantial change to the conduct of games, including a change to the rules, must be notified by writing under clause 29 of the proposed Regulation. Requiring operators to update their rules and proactively notify the Regulator promotes good practice. A no-charge notification system under the

proposed Regulation also reduces administrative burden and cost for operators who are no longer required to pay a \$100 fee to amend their permits each time the terms and conditions are changed.

Under the proposed Regulation, notification may be required for substantial changes relating to:

- gaming rules;
- the prizes or the value of prizes;
- prize winners;
- the authority holder details;
- number of tickets.

6.18 Provision of tickets without consent – Clause 28

For certain gaming activities under the existing regulatory regime, operators must not provide gaming activity tickets to a person for their use or to sell without first obtaining their consent. The proposed Regulation now applies this requirement broadly to all gaming activities as a harm minimisation measure to protect people against fraudulent and dishonest practices.

6.19 Maximum cost of remote participation – Clause 30

Remote participation in a gaming activity refers to circumstances where a person who wishes to participate in that gaming activity is required to call a specified telephone number in order to participate.

Under the current regime, the LAU Act allows for remote participation in progressive lotteries (at section 4F(2)(h)) on the proviso that the person or organisation conducting the lottery does not receive any amount that may be paid for calling the telephone number. The cost for calling the telephone number is regulated by the LAU Regulation at clause 95, which requires that the cost not exceed \$0.50.

The proposed Regulation incorporates the existing regime's remote participation requirements into clause 30. However, the maximum charge rate of a telephone call for remote participation will no longer be fixed at \$0.50.

The proposed Regulation introduces a more adaptable rate, which is the "standard costs and charges payable for a local call or using an electronic application". This allows the proposed Regulation to remain current with standard charge rates without requiring constant amendments. The limitation of costs also ensures that members of the public, irrespective of their choice of gaming activity, are protected from excessive charging.

Under the proposed Regulation, remote participation as a method of participation now applies to all gaming activities (not just progressive lotteries). Clause 30(1) also allows for applications by specified electronic means to be made and assists with aligning the regime with modern practices.

Clause 30 maintains the restriction on a person or organisation conducting the gaming activity being unable to receive money paid by participants for the cost of telephone calls or electronic application.

6.20 Record-keeping requirements – Clause 31

Under the existing regulatory regime different record-keeping requirements apply to different gaming activities. The proposed Regulation standardises the approach for both authority and non-authority gaming activities. These record-keeping requirements relate to financial records as well as to other types of records on how the game is run.

For gaming activities requiring an authority, clause 31 provides the list of the matters that must be included in records, which must be kept for at least 7 years.

Clause 31(2) prescribes that for gaming activities not requiring an authority, appropriate records must be kept for the period that the operator thinks fit. The proposed Regulation does not prescribe a period for records for gaming activities not requiring an authority as those gaming activities are considered low risk activities. Although the onus will be on the operators to determine an appropriate period of time for the keeping of records, operators must ensure they comply with the record-keeping obligations they may have under any other legislation such as charitable fundraising and taxation legislation.

The proposed Regulation includes a list of matters which the operator may include in their records.

The keeping of proper records is consistent with community expectations. Consumers participating in community games expect that the money they pay to operators in the course of a gaming activity is used for the stated purpose (be it for charity, trade promotion etc.). The purpose of these record-keeping requirements is to ensure operators are accountable for the funds they raise, spend and invest as well as for the way in which they conduct the games and award prizes. Good record-keeping practices also help to limit the risk of misappropriating money and engaging in fraudulent activity.

The record-keeping requirements will also assist the Regulator to understand how funds have been raised, spent and invested in the event of a complaint or compliance and enforcement action.

6.21 Commissions and deduction of expenses – Clauses 33 and 34

The proposed Regulation maintains existing regulatory regime requirements for commissions and expenses.

Commissions and other payments to third parties in connection with a gaming activity

Under clause 14 of the LAU Regulation, a person must not provide another person with remuneration from funds received through conducting a lottery or game of chance other than by way of a written agreement between the parties concerned (inclusive of any involved organisation). The agreement must

specify matters including the service rendered, the figure of remuneration and the period for which the agreement is to be in force. Clause 14 of the LAU Regulation also prohibits the payment of commission in a variety of circumstances (such as where the total value of prizes is \$10,000 or less or the lottery is conducted by an art union).

