NSW Treasury

Review of the Point of Consumption Tax

Final Report

June 2022

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Acknowledgement of Country

We acknowledge that Aboriginal and Torres Strait Islander peoples are the First Peoples and Traditional Custodians of Australia, and the oldest continuing culture in human history.

We pay respect to Elders past and present and commit to respecting the lands we walk on, and the communities we walk with.

We celebrate the deep and enduring connection of Aboriginal and Torres Strait Islander peoples to Country and acknowledge their continuing custodianship of the land, seas and sky.

We acknowledge the ongoing stewardship of Aboriginal and Torres Strait Islander peoples, and the important contribution they make to our communities and economies.

We reflect on the continuing impact of government policies and practices, and recognise our responsibility to work together with and for Aboriginal and Torres Strait Islander peoples, families and communities, towards improved economic, social and cultural outcomes

Artwork:
Regeneration by Josie Rose

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Introduction

On 1 January 2019, the NSW Government introduced the Point of Consumption (PoC) tax — a 10 per cent tax on all wagers placed by NSW residents, regardless of the location of the wagering operator. This tax closed a loophole in wagering laws where most online bets were not taxed. This has prevented the wagering tax base from eroding and has broadened its scope to apply more equitably and fairly across wagering operators.

Given that the existing betting tax arrangements still apply to the NSW totalizator licensee (TAB), it is entitled to offset its existing betting tax requirements against its PoC tax liability to avoid double taxation.[1] As a practical impact, since its betting tax liability has always exceeded their PoC tax liability, TAB has not in practice paid the PoC tax.

As part of the PoC tax reforms, the NSW Government agreed to provide additional funding to the racing industry equal to 2 per cent of taxable NSW net wagering revenue from all Australian licensed wagering operators, including TAB. In addition, the NSW Government has provided:

- funding of $2 million in 2018-19 and $4 million per year from 2019-20 to 2021-22 for the Greyhound Welfare & Integrity Commission (GWIC) — this body was established in 2018 to promote and protect the welfare of greyhounds, safeguard the integrity of greyhound racing and betting, and maintain public confidence in the industry; and
- funding of $2.5 million in 2018-19 and $5 million per year from 2019-20 to 2021-22 to the Responsible Gambling Fund to address, prevent and minimise gambling-related harm associated with online wagering.

At the time of implementation, the NSW Government announced that the NSW Treasury would undertake a Review of the PoC tax ('the Review') after 18 months of operation.
On 25 February 2021, the NSW Treasury commenced the Review, considering:

- the PoC tax rate and threshold
- existing wagering tax arrangements
- racing industry funding arrangements implemented at the time of the PoC tax introduction[2]
- impacts on the wagering and racing industries; and
- any other policy or administrative issues associated with the PoC tax.

The NSW Treasury has led the preparation of the Review and consultations with stakeholders. The Review received nine submissions, some of which contained responses to a set of targeted questions from the consultation paper. Stakeholders included wagering operators and peak organisations, racing controlling bodies, and sports bodies. Several stakeholders indicated that their submissions were commercial-in-confidence. The NSW Treasury did not receive submissions from any general members of the public or community organisations.

The NSW Treasury, together with Liquor & Gaming NSW, also met with stakeholders from the wagering industry to discuss their formal submissions.

This Final Report of the Review summarises the stakeholder views presented in the submissions and stakeholder discussions and draws on other data and information provided by NSW Government agencies while conducting the review.

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[1] *Betting Tax Act 2001* s 13P
[2] The scope of the review does not extend to funding for racing industry bodies through tax parity payments by TAB, the NSW totalizator licensee.

Executive summary

The PoC tax was introduced to close a loophole whereby most online bets were not taxed. In 2020-21, the PoC tax raised $161.6 million in revenue, of which $52.7 million was provided to NSW racing controlling bodies as direct funding, equivalent to 33 per cent of PoC tax revenue received by the Government.

Overall, the PoC tax has achieved its policy intent by maintaining the integrity of the wagering tax base while also providing support to the racing industry to offset any potential negative effects of the new tax. The PoC tax has been effective in closing the loophole in the previous wagering tax laws by capturing tax on online bets placed in NSW. It also ensures that operators pay taxes on gambling activity where the associated harms occur. In addition, the PoC tax has provided additional funding to the racing industry, responsible gambling initiatives and the Greyhound Welfare and Integrity Commission.

Generally, stakeholders agreed that the PoC tax has achieved its objective of ensuring that bets placed by NSW residents are taxed, regardless of the service provider's location in Australia. Stakeholders were broadly supportive of maintaining current tax arrangements relating to the tax rate, base and threshold. There was some support for an increase in the tax rate as well as considering the totalizator headline tax rate to provide a neutral tax structure across betting products, whether totalizator or fixed odds bets and online or otherwise.

Evidence presented in submissions from online wagering operators shows a steady decline in growth in racing wagering turnover commencing before the introduction of the PoC tax, reflecting in part a shift in consumer preferences away from racing to sports betting. This downward trend continued following the introduction of the PoC tax.

The COVID-19 pandemic has caused significant disruption to the wagering and racing environment. During 2020, government restrictions to safeguard the health of the State resulted in the temporary closure of land-based gambling venues and the suspension of professional sports. Horse racing was permitted to continue throughout the lockdown but without spectators.

The industry had further disruption and uncertainty with the Delta and Omicron COVID-19 outbreaks in NSW, in June and December 2021 respectively. During the Delta outbreak, pubs and clubs were again required to close as well as betting agencies, prohibiting in-person wagering. Race meetings were able to continue but were subject to a range of restrictions such as no spectators and disallowing participants who reside in local government areas of concern. Many professional sporting events, such as NRL and AFL matches, were moved to other states.

