

## NATIONAL SELF EXCLUSION REGISTER RULES - ALLIANCE FOR GAMBLING REFORM RESPONSE

Thank you for the opportunity to make comments on the draft NSER Rules. These comments are based on our research and conversations with members of the Voices for Gambling Reform, with particular experience with online wagering.

Our comments are obviously from the perspective of preventing gambling harm to individuals.

*Authored on behalf of the Alliance for Gambling Reform, Dr Kate da Costa 23.12.2021*

### RECOMMENDATIONS (SUPPORTING DISCUSSION BELOW):

**Verification:** For the purposes of initial registration, the Rules should require only one authentication method, either via an authenticator app or by SMS or by clicking on an email verification link, as at least one of these communication methods will be available to almost anyone at the moment they are applying for registration. If a person cannot access any of these verification methods - because they are calling from a public phone for instance - the recording of their telephone conversation should be taken as consent to register.

If a person has not been able to use an initial verification method, they must confirm their identity within 7 days via some other method which is agreed to during the application phone conversation.

Identity verification via a government online verification service (Rule 8(2)(a)) should be completed within 7 days of lodging an application but the Register operator must make available alternative methods for those people who are not able, for whatever reason, to be identified via a government online verification service.

**Data mismatching:** The Rules should contain a provision for an individual who makes an application to register, to demonstrate that they are the same person who, after their registration application was received by the Register, was still able to open an account or place a bet, because of data mismatching. If they can demonstrate this, they should have refunded all their bets placed from the time the application was received until the time

their identity was confirmed, less any winnings. In the event the individual wins more than they bet, repayment may need to be over time.

**Process to deal with bets made while application is processed:** The Rules should require any licensed interactive wagering service provider to not accept any bets within 25 hours of opening an account, and to check (again if necessary) against the Register 25 hours after opening an account, before allowing any bets.

In the event that a person who already has an account with an operator applies to self-exclude and then continues to bet until such time as their application is registered, any of those bets made between the application being lodged/received and being activated should be refunded, less any winnings. If the individual has won more than they bet, they should be able to negotiate a reasonable repayment plan.

**Support persons:** The Rules should make it clear that an individual may apply for registration without nominating any support persons, and at any subsequent time, apply to add one to a maximum of five support persons.

**Automatic referral to gambling counselling:** We suggest that the Rules, subject to provisions in the *Privacy Act 1988*, consider allowing the Register operator to provide details of an individual who has applied to self-exclude to a gambling counselling service for the purpose only of an initial call within 7 days to offer optional additional support.

**Strengthened provisions around deregistration:** The Rules should place additional requirements on individuals who seek to end their exclusion periods early (deregistration), by requiring the counsellor, psychologist, general practitioner or listed support service consulted by the individual to supply separately a written opinion that the individual should be allowed to end their exclusion period early, and if this is not provided, the deregistration application is not processed.

**Deposit limit setting on exclusion expiry:** The Rules should require the individual to specify low deposit limits to apply to any account they open within one year of ending an exclusion period. All licensed interactive wagering service providers should be notified of these limits when the Register notifies them that an individual's exclusion has expired.

**Minimum time period be 6 months:** That a review of the minimum time period of 3 months for exclusion be carried out no more than 24 months after the commencement date, to determine if a minimum period of 6 months would be more beneficial.

**Prohibit third party/affiliate marketing influence:** The Rules should be used to also create offences if a person or corporation which is a licenced interactive wagering service provider influences, in the ways outlined in 61JD, a third party to influence an individual to not become a registered individual or to cease to be a registered individual.

**Ubiquitous promotion of the NSER:** The Rules should mandate that a prominent button or icon with the hyperlink to the Register appear on every page of a website or app, including all pages showing odds or where bets can be placed. Rule 24 (1) (c-e) and (2)(c) would therefore be unnecessary and replaced by a new Rule 24 (1)(c) “on every page”

**Advertise the NSER:** The Rules require all advertising in any medium or format by licensed interactive wagering service providers to include information about the NSER and a hyperlink to/url for the Register, and that this information be provided, consistent with Rule 24 (2)(b), in a text size and voice-over consistent with the rest of the advertisement.

**Support consumers:** The Register should reinforce the success of individuals, and reduce the chance they deregister early, by sending automated messages to individuals congratulating them on achieving milestones (by month if exclusion period < 1 year, by year if exclusion period >12 months). The Rules would allow a person to unsubscribe from these messages.