The proposed Regulation continues to require strict commission controlling requirements however only in circumstances involving a gaming activity for which an authority is required. Clause 33 of the proposed Regulation continues to require that the service rendered, the figure of remuneration and the term of the agreement are specified in any written agreement regarding the payment of commission. The application of this clause exclusively to gaming activities requiring an authority results from the acknowledgement that there is a higher risk associated with higher prize value thresholds.

Clause 34 maintains the general prohibition on commissions and other payments for sweeps and calcuttas, social housie, mini-numbers lotteries and progressive lotteries (excluding salary or wages for promoting a sweep or calcutta). These integrity measures have been included in the proposed Regulation to limit opportunities for fraud and mismanagement in conducting gaming activities.

Deduction of expenses incurred in relation to conducting gaming activities

Clause 35 of the proposed Regulation expands the deduction of expenses provision to all gaming activities for which participation is not free. This provides operators with a standardised approach to the reasonable amounts that may be deducted from moneys received in connection with a gaming activity and is an integrity measure intended to prevent gaming activities being manipulated for personal gain.

6.22 Consecutive or concurrent gaming activities – Clause 37

If gaming activities are conducted consecutively or concurrently, clause 37 of the proposed Regulation requires operators to notify participants that the gaming activities are conducted for different purposes. This ensures that gaming activities conducted for charitable and non-charitable purposes are clearly distinguished and communicated to participants.

Each gaming activity must adhere to their respective requirements under the proposed Regulation. gaming activities conducted consecutively and concurrently to another gaming activity must still adhere to the applicable requirements for each gaming activity under the proposed regime.

6.23 Errors not to affect availability of prizes – Clause 39

Clause 39 of the proposed Regulation provides that a mistake in the production of a ticket or card, such as including the wrong number of prize-winning symbols, will not deprive a participant of a prize. The proposed Regulation applies this to all relevant gaming activities and ensures that even in circumstances

where the prizes or money are exhausted or insufficient, the participant will still be entitled to the relevant prize with the cost covered by the operator. This responds to the historically high level of complaints to the Office of Liquor, Gaming and Racing about operators not honouring prizes where errors were made.

6.24 Liquor prizes – Clause 40

The existing regime allows liquor prizes to be given, provided the requirements of the LAU Act and LAU Regulation are met. The LAU Regulation prescribes specific requirements for the alcoholic components of liquor prizes. The liquor component of all the prizes in a gaming activity must not exceed 20 litres of liquor with an alcohol content not exceeding 20% by volume. Alternatively, the liquor component of all prizes must not exceed 5 litres of liquor with an alcohol content exceeding 20% by volume.

These provisions have been adopted into the proposed Regulation. The inclusion of these provisions reflects community expectations that the availability and use of liquor (especially as a prize) should be subject to appropriate controls in an effort to minimise social harm. The alcohol component requirements of the existing regulatory scheme are appropriate for achieving this aim.

Offences in relation to liquor prizes

The LAU Act prescribes that it is an offence for a person to sell a ticket for a liquor prize or provide a liquor prize to someone under 18 years of age. The LAU Act also makes it an offence for a person under the age of 18 years to sell tickets relating to a liquor prize or to collect a liquor prize. The maximum penalty for these offences is 10 penalty units.

It is acknowledged that the offences against people under the age of 18 are unfairly applied. The proposed Regulation adopts and updates the existing regulatory regime's offences relating to liquor prizes. However, where offences are created in relation to the conduct of people under the age of 18, the proposed Regulation shifts the responsibility for those actions onto operators and responsible adults.

6.25 Prohibited prizes – Clause 42

Under the existing regime, a prohibited prize is defined in the LAU Act as:

- Tobacco in any form;
- A firearm, ammunition, or an imitation firearm, within the meaning of the *Firearms Act 1996*;
- A prohibited weapon with the meaning of the *Weapons Prohibition Act 1998*; and
- The provision of cosmetic surgery or other similar procedure, the main purpose of which is to improve personal appearance of self-esteem.

Although the section allows for an expansion of the definition to include any item or service prescribed by the regulations, the LAU Regulation does not include further prohibitions.