In 2020, the Australian Government introduced several temporary measures to stimulate the economy in response to the significant economic consequences of the pandemic. This included the JobKeeper payment, increasing the unemployment benefits provided under JobSeeker and permitting early access to superannuation.

In 2021, in response to the Delta outbreak, the NSW Government announced a comprehensive business support package which organisations in the wagering and racing industries may be eligible for, including:

- One-off grants to assist businesses to maintain cashflow;
- JobSaver payments to help maintain employee levels;

- A payroll tax reduction of 50 per cent for the 2021-22 tax year for eligible impacted businesses; and
- Payroll tax deferrals and interest-free repayment plans.

The pandemic accelerated the shift in gambling participation to online gambling seen over the last decade. From 2010 to 2019 online wagering across racing and sports experienced significant growth, more than doubled in Australia and increased 10% in NSW. From 2019 to 2020, online wagering grew 64 per cent and from 2020 to 2021 it grew 36 per cent.

There have been calls for the NSW Government to increase funding for the State's racing industry to remain competitive with the public funding levels in Victoria and Queensland. This presumes a role for the NSW Government in providing further public subsidies to reverse the competitiveness impacts of tax and regulatory changes in other jurisdictions. In submissions, online wagering operators and a racing body also mentioned that NSW racing products could have a competitive advantage relative to Victoria from 1 July 2021, following its tax rate alignment with NSW.

As the PoC tax is an additional cost to wagering operators, the racing industry has also sought compensation for any reduction in their ability to charge race field fees to wagering operators.

Summary of review findings and recommendations

The Review finds that the PoC tax has been effective in closing the loophole in the pre-existing wagering tax laws by capturing tax on online bets placed in NSW. There has been substantial growth in the online wagering industry reflected in strong growth in net wagering revenues after the introduction of the PoC tax.

The Review notes that most states with PoC regimes have a rate of 15 per cent (rather than 10 per cent). Online gambling activity would likely see continued growth if a comparable higher tax rate were adopted in NSW. If an amended PoC rate was contemplated, consideration should also be given to maintaining or enhancing competitive neutrality across comparable betting products (i.e. totalizator licensee fixed odds and totalizator tax rates) to provide a uniform tax rate in NSW on all wagering products and for all operators.

The Review does not recommend changes to the current PoC tax base and the tax-free threshold, which have supported the objectives behind the introduction of the tax.

In response to specific issues raised in stakeholder submissions:

- The Review recommends that consideration be given to changing the basis of industry funding to an equivalent share of PoC revenue received by the Government, consistent with arrangements in other states and territories.
- Stakeholders claimed that racing industry funding was equivalent to 20 per cent of PoC tax revenues, lower than in other States. However, the Review notes that the racing industry receives a comparable proportion of PoC tax revenue to other States.
- The Review recommends that racing industry funding associated with the PoC tax not be extended to other industries, such as commercial sporting codes. There were calls from some stakeholders to provide the sport governing bodies with an equivalent or comparable share of PoC revenues. The Review notes the NSW Government makes significant contributions to community and professional sports, via funding for sports infrastructure, and community and professional sports programs.

- The Review recommends maintaining the quarterly payment frequency to the racing industry due to insufficient evidence demonstrating a need for change.
- One stakeholder recommended that PoC tax industry funding should be made monthly (rather than quarterly, as is currently the case) to align with the collection cycle of PoC tax revenue. It is unclear whether the benefits of monthly payments would outweigh the increased administrative burden of this change.
- The NSW Treasury will work with industry and Liquor & Gaming NSW on one minor issue relating to extending the offset provided to TAB for totalizator commissions to totalizator roundings earned from interstate residents.
- The Review finds that the PoC tax legislation is operating as intended and the bonus bet cost recovery adjustments should continue to be included in the calculation of net wagering revenue and remain taxable.
- One stakeholder suggested excluding bonus bet cost recovery adjustments from the calculation of net wagering revenue. The Review finds that it would be unreasonable to allow wagering operators to reduce their tax liability based on a discretionary expense that commercially benefits them by encouraging further wagering.
- Finally, stakeholder concerns relating to the regulation of totalizator derivative products were referred to Liquor & Gaming NSW, which has responsibility for this matter.

