

# SUBMISSION: GAMING MACHINES AMENDMENTS (GAMING MACHINES ACT 2001) BILL

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The Alliance for Gambling Reform thanks the Department of Liquor and Gaming for the opportunity to make this submission.

For the purposes of correspondence, this submission has been authored by Dr Kate da Costa on behalf of the Alliance, 11 December 2020.

[kate.da.costa@agr.org.au](mailto:kate.da.costa@agr.org.au) or [info@agr.org.au](mailto:info@agr.org.au)

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## INTRODUCTION

Fixing the broken self-exclusion system in NSW is a modest, simple and overdue reform. The reforms proposed are the beginning, not the end of reforms needed in this state. Putting an end to loyalty schemes, reducing operating hours, eliminating addictive features and lowering the maximum bet are all required to reduce gambling harm. Above all, a pivot away from an “informed choice” model of individual responsibility to a public health perspective across policy areas is required to address the impacts of gambling in NSW.

The Alliance for Gambling Reform views the current legislative reforms as an opportunity to reset the culture of gambling in NSW. Clearly the conflict of interest arising from significant revenues<sup>1</sup> from what are effectively mini-casinos in pubs and clubs means the community must set its expectations through legislation, as venue managements have failed to act responsibly and provide safe spaces for patrons and staff. Failure to uphold self-exclusion deeds can be seen as contributing to the wider impacts of gambling harm across the community, through delaying the recovery of people who are seeking to break free of the grip of poker machines.

The Alliance hopes to see an effective exclusion system in NSW that includes features that help people to manage their gambling, provides families a pathway for intervention in extreme cases, ensures there are adequately trained staff in venues to interact with patrons in a respectful way, protects personal data, removes the venues from the

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<sup>1</sup> Figures from Liquor and Gaming data indicate that current daily losses in NSW are running at over \$18million. That is approximately \$2million per EGM venue per year.

management of these systems, and introduces meaningful financial penalties for the managers and owners of poker machine premises. As a welcome additional feature, the introduction of universal cashless gambling systems will significantly reduce the opportunities to launder money through poker machines.

A genuine culture of Responsible Conduct of Gambling would already have ensured that venues acted to exclude people who had taken the protective measure of self-excluding, staff would be properly trained and supported, and incidents would have been recorded as they occur (Rintoul et al 2017). Some of these features must be included in a reformed exclusion system. As recommended in a [recent report](#) to the NSW Government, reform of the entire RCG system in NSW is also overdue.

We note the title of the Bill, and welcome a stronger focus on the requirements of the Gaming Machine Act 3(3): *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.*

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#### 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 take a public health approach to gambling reform with the objective of preventing and minimising harm from gambling through structural policy change.

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#### LANGUAGE DEFINITIONS

A widely used, standard definition of disordered gambling is that “Problem Gambling is characterised by difficulties in limiting money and/or time spent on gambling which leads to adverse consequences for the gambler, others, or for the community”<sup>2</sup>. While there is no agreement on definitions of “difficulties” or the scale of “adverse consequences” which would constitute harm, the Alliance believes that any difficulties and any adverse consequences are harmful. We avoid the use of the term “problem gambler” as it is stigmatising and victim-blaming. We recognise the Problem Gambling Severity Index used in clinical settings, but consider that even those gamblers characterised using that system as being at low or medium risk, can in fact experience significant harm. The Alliance aims

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<sup>2</sup> Neal, P., Delfabbro, P., & O’Neil, M. (2005). *Problem gambling and harm: Towards a national definition. Commissioned for the Ministerial Council on Gambling*. Prepared by the SA Centre for Economic Studies with the Department of Psychology, University of Adelaide. November 2005.  
<http://www.adelaide.edu.au/saces/gambling/publications/ProblemGamblingAndHarmTowardNationalDefinition.pdf>

to prevent or reduce harm from gambling, regardless of the risk factor of individual gamblers, and particularly with regard to their families, carers, colleagues and community, who are also impacted by gambling. In the context of these reforms, the Alliance draws attention to venue staff, who, when confronted with distressed or angry patrons, or placed in stressful situations when dealing with conflicting requirements of Responsible Conduct of Gambling (RCG) and management, are also harmed by gambling.

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## BACKGROUND

It may be helpful to make some brief comments on the Alliance's understanding of the value of self-exclusion in dealing with gambling harm, how to interpret attempted or actual breaches of self-exclusion deeds, and issues around third-party exclusions.