Under the Community Gaming Act, a gaming activity is not permitted if any prize consists of a prohibited prize (section 12). The Community Gaming Act adopts three of the four prohibited prize categories from the existing regime. It prohibits:

- Tobacco in any form;
- A firearm, ammunition, or an imitation firearm, within the meaning of the *Firearms Act 1996*; and
- A prohibited weapon with the meaning of the *Weapons Prohibition Act 1998*.

The Community Gaming Act allows for regulations to prescribe further items or services that are prohibited prizes. Clause 42 of the proposed Regulation prescribes the following as prohibited prizes:

- A tobacco, smoking or vaping product, within the meaning of section 23 of the *Public Health (Tobacco) Act 2008*;
- The provision of cosmetic surgery;
- A prize involving the administration to a person of a substance to which Division 1A of Part 3 of the *Poisons and Therapeutic Goods Act 1996* applies; and
- A prize that would contravene any law of New South Wales or the Commonwealth.

Clause 42 addresses the emergence of alternative tobacco and smoking methods through its prohibitions on vaping products. The proposed Regulation seeks to minimise the potential risks that vaping products may have on the community by including broader reference to tobacco, smoking or vaping products (as they are defined in the *Public Health (Tobacco) Act 2008*).

The proposed Regulation defines cosmetic surgery at clause 42 by reference to its definition in the *Private Health Facilities Regulation 2017*. The definition includes "...any cosmetic surgical procedure that is intended to alter or modify a person's appearance or body and that involves anaesthesia..." The definition is expanded to include a number of invasive surgical procedures such as brachioplasties, necklifts and the insertion of calf implants. The definition expressly excludes any dental procedure.

Clause 42 also prohibits prizes that involve the administration of a substance controlled under Division 1A of Part 3 of the *Poisons and Therapeutic Goods Act 1966*. Division 1A lists a number of substances including botulinum toxins for human use and hyaluronic acid and its polymers in preparations for injection or implantation (amongst other substances). It is noted that most non-invasive beauty treatments such as facials and exfoliations are excluded from the definition.

Under the proposed Regulation, a gaming activity will no longer be a permitted gaming activity if any prize is a prohibited prize. The conduct of the activity would therefore be an offence under section 8 of the Community Gaming Act.

6.26 Substituting prizes – Clauses 43, 45

The LAU Regulation outlines the process for substituting prizes at clause 33. An operator must make an application to the Minister before a prize can be substituted.

The policy intent of this requirement is to ensure fairness and integrity. As a matter of principle, consumers who have entered a game should be awarded the prize offered when they first entered. Section 13 of the Community Gaming Act makes it an offence to not award prize winners the prize which has been promoted. However, the regulations can prescribe defences for not awarding the promoted prize.

Clause 45 of the proposed Regulation provides that where a prize is not available due to unforeseeable or special circumstances, a substituted prize can be offered. A substituted prize must be similar to the original prize and of no less value. These requirements provide flexibility to operators in dealing with circumstances beyond their own control. The clause also serves to preserve public confidence in gaming activities and ensuring that winners receive a prize.

6.27 Unclaimed prizes – Clauses 43, 45, 49

In community gaming, sometimes a prize cannot be awarded to the prize winner because the winner cannot be located (or because of other special circumstances). Despite the gaming operator making all reasonable inquiries, the prize becomes unclaimed.

Under the existing regime, section 15 of the LAU Act outlines the process for dealing with unclaimed prizes. Section 14 is limited to lotteries and games of chance. Under the section, unclaimed prizes unclaimed for three months must be sold under the direction of the Minister. The proceeds of sale must then be paid into the account of the organisation conducting, or institution benefiting from, the lottery or game of chance. The LAU Regulation requires that rules be formulated determining the course of action to be taken in circumstances involving unclaimed prizes. These rules are currently mandatory for lotteries, club bingo and games of housie.

The existing regulatory regime is both inflexible and not practically regulated. For example, in some situations unclaimed prizes cannot be redrawn but must be sold under Ministerial direction. The regulatory burden of having to apply these processes broadly to low risk gaming activities would contradict the

The Community Gaming Act allows for regulations to be made with respect to the sale or disposal of unclaimed prizes and the payment of proceeds from the sale of those prizes (section 49(2)(e)). The Community Gaming Act does not expressly outline any circumstances or processes relating to unclaimed prizes.