## DISCUSSION

## REGISTERING

For the maximum benefit, signing onto the Register should be as easy as possible and should take effect as soon as possible. Identity and consent checks should occur after registration is activated to ensure that wagering accounts are either frozen or not able to be opened as soon as possible after someone has decided they need to self-exclude. The point of the NSER is that people, at the moment they decide they need to act, should be able to do so, at any time and in any place.

We suggest that ACMA reconsider & amend Rule 7(1)(e) and Rule 8.

We understand that the Register must guard against vexatious, malicious or frivolous applications, however, we anticipate that the number of these will always be less than the number of people who genuinely wish to self-exclude, but do not complete the application because of barriers they encounter.

**SMS/Email verification:** Barriers to registration might include not being able to fulfil verification procedures (as outlined in Rule 8(2)), particularly receiving SMS messages. Despite claims by Telstra and other telcos, there are mobile phone blackspots across Australia, particularly in regional and rural areas. Even if a person has internet access and in theory, wireless mobile phone access, not all telcos support wireless voice or SMS capabilities.

Another scenario is that a person can apply via telephone in a situation where they do not have access to email.

The digital divide is real. Even if the Rules are predicated on the assumption that a person must have online access of some kind in order to open an account or place bets, this does not mean they always have this access. They may be using work equipment to gamble, but not have email or online access at home.

An individual may also be applying to self-exclude before they have ever opened an online account, because they are also grappling with gambling problems around poker machines, and are trying to protect themselves from turning to another gambling activity.

**Recommendation:** For the purposes of initially registering, the Rules should require only one authentication method, either via an authenticator app or by SMS or by clicking on an email verification link, as at least one of these communication methods will be available to almost anyone at the moment they are applying for registration. If a person cannot access any of these verification methods - because they are calling from a public phone for instance - the recording of their telephone conversation should be taken as consent to register.

If a person has not been able to use an initial verification method, they must confirm their identity within 7 days via some other method which is agreed to during the application phone conversation.

Identity verification via a government online verification service (Rule 8(2)(a)) should be completed within 7 days of lodging an application but the Register operator must make

available alternative methods for those people who are not able, for whatever reason, to be identified via a government online verification service.

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CONTACT DETAILS FOR DATA MATCHING:

The Rules should reflect that a person who seeks self-exclusion is also someone likely to have complex issues and potentially a long history of gambling using multiple contact points. This might include multiple email addresses and bank accounts, and/or frequent relocation meaning multiple non-current residential addresses held by licensed interactive wagering service providers.

**Names:** People may also use variants of their names, either deliberately or unintentionally. This could include providing initials, diminutives, middle names, anglicised versions or nicknames. John, Johnny, JoJo, Jacek, Jack or J might all be names used by the same individual, and used to register accounts with licensed interactive wagering service providers.

**Email addresses:** It may be that an applicant has more than one email address in use, and that they have opened accounts with licensed interactive wagering service providers using different email addresses, some of which they have forgotten, or forget at the time of applying for registration. The data matching requirements of the rules appear to include all email addresses supplied at the time of application, but do not appear to have provisions for missing email addresses.

**Residential postcodes:** People with significant gambling problems often move house, voluntarily or involuntarily. This is often due to failure to make rent or mortgage payments because of gambling, or frequent job changes. The postcode for a person when they apply to register may not be the same as when they opened an account with an licensed interactive wagering service provider. But they may be unable to recall all the addresses at which they have lived, or used to open an account, at the time of applying to the Register.

**Recommendation:**

We understand the Rules to mean that each licensed interactive wagering service provider makes checks based on name, email address they have on file, date of birth and residential postcode on file and unless all of these match the Register, they can open an account or accept a bet for an individual.

The Rules should contain a provision for an individual who makes an application to register to demonstrate that they are the same person who, after their registration application was received by the Register, was still able to open an account or place a bet, because of data mismatching. If they can demonstrate this, they should have refunded all their bets placed from the time the application was received until the time their identity was confirmed, less any winnings. In the event the individual wins more than they bet, repayment may need to be over time.

This provision means that neither the licensed interactive wagering service providers nor the individual are out of pocket, although the online providers may have to wait for repayment. This might incentivize them to data match more carefully.

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#### TIMEFRAMES

Rule 10 requires the Register operator to register an individual within 24 hours. However, it is possible to place a large number of bets within 24 hours.

#### **Recommendation:**

The Rules should require any licensed interactive wagering service provider to not accept any bets within 25 hours of opening an account, and to check (again if necessary) against the Register 25 hours after opening an account, before allowing any bets.

In the event that a person who already has an account with an operator applies to self-exclude and then continues to bet until such time as their application is registered, any of those bets made between the application being lodged/received and being activated should be refunded, less any winnings. If the individual has won more than they bet, they should be able to negotiate a reasonable repayment plan.