Self-exclusion is a therapeutic tool available to a person after they have already experienced harm from gambling. It requires the person to acknowledge that they need to take action to deal with their gambling, and that one part of that is to physically remove themselves from gambling venues. Ideally, this should be done in conjunction with counselling.

There are few robust studies of the success of self-exclusion in any jurisdiction, where success is defined as long-term recovery from gambling and other co-morbid harms. In the 2019 *Harm Minimisation Gap analysis* undertaken for the NSW Government, eleven articles were assessed which considered self or forced exclusion<sup>3</sup>. Methodological flaws were noted in some articles, and the nature of self-exclusion systems studied varied widely, although it is important to note that the available research does not show that self-exclusion is ineffective, just that the data is underdeveloped<sup>4</sup>. The summary nonetheless indicated that self-exclusion is a useful tool. Two studies in particular were of note. Kotter et al (2019) found that pathological gambling decreased substantially from 61-95% before exclusion to 13-26% after exclusion, while abstinence or gambling reduction varied wildly. Rates of exclusion breaches varied from 8% to 59%. An Australian study compared gamblers who self-excluded, undertook counselling or both (Hing, Russell, Tolchard, & Nuske, 2015). Interestingly, no greater benefit was found for undertaking self-exclusion with counselling, suggesting that allowing autonomous self-exclusion would be as effective as implementing it with a counsellor.

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<sup>3</sup> 2019 Harm minimisation gap analysis, Table 43

<sup>4</sup> 2019 Harm minimisation gap analysis, p 65 "Drawson et al. (2017) point to low quality evidence in this area."

It is sometimes assumed that a person who attempts or actually breaches their self-exclusion deed has failed, or that a self-exclusion system is a failure if there are breaches. This misunderstanding does not recognize that taking out a self-exclusion deed is the critical action. Subsequent breaches can be compared to multiple attempts by smokers to quit. Both reflect the difficulties of recovering from an addiction. Self-exclusion in itself is not a treatment, it is an action taken to enforce abstinence while treatment can be undertaken (Blaszczynski, Ladouceur, Nower 2007). However, as noted, counselling at all, or in direct relation to self-exclusion is not necessarily needed by all people.

For some people, providing pathways to keep away from poker machines which do not involve having to admit to others there is a problem is important. It is not the ideal mechanism, but if it contributes to reducing harm or leading to recovery, it is an improvement over no action at all<sup>5</sup>.

The Alliance considers that the current reforms offer these alternative pathways through either autonomous action via on-line self-exclusion on the state-wide register, or through setting a budget of \$0 on a universal cashless gambling card.

Third party exclusion is quite different from self-exclusion and is much rarer in legislation. It is designed primarily to allow a family member(s) to arrange for a person to be barred from a venue, generally when the family member believes the person to be unable to either recognize that their gambling is impacting significantly on themselves or others, or is unable to make the decision to self-exclude. There are a number of obvious risks with this kind of exclusion, including issues around consent, personal responsibility, privacy and vexatious claims.

The 2014 Parliamentary enquiry noted the potential for unintended consequences (Recommendation 5), including the risk of family or domestic violence.

The Alliance considers that the Schottler report for NSW into third-party schemes (2017) was based on several false assumptions. It framed third party exclusion schemes as being principally or significantly aimed at reducing harm to the third party initiating the exclusion. It noted that existing measures in NSW do not allow third parties to protect financial assets if a gambler has access to them. It did recognize that families and counsellors support the introduction of third party exclusion, even when the harm families and others experience may not be reduced. The key findings were based on a false test for the value of self-exclusion - that success is measured by few or no people

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<sup>5</sup> [NAB has seen a significant increase](#) in those putting a block on their credit and/or debit for gambling transactions, since they allowed people to do so themselves through account settings. Previously, people had to ring the bank and ask a person to do that - the shame of admitting the problem made a barrier. Over 10,000 people have now used this feature, even though it has had very little publicity.

breaching self-exclusion<sup>6</sup>. The Schottler report also found that exclusion itself may not reduce harm to impacted others, particularly because of breaches or alternative gambling, and suggested that mandatory counselling or financial controls would be more effective at reducing harm to others. This is based again on a false measure of success and indeed on a possibly false assumption on the motives for third party initiations of exclusion. In any case, mandatory counselling is impossible.

The Schottler report did identify the risk of family or domestic violence being a consequence of third-party schemes.