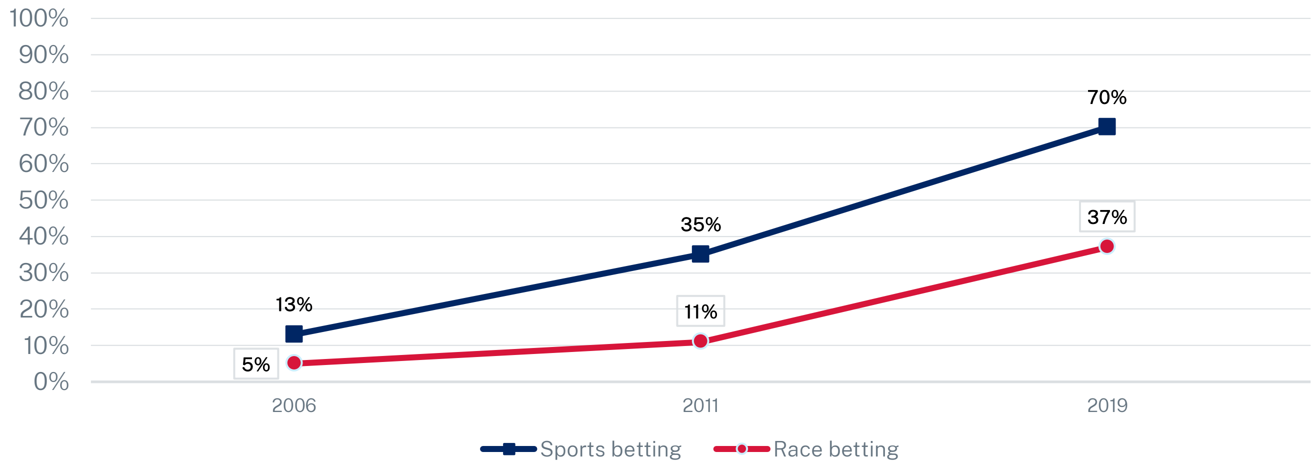
Background

Historically, most bets were placed on races (thoroughbred, greyhound and harness racing) and took the form of in-person transactions in a retail outlet or with an on-course bookmaker. Before the introduction of the PoC tax, and pursuant to the Betting Tax Act 2001, wagering tax was only paid by TAB on a location of supply basis (i.e. the state the wagering operator is located and licensed in). Online wagering operators licensed interstate and on-course bookmakers were not liable for this tax.

In the past decade, online wagering across racing and sports has experienced significant growth. For example, in 2019 around 37 per cent of NSW residents surveyed who bet on races placed their bets online, compared with 11 per cent in 2011 (Chart 1).

Similarly, in 2019 around 70 per cent of NSW residents surveyed who bet on sports placed their bets online, double the comparable figure from 2011. This growth is expected to continue due to the increased accessibility, convenience, greater competition and breadth of offerings available through online wagering.

Chart 1: Online betting has increased for sports and race betting



Note: Per cent of betters who bet online
Source: NSW Gambling Survey, 2019

More broadly, overall gambling participation in Australia has decreased from around 64 per cent in 2010 to around 57 per cent in 2019.[3] However, online gambling has more than doubled in Australia over the same period, and for NSW it increased 10 per cent (from 7.8 per cent to 17.8 per cent). In addition, this growth was found to be driven by extensive advertising and inducements.[4] Race and sports betting were the second and third most common forms of online gambling, at around 6 per cent each. Of those who gamble, around 31 per cent were estimated to gamble online in 2019 compared to around 13 per cent in 2010.[5]

Before the introduction of the PoC tax, most online operators were located and licensed outside of NSW and were not required to pay wagering tax. In response to the growing online presence of wagering, the NSW Government introduced the PoC tax on 1 January 2019, ensuring that bets made by NSW residents are taxed.

[3] Gambling Research Australia, The Second National Study of Interactive Gambling in Australia (2019-2020), October 2021.
[4] Ibid.
[5] Ibid.

Effect on wagering

PoC tax rate and base

The PoC tax represents a direct additional cost to wagering operators with NSW customers. In addition to the PoC tax, operators are required to cover their operating and capital costs, pay product fees to racing and sporting bodies for taking bets on their events, and pay the GST.

A key consideration of the impact of the PoC tax is the extent to which it is passed onto consumers by wagering operators, by changing the breadth of product offerings, the odds offered to customers or any change in the amount of incentives or free bets.

In submissions for the Review, online wagering operators stated that they have been adversely affected by the PoC tax and have had to increase their overrounds (related to the theoretical revenue margin built into prices or odds) offered to wagering customers to cover the increased tax burden. This makes odds offered or prices less attractive for punters. In addition, online wagering operators noted they reduced their customer incentives and promotional expenditure.

Evidence presented in submissions from online wagering operators shows a steady decline in growth in NSW racing wagering turnover, commencing prior to the introduction of the PoC tax. There has been a shift in consumer preferences away from racing to sports betting for the past 10 years. This downward trend continued following the introduction of the PoC tax up until the beginning of the COVID-19 pandemic in March 2020.

The COVID-19 pandemic has caused significant disruption to the wagering and racing environment. Throughout 2020, government restrictions to safeguard the health of the State resulted in the temporary closure of land-based gambling venues and the suspension of professional sports. Horse racing was permitted to continue throughout the lockdown but without spectators.

The Australian Government introduced several temporary measures to stimulate the economy in response to the significant economic consequences of the pandemic. This included introducing the JobKeeper payment, a wage subsidy program for businesses; increasing the unemployment benefits provided through the JobSeeker payment; and permitting early access to superannuation.

The pandemic also resulted in an accelerated migration of retail customers online, leading to strong growth in wagering turnover. The Australian Gambling Research Centre surveyed more than 2,000 people from across Australia who gambled from June to July 2020.[6] Findings showed that the average proportion of gambling conducted online increased from 62 per cent before COVID-19 to 78 per cent during the pandemic. Findings also revealed that, as horse racing continued throughout the lockdown along with the AFL and NRL recommencing a few weeks after restrictions began easing at the start of May, one in three participants signed up for new online betting accounts during COVID-19.

Online wagering operators also reported strong performance in the first half of 2020. Flutter Entertainment, Sportsbet's parent company, reported that online revenue was up 45 per cent in the first half of 2020,[7] while GVC Holdings (now Entain), Ladbrokes' parent company, announced its Australian business grew by 76 per cent between April and June 2020.[8]

[6] Australian Gambling Research Centre (2020), Gambling in Australia during COVID-19, October.
[7] Flutter Entertainment plc (2020) Interim Results, 27 August 2020 https://www.flutter.com/sites/paddy-power-betfair/files/result-center/2020/flutter-2020-interim-statement.pdf.
[8] Sydney Morning Herald (2020), 'Australian punters propping up global bookmaker profits', 3 August 2020 https://www.smh.com.au/politics/federal/australian-punters-propping-up-global-bookmaker-profits-20200802-p55ht8.html.