The proposed Regulation does not incorporate the existing regime's provisions rule requirements for unclaimed prizes. Clause 43 provides a defence to an offence under section 13 of the Community Gaming Act by reference to section 49. Clause 49 makes provision for circumstances where the prize winner of community games that require an authority cannot be located after the operator makes all reasonable inquiries (although the proposed Regulation does not restrict the application of the clause to lotteries and games of chance, clause 49 applies only to gaming activities requiring an authority).

Clause 49 of the proposed Regulation sets out new flexible requirements for dealing with unclaimed prizes. The clause allows for redetermination of the winner after 3 months and provides for sale or disposal of perishable prizes. The clause is limited to gaming activities requiring an authority reflecting the consumer harms associated with inherently greater prize values. By prescribing processes on how to deal with unclaimed prizes of high value, operators are provided with clearer guidance and the social benefit of ensuring correct handling of prizes is upheld. The proposed community gaming regulatory regime achieves the right balance between ensuring the integrity of gaming activities and providing flexibility for operators to deal with unclaimed prizes.

Special Circumstances – Clause 43, 45 and 49

A defence of special circumstances is outlined in clause 43 and encapsulates matters not contemplated in the above clauses 45 and 49. This provision covers exceptional circumstances such as where the winner is dead, the winner denies having entered the gaming activity or otherwise refuses to accept the prizes.

6.28 Payment of monetary prizes – Clause 44

The existing regulatory regime prescribes that, for games of lottery or chance, any prize money exceeding \$2,000 must be paid by electronic funds transfer or crossed cheque payable to the prize winner.

Clause 44 of the proposed Regulation carries across the \$2,000 limit and extends the requirement to all gaming activities. The limit of \$2,000 acts as a general deterrent to theft. It also improves traceability and improves general record keeping for the awarding of prizes of more significant monetary value.

6.29 Scrutiny of determination of prizes – Clause 48

Under the existing regulatory regime, certain gaming activities are required to have an independent person oversee aspects of the gaming activity. For example, draw lotteries must have a mechanical or electronic device used for the purpose of the draw approved by an independent person (clause 43). Club bingo rules must outline the manner in which numbers or symbols appearing in a winning ticket are to be verified by an independent person (clause 113). These measures are intended to protect consumers

from the harm of fraud and corruption and to uphold the integrity of the community gaming regulatory regime.

Clause 48 of the proposed Regulation extends this requirement to all gaming activities requiring an authority. Considering the large value of prizes and higher risk involved in gaming activities that require an authority, the draw and the announcement of the prize winner(s) must be scrutinised by an independent person

The 'scrutiniser' observes the draw process and decides whether all entries to the lottery have been treated equally and that no person has received an unfair advantage or unfair gain.

6.30 Advertising of gaming activities – Clause 52

Clause 52 of the proposed Regulation carries over most restrictions from the existing regulatory regime and prohibits an advertisement promoting a gaming activity that:

- encourages a breach of the law;
- depicts children participating in a gaming activity;
- suggests that winning will be a definite outcome of entering or participating in gaming activities; or
- suggests that entering or participating in gaming activities will definitely improve one's financial prospects.

These advertising prohibitions are intended to protect the community against gaming-related harm. Especially harm to minors who are not explicitly prohibited from participating in gaming activities under the proposed Regulation.

6.31 Independent audit where gross proceeds exceed \$250,000 – Clause 53

Clause 53 of the proposed Regulation requires an independent audit of accounts where more than \$250,000 in a financial year has been raised.

This is a key integrity measure that reflects requirements in NSW charitable fundraising legislation. In the existing regulatory regime, audit requirements are limited to art unions.

Operators are not required to submit the audit to the Regulator. However, compliance and enforcement provisions of the Community Gaming Act provide for an authorised officer to compel an operator to produce documents, or to inspect or take copies of documents at premises. Audit reports carried out in compliance with the proposed Regulation will form part of those documents.

This auditing requirement maintains appropriate regulatory oversight of gaming activities with high turnover amounts. More broadly, independent audits safeguard consumer protection by increasing accountability and providing transparency on the distribution of proceeds, as well as promoting integrity and encouraging compliance from operators.

6.32 Offences and Penalty Infringement Notices (PIN) – Schedule 2

The Community Gaming Act introduces a new compliance and enforcement framework for community gaming activities. This framework gives effect to a recommendation from the OLGR Review which was to implement a more flexible and modern compliance and enforcement approach which does not always rely on taking court action for non-compliance.