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## REFERENCES

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[Schottler Consulting](#) (2017) *The harm minimisation impact of third party exclusion schemes and possible future directions for NSW*.

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<sup>6</sup> Schottler 2017, pp 4-10

## RECOMMENDATIONS:

### ESSENTIAL:

- Change the Objects of the *Gaming Machine Act* to acknowledge that even when used as intended, gaming machines can induce harm, by amending 3(a) to read “to minimise harm associated with gambling activities,”
- The legislation must require venues to attempt all reasonable steps to deny entry to, or promptly detect and remove from the premises, anyone on the exclusion register, being as discreet and respectful as possible, or face substantial financial penalties
- All owners, licensees and managers should be potentially liable for any penalties for breaches
- A single state-wide register, covering all EGM venues, of people excluded from venues, with the possibility for autonomous on-line self-exclusion, recording of attempted breaches, and pathways for people to report actual breaches of exclusion orders, is key to the success of the reforms; the operation and management of the register should not be in the hands of any entity involved with EGM manufacturer, distribution or operations
- A universal cashless gambling system, operated independently of any gambling business or club interests, should be incorporated in the reforms, to act as a backup system to prevent those on the exclusion register from gambling, to allow patrons to set their own budgets, to have enforced breaks in play, and to reduce the possibility of money-laundering through poker machines
- Strong whistleblower protections must be available for staff to report violations or where venue management encourages staff to ignore concerning behaviour and/or not use the venue gambling incident register

### GENERAL:

- It should be emphasized throughout the legislation, regulations, guidelines and explanatory papers that the principal aim of the reforms is to support those seeking or needing assistance in staying safe from poker machines, through providing a variety of pathways for exclusion which are easy to access, and accompanied by offers of professional assistance.
- Within the context of individuals acting to manage their circumstances, venues should be expected at every stage to assume greater responsibility to proactively address any gambling harm identified on their premises
- All systems that record information about individuals should be designed to maximize privacy and minimize the number of people who can access that information, and access to that personal information should only be either by

consent of the individual or for the purposes of clearly defined compliance or court ordered actions

- At all points where staff are expected to interact with patrons, they should know what is expected of them, and are provided with training to do this respectfully, but compliance with the legislation remains the responsibility of the management and owners of venues.
- Attempted or actual breaches of self-exclusion deeds should not be seen as failures by the person, but are opportunities for venues to repeat offers of professional assistance, and for all concerned to acknowledge the difficulties in recovering from gambling addiction; no actions should be taken that could appear to be punitive
- The term “problem gambler” should not appear in legislation, regulations, guidelines or explanatory notes/papers. Use “person impacted by gambling” or “person exhibiting concerning behaviour” or “person with problems gambling”. “Problem gambler” stigmatises the person, and implies that they are the problem, and not the gambling regime. It is a barrier to help-seeking<sup>7</sup>.

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#### SPECIFIC FEATURES:

##### Individual self-exclusion

- If a person accesses an on-line portal to the state-wide register to autonomously self-exclude, this should trigger a warm referral to a counsellor, who should contact the person within 7 days
- Autonomous access should be available 24 hours a day
- Attempted breaches should be recorded on both the venue incident register - demonstrating that the venue has effective systems in place - and on the statewide register so that, if consent has been given, the person’s counsellor can access that information
- No exclusion order should be removed or ended without the involvement of a gambling counsellor
- There should be no limit to the number of venues a person can self-exclude from, and there should be a simple option to exclude from all venues in NSW, including the casino.
- There should remain an option to only exclude from gambling rooms, to allow people the option of continuing to socialise in non-gambling areas of venues

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<sup>7</sup> Hing, N., Russell, A., Nuske, E., Gainsbury, S. (2015). *The stigma of problem gambling: Causes, characteristics and consequences*. VRGF

- If a person nominates specific venues for self-exclusion, all other venues within 5km should also be included in the self-exclusion deed; the person should be advised of which venues are automatically included