Further disruption and uncertainty for the industry has been generated by the Delta and Omicron COVID-19 outbreaks, in June and December 2021. As a result of public health orders, retail betting agencies along with all non-essential retail were prohibited from opening. Race meetings were able to continue but were subject to a range of restrictions such as no spectators and disallowing participants who reside in local government areas of concern. Many professional sports events, such as NRL and AFL matches, were moved to other states.

Online wagering increased dramatically during the periods of COVID-19 venue closures. In the June 2020 and September 2021 quarters, growth was 59.4 per cent and 47.4 per cent respectively, compared to the previous year.[9] Both quarters were significantly higher than the average quarterly growth rates in the years that preceded (previous four quarters).[10]

Despite the restrictions in the second half of 2021, online wagering operators continued to report strong results. Flutter Entertainment reported turnover and revenue growth of 20 per cent from Sportsbet for 2021.[11] This strong growth was supported by an increase in average monthly players of 27 per cent in 2021. Flutter attributed these results to the retention of players that migrated online during 2020 and noted that during the third quarter of 2021 travel restrictions applied to over 60 per cent of Australians, resulting in Sportsbet capturing additional leisure expenditure.[12] The Group also noted that profitability in Australia has increased 43 per cent in 2021 since 2018, over a period encompassing the introduction of interstate PoC taxes and the pandemic.

Entain Group, Australian brands Ladbrokes and Neds' owner, also reported strong performance for 2021. Active customers increased by 9 per cent and revenue by 20 per cent in 2021 (35 per cent since 2019). Australian brands (Sportsbet, Ladbrokes and Neds), major online operators, have seen market share increases over the pandemic period with Sportsbet increasing its share to 50 per cent in 2021 (7 per cent higher since 2019).

Broadly, stakeholder submissions from online wagering operators supported maintaining the current tax structure of a 10 per cent tax rate on net NSW wagering revenue above the $1 million threshold. Stakeholders have argued that any increase in the tax burden would be passed on to consumers through higher prices (worse odds), meaning punters would lose their wagering dollars faster, reducing the amount of money they can reinvest, resulting in reduced wagering turnover.

There was some support for a higher PoC tax rate and a decrease in the totalizator tax rate from a headline rate of 19.11 per cent. Under these proposed settings, tax parity arrangements would be unchanged. This is proposed to provide greater equity in the tax treatment of fixed odds and totalizator bets, and that the increase would be in line with the recent increase in Victoria's PoC tax rate of 2 per cent (to 10 per cent) from 1 July 2021.

Promotional programs

Wagering operators sometimes offer customers the opportunity to earn 'free bets' or 'bonus bets', which are intended to induce wagering activity. NSW taxes these bets by including their face value in the calculation of net wagering revenue. The treatment of bonus bets under state PoC tax legislation varies across jurisdictions. However, Victoria, the ACT and Western Australia also apply the same treatment as NSW by including these in the net wagering revenue. This treatment seeks consistency with customer-funded bets and recognises that these are discretionary marketing expenses for the operator.

[9] June 2020 quarter was compared with June 2019, September 2019, December 2019 and March 2020 quarters. September 2021 quarter was compared with September 2020, December 2020, March 2021 and June 2021 quarters.
[10] NSW Treasury (2021), player-loss used as a proxy for gambling expenditure.
[11] Flutter Entertainment plc - 2021 Preliminary Results announcement, 1 March 2022.
[12] Flutter Entertainment plc – Q3 2021 Trading Update, 2 November 2021.

Stakeholders did not advocate for a change to the inclusion of 'free bets' in the definition of net wagering revenue. However, it was mentioned that the PoC tax rate is 'effectively' higher than 10 per cent as it includes 'free bets' in the calculation of net wagering revenue. It was also mentioned that in Queensland the value of promotional 'free bets' is not included in the tax base, which wagering operators consider to be a more accurate reflection of their revenues.

Some stakeholders also claimed that the PoC tax has encouraged the take-up of illegal offshore wagering, however, no evidence was presented to confirm these claims.

Review findings

The Review finds that the PoC tax has been effective in closing the loophole in the pre-existing wagering tax laws by capturing tax on online bets placed in NSW. There has been substantial growth in the online wagering industry reflected in strong growth in net wagering revenues after the introduction of the PoC tax.

The Review notes that while PoC taxes have been introduced in most States and Territories, they were introduced at varying but higher tax rates and in some cases have recently been increased. Online betting has continued to grow since the introduction of the tax, and would likely continue to do so if the tax rate were to be maintained at the current level or even if the rate were to increase up to parity with the majority of other jurisdictions. If any change to the rate were contemplated, consideration should be given to tax neutrality across equivalent betting products.

Table 1: NSW PoC tax compared to other jurisdictions

	NSW	QLD	VIC	WA	SA	TAS	ACT	NT
PoC rate	10%	15%	10%	15%	15%	15%	15%	N/A
Tax-free threshold	$1m	$300,000	$1m	$150,000	$150,000	$150,000	$150,000	N/A

