

Trust Deed

Responsible Gambling Fund

This is a Deed made by the Honourable David Harris MP, the Minister for Gaming and Racing, representing the Crown in right of the State of New South Wales (the **Minister**).

Recitals

1. The Casino Control Act requires any casino operator to pay to the Secretary a responsible gambling levy in respect of each casino licence.
2. The money derived from payment of those levies is to be paid into the Responsible Gambling Fund (**Fund**).
3. The Betting Tax Act allows (and for a defined period, requires) the Treasurer to pay to the Fund certain amounts.
4. The Fund is to be administered by Trustees who are responsible for making recommendations to the Minister in regard to expenditure of Fund money for purposes relating to responsible gambling.
5. The Fund is to be supported in the exercise of its functions by the Department.
6. The functions of the Trustees are set out in this Deed.

1. Definitions and interpretation

1.1. Interpretation

Unless the context requires otherwise, in this Deed:

- (a) words in the singular include the plural and vice versa;
- (b) where any time limit pursuant to this Deed falls on a day which is not a Business Day then the time limit will be deemed to have expired on the next Business Day;
- (c) a reference to a statute, regulation, ordinance or by-law will be deemed to include a reference to all statutes, regulations, ordinances or by-laws amending, consolidating or replacing same from time to time;
- (d) headings are for convenience only and do not affect the interpretation of this Trust Deed;
- (e) the use of the word 'includes', 'including', 'for example' or similar expressions are not to be taken as limiting the meaning of the words preceding it;
- (f) reference to a person includes any other entity recognised by law and vice versa;
- (g) where an expression is defined, its other grammatical forms have a corresponding meaning;
- (h) a reference to a person which has ceased to exist or has been reconstituted, amalgamated or merged, or other functions of which have become exercisable by any other person or body in its place, will be taken to refer to the person or body established or constituted in its place by which its said functions have become exercisable;
- (i) a reference to a group of persons is a reference to all of them collectively and to any two or more of them collectively and to each of them individually;

- (i) this Deed will continue to operate if the person presently holding the office of Minister ceases to hold that office and another person is appointed as the Minister responsible for administering the Casino Control Act; and
- (k) the use of the terms "Trust Deed" and "Trustee" is not by their use to be deemed to create a trust as defined by the *Trustee Act 1925* (NSW) or otherwise according to statute, common law or equity.

1.1. Definitions

Betting Tax Act means the *Betting Tax Act 2001* (NSW) as amended from time to time and includes related legislation and any delegated legislation made pursuant to such legislation;

Casino Control Act means the *Casino Control Act 1992* (NSW) as amended from time to time and includes related legislation and any delegated legislation made pursuant to such legislation;

Chairperson means a Trustee appointed as chairperson in accordance with this Trust Deed;

Community Contributions Panel means a panel of individuals which may be formed by the Department, in relation to the Fund, to consider how community benefit payments under the Gaming Machines Act may be applied;

Consolidated Fund means the fund referred to in section 39 of the *Constitution Act 1902* (NSW);

Department means the Department of Creative Industries, Tourism, Hospitality and Sport;

Fund means the Responsible Gambling Fund established in the Special Deposits Account in the Treasury of the State of New South Wales pursuant to section 115(4) of the Casino Control Act;

Gaming Machines Act means the *Gaming Machines Act 2001* (NSW);

Levy has the meaning given to that term in clause 3.2;

Minister has the same meaning given to that term in the Casino Control Act;

Parliament means the Parliament of New South Wales;

Peer Review Process means subjecting the research and any associated reports to the scrutiny of at least one independent expert with specialised knowledge in the same field or methodology based on that expert/s' training, qualifications or experience;

Secretary means the Secretary of the Department of Creative Industries, Tourism, Hospitality and Sport;

Treasurer means the Treasurer of New South Wales;

Trust Deed means this Trust Deed and includes the attachments and annexures that are incorporated into this Trust Deed by reference, as amended from time to time in accordance with the terms of this Trust Deed; and

Trustee means a person appointed as Trustee in accordance with this Trust Deed.

2. Operation

- 2.1. The Fund trust deed made by the Minister on 24 January 2019 (and any other Fund trust deeds that have not ceased as at the date of this Trust Deed) is deemed to have ceased to have effect as from the date of this Trust Deed and as from that date the provisions of this Trust Deed apply.