### Venue compliance

- There should be mandatory intervention when staff observe concerning gambling behaviour, with the Gambling Control Officer ordinarily the staff member to approach the patron
- The gambling incident register should document how a venue has responded to identified harm rather than be used as a compliance instrument;
  - the current list of events to be included in the gambling incident register is clearly incomplete - it does not include faulty EMGs or RCG ticket issues, for example - and possibly unworkable in its current form
  - it may inadvertently lead to expectations that every recordable incident requires the identification of the patron;
  - some concerning behaviour requires the recognition of a pattern of behaviour and the way in which staff should be noting or recording that is not clear
- There should be at least one Gambling Control Officer (GCO) on staff on every shift where gambling rooms are open;
- All GCOs should receive higher duties pay and should be the main staff responsible for intervention, managing the gambling incident register, dealing with positive identifications of people on the state-wide register, and advising on third party exclusion applications
- GCOs should have current advanced Responsible Conduct of Gambling training
- Guidelines and training for staff should make clear how they are to report concerns to the Gambling Control Officer, and how that staff member, or members, should approach patrons, offer assistance and record incidents
  - More design work is needed to ensure that the guidelines provide clear advice to staff, and the thresholds in the list of concerning behaviour are suitably calibrated against expected staff actions - front line staff, gambling counsellors and people with lived experience are much better placed to advise on this than any venue, ClubsNSW, or AHA manager or executive; more definition on the risk of harm may be needed
- Venues should bear the cost of advanced Responsible Conduct of Gambling training, and of regular training for all staff regarding their obligations
- Advanced Responsible Conduct of Gambling training should be available across NSW
  - The ORG should consider following the Victorian approach of running all RCG and Advanced RCG training

- Because venues have no incentive to report actual breaches of exclusion orders, or to report that minors or excluded persons have winnings that may be forfeit, a clear pathway to report actual breaches, via the state-wide exclusion register, is needed so that the person concerned, or staff members, can report an actual breach that then triggers a compliance investigation
- Mechanisms need to be included to incentivize venues to report when a minor or excluded gambler has won, as reporting this to Liquor and Gaming for winning forfeiting may incriminate the venue; these mechanisms might include requiring the venue to reimburse the patron for their losses or the creation of an offence of not reporting a forfeitable win.

### Third party exclusion

- There should be an independent third party exclusion pathway that is not overly bureaucratic, but also shields third parties from harm and in particular includes protection systems with regard to physical, financial and coercive abuse
  - Much more immediate design work is needed to ensure that potential retaliation in regard to third party exclusion applications is considered at all stages, taking advice from specialists in family, domestic and intimate partner violence.
- Third party/Family led exclusion applications are best managed via standing independent adjudicators (or at the least, specialist gambling counsellors), although direct application to venues could be retained
- The design of this process should take into account that a family may need to have a person excluded from multiple venues, and should not have to approach each one individually - hence the recommendation to have the entire matter decided by an independent adjudicator who can then, if the application is upheld, arrange exclusion from multiple venues
- The decision to accept or reject a third party application should not be in the hands of the venue, particularly where more than one venue is involved
- Families who seek third party exclusions should have access to the same level of specialist advice and assistance as venues, but free of charge
- Where it is recommended that a person be excluded from one or more venues, they must be offered gambling counselling, they must be offered the opportunity to self-exclude, and in the event they do not self-exclude, they must be contacted before the exclusion is activated
- Timeframes for conveying decisions to families or people subject to exclusion applications or orders need to be included where missing
- The process for a venue to decide to initiate a venue-led exclusion needs more detail, particularly to ensure natural justice provisions are included

- The possibility of the exclusion only applying to gambling rooms, in the event of a venue-led exclusion, should be retained
- No exclusion order should be removed or ended without the involvement of a gambling counsellor; no venue should have the right to lift an exclusion order unilaterally or without reason
- Venues have the right to guard against vexatious or malicious applications
- ILGA will need additional resources to manage any appeals

### Privacy

- If venues check identification of patrons against the state-wide register, no data should be retained during or as a consequence of that transaction
- Aside from checking identification of patrons, or reporting an attempted breach of a self-exclusion deed, venues and staff should not be able to access the information on the state-wide register or any other existing register other than their own
- If a person gives consent, their counsellor should have access to the state-wide register but only to the extent of checking if the person has attempted or actually breached their self-exclusion deed
- A counsellor should be notified if a person autonomously self-excludes, or if their client's exclusion period is about to expire.
- Liquor and Gaming compliance staff may access the state-wide register in order to verify venue gambling incident registers
- Subject to relevant ethics clearances, de-identified data from the state-wide register can be released for research and policy development purposes
- There is no need for the police to have access to venue gambling incident registers, unless gathering information as a consequence of a court order
- Independent adjudicators of third party applications can be supplied with information, if it exists, from venue gambling incident registers, but only in relation to the subject of the third party application

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### CASHLESS GAMBLING SYSTEMS

Exclusion systems can be reinforced by a cashless system (card, digital wallet, etc) which provides additional tools to help people manage their own gambling behaviours. For simplicity, our description uses the word "card" to refer to any cashless system, with the warning that digital wallets, apps, tap&go, TITO and other technical solutions are not exactly similar, and would need careful management of conditions.