As part of this framework, section 46 of the Community Gaming Act empowers authorised officers to issue a penalty notice if it appears a certain offence has been committed. Schedule 2 of the proposed Regulation prescribes certain offences in the Community Gaming Act and Regulation as penalty infringement notice offences, known as PINs. Penalty notices are a quick and efficient way of dealing with minor offences. Penalty notices are generally not appropriate for serious offences such as offences that attract imprisonment.

The Regulator can serve a penalty notice on a person if there is evidence that they have committed an offence under the Community Gaming Act or the proposed Regulation.

If the person does not wish to have the matter determined by a court, they can pay the amount of the penalty within the time specified in the notice. Payment of the penalty is not regarded as an admission of liability and prevents further disciplinary action from being taken for the offence, however does not affect any civil claim arising from the matter.

The aim of the penalty notice scheme is to encourage changes in an operator's conduct to achieve compliance with laws. The Regulator has guidelines on the use of penalty notices to ensure that the integrity of the penalty notice scheme is maintained. The guidelines help ensure the scheme is used consistently and only for appropriate offences, that is, offences of a minor or technical nature. Circumstances where stronger disciplinary action would be more appropriate might include repeat or deliberate offences or behaviour that has caused serious detriment to consumers.

When new penalty notice offences are introduced, it is the Regulator's policy to proceed with gradual implementation in the first six months. During this time on-the-spot notices are not issued and all penalty notices must be approved at a supervisory level before being issued.

Section 49(3) of the Community Gaming Act provides that the Regulation may create offences punishable by penalties not exceeding 50 penalty units. This is an increase from the 20 penalty units limit allowed for in the LAU Regulation. The increase in the penalty amount strengthens consumer

protection and brings the proposed Regulation in line with other legislative regimes administered by the Regulator.

The new compliance and enforcement framework in the Community Gaming Act also reflects the Regulator's approach to compliance with regulatory requirements. Across the Regulator's legislation different mechanisms for addressing non-compliance exist to ensure the regulator's response is commensurate with the severity and public impact of the breach.

Appendix 1 – Data on Permit Applications

Number of permit applications by permit type (January 2018 – July 2019)

Permit type	No. of applications lodged
Art union	265
Major housie	171
Minor housie	25
Super housie	43
Progressive lotteries	1
Chocolate wheel	78
Lucky envelope	4
Sweep or calcutta	8
Trade promotion (multiple)	2,206 (total)
Permit for a gaming activity where value of any one prize is unable to exceed \$250, and the total value of the prizes is capped at \$50,000	615
Permit for a gaming activity where value of any one prize cannot exceed \$1,000, and the total value of the prizes is capped at \$100,000.	1,591
Trade promotion (single)	16,062 (total)
Trade promotion (single) - Under \$10,001 prize value	11,272
Trade promotion (single) - \$10,001-\$50,000 prize value	3,341
Trade promotion (single) - \$50,001-\$100,000 prize value	802
Trade promotion (single) - \$100,001-\$200,000 prize value	315

Appendix 2 – Table of Key Requirements

Gaming Activity	Key Requirements												
	Authority required	Purpose	Proceeds allocation	Prize limit	Money prize limit	Prohibited prizes (incl. liquor)	Ticket sales limit	Ticket price	Conduct frequency & location	Records	Audit	Commission/ Remuneration	Expenses & deductions
RIS ref.	6.3	6.5	6.6	6.7	6.7,6.28	6.24,6.25	6.8	6.8	6.9	6.20	6.31	6.21	6.21
Art unions	Yes	Raise funds for charities, non-profit orgs, or an object of a genuinely public/ charitable character	Min. 30% of gross proceeds to benefiting org.	Total prize: >\$30,000	\$30,000	Standard prohibited prizes	No restriction	No restriction	No restriction	Keep records for min. 7 years	Required for gross proceeds > \$250,000	Via written agreement with the person/body conducting the activity	Only prescribed expenses
Charity housie	No	Raise funds for charities	Min. 12.5% of gross proceeds to benefiting org.	Total prize: Max. \$5,000 per session (exclusive of jackpot max. \$5,000) and max. 75% of gross proceeds from ticket sales	No restriction	Standard prohibited prizes	Max. 48 per player	Max. \$0.40 per ticket	No restriction	Keep records for a fitting period	Required for gross proceeds > \$250,000	Not prohibited	Only prescribed expenses Max. 12.5% of gross proceeds