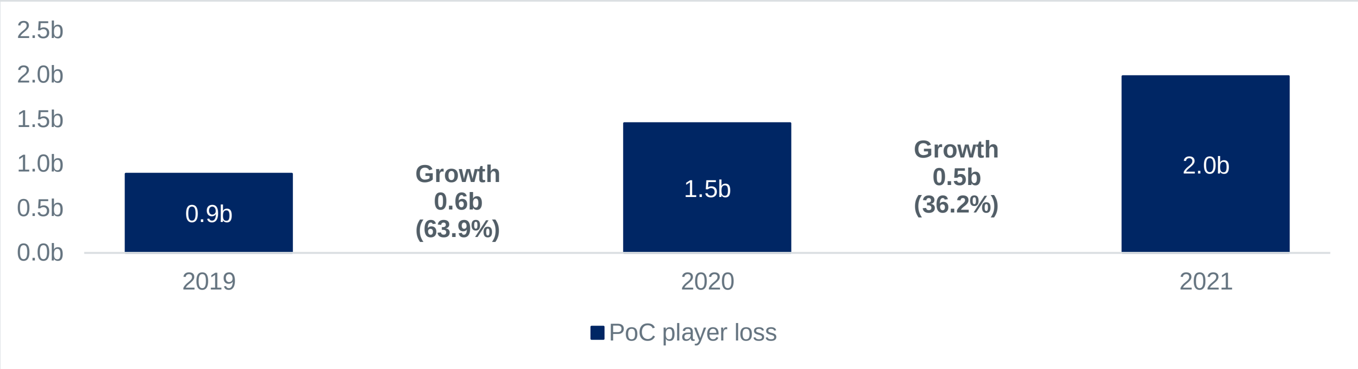
The Review recommends no changes to the current PoC tax base and tax-free threshold, which have supported the objectives behind the introduction of the tax.

Stakeholders submitted that the introduction of the PoC tax has caused a slowdown in wagering turnover and accelerated the decline in racing wagering participation. On the evidence available, player-loss from online wagering has been growing since 2010 and has significantly increased after the COVID-19 pandemic outbreaks.

Since the introduction of the PoC tax, the online wagering market grew from 43.6 per cent of the total wagering market to 73.7 per cent in 2021.[13] PoC annual player-loss has increased by 123.3 per cent from 2019 to 2021.[14]

[13] NSW Treasury (2021), player-loss used as a proxy for gambling expenditure.
[14] Ibid.

Chart 2: Point of Consumption player-loss



Source: NSW Treasury (2021), player-loss used as a proxy for gambling expenditure.

For example, Sportsbet, which holds the largest share of the online wagering market in Australia,[15] reported stable financial results in the calendar year 2019 compared with 2018, following the introduction of many interstate PoC taxes. Turnover increased slightly and it was able to offset much of the tax increase with an increase in its revenue (turnover less winnings) of 14 per cent.[16] Sportsbet indicated it was able to increase revenue by refining its risk management and seeking to change consumer preferences in favour of higher-margin products. This softened the impact that the increase in taxes had on its underlying earnings, which decreased by 6 per cent.

Sportsbet also attributed its growing share of the Australian market, in large part, to structural factors including the shift from retail to online betting and the increasing popularity of sports betting. This highlights the growing trends in the industry. In its 2021 preliminary results, Sportsbet noted that further growth will likely be driven by the increasing financial security of its player base and attracting new sports fans.[17]

The Victorian review into its PoC tax found that, despite leading to slower growth in wagering turnover, the PoC tax did not result in a reduction in the growth of net wagering revenue from racing events.[18] This is supported by research from the South Australian Centre for Economic Studies,[19] which found that wagering operators respond to a wagering tax increase by increasing their gross margins, to which consumers respond by gambling less (turnover falls). In the central case modelled, the net effect is that higher margins and lower turnover lead to the level of net wagering revenue being unchanged.

[15] Flutter Entertainment plc (2021) Annual Report & Accounts 2020.
[16] Flutter Entertainment plc (2020) Annual Report & Accounts 2019.
[17] Flutter Entertainment plc – 2021 Preliminary Results, 1 March 2022.
[18] Victorian Department of Treasury and Finance (2020) Review of the Point of Consumption Tax on wagering and betting.
[19] The South Australian Centre for Economic Studies (2019) Betting Operations Tax Revenue Options, Final Report, commissioned by the SA Department of Treasury & Finance.

Effect on the racing industry

Racing industry funding

To ensure that the NSW racing industry was not negatively impacted by the introduction of the PoC tax, the NSW Government agreed to provide additional support from when the tax commenced.[20] This additional funding is equal to 2 per cent of taxable NSW net wagering revenue from all Australian-licenced wagering operators (including TAB).

In submissions to the Review, racing industry stakeholders indicated that the introduction of the PoC tax is an additional cost to wagering operators, compromising their ability to charge higher race field fees. Race field fees are charged by racing controlling bodies to wagering operators to access race information. The rates are decided by racing controlling bodies on a commercial basis.

Racing NSW and Harness Racing NSW race field fees are calculated as a percentage of wagering turnover. Greyhound Racing NSW has a hybrid model where race field fees are based on a percentage of gross revenue (commissions and other deductions) for betting exchanges, and the greater of gross margin (turnover less winnings) or turnover for all other operators. Race field rates are capped by regulation.[21]

Based on these submissions, wagering operators were estimated to be paying up to 25 per cent of their wagering revenue in race field fees before the introduction of the PoC tax. No similar information was available to the review on race field fees post-implementation.

One stakeholder also claimed that funding of the racing industry via tax parity payments was not sustainable in the longer term, as it over-exposed the industry to changes in TAB's net wagering revenue.

Racing industry stakeholders have contended that the introduction of the PoC tax negatively impacted wagering while the COVID-19 pandemic has also disrupted the wagering environment (as described in the "Effects on wagering" section). They argued it is difficult to make firm conclusions on the impact of the tax based on the highly volatile pandemic period post-implementation and it is further unclear to what extent changes in the industry during the pandemic are temporary or represent an accelerated structural change in wagering activity and consumer behaviour.

Submissions from the racing industry have also claimed that to maintain competitiveness between the NSW, Victorian and Queensland racing codes, the amount of PoC tax revenues distributed to the industry should increase to a level in the range of 35 to 80 per cent (see discussion in Box 1). Some stakeholders support the current distribution splits between the three racing codes, while others support changing the distribution splits to better reflect current market contributions.

One stakeholder recommended that PoC tax industry funding should be made monthly (rather than quarterly) to align with the collection cycle of PoC tax revenue.

