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Gaming Machines Regulation 2019

Liquor & Gaming NSW

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## **SUBMISSION FROM THE ALLIANCE FOR GAMBLING REFORM INTO THE REVIEW OF THE GAMING MACHINE REGULATION, JULY 2019**

### **THE ALLIANCE FOR GAMBLING REFORM**

The Alliance for Gambling Reform (AGR) appreciates the opportunity to comment on proposed changes to the Gaming Machine Regulation, to be incorporated in a new Regulation to commence on 1 September 2019.

The Alliance for Gambling Reform is a national organisation which advocates for the prevention and minimisation of harm from gambling. We believe gambling should be considered a public health matter, in a similar way to alcohol and tobacco management. We do not advocate for bans on gambling, but do call for the prioritizing of harm minimisation over revenue or profit.

We hold strongly to the principle that people with lived experience of gambling harm, either from their own gambling or through the actions of family or friends, are crucial in guiding the way to lasting reform and should always be consulted.

### **INTRODUCTION TO SUBMISSION**

We make some general statements in this submission, and then outline specific issues or suggestions we consider useful in respect of individual clauses or parts of the Regulation.

### **HARM MINIMISATION-FIRST PRINCIPLE**

We note that the Gaming Machine Act 2001 No 127 (as amended) outlines a number of principles related to harm minimisation and responsible conduct in relation to gambling (§3 "Objects of Act"). While §3.1.(c) does require the Act to "*facilitate the balanced development, in the public interest, of the gaming industry*", regulators are reminded in §3.3 that "*In particular, due regard is to be had to the need for gambling harm minimisation when considering for the purposes of this Act what is or is not in the public interest.*"

We recommend strongly that, following the Act, the new Regulations put harm minimisation at the forefront of any changes, and to put actions that encourage harm minimisation ahead of considerations of cost to, or reduction of profit in, any one venue.

§210.2.(u) allows the regulations to “address any other matter that relates to the keeping or operation of approved gaming machines in hotels and on the premises of clubs” and §210.2.(z) “the transfer and forfeiture of gaming machine entitlements”. We encourage Liquor and Gaming, and the Authority, to exercise as much of this authority as they can, especially in the matter of responsible conduct of gambling, and reducing machine numbers in NSW, as far as is allowed by the Act.

**Hoteliers who hold the licence for EGMs in hotels, and EGM-hosting clubs and their secretaries, should be obliged by the Regulation to have a legal responsibility to minimise harm, and an obligation to intervene to keep gamblers safe.**

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## REMOVING SHAME AND STIGMA

**We furthermore recommend that the phrases “problem gambler” or “problem gambling” be removed from the Regulation**, except insofar as they are required by the Act. These phrases are, in the opinion of the Alliance, victim-blaming language. They do not encourage a person harmed by gambling to seek help because they reinforce the concept that the person is to blame for any harm experienced, rather than the poker machines they gamble on<sup>1</sup>. Notices that offer assistance for “problem gambling” or to “problem gamblers” are likely to be ignored by many who indeed are experiencing significant harm, because they do not consider themselves to have a problem or the shame of so identifying, prevents them from taking the information<sup>2</sup>. It does not encourage early intervention.

Our submission draws on the findings of recent research into responsible code of conduct systems in Victoria<sup>3</sup> and New Zealand<sup>4</sup>.

Additionally, by focussing only on those people most severely harmed by gambling, the Regulation fails to reduce harm to those who are at low or medium risk, or for impacted family and friends. Victorian research<sup>5</sup> demonstrates that only 15% of harm is experienced by those who are severely impacted (“problem gamblers” in the terminology of the Act and Regulation), and continuing to only regulate for this minority means the Regulation does not fully address harm minimisation.

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<sup>1</sup> Nerilee Hing, Elaine Nuske, Sally M. Gainsbury, Alex M.T. Russell & Helen Breen (2016) How does the stigma of problem gambling influence help-seeking, treatment and recovery? a view from the counselling sector, *International Gambling Studies*, 16:2, 263-280, DOI: [10.1080/14459795.2016.1171888](https://doi.org/10.1080/14459795.2016.1171888)

<sup>2</sup> Nerilee Hing, Elaine Nuske, Sally M. Gainsbury & Alex M.T. Russell (2016) Perceived stigma and self-stigma of problem gambling: perspectives of people with gambling problems, *International Gambling Studies*, 16:1, 31-48, DOI: [10.1080/14459795.2015.1092566](https://doi.org/10.1080/14459795.2015.1092566)