All cashless mechanisms would have the following features:

- Cashless gambling systems must be managed by an independent authority or organisation, unconnected to the gambling industry, and if necessary, funded by a levy on gambling revenue or directly from gambling taxes.
- There must be age and identification verification processes before the card can be activated<sup>8</sup>; cards cannot be anonymous
- No credit can be used to top-up cards, nor can top-up occur automatically
- Cards must link to the state-wide exclusion register(s), preventing any gambling if the card-owner is on the register
- It should be possible to freeze lost or stolen cards, and any exclusion deed will also freeze a card. Registered card owners will have to apply to the managing authority to have funds on a lost/stolen card transferred to a new card
- Individuals should be able to independently specify their own budget for 3 months periods, through their account settings
- Budgets cannot be increased until the end of the minimum time period ie if a person loses up to their personal budget in 2 months, they cannot increase their budget until the full 3 month period has elapsed; budgets can be lowered at any time
- Cards should have a low top-up cap, which the Alliance recommends setting at \$200, based on evidence of average spending in recent prevalence studies<sup>9</sup>
- Top-up funds can only come from bank accounts held in the same name as the card, or by cash.
- Card top-up should occur away from the EGM, to encourage breaks in play, similar to the way individuals now leave machines to obtain more money from ATMs.
- Winnings cannot be credited to the card, and the threshold to pay out winnings by cheque should be lowered to \$1000
- Cards cannot be used as part of membership loyalty schemes
- Financial penalties should apply to venues which bring top-up devices to people while seated at, or standing near, machines.

Data should be protected by the Privacy Commissioner. There should be no possibility of the data being used to encourage people to lose more money or monetizing the data generated from such schemes. The only access to the data would be in the following cases:

- De-identified data should be available to be used for research or policy development to assess and develop harm minimisation measures.

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<sup>8</sup> Consider harmonising this with the age and identity verification systems being put in place for online gambling

<sup>9</sup> Based on average monthly expenditures and average withdrawals from EFTPOS machines as revealed in the NSW Gambling Survey 2019 and the Victorian Population Gambling Health 2018-2019 reports, respectively

- Card-owners should be automatically emailed or mailed regular activity statements to allow them to see their spending patterns.
- Except where obliged by the courts, the data of an individual's spending or gambling patterns should not be released to any other person, business or government body.
- In the event of public health contact tracing, data related to the activity and duration of gambling at a venue may be released to health authorities, but not the amounts gambled, won or lost.

In the event that a person has lost or left behind their card the following system could apply:

- Temporary cards could be available at venues, but with a maximum load of \$200 (=top up amount)
- Temporary cards cannot be bought using credit cards
- they would be subject to age and identification verification
- they would have to be registered, with a ID check on the exclusion register, before being activated;
- any patron buying a temporary card would be limited to one card per 24 hour period in NSW (ie it is not possible to buy a temporary card at multiple venues within the 24 hour period)
- Limit of 3 cards which are active at any one time

After a transition period, there should be no EGMs operating in NSW which take cash. In order to facilitate the reform, a transition period of 2-4 years could be set so that over the usual replacement cycle, new machines which are cashless-enabled are installed.