In submissions, there was also a suggestion that the NSW racing industry should receive most of the funding of any PoC tax increase, and that some of the proceeds be directed towards NSW retail betting venues.

[20] Legislative Assembly Hansard (2018), Mr Dominic Perrottet, Second Reading Speech for the Betting Tax Amendment (Point of Consumption) Bill 2018, 17 October 2018.
[21] Betting and Racing Regulation 2012 cl 16.

Box 1. Comparison of PoC tax industry funding with Victoria and Queensland

The NSW, Victorian and Queensland racing industries are among the largest in the country. The NSW Government recognises the need for the NSW racing industry to remain competitive with Victoria and Queensland.

In response to the Victorian PoC tax review, from 1 July 2021, the Victorian Government increased its PoC tax rate from 8 per cent to 10 per cent in line with NSW. Victoria passes on all the additional revenue raised from the 2 per cent tax rate increase to their racing industry. This now means that the equivalent proportion of PoC tax revenues passed on to the Victorian racing industry is 35 per cent.

From 1 July 2021, the Queensland Government also began directing 35 per cent of PoC tax revenues to their racing industry. This has the effect of increasing public funding for their industry by around $20 million over the next two years.

New South Wales racing industry stakeholders have cited the need to remain competitive with their Victorian and Queensland counterparts, both significant interstate competitors. Stakeholders contended that this competitiveness is closely linked to the respective funding for each state's racing industry, not other factors typically associated with a competitive advantage.

Most stakeholders, therefore, argued for the proportion of PoC tax revenues paid to the NSW racing industry to be aligned with the 35 per cent rate in Victoria and Queensland.

However, NSW PoC tax payments to the racing industry are already comparable to Victoria and Queensland and have in fact been significantly higher on a proportionate basis prior to Victoria's increase and Queensland's introduction. In 2020-21, the PoC tax raised $161.6 million in revenue, of which $52.7 million was provided to the NSW racing controlling bodies in hypothecated funding, equivalent to 33 per cent of PoC tax revenue. This is broadly in line with the 2019-20 proportion of 35 per cent. This is because, even though TAB does not effectively pay the PoC tax, TAB's taxable net wagering revenue still forms part of the calculation of hypothecated industry funding.

Wagering industry stakeholders also noted that the decision to increase the Victorian PoC tax rate to 10 per cent would provide a competitive advantage to NSW. Wagering stakeholders attributed previously stronger growth in Victorian wagering turnover to the lower tax rate despite relatively higher product fees. With the tax rates now aligned across both states, the lower racing product fees in NSW may have a positive flow-on effect for the NSW racing industry through substituted turnover on these products.

Review findings

The Review finds that profitability in the racing industry has remained robust since the introduction of the PoC tax and there is no clear evidence that it has negatively impacted the industry.

Additionally, the NSW Government has provided additional funding to the racing industry equal to 2 per cent of taxable NSW net wagering revenue from all Australian licensed wagering operators, including TAB. The racing industry receives a comparable proportion of PoC tax revenue to other States.

While TAB does not in practice pay the PoC tax, due to the offset it is entitled to from its other betting tax obligations, TAB's taxable NSW net wagering revenue still forms part of the calculation of hypothecated industry funding. This means that the equivalent proportion of redirected PoC tax revenues is above 20 per cent (33 per cent in 2020-21).

Before the COVID-19 pandemic, racing codes 2018-19 annual reports, which covered the first six months of the tax's operation, showed that the additional funding from PoC revenues was:

- the main driver of revenue growth of 16.5 per cent for Racing NSW.
- primarily responsible for revenue increasing slightly by 0.9 per cent for the year for Harness Racing NSW.
- an offset to the decline in the TAB distribution for Greyhound Racing NSW, driving income higher by 3.5 per cent.[22]

These results indicate that the additional funding from PoC tax revenues supported the racing codes revenue streams. This funding is likely to continue to grow with the underlying trends in the wagering market, namely the increasing market share of corporate operators and online wagering.

In addition to the support provided through the PoC tax legislation, the NSW Government provided significant racing infrastructure funding of $67 million in the recent 2021-22 Budget for upgrades to Racing NSW regional racecourses. In June 2021, the NSW Government also announced additional infrastructure funding of $25 million for the greyhound racing industry.

Regarding the PoC tax's impact on the ability of the racing industry to charge wagering operators higher race field fees, there was no strong evidence suggesting there is a severe impact. Before the COVID-19 pandemic in 2018-19, turnover growth continued for each of the codes.[23] All three codes saw an increase in their race field fee revenue which contributed to their income growth for the year, despite the introduction of the tax.

Racing codes 2019-20 annual reports, covering the June 2020 lockdown quarter, showed similar revenue trends, noting the distortionary surge in online racing wagering activity in the final quarter. Increases in race field fees and PoC tax funding assisted in offsetting the declines in TAB distributions and substantially contributed to growth in revenue.[24]

Concerning the longer-term sustainability of racing industry funding via tax parity payments, the Review notes that the racing industry can draw upon other levers to generate revenue, such as race field fees. The racing industry is also benefitting from growing PoC tax funding with increasing online betting and net wagering revenues.

[22] Racing NSW, Harness Racing NSW & Greyhound Racing NSW Annual Reports 2018-19.
[23] Ibid.
[24] Racing NSW, Harness Racing NSW & Greyhound Racing NSW Annual Reports 2019-20.

The Review also notes that racing codes can develop alternative race field fee structures, particularly for codes that exclusively use turnover in the calculation of their fees. This is consistent with the Victorian review, which found that racing and other industry bodies that implement a revenue-based fee model or a 'hybrid' model (which includes both turnover and revenue) allow them to better align the incentives of wagering operators with their code. This minimises the risk of a decline in product revenue where other costs increase (including wagering taxes).[25] As such, the Review recommends not increasing the industry funding arrangements.

