



Australian Government

Department of Communications and the Arts

Regulation Impact Statement

Interactive Gambling Amendment (Lottery Betting) Bill 2018

Table of Contents

Regulation Impact Statement	3
Background	3
1. The problem.....	5
2. The need for government action	9
3. Policy options and impact analysis	11
Option 1: Maintain status-quo.....	11
Option 2: Complete ban on lottery betting services.....	14
Option 3: Partial ban on lottery betting services.....	16
4. Preferred Option	18
Option 2: Complete ban on lottery betting services.....	18
International experience.....	20
5. Consultation.....	21
6. Implementation and evaluation	21
Role of the ACMA.....	21
Evaluation	22



Regulation Impact Statement

This Regulation Impact Statement (RIS) assesses the Government's proposed policy to prohibit lottery betting services in Australia in response to industry, governments and community concerns regarding the offering of these services in Australia. The RIS defines why lottery betting is a problem in Australia, why government intervention is required, and assesses the merits of three options to determine the preferred course of action:

- Option 1: Maintain status quo – (no regulatory action).
- Option 2: Prohibit betting on the outcome of lottery draws (complete ban – major regulatory action).
- Option 3: Prohibit betting on the outcome of Australia-based lottery draws only (partial ban – minor regulatory action).

Background

The provision and advertising of interactive gambling services to persons in Australia is regulated under the *Interactive Gambling Act 2001 (Cth)* (the IGA).

Interactive Gambling Act 2001

The IGA aims to minimise the scope for problem gambling among Australians by limiting the provision of gambling services to Australians through interactive technologies such as the internet. The main offence provision applies to the provision of prohibited interactive gambling services or unlicensed regulated gambling services to persons in Australia. Prohibited services under the IGA include online casino-style gaming services of chance or mixed skill and chance, such as blackjack, roulette and poker, which are played for money or anything else of value. Wagering and lotteries are permitted but an operator must hold an appropriate licence with an Australian state or territory.

Contraventions can carry a maximum civil penalty of \$1.5 million (7500 penalty units) per day for individuals and \$7.8 million per day for corporations. Criminal penalties may involve a custodial punishment and can carry a maximum fine of \$1.1 million (5000 penalty units) per day for individuals and \$5.2 million per day for corporations. These penalties apply to all interactive gambling service providers, whether based in Australia or offshore, or whether Australian or foreign owned.

The IGA also prohibits the broadcasting or publishing of prohibited and unlicensed regulated interactive gambling service advertisements in Australia, including on the internet. Individual broadcasters and publishers are responsible for ensuring their programming and advertising comply with regulatory requirements.

The Australian Communications and Media Authority (ACMA) is responsible for investigating complaints made under the IGA about the provision and advertising of prohibited and unlicensed regulated interactive gambling services. The ACMA has the powers to enforce penalties under the civil penalty regime, however complaints regarding criminal offences can be referred to the Australian Federal Police (AFP) for further investigation and criminal prosecution.

Betting on the outcome of a lottery draw

When wagering with lottery betting services (also called 'synthetic lotteries'), a customer does not purchase a ticket in the official lottery draw. Instead the customer chooses numbers through a third



party, who will pay out winnings equivalent to those that the person would have received through the official lottery provider, should they have won.

Lottery betting services will match prizes of each tier including the jackpot that the official lottery operator would have paid to a customer if they had won with an official lottery ticket through that service. These services will generally pay out on wins from sales revenue; however, larger pay-outs may be covered by the operator's insurance policy. In some instances, the lottery betting service operators may provide incentives which promise customers higher jackpot amounts compared to those prizes offered under the official lottery draw.

Current Commonwealth legislative framework

Parts 2 and 7A of the IGA set out prohibitions on, and civil and criminal penalties in relation to, the provision and advertising of prohibited interactive gambling services in Australia. Lottery betting services are, arguably, *prime facie* prohibited interactive gambling services within the meaning of subsection 5(1) of the IGA.

Subsection 5(1) of the IGA provides that a gambling service that is provided to customers, in the course of carrying on a business, using an internet carriage service, any other listed carriage service, a broadcasting service, any other content service, or a datacasting service, is a 'prohibited interactive gambling service'. The definition of 'gambling service' in section 4 of the IGA includes: a service for the placing, making, receiving or acceptance of bets; a service for the conduct of a lottery or the supply of lottery tickets; and, a 'gambling service' within the ordinary meaning of the term that is not otherwise covered by that definition.

However, subsection 5(3) of the IGA lists a number of services which are considered not to be prohibited interactive gambling services for the purposes of the IGA. This includes 'excluded wagering services' and 'excluded lottery services'.

Subsection 8A(5) of the IGA provides that a service is an 'excluded wagering service' to the extent that it: relates to the betting on the outcome of an event, a series of events, or a contingency; is not an 'in-play betting service' (within the meaning of section 10B, which is relevant to sporting events); and, is not a service of the type listed in paragraph 8A(5)(c). Paragraph 8A(5)(c) includes a service for the conduct of, or relating to betting on the outcome of, a scratch or other instant lottery, a service for the supply of lottery tickets, a service for the conduct of a game (within the meaning of paragraph (e) of the definition of 'gambling service' in section 4), and a service relating to the betting on the outcome of a game of chance/mixed chance and skill.

Lottery betting services provided online, are likely to meet the requirements set out in subsection 8A(5) to be considered an excluded wagering service, and are thereby permitted under the IGA.

Section 8D of the IGA provides that a service for the conduct of a lottery or the supply of lottery tickets that is not an electronic form of a scratch lottery or other instant lottery is an 'excluded lottery service'. The terms 'lottery' and 'ticket' are defined in section 4 of the IGA to include an electronic lottery and an electronic ticket, but otherwise bear their ordinary meaning. While this provision can be a point of concern, it is not clear that a lottery betting service could itself be characterised as a service for the conduct of a lottery or supply of lottery tickets.