Gaming Activity	Key Requirements												
	Authority required	Purpose	Proceeds allocation	Prize limit	Money prize limit	Prohibited prizes (incl. liquor)	Ticket sales limit	Ticket price	Conduct frequency & location	Records	Audit	Commission/ Remuneration	Expenses & deductions
RIS ref.	6.3	6.5	6.6	6.7	6.7,6.28	6.24,6.25	6.8	6.8	6.9	6.20	6.31	6.21	6.21
Social housie	No	Social purposes	Remaining proceeds after deducting costs of prizes and expenses must be returned to participants	Total prize: Max. \$40 per session If 1 or more individual prizes are not won, max. jackpot prize \$200	No restriction	Standard prohibited prizes	No restriction	Max. \$0.40 per ticket	No restriction	Keep records for a fitting period	Required for gross proceeds > \$250,000	Prohibited	Only prescribed expenses
Club bingo	No	Attracting patronage to the club's facilities	Not prescribed	Total prize: Max. \$70 per game A single bonus prize max. \$70 may be offered at the end of a session	N/A	Standard prohibited prizes + money prizes	No restriction	Max. \$0.05 per ticket	Frequency: No restriction Location: Registered club premises	Keep records for a fitting period	Required for gross proceeds > \$250,000	Not prohibited	Only prescribed expenses

Gaming Activity	Key Requirements												
	Authority required	Purpose	Proceeds allocation	Prize limit	Money prize limit	Prohibited prizes (incl. liquor)	Ticket sales limit	Ticket price	Conduct frequency & location	Records	Audit	Commission/ Remuneration	Expenses & deductions
RIS ref.	6.3	6.5	6.6	6.7	6.7,6.28	6.24,6.25	6.8	6.8	6.9	6.20	6.31	6.21	6.21
Draw lotteries	No	Raising funds for charities or non-profit orgs.	Min. 40% of gross proceeds to benefiting org.	Total prize: Max. \$30,000	No restriction	Standard prohibited prizes	No restriction	No restriction	No restriction	Keep records for a fitting period	Required for gross proceeds > \$250,000	Not prohibited	Only prescribed expenses
No-draw lotteries	No	Raising funds for charities or non-profit orgs.	Min. 40% of gross proceeds to benefiting org.	Total prize: Max. \$5,000	No restriction	Standard prohibited prizes	Max. 3,000 for activity	Max. \$2 per ticket	No restriction	Keep records for a fitting period	Required for gross proceeds > \$250,000	Not prohibited	Only prescribed expenses
Mini-numbers lotteries	No	Raising funds for charities or non-profit orgs.	Min. 40% of gross proceeds to benefiting org.	Total prize: Max. \$20,000 per session and min. 50% of gross proceeds	No restriction	Standard prohibited prizes	No restriction	Max. \$2 per ticket	No restriction	Keep records for a fitting period	Required for gross proceeds > \$250,000	Prohibited	Only prescribed expenses

Gaming Activity	Key Requirements												
	Authority required	Purpose	Proceeds allocation	Prize limit	Money prize limit	Prohibited prizes (incl. liquor)	Ticket sales limit	Ticket price	Conduct frequency & location	Records	Audit	Commission/ Remuneration	Expenses & deductions
RIS ref.	6.3	6.5	6.6	6.7	6.7,6.28	6.24,6.25	6.8	6.8	6.9	6.20	6.31	6.21	6.21
Progressive lotteries	No, unless total value of prizes > \$30,000	No restriction	<p>Remaining proceeds after deductions must be wholly applied towards prizes or returned to participants</p> <p><i>If activity conducted wholly/partly for a charity or non-profit org.:</i></p> <p>Reasonable amount of gross proceeds must be paid to the org.</p>	No restriction	\$7,000	Standard prohibited prizes	No restriction	No restriction	No restriction	<p><i>If authority required:</i></p> <p>Keep records for min. 7 years</p> <p><i>If authority not required:</i></p> <p>Keep records for a fitting period</p>	Required for gross proceeds > \$250,000	Prohibited	Only prescribed expenses