The PoC tax funding distribution splits are based on a commercial agreement between the three racing bodies (the *Racing Inter-Code Deed*). The Review does not recommend any changes to this distribution without full support from all parties to that agreement.

The Review recommends maintaining the payments to the racing industry on a quarterly basis due to insufficient evidence demonstrating a need for change. It is unclear whether the benefits of monthly payments would outweigh the increased administrative burden from processing this change.

The Review notes that in the 2021-22 Budget the Government announced changes to funding arrangements for the GWIC. Under the new model, from 1 July 2021 Greyhound Racing NSW will pass on its hypothecated PoC tax funding to the GWIC, and the balance needed to fully fund the GWIC will be made up from additional NSW Government support. This means that the NSW Government now effectively fully funds the GWIC through PoC tax and broader government revenues.

[25] Victorian Department of Treasury and Finance (2020) Review of the Point of Consumption Tax on wagering and betting.

Effect on sports bodies

Sports betting has been the industry's fasting growing segment over the past five years, owing to strong growth in wagers placed digitally and on fixed odds offerings as well as greater product offerings, supported by significant marketing.

This has been accompanied by a weaker interest in horseracing and greyhound racing. Sports betting made up around 26 per cent of estimated industry revenues for 2019-20, based on the IBIS industry report on horse and sports betting released in May 2020.[26]

Sports body stakeholders submitted that there is inequitable treatment under the current hypothecated funding arrangements, whereby the racing industry receives funding support but sports bodies do not. This disparity in funding arrangements is claimed to increase as sports betting becomes a greater share of the wagering market and PoC tax revenues. To gain consistency in industry support, sports body stakeholders sought similar PoC tax funding arrangements as the racing industry.

These stakeholders also argued for no increase in the tax rate on the basis that it would exacerbate the negative impact on their revenue sources. Similar to the racing industry, stakeholders claim that the PoC tax has constrained their ability to earn a fair return from product fees for the provision of information on sports events.

Review findings

At the time when the PoC tax was introduced, the NSW Government decided to provide additional funding to the racing industry to offset any negative impact of the tax's introduction. In the NSW Government's view, this was in recognition of the unique economic and cultural significance of the racing industry to NSW.

The racing industry relies heavily on wagering-sourced funding different to the sports industry. In 2018-19 and 2019-20, the racing controlling bodies received between 80 to 97 per cent of their income from wagering sources.[27] By comparison, the National Rugby League (NRL), for example, only received around 15 per cent of their income from 'wagering and sponsorship' sources in 2017-18 and 2018-19.[28] In 2021, the NRL reported that their revenue growth was mainly linked to an increase in media revenue and growth of ticket sales and that the broadcast revenue will place the league in the strongest financial position in their history.[29]

The NSW Government, on behalf of taxpayers and the community, currently provides support through investment in community and professional sports and funding for sports infrastructure, including:

- the redevelopment of Allianz Stadium, allowing it to become a world-class facility
- $50.5 million of funding to upgrade the Ken Rosewall Arena at Homebush to become a world-class tennis and netball venue

[26] IBIS World Industry Report "Horse and Sports Betting in Australia" Industry Report, March 2020.
[27] Racing NSW Annual Report 2018-19, 2019-20; Harness Racing NSW Annual Report 2018-19, 2019-20; Greyhound Racing Annual Report 2018-19, 2019-20.
[28] NRL Annual Report 2017-18, 2018-19.
[29] NRL Annual Report 2020-21.

- continued support for the Rugby League Centres of Excellence program
- funding for sports facilities in the 2020-21 Budget, including $100 million for the Greater Cities and Regional Sports Facilities Fund to invest in new and existing facilities to improve sports infrastructure across Greater Sydney, Newcastle, Wollongong and Regional NSW, as well as $25 million to fast track the Orange Sports Complex, a regional sporting hub for various sports
- support through subsidies for junior sports participation and funding for major events; and
- funding for sports through the ClubGRANTS program.

The Review recommends that racing industry funding associated with the PoC tax not be extended to other industries, including the sporting industry.

Similar to the racing industry, sporting codes are also able to develop alternative product fee structures.

Harm minimisation

Stakeholders broadly submitted that the introduction of the PoC tax has supported harm minimisation efforts through the funding of harm minimisation programs. However, some stakeholders claimed the PoC tax had the adverse impact of shifting consumers to bet with illegal offshore operators, who are not subject to the same consumer protection regulations. No evidence was available to support these claims.

Submissions provided mixed responses on whether further regulation of the online gambling environment was needed to strengthen harm minimisation initiatives.

Some stakeholders argued more could be done to provide a more equitable regulatory environment between online gambling and in-person gambling.

Other stakeholders questioned whether online wagering is a higher-risk form of gambling as opposed to land-based gambling. These submissions highlighted recent academic results based on a survey of Australians who gambled online and their self-reported gambling participation, problem gambling severity and psychological distress.[30] One limitation of this study is that it excludes individuals who gambled only in land-based gambling, with unclear implications for the study.

Review findings

Gambling taxes have a complex relationship with harm minimisation. Problem gambling is associated with a range of social impacts, such as mental health problems, family breakdown and crime.[31] Where a behaviour causes social harms, as opposed to purely private costs to the individual, a standard economic response is to tax the behaviour to discourage it. In addition, a tax can capture funds, which can be redirected towards ameliorating that social harm.