State and Territory regulation

State and territory governments are responsible for the licensing and regulation of all legal forms of gambling within their jurisdictions. Official lottery providers must pay applicable taxes in every state



and territory in which they operate. This guarantees that each jurisdiction receives a benefit from lottery services being played by its residents.

Online gambling operators, including lottery betting providers, are not subjected to the same taxation requirements. As long as an online gambling operator is licensed within Australia, they are able to provide their services nationally subject to any state and territory laws. The majority of online gambling companies in Australia, including lottery betting operators, are licensed and regulated in the Northern Territory (NT).

Lottery betting is prohibited in South Australia (SA) due to 'betting on the outcome of a lottery draw' not being registered as an approved betting contingency, pursuant to the *Authorised Betting Operations Act 2000 (SA)* and the Approved Betting Contingencies Notice 2016. This means that lottery betting operators like Lottoland are unable to provide their services to South Australians.

On 30 November 2017, the NT Government removed 'betting on the outcome of an Australian lottery' from the approved betting contingencies register.¹ As a result, current NT licensees are no longer able to accept bets on the outcome of an Australian-based lottery draw.²

It has been reported that Victoria (VIC)³, New South Wales (NSW)⁴, Tasmania (TAS)⁵ and Western Australia (WA) are currently considering introducing legislation to prohibit lottery betting services being offered to persons in their respective jurisdictions.

1. The problem

The primary provider of lottery betting services in Australia is Lottoland Australia Proprietary Limited (Lottoland), which is part of the Lottoland group with global headquarters located in Gibraltar. Customers participate through the Lottoland website at www.lottoland.com.au. Bet365⁶, William Hill⁷ and Ladbrokes⁸ also offer online lottery betting services as a minor part of their suite of products. Lottoland and these other lottery betting providers are licensed and regulated in the NT. There may be other smaller providers in the market.

In 2017, the NT Government advised the Department of Communication and the Arts (the Department) that Lottoland is the only lottery betting operator licensed in its jurisdiction that wholly provides lottery betting services. Since its Australian launch in 2016, Lottoland has reportedly signed

¹ NT Government, *Declared sporting events for bookmaking*, <https://nt.gov.au/industry/gambling/bookmaker-licences-and-permits/declared-sporting-events-for-bookmaking>

² iGaming Business, *Lottoland banned from selling bets on Australian lotteries*, published 15/11/2017, www.igamingbusiness.com/news/lottoland-banned-selling-bets-australian-lotteries

³ Herald Sun, *Foreign Lottoland agency linked to tax revenue dip from local lotteries*, published 9/07/2017, www.heraldsun.com.au/news/victoria/foreign-lottoland-agency-linked-to-tax-revenue-dip-from-local-lotteries

⁴ The Australian, *Lottoland may face restrictions in NSW*, published 4/10/2017, www.theaustralian.com.au/news/latest-news/lottoland-may-face-restrictions-in-nsw

⁵ News.com.au, *'Not welcome here': Lottery betting to be outlawed in Tasmania*, published 11/10/2017, www.news.com.au/finance/money/wealth/not-welcome-here-lottery-betting-to-be-outlawed-in-tasmania

⁶ Bet365, www.bet365.com.au/#/AS/B6/

⁷ William Hill, www.williamhill.com.au/planet-lottery

⁸ Ladbrokes, www.ladbrokes.com.au/novelty/lotto



up more than 600,000 Australian users⁹ and estimates to have taken about a one per cent share of Australia's \$2 billion lotteries market¹⁰.

Lottoland's Gotta Go campaign

In September 2017 newsagents across Australia launched a campaign to close down Lottoland. This campaign was conducted by a coalition of newsagent associations and operators supported by the Tatts Group (which merged with Tabcorp on 22 December 2017). Television commercials, billboards, in-store posters and parked trucks adorned with the slogan "*Lottoland's Gotta Go*" were used to publicise the impact that Lottoland is having on newsagents and community services¹¹. The campaign made a number of claims against lottery betting services which are outlined below.

Claim: Jeopardises \$1 billion of State and Territory lottery tax revenue.

Campaigners have argued that official lotteries contribute significantly to state and territory revenue with around \$1.1 billion paid in lottery taxes in 2016-17. Unlike official lottery providers, lottery betting service providers such as Lottoland are not required to pay lottery taxes in every state and territory in which it operates. If customers move from official lottery draws to lottery betting services, governments may lose these taxes that can be used to fund schools, hospitals and roads.¹²

It has been separately reported in the media that lottery betting has attributed to the loss of lottery tax revenue in states and territories. For example, recent media reports indicated that the VIC Government has forecasted that more than \$90 million will be wiped from their budget over the next three years because of falling revenue from state-sanctioned lotteries.¹³ Meanwhile, the WA Government has reported that the state-regulated lottery operator Lotterywest, showed a significant drop in the number of Western Australians buying Lotto tickets, with sales revenue down by more than \$60 million last financial year.¹⁴

The reduction in lottery revenue could be a result of a number of factors. The 2016 annual report by the Lotteries Commission of South Australia (LCSA) noted that sales activity for various games is primarily driven by the frequency and amount of high value jackpots. During the same year, LCSA identified that Oz Lotto's sales revenue increased by \$11.1 million – Oz Lotto ran one \$60 million jackpot and three \$40 million jackpots in 2016 compared to one \$40 million jackpot in 2015. Meanwhile, Powerball's sales revenue increased by \$501,000 – they ran two \$70 million jackpots in 2016 compared to one \$70 million jackpot in 2015.¹⁵

⁹ Herald Sun, *Lottoland offers peace deal to halt campaign to see it banned*, published 10 October 2017, www.heraldsun.com.au/news/lottoland-offers-peace-deal-to-halt-campaign-to-see-it-banned

¹⁰ News.com.au, *Newsagents push to ban industry-killer Lottoland*, published 6/04/2017, www.news.com.au/finance/business/other-industries/newsagents-push-to-ban-industrykiller-lottoland

¹¹ News.com.au, *Newsagents push to ban industry-killer Lottoland*, published 6/04/2017, www.news.com.au/finance/business/other-industries/newsagents-push-to-ban-industrykiller-lottoland

