

## Unlawful Gambling Regulation 2016

### Statement of Compliance with Schedule 1 of the *Subordinate Legislation Act 1989* and the Better Regulation Principles

#### Background

The *Subordinate Legislation Act 1989* provides that, before a statutory rule may be made, the responsible Minister must ensure, as far as is practicable, that the guidelines set out in Schedule 1 of that Act are complied with.

The guidelines essentially entail a delineation of objectives; a consideration of the suitability of the objectives; an assessment of alternative options for achieving the objectives; an evaluation of the costs and benefits expected to arise from each option, including the “do nothing” option; and consultation with any other affected authority. Where costs and benefits are involved, economic and social costs and benefits are to be taken into account and given due consideration.

The responsible Minister must ensure that implementation by means of a statutory rule occurs only when anticipated community benefits outweigh anticipated community costs. The Minister must also ensure that only the option involving the greatest net benefit or least net cost is chosen, bearing in mind the impact of the proposal on the economy and on consumers, members of the public, relevant interest groups, and any sector of industry and commerce, that may be affected.

In addition, all new and amending regulatory proposals are required to comply with the requirements outlined in the *Guide to Better Regulation*.

The objectives of the *Subordinate Legislation Act 1989* and the seven better regulation principles have been considered in the preparation of the attached regulation.

#### Requirements of Schedule 1 of the *Subordinate Legislation Act 1989* and the Better Regulation Principles

##### ***Better Regulation Principle 1: The need for government action should be established***

The *Unlawful Gambling Act 1998* (the Act) provides a framework in which long established prohibitions are imposed on certain gambling activities. The objects of the Act are as follows:

- (a) to prohibit, in the public interest, certain forms of gambling,
- (b) to prevent the loss of public revenue that is derived from lawful forms of gambling,
- (c) to deter criminal influence and exploitation in connection with gambling activities.

Section 52 of the Act provides for the use of penalty notices for offences prescribed by the regulation. The following offences are currently prescribed:

- Section 10 - betting in NSW with bookmakers acting illegally
- Section 13(1) - selling a ticket in an unlawful game
- Section 14 - participating in an unlawful game
- Section 17(1) - gambling by a minor
- Section 21(3) - deface, destroy, cover or remove a notice of an interim (unlawful) gambling premises declaration
- Section 27(2) - deface, destroy, cover or remove a notice of an (unlawful) gambling premises declaration
- Section 34(1) - being on (unlawful) gambling premises
- Section 37(1) - being on declared (unlawful) gambling premises without lawful excuse
- Section 38(1) - re-enter racecourse or other premises after being removed for unlawful betting
- Section 43(3) - fail to comply with a direction to assist police in accessing information

If the Regulation is not remade, then these offences are unable to be dealt with via the issue of a penalty notice, and enforcement action would need to be taken through the courts. This is not an efficient and cost effective way in which to deal with these offences.

### **Formulation of Objectives**

#### ***Better Regulation Principle 2: The objective of government action should be clear***

The objective of the proposed Regulation is to repeal and remake (with a minor amendment) the Unlawful Gambling Regulation 2011, which would otherwise be due for repeal on 1 September 2016 in accordance with section 10(2) of the *Subordinate Legislation Act 1989*. The Regulation prescribes offences under the Act that may be dealt with by penalty notice.

Based on advice from Parliamentary Counsel, the offence currently prescribed under section 10 of the Act will be removed from the list of prescribed penalty notice offences in the Regulation, as it is considered unsuitable to be dealt with by penalty notice.

### **Reasonableness, etc of Objectives**

The objective of the proposed Regulation is reasonable and appropriate. The proposed Regulation is consistent with the requirements of the *Subordinate Legislation Act 1989*, and provides for matters of a machinery nature that are necessary for the proper administration of the Unlawful Gambling Act. It will continue to facilitate the use of penalty notices in dealing with certain offences under that Act. To allow the existing Regulation to lapse would impact upon the cost and effectiveness of enforcing these offences.

The offence under section 10 of the Act has been removed from the list of prescribed offences in the proposed Regulation. Section 10 of the Act states that:

*“A person must not make a bet with another person if the person knows, or would be reasonably expected to know, that the other person is carrying on bookmaking in contravention of this Act.”*

An element of this offence is that the person knows that the person with whom they are making a bet is acting in contravention of the Act. Advice received from Parliamentary Counsel is that an offence under section 10 cannot be prescribed as a penalty notice offence. This is on the basis that it is up to a court, and not the person issuing a penalty notice, to find, on the evidence before it, that the offender had the knowledge required for the offence to be carried out. As a result, section 10 has been removed from the list of penalty notice offences.

### **Consideration of Options for Achieving Objectives**

#### ***Better Regulation Principle 3: The impact of government action should be properly understood by considering the costs and benefits of a range of options, including non-regulatory options***

##### **Consideration of options**

There is no other option that will achieve the objective. The proposed Regulation aligns with the objectives, principles and intent of the *Subordinate Legislation Act 1989* and the *Unlawful Gambling Act 1998*. It is not inconsistent with the objectives of other Acts or statutory rules.

##### **Cost and benefits**

The use of penalty notices to enforce offence provisions saves time and costs for enforcement agencies and for the courts. They are commonly used as an enforcement tool.

Prescribing offences by way of the proposed Regulation facilitates the use of penalty notices for certain offences under the *Unlawful Gambling Act 1998*.

As noted by the Parliamentary Counsel, an offence under section 10 of the Act involves a mental element. In these circumstances, it is more appropriate that a court, rather than the person issuing the penalty notice, determine whether the alleged offender had the knowledge required to be found guilty of the offence. Consequently offences under section 10 of the Act are not prescribed by the proposed Regulation.

Data has been obtained from the NSW Police Force which gives an overview of enforcement action taken under the Act from 2001 to 2012. During this period, there have been 25 legal actions taken by the Police, none of which relate to an offence under section 10. Given that the Police have had no cause to issue a penalty notice under section 10, the practical impact of removing it from the proposed Regulation will be minimal.

As a result, it is considered that the anticipated benefits of the proposed Regulation outweigh any unanticipated costs that may arise.

***Better Regulation Principle 4: Government action should be effective and proportional***

The proposed Regulation is necessary for the proper administration of the Act. It facilitates an efficient and cost effective way in which to enforce the offence provisions of the Act, which is of benefit to government, the courts and individuals within the community.

***Better Regulation Principle 5: Consultation with business and the community should inform regulatory development.***

Liquor & Gaming NSW has undertaken a review of the Regulation in consultation with the Parliamentary Counsel's Office, and with the assistance of data provided by the NSW Police Force.

It is considered that there is no duplication of, or conflict with, any Acts, statutory rules or stated government policies administered by any other authority. The proposed Regulation is in keeping with "plain English" principles, and employs clear and contemporary language. It is consistent with the language of the Act.

***Better Regulation Principles 6 and 7: The simplification, repeal, reform or consolidation of existing regulation should be considered and the Regulation should be periodically reviewed, and if necessary reformed to ensure its continued efficiency and effectiveness***

The proposed Regulation does not implement additional layers of regulation and it maintains the status quo. The efficiency and effectiveness of the regulation will be monitored. The Regulation will also continue to be reviewed every five years in accordance with the *Subordinate Legislation Act 1989*.