However, as noted by the Productivity Commission,[32] gambling yields recreational benefits to the large majority of gamblers, only some of whom suffer from gambling problems. Taxes reduce the benefits people derive from gambling and raising taxes is, therefore, a blunt instrument in minimising harm. An additional layer of complexity is that people with gambling problems may be less responsive to a price increase (via higher taxes).

The Review notes that the PoC tax is an important tool in supporting harm minimisation, particularly through the funding of harm minimisation programs. It also ensures that there are more equitable tax arrangements by ensuring that tax is collected at the point at which the harm occurs (i.e. tax revenue is now collected on all wagers placed by NSW residents, regardless of where the wagering operator is located).

As part of the PoC tax reforms, the NSW Government has provided total funding of $17.5 million from 2018-19 to 2021-22 to the Responsible Gambling Fund (RGF) to address, prevent and minimise gambling-related harm associated with online wagering. This made up 18 per cent of contributions to the RGF over this period.

[30] Gainsbury S et al. (2019), 'Isolating the impact of specific gambling activities and modes on problem gambling and psychological distress in internet gamblers', *BMC Public Health*, 19, Article Number 1372
[31] Productivity Commission (2010), Gambling, Inquiry Report No. 50 Volume 1, 26 February 2010, pg 16.
[32] Productivity Commission (1999), Australia's Gambling Industries, Inquiry Report No. 10 Volume 2, 26 November 1999

The RGF has allocated an estimated $19.9 million of funding from 2018-19 to 2020-21 to minimise harm directly related to online wagering, including:

- support provided via Gambling Help, which provides a range of support and counselling services to gamblers and their families
- upgrades to the service delivery model to improve digital support for clients recognising that many online gamblers prefer to access treatment services online
- research to inform responsible gambling policy, programs and initiatives, directly related to online wagering; and
- a range of education and awareness initiatives related to online wagering.

The NSW Gambling Survey 2019 showed that, while problem gambling prevalence within the NSW community was stable at 1 per cent, it is higher among online gamblers at 4 per cent.[33] Gamblers who were classified as moderate-risk and problem gamblers (47 per cent) and low-risk gamblers (46 per cent), were more likely to have placed a racing bet via the internet than non-problem race betters (32 per cent).

More generally, wagering is a relatively high-risk form of gambling. According to the NSW Gambling Survey 2019, 22 per cent of sports bettors and 14 per cent of race bettors are problem or moderate-risk gamblers (compared, for example, with 5 per cent of lottery ticket purchasers). In addition, NSW Gambling Help services have seen a steady increase in clients presenting with online wagering problems, based on information provided by the Office of Responsible Gambling.

The Review notes the progress of the National Consumer Protection Framework for Online Wagering, delivered in agreement between all Australian governments, which provides stronger consumer protections for Australians gambling online.

It includes the passage of legislation to establish the National Self-Exclusion Register in December 2019, which allows consumers to exclude themselves from all interactive wagering services in Australia through a single process.

The Review finds that the continued growth in online wagering is evidently associated with harm experienced by NSW residents. Consideration may be given to the tighter alignment of revenues from gambling activity (such as the PoC tax) with the funding of harm minimisation activities.

[33] NSW Gambling Survey (2019) Central Queensland University, commissioned by the NSW Responsible Gambling Fund

Other matters raised in the review

Offset applying to totalizator roundings

Currently, the totalizator licensee (TAB) is entitled to claim an offset against their betting tax liability for totalizator commission earned from residents outside of NSW, to avoid potential double taxation with other states' point of consumption taxes. However, this offset does not currently apply to totalizator roundings.

Totalizator roundings are amounts that would ordinarily form part of a dividend or winning amount but are retained by the licensee because of the rounding down of an amount calculated as dividends or winnings. As roundings income is included in wagering tax payments,[34] but excluded from the interstate resident offset, the licensee is exposed to double taxation on this income from interstate bets.

Review findings

The NSW Treasury and Liquor & Gaming NSW will further explore this issue with the totalizator licensee.

Bonus bet cost recovery adjustment

Where a betting company funds a customer's bet via bonus bet credit, and that bet goes on to win, many betting systems generate an 'adjustment' against that customer's account to recover the original cost of funding the bet. That is, for winning bets, the winnings are paid out without the original stake being paid to the customer.

One stakeholder argued that bonus bet cost recovery adjustments should be excluded from the calculation of net wagering revenue so that a bonus bet is being taxed at the same level as ordinary cash-funded bets.

Review findings

The Review finds that the PoC tax legislation is currently operating as intended and recommends no change to the treatment of bonus bets. That is, bonus or free bets should continue to be taxable.

The Review notes that the difference in the amount of tax paid out under a bonus bet, as opposed to a customer-funded bet, arises from the way bets are paid out. Winnings from a customer-funded bet include a payout of the original stake, whereas bonus bets do not because the operator typically recovers the cost of the bonus bet, deducting it from the payout.

Bonus bets are a discretionary expense assumed by the operator. The Review finds that it would be unreasonable to allow wagering operators to reduce (and potentially offset) their tax liability in relation to bonus bets that are not actually paid out to customers and are commercially benefiting operators by encouraging further wagering.

[34] *Betting Tax Act 2001* (NSW) s 9

Totalizator derivative products

A stakeholder raised concerns about totalizator offerings being put at a disadvantage from totalizator derivative products (fixed odds products offered by online gambling companies which have prices based on totalizator bets). This is because online operators can arguably ‘free-ride’ off the totalizator by offering a superior return without facing the same operational costs, regulatory requirements and racing industry funding obligations as the totalizator licensee.

Review findings

This issue has been referred to Liquor & Gaming NSW for consideration.

52 Martin Place
Sydney NSW 2000

GPO Box 5469
Sydney NSW 2001

W: treasury.nsw.gov.au

NSW GOVERNMENT

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