¹² Lottoland's Gotta Go, reallotteries.com.au/

¹³ Herald Sun, *Lottoland offers peace deal to halt campaign to see it banned*, published 19/10/2017, www.heraldsun.com.au/news/lottoland-offers-peace-deal-to-halt-campaign-to-see-it-banned/news-story/a65d5e48afbd92de03495c876e5a86b7

¹⁴ ABC News, *Lottoland calls on WA Government not to ban it in the state*, updated 11/10/2017, www.abc.net.au/news/2017-10-11/lottoland-calls-on-wa-government-not-to-ban-it/9039092

¹⁵ Report is downloadable from the SA Auditor-General's Department website at www.audit.sa.gov.au/publications/annual-reports/2016-reports/annual-report-by-agency/lotteries-commission-of-south-australia



Furthermore, the loss of lottery tax revenue may be part of a larger problem where jurisdictions other than the NT are seeing a reduction in overall gambling tax revenue due to the growing prevalence of other gambling products, in particular online wagering services.

In 2014-15, it was reported that the total wagering expenditure was \$937.6 million, however, the NT government collected approximately \$10 million in taxes which is less than 1.1 per cent of the money gamblers lost.¹⁶ To address the loss of gambling tax revenue, the SA Government introduced a 15 percent point-of-consumption tax on 1 July 2017.¹⁷ Other states have indicated interest in introducing similar taxes. WA is reportedly working towards introducing a similar tax to take effect in January 2019.¹⁸ In March 2018, NSW commenced a public consultation process around a point of consumption tax for online betting.

The Department notes general feedback through consultation with selected state and territory government authorities indicate that there is currently insufficient data to determine the actual impact of lottery betting on state taxation revenue. However, it is agreed that any increase towards lottery betting and away from traditional lottery sales would have a negative impact on states and territories funding community and other government funded causes.

Claim: Could destroy Australian small businesses

Over 4,000 Australian small business lottery retailers rely on official lotteries for more than 50 per cent of their revenues. Losing customers to lottery betting services threatens to destroy small and family run businesses. This potentially threatens approximately 15,796 jobs and 4,000 small businesses.¹⁹

Just as there is limited data available to quantify the claims made about the impact of lottery betting services on state tax revenue, the Department notes that similarly there is limited data available to quantify the financial impact on small businesses. Consultation with stakeholders shows that retailers often operate across various business sectors, examples include independently owned grocery stores, pharmacies, petrol stations, and newsagencies.

Similar to the impact on state taxation revenue, it is likely that any increase towards lottery betting and away from traditional lottery sales would have a negative impact on small business revenue.

Claim: Mislead customers into thinking they are entering a lottery draw

The campaign claims that lottery betting service providers are misleading customers by allowing them to think that they are buying tickets in official lotteries. Lottery betting services such as Lottoland are not licensed lottery operators and as such, their customers are not able to enter a lottery via Lottoland.

Instead, customers are able to place a bet against the outcome of a particular lottery. The campaign claims that there is a Federal Court order preventing Lottoland from suggesting that customers are participating in an official lottery. Lottoland does state on its website that they are a bookmaker and not a lottery operator.

¹⁶ The Conversation, *South Australia's gambling tax highlights the regulatory mess of online betting*, theconversation.com/south-australias-gambling-tax-highlights-the-regulatory-mess-of-online-betting-72495

¹⁷ Revenue SA, *Betting Operations Tax*, www.revenuesa.sa.gov.au/taxes-and-duties/wagering-tax

¹⁸ The West Australian, *Punting tax 'could backfire on racing industry': Racing and Wagering WA's Richard Burt*, thewest.com.au/politics/state-politics/punting-tax-could-backfire-on-racing-industry-racing-and-wagering-was-richard-burt-ng-b88630520z

¹⁹ Lottoland's Gotta Go, reallotteries.com.au/



Through consultation with the NT Government in 2017, it was confirmed that initially, after Lottoland's launch in Australia, there was confusion with the clarity of the message being presented around the product offered. In response to these concerns, Lottoland placed an explanation on their website that clarifies "What is Lotto Betting?"

Some state and territory governments continue to hold concerns around message clarity through advertising of lottery betting providers.

Claim: Are not subject to the same regulatory regime applied to official lottery operators

Official lotteries are heavily regulated to protect customers. They are funded by the proceeds of lottery sales. Lottery betting services are not subject to the same regulatory regime as official lottery operators which guarantees that all prizes are paid out to winners.²⁰

To date the Department has not been made aware of, or received any complaints, from consumers who have indicated that winnings have not been paid out by a lottery betting service provider including Lottoland.

The Department notes that lottery betting providers are regulated as bookmakers or wagering operators. As licensing and regulation of all legal forms of gambling is the responsibility of state and territory regulators, it would be up to the relevant state or territory gambling regulator to enforce the appropriate requirements on their licensees. This includes assessment of a licence applicant's potential economic contribution to the jurisdiction and integrity of the applicant's wagering system.

However, the Department agrees that the difference in regulatory requirements between wagering and lottery operators may place lottery betting service providers at an unfair competitive advantage.

Lottery betting services can provide incentives to attract customers, which would not be plausible with official lottery operators. For example, Lottoland offers a service called 'Number Shield'. By paying a small premium, customers can guarantee that they will win the full jackpot figure even if there is another Division 1 winner. Official lottery operators would not be able to offer such a service, and instead would divide the prize according to the number of winners.

The combination of wagering incentives and offering of higher jackpots at greater frequency (by allowing customers to bet on international lotteries) would arguably encourage customers to engage with lottery betting services, and away from official lottery draws.

Further, there are concerns around the operational costs. Lottery betting services rely on official lottery draws to conduct their betting practices. This means that operational costs for lottery betting services are minimal – instead, official lottery operators are responsible for the costs associated with conducting a lottery draw.