The purpose of this recommendation is to ensure that no individual can apply to self-exclude but then bet or continue to bet while the Register operator is arranging for their application to go on the Register.

We further recommend that an obvious precaution a licensed interactive wagering service provider can take is to quarantine winnings for 24 hours, and to check on the Register before paying them out, so that they do not inadvertently pay winnings to someone who has self-excluded and then have to wait for that individual to repay them.

The terminology of the Act 61JC(2)(b) and Rule 2 seem to imply that if an individual wishes to have any nominated support persons, they have to register them at the time of the initial application. Act 61Jl, which allows “another” nominated support person to be added, reinforces this impression.

**Recommendation:** The Rules should make it clear that an individual may apply for registration without nominating any support persons, and at any subsequent time, apply to add one to a maximum of five support persons.

## ACCESS TO THE REGISTER

Taking the step to self-exclude from any gambling activity is difficult and should be positively reinforced. It is also often not the only step an individual needs to take to recover from gambling problems. The Act and the Rules acknowledge this by providing for support persons for anyone who has self-excluded.

**Recommendation:** We suggest that the Rules, subject to provisions in the *Privacy Act 1988*, consider allowing the Register operator to provide details of an individual who has applied to self-exclude to a gambling counselling service for the purpose only of an initial call within 7 days to offer optional additional support.

This could be restricted to only those people who do not provide details of any support person(s) at the time of initial application. It should be clear that the purpose of the call is to encourage the individual to consider gambling counselling, but this is entirely optional, and the gambling counselling service must not keep contact details of any person who declines such an offer of support.

It may be that to satisfy the *Privacy Act*, anyone making an application must be advised, on the online form or during their application phone call, that this counselling service call will occur, and they can opt-out of receiving that contact.

Just as it should be as easy as possible to self-exclude by becoming a registered individual, it should be relatively difficult to end the exclusion.

The Act currently provides for no actions at the expiry of an exclusion period that would assist and support a person who returns to gambling. It appears to consider that the exclusion period alone is sufficient. We feel that the Rules could be used to provide at least a taper through the requirement that an individual set deposit limits when their exclusion expires.

At first glance, the Act and the Rules also appear to mandate that an individual who applies for self-exclusion cannot reduce the time period they have nominated for exclusion, but can extend that period. However, 61JK allows “deregistration” which appears to be different from “expiry” of registration. This therefore implies that an individual can in fact reduce the time period they have nominated, but that total exclusion period cannot be less than 3 months.

**We consider this to be completely incompatible with the intention of the Register.**

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### PURPOSE OF A STATUTORY DECLARATION TO ACCOMPANY DEREGISTRATION REQUEST

The Act appears to consider that a person should not deregister unless they have sought counselling and/or advice about their circumstances in the lead up to that application but provides no mechanism to confirm this has happened, or to deal with the situation where the registered individual is advised or counselled not to deregister.

**The current drafting of the Act and the Rules makes the requirement of a statutory declaration by the registered individual alone meaningless.**

61JK(4) requires a statutory declaration from the registered individual that they have, within the last three months before lodging their deregistration application, sought advice from either a counsellor, psychologist, general practitioner or listed support service about their decision to deregister. The Rules do not add any other requirements to the deregistration process, although 61JK(3)(b) would allow the Rules to do so.



The drafting of the Rules should consider that many people who seek self-exclusion are suffering from a compulsion to gamble. Such a compulsion may cause people to submit false statutory declarations. They are after all merely a piece of paper. While there may be legal consequences to providing a false declaration, the declaration has to be found to be false for that to happen. There appears to be no possible way the Register operator could determine if the statutory declaration is false or not, particularly if the registered individual has no nominated support persons who would be notified that a deregistration process is underway.

We made this point in our submission to the 2019 exposure draft of the *Interactive Gambling Amendment (National Self-Exclusion Register) Bill 2019*

The Rules should guard against the possibility of a false statutory declaration being lodged, or that the advice a person has received was to not apply for deregistration.

We identify the following serious flaws with the current process:

- There is no requirement to verify that the counsellor, psychologist, general practitioner or listed support service was in fact consulted by the individual or offered counselling or advice; a statutory declaration is no proof of veracity
- There is no requirement for the counsellor, psychologist, general practitioner or listed support service to confirm that in their opinion, it is reasonable and in the interests of the individual for their nominated exclusion period to be ended early
- There is no process listed for what the Register operator should do if the application to deregister is not accompanied by a (verified) statutory declaration or the statutory declaration is in some other way flawed (eg not properly witnessed)
- There is no process listed for what the Register operator should do if the counsellor, psychologist, general practitioner or listed support service contacts the Register indicating that the individual should not deregister before the expiry of their nominated exclusion period.