## MAPPING AGAINST CONSULTATION DRAFT

Legislation	Suggested submission points
Reform package	Welcome, simple, modest, achieves community expectations
[1] - [4], [6]-[8], [11] -increased penalties	support
[5]	additions to Act, as listed below
42C {family led exclusions} & 42N {gambling counsellors acting on behalf of family members}  and 40J in the Regulations	<p>Recommend further consultation with people with lived experience for the design, however:</p> <ul style="list-style-type: none"> <li>• Recommend that the operation of the system be removed from the control and involvement of venues, due to conflict of interest, while still allowing venue-led exclusions</li> <li>• <b>42D - Provide one or more independent adjudicators with gambling counselling experience, employed/paid for by the RGF or a gambling levy, to hear applications or as the primary pathway for family-initiated exclusion applications, in addition to being available for venues to seek advice;</b></li> <li>• If the independent adjudicator upholds the application, the person in question is to be notified and offered counselling, and no exclusion can take place until reasonable efforts to contact and offer counselling have taken place; the adjudicator to make the entry into the state-wide register</li> <li>• if the application is upheld, the venue can appeal, but cannot reject the application</li> <li>• <b>42E - consider allowing the exclusion order to only apply to the gambling room where the venue(s) are the only reasonable places for public socializing by the excluded person</b></li> <li>• Further design of the family-led process be based on consultation with experts in domestic and family violence, due to the high risk associated with the process, and the need to keep family members safe</li> <li>• improve privacy provisions around the identity of family members</li> </ul>
42C(1)	We cannot identify in the regulations the procedure that venues must follow, if they decide on a venue-initiated exclusion
42C - in the event that this section is not substantially remade	<p>42C(3) (a) - suggest “refer a family member who proposes to make an exclusion application to a gambling counselling service provider <b>at the time, or within 24 hours, of receiving the application, and</b>”</p> <p>Query: Does 42C(3)(a) conflict with 42N, if the family member commenced the process by going to a counsellor?</p> <p>42C(3) (b) - is ambiguous in that it could be taken to mean that the venue can wait until the family member has spoken with a gambling counselling service before assisting them with making the application</p>

	<p>42C(3) (c) the 21 day timeframe should include not only the decision, but the notification to the family and the person, and notification to the family member and the person no more than 7 days after the decision is made in any case</p> <p>42C(4) (b) - the venue must <b>not</b> be the authority that revokes an exclusion order - that should only be done via a counsellor, who could be nominated by the venue to make the decision, that the risks of harm, or any other grounds on which the order was originally made, no longer apply; if the original order was made based on a family application, the family member making the original application should also be notified if a process begins to consider revoking the order and their views must be considered in any decision to revoke; in any case, reasons for revoking the order must be recorded on the state-wide register</p> <p>42C(5) suggest “The regulations may make provision for or with respect to the matters to be considered, and the procedure to be followed, in deciding whether or not to make an exclusion order <b>and whether or not to revoke it</b>”.</p>
<p>42E {extension of exclusion to all venues within 5km}</p>	<p>modified support, assuming that a person does not self-exclude, or is excluded from, all venues in NSW, with modification making it possible to only cover gambling rooms</p> <p>we assume the 5km limit is based on the nominal catchment area of a venue in the LIA system, but we wonder why the default is not a state-wide exclusion - if the order is made, it is based on harm or risk of harm, which exists across the state</p> <p>if retained, we suggest expanding this to include automatic exclusion from venues 5km from nominated venues when a person self-excludes through the on-line portal, or via a venue exclusion scheme, or with the assistance of a counsellor</p>
<p>42F-42J {venues must take all reasonable steps to prevent an excluded person from entering the venue and not include them in any promotions or reward schemes}</p>	<p>strongly support principle, but the detail is unknown as it is to be outlined in guidelines which are not yet available; the steps in the guidelines should not be seen as the exhaustive list of reasonable steps, but as some of the reasonable steps venues could take</p> <p>At a minimum there should be a requirement to check identification against the State-wide exclusion register at sign-in to a club, or within a short time of entering a gambling room at a pub - although this could be stated in the regulations or guidelines as an essential step</p> <p>Note that consistent identification checking will also aid in preventing minors from gambling, particularly in pub gambling rooms</p>
<p><b>42F - ensure the wording of a defence matches the wording of the requirement</b></p>	<p><b>Recommended drafting:</b> It is a defence to a prosecution for an offence under this section if it is proved that the hotelier or club took all reasonable steps to prevent an excluded person from entering or remaining in the relevant exclusion area of the venue.</p>