AHA and Clubs Australia's response to Kenoland

In January 2018, Lottoland launched a new service called 'Kenoland' which allows customers to bet on the outcome of overseas Keno draws. This expansion of lottery betting services has concerned the Australian Hotels Association (AHA) and Clubs Australia whose members sell Keno lottery tickets in clubs and hotels.

²⁰ Lottoland's Gotta Go, reallotteries.com.au/



Media reports on the Australian Hotel Association (AHA) and Clubs Australia's response to Kenoland have echoed similar concerns raised by the *Lottoland's Gotta Go* campaign. *The Shout* quoted AHA's CEO, Stephen Ferguson, stating that in Australia:

Keno is licensed, regulated and taxed by the State and Territory governments. Keno is sold in hotels across Australia. In comparison to gambling on overseas lotteries such as offered by Kenoland, the Keno offered in Australian hotels: pays taxes in Australian states and territories; is wholly regulated within Australia; is offered only within a supervised retail environment; and helps hotels support over 50,000 community groups at the grass roots level.²¹

Standing Committee on Petitions referrals

As of 5 March 2018, the Standing Committee on Petitions has referred 66 petitions with a total of 14,775 signatures to the Minister for Communications for response. The petitioners have called for the *Interactive Gambling Act 2001* to be amended to prohibit lottery betting in Australia. Petitioners have also raised concerns about the impacts of lottery betting services on state and territory taxation revenue and the impact on small business newsagencies.

The Department has also received ministerial correspondence items calling for a similar ban.

Impact of NT ban on betting Australian lottery draws

On 30 November 2017, the NT Government implemented a prohibition on the 'betting on the outcome of an Australian lottery'. As a result, current NT licensees are no longer able to accept bets on the outcome of an Australian-based lottery draw.²²

Feedback from industry and state and territory government stakeholders has suggested that while this prohibition is welcomed, it does not sufficiently address the concerns associated with lottery betting services.

2. The need for government action

Despite the limited availability of data at this point in time, the Government is concerned that the provision of lottery and keno betting services in Australia, and the potential expansion of these services in the near future, will have adverse impacts on states and territories, small business and the community. Furthermore, the Government believes that lottery and keno betting services are contrary to the intent of the IGA.

Intent of the Interactive Gambling Act

The intent of the IGA is to minimise the scope of problem gambling in Australia. Lottery draws are permitted under the IGA as there has traditionally only been a small number of draws conducted each week – some seven draws conducted across a week, typically with a day's break in between. On the contrary, lottery betting services allow consumers to bet on the outcome of up to 25 lottery draws being conducted around the world each week, with the promise of massive jackpots ranging up in the hundreds of millions, which could lead to problem and at-risk gambling.

²¹ The Shout, *AHA pushes for Interactive Gambling Act reform*, published 21/02/2018, www.theshout.com.au/australian-hotelier/aha-pushes-interactive-gambling-act-reform/

²² iGaming Business, *Lottoland banned from selling bets on Australian lotteries*, published 15/11/2017, www.igamingbusiness.com/news/lottoland-banned-selling-bets-australian-lotteries



The Department has identified parallels between previous concerns related to ‘click-to-call’ in-play wagering²³ and keno betting services. Keno betting services are similar in that bets can be placed rapidly in an unsupervised environment with no restrictions. Kenoland advertises 1 draw every 4 minutes 24/7, and offers incentives to encourage customers to place bets as captured in the below image. The same consumer protections cannot be guaranteed as Keno draws that are conducted in regulated venues such as Australian casinos, clubs and hotels.

The nature of these betting services goes against the original intent of the IGA.

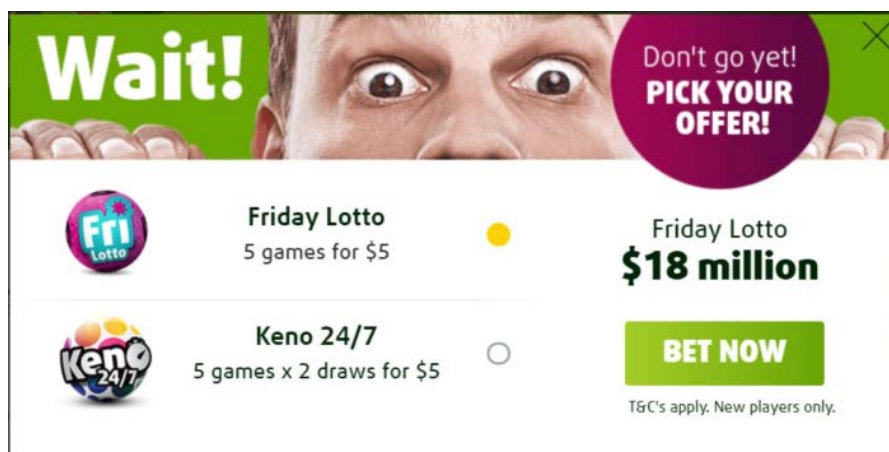


Figure 1 Pop-up offer for Kenoland website visitors

State versus Commonwealth regulation

The Tasmanian Government announced in October 2017 that it would take steps towards banning lottery outcome wagering²⁴. Media reports have indicated that VIC²⁵, NSW²⁶ and WA are currently considering laws to prohibit lottery betting services being offered to persons in their respective jurisdictions.

There is an option for the Commonwealth Government to not intervene and allow state and territory governments to amend or introduce legislation in their jurisdictions. This Department views that state level prohibitions can be beneficial from the stance that it would also cover land-based gambling (whilst the IGA only covers online gambling). South Australia (SA) does not permit lottery betting services and it appears that this has been effective in stopping these services being provided to SA residents.

The Commonwealth holds responsibility over online gambling matters and is best placed to implement a national position in relation to lottery betting services in Australia. This would be consistent with the National Consumer Protection Framework (consistent harm minimisation measures across all states

²³ ‘Click-to-call’ in-play betting services included a mix of data entry on websites or mobile apps with a voice call. These services involved a consumer inputting betting information using a website or mobile device application, which activates a call to a computerised voice that repeats the consumer’s proposed bet and asks the consumer to confirm the bet by pressing a button on a website, application or keypad. The Commonwealth Government enacted the *Interactive Gambling Amendment Act 2017* to prohibit click-to-call services.