Other jurisdictions and systems require the submission of documents from counsellors or health professionals, or in some cases a support person, confirming that the person is ready to end their exclusion. Although we recommended this in our submission in 2019, we have subsequently refined our position, when consulted by the Queensland Attorney-General in relation to a conflict between that state's laws and the code of conduct of The Star Casino. We now understand that requiring a person to provide that secondary

affirmation might do one of two things. It might make the person feel that they cannot be trusted to make decisions for themselves and knowing that they will be humiliated in this way may make them less likely to enter into the process at all. It might alternatively place the person in danger if they are obliged to seek “permission” from a support person who is exerting some form of coercive control over them. These concerns were raised by us in the circumstances of the expiry of a fixed exclusion term. They are even more relevant to an application to end an exclusion term early.

**Recommendation:** The Rules should place additional requirements on individuals who seek to end their exclusion periods early, by requiring the counsellor, psychologist, general practitioner or listed support service consulted by the individual to supply separately a written opinion that the individual should be allowed to end their exclusion period early, and if this is not provided, the deregistration application is not processed. This is a lower test than requiring a written opinion that it would be in the individual’s best interest, but as we are not clinicians we only feel competent to recommend this lower bar.

Regrettably, the Rules cannot override the Act which specifies that the deregistration application will come into effect a mere 7 days after submission, but we strongly recommend that ACMA advocate that this time period be significantly extended, based on the length of the original or extended exclusion term.

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#### REQUIRE ADDITIONAL ACTIONS ON EXPIRY OF EXCLUSION

The Act and Rules are silent on actions after an exclusion period ends. Given that the Register is part of a Consumer Protection Framework, we suggest that the Rules be used to support a person who may choose to recommence gambling after an exclusion period. This will assist in helping that person from falling back into old, bad habits.

**Recommendation:** The Rules should require the individual to specify low deposit limits to apply to any account they open within one year of ending an exclusion period. All licensed interactive wagering service providers should be notified of these limits when the Register notifies them that an individual’s exclusion has expired.

Alternatively, the Act’s requirements that the individual’s details be removed and archived from the Register at expiry notwithstanding, the deposit limit specifications could be retained on the Register. Licensed interactive wagering service providers would be required to check on these limits before opening any account. The limits would be lifted after one year.

We received a number of comments that the minimum exclusion period of 3 months was too short. We understand that the decision to choose that time period may have been made based on research, and that this time period is specified in the Act, not the Rules.

Nonetheless, we take this opportunity to **strongly recommend** that a review of this minimum time period be carried out no more than 24 months after the commencement date. The review should consider how many people chose the shortest time period, and how many of them reapplied to be self-excluded, compared to other people who chose time periods less than one year. It should consider the effect the NSER has had by significantly reducing the minimum period of self-exclusion in some jurisdictions.

The evaluation of the UK system GAMSTOP shows that 71% of consumers chose the maximum available time period of 5 years, and 40% wanted even longer periods available<sup>1</sup>. Only 12% wanted exclusion periods shorter than the minimum period of 6 months in GAMSTOP. These data suggest that most people seeking to exclude know that they need to have a relatively long period of time during which they cannot access a gambling activity in order to become safe.

We note that currently some licensed interactive wagering service providers have a longer minimum period for self-exclusion. TAB for instance, in most states, has a minimum period of 12 months.<sup>2</sup> In NSW, the self-exclusion period for land based venues has a minimum period of 6 months.<sup>3</sup>

### BRIBERY

In our submission to the exposure draft in 2019 we noted that affiliate marketing was a burgeoning mechanism by which gambling operators used third parties to influence

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<sup>1</sup>[https://www.greo.ca/en/greo-resource/resources/Documents/Sonnet-Advisory-and-Impact-2021\\_-GAMSTOP-Evaluating-online-self-exclusion-scheme.pdf](https://www.greo.ca/en/greo-resource/resources/Documents/Sonnet-Advisory-and-Impact-2021_-GAMSTOP-Evaluating-online-self-exclusion-scheme.pdf)

<sup>2</sup> <https://responsiblegambling.tab.com.au/help>

<sup>3</sup><https://www.responsiblegambling.nsw.gov.au/home/gambleaware/manage-your-gambling/self-exclusion>

individuals to open accounts, place bets, or not close accounts. 61JD creates offences for persons and civil penalties for corporations which have influenced individuals to not become a registered individual or to cease to be a registered individual.