3. Establishment of Fund

- 3.1. The Fund is established pursuant to section 115(4) of the Casino Control Act.

- 3.2. The Casino Control Act requires a casino operator to pay to the Secretary a responsible gambling levy in respect of each casino licence (as defined in the Casino Control Act) (the **Levy**).
- 3.3. The Casino Control Act requires the Levy to be paid into the Fund.
- 3.4. Pursuant to section 13N of the Betting Tax Act:
- (a) for the period 1 January 2019 to 30 June 2019, the Treasurer is to pay to the Fund the amount of \$2,500,000; and
 - (b) for subsequent financial years, the Treasurer may pay to the Fund, from the Consolidated Fund, other amounts appropriated by Parliament.
- 3.5. The money derived from payment of the Levy, or paid to the Fund pursuant to section 13N of the Betting Tax Act, is required by the Casino Control Act and the Betting Tax Act to be the subject of the creation and operation of a trust deed appointing Trustees and containing provisions approved by the Minister relating to the expenditure of that money for purposes relating to responsible gambling. For the avoidance of doubt, this Trust Deed is the trust deed contemplated by the Casino Control Act and the Betting Tax Act.
- 3.6. Pursuant to section 115 of the Casino Control Act, and section 13N of the Betting Tax Act, the Minister may pay money out of the Fund for purposes relating to responsible gambling in accordance with the recommendations of the Trustees or for any purpose that is consistent with the provisions of this Trust Deed, but only after consulting with the Trustees on the proposed expenditure.
- 3.7. Pursuant to section 115B of the Casino Control Act, money paid to the Secretary as a community benefit payment or gaming machine lease levy under the Gaming Machines Act is to be paid into the Fund, and that money is to be applied for such purposes as the Minister determines for the benefit of local communities in which gaming machine thresholds for venues have increased. A Community Contributions Panel may make recommendations to the Minister relating to the expenditure of money paid into the Fund under section 115B of the Casino Control Act.
- 4. Responsible Gambling**
- 4.1. For the purposes of this Trust Deed, the concept of "responsible gambling" is a broad one which recognises that although gambling is a lawful and regulated activity in the State of New South Wales gambling can cause personal and social harms.
- 4.2. Activities that promote responsible gambling include those which seek to:
- (a) enable persons to make safer and more informed decisions about their participation in gambling;
 - (b) minimise the potential for, and incidence of, gambling harm; and
 - (c) reduce the incidence, prevalence and severity of gambling problems and gambling harm.
- 5. Appointment of Trustees**
- 5.1. There must be a minimum of seven Trustees as determined by the Minister.
- 5.2. Without limiting the power of the Minister to appoint the Trustees under the Casino Control Act and/or the Betting Tax Act, the Minister will consider the Trustee Selection Principles located in Annexure "A" of this Trust Deed when selecting the Trustees.
- 5.3. The Trustees are to be appointed by a written instrument signed by the Minister pursuant to this clause. The date of the appointment of the Trustees for the purposes of this Trust Deed will be either the date expressed in that instrument or, if not so expressed, from the date the Minister signs that instrument.
- 5.4. Subject to clause 5.5, the date of the cessation of the appointment of each Trustee will be the

date so expressed in the instrument appointing them.

- 5.5. Every Trustee will be eligible to be appointed for a term not exceeding four years and will hold office subject to clause 9 of this Trust Deed and will thereafter be eligible for reappointment at the discretion of the Minister for a cumulative lifetime maximum of ten years unless appointment beyond the maximum is, in the opinion of the Minister, in the public interest.
- 5.6. Every Trustee is bound by the provisions of this Trust Deed and must exercise and perform his or her functions and duties in accordance with those terms.
- 5.7. Where a casual vacancy occurs in the office of any Trustee, the Minister may appoint another suitable person to fill that vacancy within the period of three months of that vacancy arising, provided that the person appointed to fill the casual vacancy will be appointed for the balance of his or her predecessor's term of office, or for the period specified by the Minister in a written instrument of appointment, and will hold office subject to clause 9 of this Trust Deed and be eligible for reappointment subject to the provisions of clause 5.5.