²⁴ News.com.au, ‘Not welcome here’: Lottery betting to be outlawed in Tasmania, published 11/10/2017, www.news.com.au/finance/money/wealth/not-welcome-here-lottery-betting-to-be-outlawed-in-tasmania

²⁵ Herald Sun, *Foreign Lottoland agency linked to tax revenue dip from local lotteries*, published 9/07/2017, www.heraldsun.com.au/news/victoria/foreign-lottoland-agency-linked-to-tax-revenue-dip-from-local-lotteries

²⁶ The Australian, *Lottoland may face restrictions in NSW*, published 4/10/2017, www.theaustralian.com.au/news/latest-news/lottoland-may-face-restrictions-in-nsw

and territories) and the new credit betting prohibition in the IGA that that came into effect on 17 February 2018. The ACMA would be responsible for compliance and can respond to any complaints about lottery betting services being provided by either Australian or international operators.

Constraints and barriers

Lottery betting service providers may restructure their business models so that they can continue providing their services in Australia.

Subsection 5(3) provides that a 'telephone betting service' is not a prohibited interactive gambling service. Section 8AA provides that a gambling service provided on the basis that dealings with a customer are wholly or by way of voice calls using a carriage service are telephone betting services. However, if the service allows for any particular kinds of information to be provided by a customer otherwise than by voice call (including selection of bet types, nomination of bet amounts, confirmation of bets etc.), such a service will not be a telephone betting service (subsection 8AA(8)).

The Department believes that it is quite unlikely that provision of these types of services as a telephone betting service would be a viable business model, but will further consult with stakeholders to determine whether amendments to provisions beyond subsection 8A(5) may be warranted in the future. The Department also recognises the IGA is limited to the provision of interactive or online services. Lottery betting services may still be provided at land-based venues or in face-to-face interactions.

3. Policy options and impact analysis

Option 1: Maintain status-quo

Description

Leave the existing regulatory framework unchanged. Gambling operators would continue to provide lottery betting services to every Australian state and territory except South Australia. State and territory governments may introduce legislation to prohibit lottery betting services being provided in their jurisdictions.



Analysis

Benefits	Shortcomings
<ul style="list-style-type: none"> Benefit to Lottoland and other operators as they would continue to offer lottery betting services in Australia (subject to new or existing state laws). Benefit to Northern Territory Government who will continue to receive licensing and tax revenue from lottery betting providers. Customers would be able to continue to bet on the outcome of overseas lottery draws. 	<ul style="list-style-type: none"> Revenue attracted to lottery betting providers, and away from traditional lottery draws, would negatively impact taxation revenue collections and small business retailers. Contrary to the intent of the IGA to limit rapid style online gambling products that can lead to problem gambling. States and territories may proceed with introducing new laws to prohibit lottery betting in their jurisdictions. This would, however, result in further inconsistencies in online gambling regulation nationally. Lottery betting services would continue to use the lottery draws administered by official providers potentially without payment of fees or commissions for use of that service.

Negative impacts on lottery industry and small businesses

General consensus from stakeholders is that any sales revenue that is taken by lottery betting services, and away from traditional lottery services, will have a negative impact on the lottery industry, state and territory government taxation collections, and small businesses retailers that rely on lottery ticket sales.

The Department notes that due to limited data, it is not possible to exactly quantify this impacts in financial terms. However, from advice received by the official lottery provider in Australia (Tabcorp), for every \$1 lottery ticket sold:

- 55 to 73% is allocated to the jackpot pool to pay customer winnings;
- 13 to 28% is allocated to state taxes to support regulatory oversight and government services;
- 3 to 18% is allocated to operational costs, capital investment and profit; and
- 7 to 9% is paid to agents for relevant sales costs and income requirements.

Lottery betting operators (under a wagering licence) are subject to different regulatory requirements from lottery operators. As discussed under the *Problem* section in this RIS, the difference in requirements combined with wagering incentives, and higher frequency of high jackpots, may provide lottery betting services with an unfair competitive advantage.

Cross-jurisdictional concerns with enforcement

State and territory governments may introduce legislation in their jurisdictions to address issues caused by the provision of lottery betting services in their jurisdiction. However, this may result in further inconsistencies in online gambling regulation nationally and negatively impact the enforceability of any prohibition against lottery betting.



Should an unlicensed overseas wagering operator offer prohibited lottery betting services, state regulators would be faced with complications associated with determining who holds investigative and enforcement responsibility. Without a prohibition at a Commonwealth level, the ACMA would be limited in terms of what assistance it could provide in dealing with international entities.

Risks of problem gambling

The recent expansion of lottery betting services in Australia including the recent launch of Kenoland in January 2018 has raised concerns around the impact on problem and at-risk gambling. The Department has noted parallels between lottery betting services and 'click-to-call' betting services which were prohibited under the *Interactive Gambling Amendment Act 2017*.

Kenoland accepts bets on Keno 24/7 draws which conduct a draw every 4 minutes, for a possible maximum jackpot of \$10 million. Customers are able to place bets on draws which occur at a high frequency all day, and without the consumer protection measures offered by land-based gambling venues. The Department views that this goes against the original intent of the IGA.

Intellectual property concerns

An additional concern raised is that lottery betting services rely on official lottery draws internationally to conduct their betting practices. However, it is uncertain whether these lottery betting services pay any fees for the benefits gained from using the lottery company's intellectual property.

Industry representatives have raised concerns that if lottery betting services are not regulated or prohibited, it would appear that the Commonwealth Government is complicit in the infringement of intellectual property rights of domestic and international lottery operators.

Regulatory Costs

There would be no change to regulatory costs by maintaining the status quo.