<sup>3</sup> Angela Rintoul, Julie Deblaquiere & Anna Thomas (2017) Responsible gambling codes of conduct: lack of harm minimisation intervention in the context of venue self-regulation, *Addiction Research & Theory*, 25:6, 451-461, DOI: [10.1080/16066359.2017.1314465](https://doi.org/10.1080/16066359.2017.1314465)

<sup>4</sup> <https://www.health.govt.nz/our-work/mental-health-and-addictions/gambling>  
<https://www.gamblehostpack.choicenotchance.org.nz/resources>

<sup>5</sup> <https://responsiblegambling.vic.gov.au/about-us/news-and-media/assessing-gambling-related-harm-victoria-public-health-perspective/>

## WELCOME CHANGES FOR COMMUNITY LANGUAGES AND NOTICES

**We support the proposed changes which no longer limit the Authority from approving brochures about gambling harm and counselling support to a few community languages** (proposed §19 etc).

**We also support the proposed changes which give the Authority flexibility in determining the wording of appropriate signage related to the dangers of gambling and the provision of counselling help**, based on research and changes in approach (throughout proposed Part 3). We have some concerns about the drafting of these changes, which are specified below. **We strongly recommend that the Authority consult with people with lived experience of gambling harm**, in order to understand what content and form notices might take to have the greatest chance of being seen and responded to by those who are gambling.

## RECOMMENDED CHANGES/ADDITIONS FROM ALLIANCE

### MOST SIGNIFICANT CHANGES

The Alliance details, below, a number of specific changes we would prefer to see, based on the proposed Regulation (2019) circulated by Liquor and Gaming. However, of all the actions we believe could be included in the remade Regulation, which would reduce or minimize harm, we consider these are the seven key changes which would make the most impact. All of these changes can be incorporated in the Regulation, without the need for changes to the Act:

- **Self-exclusion schemes should be managed so that participants' details are linked to club sign-in processes, or in the case of hotels, where staff at any time (and at least once every 2 hours) can request identification which should be compared with an on-line database of persons who have excluded from that venue.** [current schemes rely on staff to recognize patrons from hard-copy photographs which they might consult at the beginning of their shift. Clubs and hotels have mechanisms to identify people who are banned from their premises, they can use those mechanisms for self-exclusion schemes]
- **Venues should be prohibited from serving any food or drink, with the exception of tap water, to any person operating an EGM. Provision of free food or drink (except tap water) should be subject to penalties.** [Research shows that having to get up and move away from a machine is a key mechanism for breaking the gambling spell that captures severely harmed gamblers. Providing food and drink to someone at a machine just enables them to stay in the 'zone']

- **Venues should be prohibited from locating EGMs in smoking areas.** [as above, venues should be acting to encourage gamblers to leave machines, not stay there longer]
  
- **Threshold increases should be reduced to:**
  - **Low range :** 1-5 [currently up to 20]
  - **Mid range :** 6-20 [currently 21-40]
  - **High range :** above 20 [currently above 40]

[these thresholds are triggers for different types of LIA applications for more machines; currently, nearly half of poker machine movements do not require an LIA as most venues apply for up to 20 machines at a time; more community consultation is better than less but can only be triggered if a Class 2 LIA is lodged]
  
- **Penalties should act as a real disincentive to venues which breach the Act or Regulation. This can be done by specifying that penalty points can be multiplied by the individual number of breaches or by the number of people impacted or by the number of EGMs present when a breach occurred.** [Mt Pritchard/Mounties club was fined \$6000 in 2019 for allowing a minor into a gambling room – that club currently makes \$66.5million a year in net profits from their machines, the fine was ludicrously low; the Act prevents the Regulation setting a penalty of more than 50 units]
  
- **Player reward schemes should be prohibited, but player activity statements should still be provided as a RCG measure** [there is no first mover advantage to ditch reward or loyalty programs, but if they are all banned across the state, no single venue is disadvantaged]
  
- **ATM or other cash-dispensing machines should be located at least 30 metres from any gambling room, as recommended in the government commissioned review<sup>6</sup>.** Exceptions, authorised by the Secretary, would only be allowed where the architecture of the venue and security requirements of cash-dispensing machines makes it impossible to locate the machines 30 metres from EGMs. Relocation costs compared with annual net profit per machine, in either club or hotel, is negligible – the average machine in a club in NSW has a net profit of around \$52,000, while a hotel poker machine has an average annual net profit of \$107,000. [As with changes related to serving food and drink, or locating EGMs in smoking areas, this measure assists in breaking the spell for gamblers, and gives staff more opportunity to problems].

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<sup>6</sup> Schottler Consulting Pty Ltd [lead author Sarah Hare] (2017) *Research into the separation of ATMs and gaming machines in NSW*, Department of Liquor and Gambling NSW

## ALL SUGGESTED CHANGES

All references to clauses or Parts are based on the proposed 2019 Regulation, as circulated for public consultation by Liquor and Gaming.