6. Functions of the Trustees

- 6.1. The function of the Trustees is to make recommendations to the Minister on the appropriate allocation of monies from the Fund for purposes relating to responsible gambling.
- 6.2. When making recommendations for the payment of money out of the Fund, the Trustees are required to take into account any policy guidelines issued to the Trustees by the Minister for the purpose of giving effect to the provisions of this Trust Deed relating to expenditure for purposes relating to responsible gambling. The current Policy Guidelines are located at Annexure "B" of this Trust Deed.
- 6.3. The Trustees may also be required by the Minister for consultation regarding the payment of money out of the Fund for any purpose that is consistent with the provisions of this Trust Deed.

7. Appointment of chairperson

- 7.1. The Minister must, by written instrument signed by the Minister, appoint a Trustee as a Chairperson from amongst the Trustees. The Chairperson will remain in that role until such time as they are no longer a Trustee, or are otherwise removed or replaced by the Minister in his or her complete discretion.
- 7.2. The functions of the Chairperson are to:
 - (a) manage and provide leadership to the Trustees;
 - (b) facilitate the orderly conduct of all meetings of the Trustees at which he or she is present; and
 - (c) act as the primary point of contact for the Trustees, with the Office of Responsible Gambling, and the Department, in order to assist the Trustees in fulfilling their functions and support the effective operation of the Fund.
- 7.3. The Chairperson will have a casting vote at all meetings of the Trustees at which there are an even number of Trustees present and entitled to vote on a matter.

8. Meetings of the Trustees

- 8.1. The Trustees must meet and/or transact business by the circulation of papers in accordance with this Trust Deed, on not less than six occasions each calendar year. The meeting schedule should be arranged at regular intervals.
- 8.2. If the Chairperson is not present, the Chairperson may nominate a Trustee to preside the meeting in their place. If no substitute has been nominated by the Chairperson, the Trustees present at a meeting will elect a Trustee from amongst those Trustees present to preside at the meeting. The person so elected is to have, during such absence, all the powers of the Chairperson.
- 8.3. There will be a quorum at a meeting of the Trustees if the majority of the Trustees at that time are present.
- 8.4. A recommendation supported by a majority of members, at a meeting of the Trustees at which a quorum is present, is to be regarded as a recommendation of the Trustees and the Trustees will put that recommendation to the Minister for consideration as to the allocation of money from the Fund.
- 8.5. A Trustee that is directly interested in any matter that is before the Trustees for consideration, deliberation or decision must disclose the nature of his or her interest. Such disclosure is to be recorded in a register of disclosures which is to be kept by the Department and the record of proceedings which is to be kept in accordance with clause 8.6 of this Trust Deed, and the Trustee:
- (a) must not take part after the disclosure in any deliberation, consideration or decision of the Trustees with respect to that matter;
 - (b) must be disregarded for the purpose of constituting a quorum of the Trustees for that deliberation, consideration or decision; and
 - (c) is required to leave the meeting while the matter is being considered by such Trustees.
- 8.6. The Department must keep a record of proceedings at Trustee meetings.

9. Removal of Trustees

- 9.1. The office of a Trustee will become vacant if the Trustee:
- (a) dies;
 - (b) acts in a manner which is inconsistent with this Trust Deed;
 - (c) refuses to act;
 - (d) is unable to perform the duties of office due to illness or other commitments;
 - (e) is removed from office by the Minister;
 - (f) becomes bankrupt or compounds with his or her creditors or otherwise takes advantage of the laws in force for the time being relating to bankruptcy;
 - (g) becomes prohibited from being a director of a company by reason of an order made under the *Corporations Act 2001* (Cth);
 - (h) is convicted of a criminal offence;
 - (i) resigns his or her office by notice in writing;
 - (j) is absent from three consecutive meetings of the Trustees of which reasonable notice has been given, except when leave has been granted by the Chair;
 - (k) is directly interested in any matter that is before the Trustees for consideration, deliberation or decision and fails to disclose the nature of his or her interest; or is unable to mitigate his or her interest; or