Option 1: Average annual regulatory costs by sector

Business (\$ million)	Community Organisations	Individuals	Total change in costs
\$ 0	\$ 0	\$ 0	\$ 0



Option 2: Complete ban on lottery betting services

Description

Amend the IGA to prohibit interactive gambling operators from accepting bets on the outcome of a lottery draw. This would include both Australian and international lottery draws.

Analysis

Benefits	Shortcomings
<ul style="list-style-type: none"> • Protect taxation revenue collections of states and territories and income of small business newsagents and lottery agents. • Uphold the original intent of the IGA to limit the availability of rapid style online gambling products. • IGA amendments would provide consistent regulation across all states and territories on lottery betting services. • Commonwealth level intervention will enable the ACMA and Australian Federal Police (AFP) to investigate and apply criminal and civil penalties against offending lottery betting providers, including overseas operators. 	<ul style="list-style-type: none"> • Operators who solely provide lottery betting services will be severely affected and likely to cease operations in Australia. Other operators would need to change business practices. • Employees of lottery betting service operators could be made redundant. • Broadcasters, sponsorship and advertiser revenues may be impacted. Lottoland advertises extensively through digital, outdoor, stadium and radio channels. • Freedom of consumer choice will be negatively impacted. Consumers would no longer be able to access lottery betting services on overseas lottery draws.

This option would ensure that there is consistent regulation nationally for lottery betting services and will address the concerns listed under Option 1, including:

- Impacts on official lotteries, small business and state tax revenue;
- Concerns with lottery betting service providers having an unfair competitive advantage over lottery operators;
- Risks of problem gambling due to 24/7 availability of online lottery betting services; and
- Concerns that the lottery betting services will continue infringing on intellectual property rights of lottery operators.

Impacts on current lottery betting service providers and associates

The Department notes that the Australian franchise of Lottoland (*Lottoland Australia Proprietary Limited*) would likely close down under Option 2. The company has offices in Darwin and Sydney and employs approximately 15 staff.²⁷

²⁷ *Lottoland Corporate*, www.lottolandcorporate.com/en-au/about-us/team



Other lottery betting providers William Hill, Bet365 and Ladbrokes would be less affected as lottery betting is a minor component of their gambling suite of products.

Current sponsorship deals would be jeopardised. Lottoland has a reported three year million dollar sponsorship agreement with the Manly Warringah football club in the National Rugby League competition. Manly Warringah Stadium is currently called “Lottoland Stadium”. Lottoland also has a sponsorship arrangement with the Sydney Swans in the Australian Football League.

Broadcasters and advertisers’ revenues would be impacted. Lottoland advertises extensively through digital, outdoor, TV and radio channels. This was evident during the recent Australian Tennis Open with the widespread advertising of Kenoland.

It has been reported that Lottoland has some 600,000 Australian users in Australia.²⁸ A complete ban would mean that these consumers would no longer be able to bet on the outcome of international lotteries.

Impacts on NT revenue and other lottery betting related taxes

The NT Government would be impacted – licensed wagering operators pay tax under section 106 of the *Racing and Betting Act (NT)* which is currently capped at \$575,000 per financial year. Lottery betting companies also pay GST, company tax and payroll tax which would be lost to the Federal Government.

Regulatory Costs

Option 2: Average annual regulatory costs by sector

Business (\$ million)	Community Organisations	Individuals	Total change in costs
\$ 0.15	\$ 0	\$ 0	\$ 0.15

Costs to the wagering industry

The Department expects that the cost of the regulatory burden to the business sector – particularly for lottery betting and wagering operators – will be around \$150,000. Operators who provide lottery betting services may incur professional fees (which could include legal, tax and accounting advice) to ensure they are compliant with the proposed prohibition.

The Department is aware of one operator that solely provides lottery betting services (Lottoland) and three other wagering operators who provide lottery betting services as part of a suite of services (William Hill, Ladbrokes and bet365). However, there could be other players operating in the market.

Refund of registration and licensing fees

Lottoland is currently the only operator whose sole business is providing lottery betting services. As such, they may be entitled to receiving refunds for registration and licensing fees from the NT government on a pro-rata basis (subject to arrangements with the NT government).

²⁸ Herald Sun, *Lottoland offers peace deal to halt campaign to see it banned*, published 10 October 2017, www.heraldsun.com.au/news/lottoland-offers-peace-deal-to-halt-campaign-to-see-it-banned



Lottoland was issued with a NT sports bookmaker's licence in December 2015 and launched in Australia in January 2016. It is estimated that registration and licensing fees are approximately \$23,394.00. The breakdown is as follows:²⁹

Item	Fee
Bookmaker permit – application	\$132.00
Corporate bookmakers licence	20,000 revenue units, approximately \$23,000 for 2015/16 financial year
Police history name check	\$69
Police history finger print check	\$193

Other providers offer lottery betting as part of a suite of betting services. As such, it is unlikely that the prohibition will impact their gambling operator licences.

Option 3: Partial ban on lottery betting services

Description

Amend the IGA to prohibit interactive gambling operators from accepting bets on the outcome of Australia-based lotteries. Interactive gambling operators will be able to continue to accept bets on the outcome of overseas-based lottery draws.

²⁹ Estimates from fees obtained from NT Government website at <https://nt.gov.au/industry/gambling/bookmaker-licences-and-permits/bookmaker-licence-fees>



Analysis

Benefits	Shortcomings
<ul style="list-style-type: none"> • Benefits to lottery betting operators would continue to offer lottery betting services on overseas lottery draws. • NT government would continue to receive licensing and taxation revenue. • Customers would continue to have access to betting on overseas lottery draws. 	<ul style="list-style-type: none"> • Revenue attracted to lottery betting providers, and away from traditional lottery draws, would negatively impact lottery operators, their retailers and small businesses who rely on lottery ticket sales. • Lottery betting services would continue to use the lottery draws administered by official providers potentially without payment of fees or commissions for use of that service. • Contrary to the intent of the IGA to limit rapid style online gambling products that can lead to problem gambling. • States and territories may proceed with introducing new laws to prohibit lottery betting in their jurisdictions. This may result in further inconsistencies in online gambling regulation nationally.