Gaming Activity	Key Requirements												
	Authority required	Purpose	Proceeds allocation	Prize limit	Money prize limit	Prohibited prizes (incl. liquor)	Ticket sales limit	Ticket price	Conduct frequency & location	Records	Audit	Commission/ Remuneration	Expenses & deductions
RIS ref.	6.3	6.5	6.6	6.7	6.7,6.28	6.24,6.25	6.8	6.8	6.9	6.20	6.31	6.21	6.21
Free lotteries (e.g. lucky door)	No	For any purpose except being a progressive lottery or trade promotion gaming activity	Not prescribed	Total prize: Max. \$30,000	N/A	Standard prohibited prizes + Money prizes	No restriction	Free	No restriction	Keep records for a fitting period	Required for gross proceeds > \$250,000	Not prohibited	N/A
Promotional raffles	No	Attracting patronage to the club's facilities	Min. 90% for prize costs in gaming activity or other similar gaming activities	Total prize: Max. \$700 per session	N/A	Standard prohibited prizes + Money prizes + No prize to be paid between 10pm and 8am	No restriction	Max. \$5 per player	Frequency: Max. 3 hours per session Location: Registered club premises	Keep records for a fitting period	Required for gross proceeds > \$250,000	Not prohibited	Only prescribed expenses

Sweeps and calcuttas	No, unless total value of prizes >\$30,000	Raising fund for prescribed orgs. <u>or</u> for social purposes	<p><i>If activity is conducted wholly/partly for prescribed org.:</i></p> <p>Reasonable amount paid to the org. <u>and</u> remaining proceeds after payment of prizes and costs/ expenses may be paid to the org.</p> <p><i>If activity is not conducted wholly/partly for prescribed org.:</i></p> <p>Gross proceeds distributed to holders of the rights in the relevant sessions</p>	No restriction	No restriction	Standard prohibited prizes	No restriction	No restriction	No restriction	<p><i>If authority required:</i></p> <p>Keep records for min. 7 years</p> <p><i>If authority not required:</i></p> <p>Keep records for a fitting period</p>	Required for gross proceeds > \$250,000	<p>Prohibited, except payment of salary/wages to persons assisting in the promotion of activity</p> <p><i>If authority required:</i></p> <p>Via written agreement with the person/body conducting the activity.</p>	Only prescribed expenses
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Gaming Activity	Key Requirements												
	Authority required	Purpose	Proceeds allocation	Prize limit	Money prize limit	Prohibited prizes (incl. liquor)	Ticket sales limit	Ticket price	Conduct frequency & location	Records	Audit	Commission/ Remuneration	Expenses & deductions
RIS ref.	6.3	6.5	6.6	6.7	6.7,6.28	6.24,6.25	6.8	6.8	6.9	6.20	6.31	6.21	6.21
Other gaming activities for charitable purposes	No	Charitable purposes	Min. 40% of gross proceeds to benefiting org.	Total prize: Max. \$5,000 per session	No restriction	Standard prohibited prizes	No restriction	No restriction	No restriction	Keep records for a fitting period	Required for gross proceeds > \$250,000	Not prohibited	Only prescribed expenses <i>If participation is free:</i> N/A
Trade promotions	No, unless total value of prizes >\$10,000	Promoting goods or services provided by the business	Not prescribed	No restriction	No restriction	Standard prohibited prizes	No restriction	Purchase of relevant goods/ services	No restriction	<i>If authority required:</i> Keep records for min. 7 years <i>If authority not required:</i> Keep records for a fitting period	Required for gross proceeds > \$250,000	Not prohibited <i>If authority required:</i> Via written agreement with the person/body conducting the activity.	Only prescribed expenses

Appendix 3 – list of targeted stakeholders

A copy of the proposed Regulation and this RIS has been provided to key stakeholder groups and organisations. These include:

- Asahi Beverages
- Australian Charities and Not-For-Profits Commission
- Australian Football League
- Bauer Media Group
- BSG Australia
- ClubsNSW
- Commercial Radio Australia
- Channel 7
- Cricket Australia
- Derham Marketing Research Pty Ltd
- Fundraising Institute Australia
- Good2Give
- Justice Connect
- Kids With Cancer
- Learning Links
- L'Oreal
- Multiple Sclerosis Ltd
- NSW SES Volunteers Association
- OneContact (formerly Contact Centres Australia)
- Plexus Legal
- Public Fundraising Regulatory Association
- Racing NSW
- Seven West Media Limited – Pacific Magazines
- Yourtown