- (l) has breached the Lobbyist Code of Conduct.
- 9.2. Any Trustee who ceases to be an officer of the Public Service of New South Wales or the holder of a statutory office pursuant to any legislation enacted by the Parliament of New South Wales will cease to be a Trustee under this Trust Deed unless the Minister authorises in writing the Trustee to continue as a Trustee. Subject to clause 5.3 of this Trust Deed, such authorisation may be determined by the Minister.
- 9.3. Subject to this Trust Deed, the Trustees may conduct their business in such manner as they think fit, in accordance with their legal duties.
- 10. **Fees and Allowances of Trustees**
- 10.1. Subject to clause 10.2 below, the Trustees will be paid out of the Fund such fees and out of pocket expenses reasonably incurred by them, if any, as the Minister may from time to time determine.
- 10.2. Unless otherwise determined by the Minister, a Trustee who is an officer of the Public Service of New South Wales is not entitled to any remuneration, payment or any other benefit for attendance at any meeting of the Trustees whether or not such meeting is held during the ordinary office working hours of that officer.
- 11. **Funding to the Department**
- 11.1. Subject to the limitations on the purposes to which money in the Fund may be allocated (as outlined in the Casino Control Act, the Betting Tax Act, and this Trust Deed), the Minister may allocate money from the Fund to the Department for any purpose relating to responsible gambling.
- 11.2. All money allocated from the Fund to the Department, must be used in relation to responsible gambling, including:
 - (a) to assist the Trustees in fulfilling their functions, including:
 - (i) assessing research, education, prevention and intervention proposals (including those outlined in any list of priorities provided to the Trustees by the Minister pursuant to the Policy Guidelines at Annexure B to this Trust Deed);
 - (ii) developing initiatives and strategic plans for the effective use of money in the Fund;
 - (iii) implementing initiatives and strategic plans once approved by the Minister;
 - (iv) reporting on the outcomes of implemented initiatives and strategic plans;
 - (v) managerial and operational assistance;
 - (vi) administrative and secretarial support; and
 - (b) regulatory oversight of legislation and regulations in relation to responsible gambling.
- 11.3. The manner in which the money provided to the Department from the Fund may be applied by the Department includes (but is not limited to):
 - (a) employee salaries and/or wages (and related employment benefits);
 - (b) overhead costs (including rent, equipment and utilities);
 - (c) costs associated with learning and development activities (including attendance and participation at conferences); and
 - (d) external consultants' fees.
- 11.4. The funds provided to the Department for purposes relating to responsible gambling (including those purposes outlined in clauses 11.2 and 11.3 above) will be commensurate

with the costs of effectively carrying out those purposes and functions.

12. **Term and Termination**

- 12.1. In the event that the casino licences granted under the terms of the Casino Control Act are cancelled or surrendered or is otherwise no longer valid, the Minister may terminate this Trust Deed.
- 12.2. The Minister may terminate this Trust Deed at the Minister's absolute discretion.
- 12.3. Where the Minister wishes to terminate the Trust Deed, the Minister must first ensure that all the moneys remaining in the Fund are dealt with in accordance with the terms of this Trust Deed.

13. **Liability and Indemnity**

- 13.1. A Trustee will be indemnified against all liabilities incurred in execution of the duties of the Trustee, other than when they arise from the Trustee's wilful neglect, misconduct or default.

14. **Variation**

- 14.1. This Deed may be varied by the Minister at any time at the Minister's absolute discretion.

Annexure A

TRUSTEE SELECTION PRINCIPLES

Without limiting the power of the Minister to appoint Trustees under the Casino Control Act and the Betting Tax Act, the Minister will have regard to the following principles when selecting Trustees:

1. In the interests of good governance and to ensure that the Responsible Gambling Fund (**RGF**) is best positioned to exercise its functions effectively, appointments should be based on demonstrated merit, i.e. persons best suited to the requirements of the role and the needs of the RGF are selected. Potential appointees should be considered against assessment criteria based on the skills, experience and knowledge required for the role.
2. Trustees will be selected for their capabilities, knowledge and experience, including in the following areas:
 - a. Research relating to gambling, gambling problems and gambling harm, contemporary gambling harm prevention and minimisation practices and issues;
 - b. financial management and auditing;
 - c. corporate governance;
 - d. government and public policy;
 - e. gambling industry;
 - f. legal and regulatory;
 - g. public and behaviour change communications; and
 - h. public health, health and social services.
3. Nothing in these Principles should be read as meaning that Trustees are appointed to be representatives of their respective industries and/or disciplines.
4. The Minister will consider the need for the Trustees to reflect the diversity of the NSW community as a whole relating to such factors as: gender, age, cultural and linguistic backgrounds, Aboriginal and Torres Strait Islander and disability status and lived experience of gambling harm.
5. Only persons of sound reputation, who are prepared to discharge their responsibilities diligently and with the public interest only in mind, may be appointed.
6. An officer of the Department may be appointed a Trustee and may hold office as such Trustee in conjunction with his or her holding office as an officer of the Public Service or holding statutory office pursuant to any legislation enacted by the Parliament of New South Wales. However, consistent with the Principles above, not all Trustees are required to be an officer of the Department or public servants.
7. With the above Principles in mind, it is envisaged that the Trustees will at least comprise:
 - a. an academic / researcher specialising in gambling harm prevention and minimisation or a relevant health or public health field;
 - b. a health, social services or public policy professional with experience in responses to gambling harm or a relevant health or social issue;
 - c. an executive or senior manager with experience in the gambling or other relevant industry;
 - d. a person with lived experience of gambling harm; and
 - e. a senior officer of the Department.

Annexure B

RESPONSIBLE GAMBLING FUND POLICY GUIDELINES

1. For the avoidance of doubt, these Policy Guidelines are those contemplated by section 115(7) of the Casino Control Act and section 13N(6) of the Betting Tax Act (as amended from time to time).
2. The Trustees will make recommendations for the allocation of money in the Fund in accordance with the objectives of the Fund as stated in the Casino Control Act, the Betting Tax Act and the Trust Deed, subject to these Policy Guidelines and any Ministerial Statement of Expectations issued in accordance with these guidelines from time to time.
3. The Trustees will be supported and assisted in considering and making recommendations for the allocation of money in the Fund by the Office of Responsible Gambling within the Department. Pursuant to the Trust Deed, money may be allocated to the Department from the Fund for the purposes of supporting and assisting the Trustees, as well as exercising regulatory functions in relation to NSW wagering and gaming related legislation.
4. The Minister may provide to the Trustees a Statement of Expectations relating to responsible gambling to inform the focus and priorities of the Fund. The Ministerial Statement of Expectations may be provided to Trustees on a periodic basis.
5. In making recommendations for funding, the Trustees must also have regard to the concept of "responsible gambling" as outlined in the Trust Deed.
6. All recommendations for the allocation of money from the Fund must be consistent with the Trust Deed, Policy Guidelines and any Ministerial Statement of Expectations.
7. The broad areas for recommended funding should include (but are not limited to):
 - a) Research to inform the development of evidence based policy, initiatives and regulatory approaches, that prevent and minimise gambling harm as well as monitor and evaluate Fund program effectiveness;
 - b) Community education to support informed gambling choices; safer gambling behaviours; increased awareness of the indicators of gambling risk and gambling harm; to de-stigmatise gambling problems and gambling harm and to promote information and support for people impacted by gambling harm;
 - c) Intervention through provision of support and counselling services including encouraging early access through increased online and self-help tools as well as support and counselling services as part of a stepped and integrated care model; and
 - d) Supporting Department policy investigation and development and regulatory oversight and enforcement of harm prevention and minimisation obligations and practices.
8. In respect of payments made to the Fund under the Betting Tax Act, a specific area for recommended funding should include (but is not limited to) matters relating to the prevention and minimisation of harm associated with online gambling.
9. In considering recommendations for the allocation of money from the Fund, the Trustees should have regard to the proportionate allocation of money in the broad and specific areas above and the need to diversify the allocation of money in each of those areas.

10. In considering recommendations for the allocation of money from the Fund, the Trustees will have regard to:
 - any Ministerial Statement of Expectations that may be issued from time to time;
 - state, national and international research, education and policy developments;
 - the scope for the proposed activity to be undertaken in collaboration with other jurisdictions; and
 - consistency with and contribution to objectives contained in any strategic plans and research agenda issued by the Department, and the work undertaken by the Department to support those objectives.
11. The Trustees must ensure that research reports are subject to a Peer Review Process before accepting delivery of any final report.
12. Projects recommended for funding should incorporate mechanisms for monitoring and evaluation.
13. Where possible, the Trustees should ensure that the outcomes and performance of funded projects and organisations are taken into account in considering the provision of further funding to such projects and organisations.
14. The Department should report on the use of the funding in an annual report each year.