This approach would align with the NT Government's partial ban of 30 November 2017 where gambling operators are unable to accept bets on the outcome of Australian lottery draws. The ban would extend to all states and territories and would ensure that bets could not be placed on Australian lotteries. However, this option would experience similar issues as outlined under Option 1, namely:

- Risks to official lottery, small business and state tax revenue;
- Concerns with lottery betting service providers having an unfair competitive advantage over lottery operators;
- Risks of problem gambling due to 24/7 availability of online lottery betting services;
- Concerns that the lottery betting services will continue infringing on intellectual property rights of lottery operators.

This option would provide some benefit to the official lottery industry and small businesses since lottery betting services will not be able to rely on Australian lottery draws as part of their betting practices. However, it cannot be said that Option 3 will provide a significant benefit in securing revenue for official lottery draws and their retailers, and associated lottery tax revenue for state and territory governments. As the Lotteries Commission of South Australia 2016 annual report noted, sales activity of various games is primarily driven by the frequency and amount of high value jackpots.³⁰ If lottery betting services can continue to offer massive overseas jackpot amounts far exceeding

³⁰ Report is downloadable from the SA Auditor-General's Department website at www.audit.sa.gov.au/publications/annual-reports/2016-reports/annual-report-by-agency/lotteries-commission-of-south-australia



Australian official lottery jackpots, the gains to the local industry of a partial ban is limited. It was also reported that, prior to the NT ban on Australian based lotteries, 70% of Lottoland's customers wagered on international lotteries which would indicate a partial ban would mostly likely be ineffective.

Regulatory Costs

Option 3: Average annual regulatory costs by sector

Business (\$ million)	Community Organisations	Individuals	Total change in costs
\$ 0	\$ 0	\$ 0	\$ 0

As this Option would replicate the prohibition the NT Government implemented from 30 November 2017 on its licensed operators, there would be no associated regulatory costs as the providers of lottery betting services have discontinued betting services in relation to Australian-based lotteries.

4. Preferred Option

Option 2: Complete ban on lottery betting services

The preferred option is to implement a complete prohibition on online gambling operators from offering lottery betting services (betting on the outcome of a lottery draw) to customers in Australia.

The prohibition of lottery betting services will directly impact certain wagering operators and their customers. First, Lottoland, the only sole provider of lottery betting services in Australia, would most likely cease business trading in Australia. This will mean that their economic contributions through tax, employment, licensing and registration fees; and advertising will be lost. Secondly, customers' freedom of choice on how and with whom they gambling on a lottery draw will be impacted. However, customers will still be able to enter official lotteries provided in Australia.

The abovementioned negative impacts are outweighed by the benefits to be gained by the Australian community. As mentioned in this RIS, the benefits are as follows:

Protect state taxation revenue and small business commissions

Official lotteries pay a considerable amount of tax to each state or territory in which it operators. According to information provided by the official lottery provider in Australia (Tabcorp), for every \$1 lottery ticket sold:

- 55 to 73% is allocated to the jackpot pool to pay customer winnings;
- **13 to 28% is allocated to state taxes to support regulatory oversight and government services;**
- 3 to 18% is allocated to operational costs, capital investment and profit; and
- **7 to 9% is paid to agents for relevant sales costs and income requirements**

Up to the 28% of sales is provided to states and territories in taxation revenue that is used to fund government and community services such as education, health and infrastructure. Around \$1.1 billion was paid in office state and territory lottery taxes in 2016-17.



Seven to nine per cent of sales is paid to small business lottery sellers including newsagencies. Many of these 4000 small businesses rely on these commission to run their business. In comparison, lottery betting service operators pay considerable less tax to the Commonwealth and NT governments and are not required to allocate any sales revenue to sales agents.

General consensus from stakeholder feedback is that any sales revenue that is taken by lottery betting services, and away from traditional services, will have a negative impact on state taxation collections, official retailers and small businesses that rely on lottery ticket sales.

Address unfair competitive advantage

The Department views that there are legitimate concerns that lottery betting services having an unfair competitive advantage over official lottery draws. Lottery betting services are regulated as wagering operators which are subject to different regulatory requirements from lottery operators.

Australian official lottery are built on guaranteed prize pools from ticket sales and are required to comply with strict audit and consumer protection measures. They would not be able to compete with lottery betting services that can advertised massive jackpots of international draws which far exceed those offered by the official lottery providers in Australia. Further, lottery betting services are able to offer wagering incentives such as Lottoland's *Number Shield* and *Double Jackpot*.³¹

While wagering systems are assessed for integrity as part of the state and territory's licensing processes, it is unclear how lottery betting services are required to demonstrate that they can pay out large cash prizes. However, it is unlikely lottery betting services would be subject to similar requirements as lotteries since they rely on insurance plans to ensure they will manage to pay out large prizes in the event a customer wins. Stakeholders have also raised concerns with the unclear terms and conditions of lottery betting services which appear to suggest that customers will not receive the full advertised prize should they win.

Uphold the intent of the IGA

The intent of the IGA is to minimise the scope of problem gambling in Australia. Lottery betting services allow consumers to bet on the outcome of up to 25 lottery draws being conducted around the world each week, with the promise of massive jackpots ranging up in the hundreds of millions, which could lead to problem and at-risk gambling.

Keno betting services can be placed rapidly in an unsupervised environment with no restrictions. Kenoland advertises 1 draw every 4 minutes 24/7, with the chance to win \$10 million. This is a very high amount that is being offered every four minutes which can lead to rapid style gambling behaviours. The same consumer protections cannot be guaranteed as Keno draws that are conducted in regulated venues such as Australian casinos, clubs and hotels.

Allow for nationally consistent rules for online gambling

The Commonwealth holds responsibility over online gambling matters and is best placed to implement a national position in relation to lottery betting services in Australia. This would be consistent with the National Consumer Protection Framework (consistent harm minimisation measures across all states and territories) and the new credit betting prohibition in the IGA that that came into effect on

³¹ *Number Shield* guarantees winners of Division 1 prizes will not have to split the Division 1 prize amount; each winner will receive the Division 1 cash prize in full. *Double Jackpot* guarantees winners of Division 1 double the cash prize amount of the jackpot offered by the relevant lottery draw.