### GENERAL POINTS

Remove references to “problem gambler” or “problem gambling” – these are victim blaming words, do not help with early intervention before people are severely impacted by gambling, and are inconsistent with a public health approach to harm minimisation.

### RESPONSIBLE CONDUCT OF GAMBLING

- [§45] Self-exclusion schemes should be managed so that participants’ details are linked to club sign-in processes, or in the case of hotels, where staff at any time (and at least once every 2 hours) can request identification which should be compared with an on-line database of persons who have excluded from that venue.
- [Part 3, Division 4] Venues should be prohibited from serving any food or drink, with the exception of tap water, to any person operating an EGM. Provision of free food or drink (except tap water) should be subject to penalties.
- [Division 4] Venues should be prohibited from locating EGMs in smoking areas.
- [§44] The list of non-RGF funded gambling counselling service providers should include any provider approved by the Secretary, not just AHA, ClubsNSW and Betsafe as now.
- [§23 & §45] Venues should provide contact details of all gambling counselling services available in their local area
- [Part 3, Division 5] The Secretary should approve Enhanced RCG courses, and require that in any venue with more than 20 EGMs, at least one staff member who holds an E-RCG certificate must be present on the premises while EGMs are operating. Such courses should be designed in consultation with persons with lived experience and gambling counsellors and should be designed to given the staff confidence to identify, and intervene with, someone who is experiencing harm while gambling or while on the premises.
- [Part 3, Division 5, especially §58] The Secretary should approve the content of any Responsible Conduct of Gambling courses, as well as the providers of those courses.
- [Part 3 Division 5] Applications by hoteliers or clubs to keep or vary the authority to keep an EGM must include proof that the hotelier or club secretary has a current Enhanced RCG certificate, if such a qualification exists.
- [§54] RCG training should be renewed every 3 years, but renewal courses should be less expensive than initial training.
- [§57.(4)] All staff working at a venue where there are EGMs, whose duties involve serving alcohol or are concerned with the conduct of activities involving EGMs, must have a current RCG certificate.

- [Part 3, Division 1] The Authority should approve both the content and form of any notices related to gambling harm and gambling counselling, to prevent venues suggesting their own wording.
- [Part 3, Division 1] Venues should be required to post the actual winnings vs actual losses at that venue in the preceding calendar year, rather than the chances of winning. Many people do not understand probability, but providing real venue data, as previously recommended to the Department<sup>7</sup>, will make a stronger impression.
- [Part 3, Division 1 esp §18; Part 3 Division 4, esp §48] All notices should be visible to anyone seated at an EGM, not just as they enter a gambling machine area of a hotel or club.
- [§21] Venues should be obliged to carry at least two copies of any approved brochure in any community language at all times, so that if a person requests the copy it can be provided at that time, not in some unspecified way in the future. This would increase the chance of a person obtaining helpful information at a time when they have recognized they need help, which might have passed by the time the venue posts them the relevant brochure.
- [§8.(2)] Areas of clubs or hotels which house EGMs should have solid walling, and doorways and openings that are as small as is consistent with safety, and as far as possible prevent the EGMs being visible from within the venue, in the same way that it is currently forbidden to have EGMs visible from outside a venue.
- [§28 in 2010 Regulation] The Regulation should continue the requirement that a clock, set to the correct time and running true, must be visible to anyone operating an EGM anywhere in a venue. Relying on the clocks on EGMs or a player's own device is insufficient. Clocks are inexpensive, compared to EGM revenue.
- [Part 3 Division 4, possibly §41] Signage denoting "VIP Lounge", "Dragon Lounge", "Lighting Lounge" or any other form or words which a reasonable person could interpret as indicating the presence of an area in a venue where there are EGMs, should be banned from being displayed outside the venue, or considered gambling advertising and subject to the existing limitations.
- [Part 6] Player reward schemes should be prohibited, but player activity statements should still be provided as a RCG measure
- [§97] Player activity statements should be based on a weekly basis and should be provided whether or not the activity is recorded by electronic means.

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## THRESHOLDS, NUMBERS AND COMMUNITY CONSULTATION

- [Part 2] The Regulation should set a lower state cap than in the Act, which is no more than currently exists, and cap existing LGA numbers to what they are now.
- [Part 2] The Authority should not increase the cap in Fairfield LGA above current numbers for the Fairfield LGA, and the Regulations should specify that number.