**Recommendation:** The Rules be used to also create offences if a person or corporation which is a licenced interactive wagering service provider influences, in the ways outlined in 61JD, a third party to influence an individual to not become a registered individual or to cease to be a registered individual.

## PROMOTION

In our consultation with people who have experienced severe harm from online gambling, and who in many cases have struggled with the self-exclusion systems of individual online gambling service providers, we have heard multiple times about the importance of prominently promoting the NSER as often as possible throughout webpages and apps.

## PROMINENCE OF HYPERLINKS

Rule 24(1) only really requires the provision of hyperlinks to the Register on pages around responsible gambling and self-exclusion. The inference is that only customers who are already looking for ways to protect themselves should be provided with information about the Register. This is well below the standard of practice around land based gambling where information about gambling help services and self-exclusion must be placed on every poker machine and available easily around casino table games. It also continues to reinforce the gambling industry's "individual choice" and "individual responsible gambling" rhetoric.

As a public health charity, we believe that gambling service providers should take far more responsibility for the consequences of their products. ACMA appears to agree with us, given its statement when seeking feedback on the model for cost-recovery for the NSER "... charging interactive wagering service providers for the Register is appropriate, given they create the demand for the scheme, and are the primary cause of harm related to online wagering."

**Recommendation:** the Rules mandate a prominent button or icon with the hyperlink to the Register appear on every page of a website or app, including all pages showing odds or

where bets can be placed. Rule 24 (1) (c-e) and (2)(c) would therefore be unnecessary and replaced by a new Rule 24 (1)(c) “on every page”

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#### REQUIREMENT THAT ADVERTISING INCLUDE HYPERLINK AND INFORMATION ABOUT THE REGISTER

ACMA will no doubt be aware that the garbled and muttered “responsible gambling” messages at the end of advertising and marketing by licensed interactive wagering service providers are ridiculed by audiences, and ineffective as a consumer protection tool.

**Recommendation:** The Rules require all advertising in any medium or format by licensed interactive wagering service providers include information about the NSER and a hyperlink to/url for the Register, and that this information be provided, consistent with Rule 24 (2)(b), in a text size and voice over consistent with the rest of the advertisement.

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#### SUPPORTING CONSUMERS

We support the suggestion we have received that consumers who have taken the important step of seeking self-exclusion would benefit from the recognition of their efforts.

**Recommendation:** That the Register reinforces the success of individuals, and reduces the chance they deregister early, by sending automated messages to individuals congratulating them on achieving milestones (by month if exclusion period < 1 year, by year if exclusion period >12 months). The Rules would allow a person to unsubscribe from these messages.

#### REQUESTS FOR CLARIFICATION

During our consultation, we received the following questions which we were unable to answer. We would appreciate clarification of these points for us to circulate to our supporters.

Are shopfront TABs captured by the NSER? If not, are they captured by state-based self-exclusion systems? We believe that TABs may sometimes fall between these two systems and out of an abundance of caution, should be covered by the NSER, especially since online TAB accounts are clearly covered by the NSER.

Does the NSER replace individual online gambling service provider's own self-exclusion systems? What if the online provider's self-exclusion system is better ie has a 12 month minimum exclusion period?

Will the Register include a live-chat function to assist consumers when attempting to join or leave the Register? This may quickly resolve simple issues, especially for someone trying to apply to self-exclude, and minimise barriers.

Some people have multiple accounts and only use each one infrequently. When a person self-excludes through the NSER, will all online gambling service providers be notified immediately and obliged to close accounts? Or will that closure only occur when the person tries to place a bet with an online service, at which point the online service discovers the exclusion before accepting the bet and then should decline the bet and inform the person that they are known to be excluded and their account will be closed? There are concerns that in the latter case, there will still be a drip feed of communication from online gambling service providers which might prompt a person to apply to deregister early.

## WHO WE ARE

The Alliance for Gambling Reform is a national advocacy organisation and registered health charity formed out of an urgent need to address the harmful and unfair impacts of gambling and its normalisation in Australia. We are a non-partisan alliance of more than 60 organisations who share our objectives of preventing and minimising harm from gambling, and we are entirely funded by individuals, foundations and local governments that do not have any ties with the gambling industry.

We take a public health approach to gambling reform, centring those with lived experience of gambling harm at the core of our work based on the principle that those closest to the harm are those closest to the solutions. We seek to collaborate meaningfully with elected representatives, local councils, service agencies, faith and community groups to prevent and reduce harm through policy change. The Alliance also provides coordination, expert advice and practical resources to our supporter organisations, community groups and the media.