17 February 2018. The ACMA would be responsible for compliance and can respond to any complaints about lottery betting services being provided by either Australian or international operators.

For the above reasons, the Department believes that Option 2 – a complete ban on lottery betting services (betting on the outcome of a lottery draw) will provide benefits to industry, government, small business and the community.

Limitations of preferred option

The key limitation of the preferred option is that the scope of the IGA is limited to interactive or online gambling services. Lottery betting services may still be provided at land-based venues or in face-to-face interactions, however, they will be subject to state and territory regulation.

There is also a possible issue where lottery betting service providers may restructure their business models so that they can continue providing their services in Australia.

As mentioned earlier, subsection 5(3) of the IGA provides that a ‘telephone betting service’ is not a prohibited interactive gambling service. Section 8AA provides that a gambling service provided on the basis that dealings with a customer are wholly or by way of voice calls using a carriage service are telephone betting services. However, if the service allows for any particular kinds of information to be provided by a customer otherwise than by voice call (including selection of bet types, nomination of bet amounts, confirmation of bets etc.), such a service will not be a telephone betting service (subsection 8AA(8)).

The Department believes that it is quite unlikely that provision of these types of services as a telephone betting service would be a viable business model, but will further consult with stakeholders to determine whether amendments to provisions beyond subsection 8A(5) may be warranted.

International experience

Lottery betting services have been coming under increased scrutiny from European gambling regulators, with lottery betting service operators being blacklisted in several countries including Greece, Italy and Estonia. It has been reported that lottery betting services were taking business from national lotteries - which is similar to Australia’s situation.³²

United Kingdom

In the United Kingdom (UK), a partial ban approach has been adopted. Licensed gambling operators can offer betting on non-UK based lotteries to customers in Great Britain. For example, they can take bets on the Irish Lottery, the Health Lottery or other foreign state lotteries.

Betting on the outcome of lotteries and other lottery themed gaming products must be presented and advertised in a way that makes it clear that customers are not entering a lottery, and allows customers to easily identify what product is being offered.³³

Section 95 of the *Gambling Act (UK)* sets out a clear prohibition on offering bets on National Lottery draws, however some operators have been offering bets on non-UK versions of EuroMillions (e.g. bet

³² Gambling Compliance, *Secondary Lotteries on European Regulators’ Radars*, published 10 May 2016, https://gamblingcompliance.com/premium-content/news_analysis/secondary-lotteries-european-regulators%E2%80%99-radars

³³ Gambling Commission (UK). *Betting on lotteries*, www.gamblingcommission.gov.uk/for-the-public/Safer-gambling/Consumer-guides/Betting/Betting-on-lotteries.aspx



on the outcome of the Spanish EuroMillions draw). EuroMillions is a lottery run in partnership between a number of lottery operators in European countries and is, technically, a separate game in each participating country despite being the same draw. The UK Government has noted that such products are at odds with the intention and spirit of section 95 of the Act.

In March 2017, the UK Government proposed to introduce a licence condition to prohibit operators from offering bets on EuroMillions draws outside the UK and commenced a consultation process.³⁴ In response to this, Lottoland has recently called upon the UK government to open a far-reaching review into allowing consumers to bet on non-UK EuroMillions draws after claiming that a recent consultation found no evidence that its lottery betting product has impacted ticket sales in the UK. Based on that, Lottoland is calling for a review period lasting for a minimum of two years before any final regulatory or legislative changes to lottery betting are made.³⁵

5. Consultation

The Minister for Communications, Senator the Hon Mitch Fifield, wrote to the Hon Natasha Fyles, Attorney General and Minister for Justice in the NT Government, seeking her response to concerns raised in relation to Lottoland and lottery betting on 18 September 2017. After an investigation conducted by the NT Government, as of 30 November 2017, NT licensed sports bookmakers (including Lottoland) were prohibited from accepting bets on the outcome of Australian-based lottery draws.

In February and March 2018, the Department consulted with selected stakeholders from state and territory government and industry to provide their views on the existing regulation of lottery betting in Australia, and the impacts of lottery betting in their jurisdiction or industry. This consultation identified that the majority of stakeholders would be supportive of the preferred policy proposal.

Not all state government bodies were consulted on all issues. It should also be noted that lottery betting providers were not consulted in relation to the options presented in this RIS, and would not be supportive of the preferred option.

6. Implementation and evaluation

Subject to Government priorities and parliamentary sittings, it is expected that the Interactive Gambling Amendment (Lottery Betting) Bill 2018 will be introduced in Parliament in the 2018 Autumn sitting programme.

Role of the ACMA

As the proposed prohibition would be made under the IGA, the ACMA would be responsible for administering the new measures once enacted. The ACMA is currently responsible for investigating complaints regarding the provision or advertising of prohibited interactive gambling services or unlicensed regulated gambling services to customers based in Australia.

³⁴ *Prohibiting Third Party Betting on Non-UK Euromillions Draws*, www.gov.uk/government/consultations/prohibiting-third-party-betting-on-non-uk-euromillions-draws

³⁵ Public Gaming International, *The Damage to Brand Lottery Caused by Lottoland and Illegal "Secondary" Lotteries: A Call to Action*, published May/June 2017, www.publicgaming.com/PUBLICGAMINGMAYJUNE2017/Webarticles/lottoland.pdf



The ACMA is able to issue formal warning notices, infringement notices, and seek civil penalties and injunction orders for contraventions of the IGA. It also administers a list of licensed interactive wagering services and licensing authorities which acts as an education tool for consumers.

Evaluation

Compliance information around the IGA, including the number of complaints received about prohibited interactive gambling services and the enforcement actions undertaken by the ACMA, will be included in the ACMA's Annual Report which is tabled in Parliament.