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<sup>7</sup> A. Blaszczyński et al (2015) *Gambling Harm Minimisation Report*, University of Sydney Gambling Treatment Clinic for the NSW Government Department of Trade & Investment, Office of Liquor, Gambling and Racing

- [§30 specifically, and elsewhere in Part 3 Division 3]  
Threshold increases should be reduced to:
  - Low range : 1-5 [currently up to 20]
  - Mid range : 6-20 [currently 21-40]
  - High range : above 20 [currently above 40]
- [§31.(3)] The threshold number of EGMs for a club to be obliged to submit an LIA when applying for an increase, regardless of other considerations, should be reduced from 450 to 200.  
*The Alliance can only work from the data provided by Local Government Area in NSW (unlike Victoria, which publishes venue by venue data). We have taken the number of EGMs in each LGA, and divided that by the number of venues in the same LGA. Of the 100 LGA/grouped LGA figures available for the second half of 2018, the average number of EGMs in a club in NSW is 68. Twelve LGAs have average numbers of EGMs/club between 100 and 200, and only one has an average over 200. Consequently, the Alliance believes that the current threshold in this provision, of 450 (more than twice as much as the highest average number of EGMs in any LGA in NSW) is manifestly too high as a threshold for triggering better consultation.*
- [Part 3, Division 3, especially §33 and §34] LIAs should provide the history of EGM numbers at the venue over the last decade and over the last 12 months.
- [Part 3, Division 3] All applications, regardless of the requirement to submit an LIA, should require as a minimum that the local council, the local police area command and the local health district, be notified of the application
- [Part 3, Division 3] All LIAs should include community consultation requirements.
- [Part 3, Division 3 to comply with §36C of the Act] Community consultation requirements currently in guidelines for Class 1 LIAs should be placed in the Regulation
- [Part 3, Division 3] The Authority should be obliged to consider submissions from Councils regarding any threshold increase applications, with or without LIAs, and Councils should be obliged to make submissions, which may be supportive of the application if they so choose.
- [Part 3, Division 3] Failure to conduct genuine community consultation as part of a Class 1 or Class 2 LIA process should attract penalties.
- [§34] Class 2 LIAs should be obliged to report on alcohol related crime, and domestic and family violence statistics in the venue's SA2, and local government area, and neighbouring SA2 or local government areas if the venue's SA2 borders another local government area.
- [§34] Class 2 LIAs should be obliged to address the cumulative impact of EGM numbers at their venue, not just the impact of the proposed additional EGMs.
- [§36] The Authority should consider all facilities available in a new development area, not just those that are or could be provided by a registered club, when assessing an application for a threshold increase made by a club under the special provisions for new development areas.
- [§145] EGMs should not be allowed in a club or hotel in a shopping centre where there are more than 20 shops. *The Alliance has strong concerns that the proposed Regulation does not take sufficient action to minimize convenience gambling (in location where people are undertaking ordinary daily activities, as opposed to destination gambling at a casino), and this provision is an example.*
- [§37] If an applicant for more EGMs supplies additional or amended information in an application to the Authority, all persons or bodies which have made submissions based on the original

application must be notified of the amendments or additions and offered a reasonable opportunity to make further submissions based on the new information

## PENALTIES

- While penalties under the Regulation cannot exceed 50 penalty points, we encourage the Authority to make penalties act as a real disincentive to venues which breach the Act or Regulation. This can be done by specifying that penalty points can be multiplied by the individual number of breaches or by the number of people impacted or the number of EGMs present at the time of the breach. For example, if a notice was missing from a machine, the penalty could be multiplied by the number of games played on the machine while the notice was missing. If a minor enters a gambling machine area, the penalty should be multiplied by the number of EGMs in the area.
- Penalty notice amounts (fines issued rather than penalties imposed by the court) should be much higher.

## BETS, PAYMENTS AND ACCESS TO CASH

- [§13] Bet limits on multi-terminal games should be \$10 and the maximum amount of a prize from a multi-terminal game should be \$100,000. [currently \$100 and \$500,000 respectively]
- [§28] ATMs and/or EFTPOS terminals should be at least 30m from any entrance to an area where EGMs are located as previously recommended to the government, unless the Authority/Secretary is convinced that the architecture of the building and associated security requirements prevent this. The cost of relocating ATMs is negligible compared to EGM revenue, or grants currently made under Category 2 grant schemes. Smaller clubs could request assistance under Category 2 or 3 ClubGrant schemes to cover the relocation costs if necessary.
- [§103] Gaming machine tickets of a value of more than \$5000 must be issued from a locked or secure machine or subsidiary equipment (to be consistent with other provisions about the threshold for issuing cheques)
- [§105] Redeeming gaming machine tickets should involve payment similar to other requirements where amounts over \$5000, or the entire amount if it is over \$5000, should be paid by cheque or EFT, as requested by the person.

----- ALLIANCE SUBMISSION ENDS -----

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