42K {forfeit of winnings}	To incentivize venues to report forfeitable winnings when the person has been on the premises for some time, suggest that all losses are reimbursed to the person (as the venue has demonstrably failed to enforce the exclusion) and winnings to be forfeit to the Responsible Gambling Fund; OR consider another mechanism to ensure venues do report these winnings (same amendments for [16] regarding minors)
42L {single State-wide Register}	strongly support, where checking of identification of people entering venues (clubs) or gambling rooms (pubs) can be linked to the register to facilitate enforcing the exclusion arrangements
42M {record breaches or attempted breaches}	<p>Recommend further consultation with people with lived experience and counsellors as to unintended consequences of punitive responses to breaches;</p> <p>Provide pathway for person, staff or other (eg counsellor) to report actual breaches of an exclusion order as there is no real incentive for venues to self-incriminate</p> <p>support for noting breaches or attempted breaches on a venue gambling incident register, although with very strict privacy provisions</p> <p>allow mechanism for a person's counsellor, with consent, to inspect the register for that client only, to investigate attempted or actual breaches</p>
45B(2)	suggest adding (d) for the purposes of compliance with sections 42C
[9]-[10] {remove "problem"}	applaud cultural change that recognizes that labelling using "problem" inhibits help-seeking behaviour when describing counselling services
[12]	additional clauses on a gambling incident register, as below
48A {matters to be recorded on gambling incident register}	<p>support creation of registers, similar to alcohol incident registers, however some concerns remain over the scope in 48A.2(a) requiring listing any of the behaviours specified in guidelines without requiring any other intervention based on observing those behaviours;</p> <p><b>48A(6):</b> the purpose of allowing police officers to access and copy the register is unclear and seems unnecessary; no privacy provisions are detailed</p>
48B(2)	support the different definition for this section, reinforcing the responsibility of the management or owner of a venue, rather than staff
48C {gambling contact officer}	support, with requirement that such an officer receive a higher duties pay allowance, noting our concerns above regarding the scope and obligations to be outlined in the regulations and guidelines, including reasonable processes for staff to fulfill their obligation under (5) (b) to inform the gambling contact officer
48D {whistleblower protection}	other, proven and superior, whistleblower provisions exist in other Acts and should be copied for this reform
[14] {advanced RCG training}	welcome, though reference to the Victorian system where the authority conducts training rather than RTOs should be considered; and assuming the Secretary approves more than one training provider if it remains outside the hands of the ORG

[16] {minors obtaining prizes}	sensible closing of a loophole, although as above, losses should be refunded to the minor as well as forfeiture of winnings
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Regulations	Suggested submission points
40E (1)	suggest, for clarity, amending to “An exclusion application <b>made by a family member</b> must identify the family member’s concerns about the gambling behaviour of the relevant person.”
40F {venue considering family led exclusion}	<p>for the purposes of family-led applications, as noted we believe the process should be described based on the family member applying to an independent adjudicator, or working with a gambling counsellor to make the application.</p> <p>Data, including gambling incident register information, held by venues where the subject of an application has gambled, could be made available to the adjudicator with appropriate privacy provisions</p> <p>for the purposes of a venue-led exclusion, the venue should take the advice of their gambling contact officer</p> <p><b>40F(5) (a) and 40F(8)</b> - the guidelines will have to give careful advice on what “risk of harm” means - and must include physical, financial, emotional and other harms based on expert consultation</p> <p><b>40F(6) (a) and (b)</b>: timeframes must be included so that the matter does not drag on - suggest 24 hours for (a) and two weeks for (b)</p> <p><b>40F(7)</b> there should be a timeframe, to match 42C(3) (c) in the Act, although we recommend deleting this as the venue should not be deciding whether or not to accept a family</p>
40G	<p><b>40G-</b> generally, no definition of independent advisor is provided, unless the definition in the Act 42D(1) is intended to apply - if so, that definition should be included in glossaries</p> <p><b>40G(2)</b> - this might be interpreted adjust the information held by the venue, and not including the information provided by the family member or representations by the relevant person - should be clarified</p> <p><b>40G(3)</b> - requiring the Secretary to agree that a case is complicated enough to require a higher fee may slow down the process and breach privacy; if the fee proves inadequate to cover the time involved, does having the amount in the regulations make it difficult to modify? Should the fee be in the regulations or the guidelines?</p>
40H	<p>for the purposes of venue-initiated applications, some aspects of 40F-G may be applicable, but should be considered in the context of Responsible Conduct of Gambling requirements</p> <p><b>40H(1) (b)</b> the venue should also provide notice to the family member of the making of the order, and the timeframe for this notice should be included, and should match the Act</p>

40I {review}	amend to reflect the decision making of an independent adjudicator, unless the venue has made a venue-led exclusion
40J	see above in Legislation
40K {access to data on state-wide register}	access to the register by authorised persons employed by venues should be restricted to entering a person on the Register if the person applies, or if there is a venue-led exclusion, and checking if the person is on the self-exclusion register for the purposes of allowing them access to the venue or gambling rooms no other access by venue staff should be allowed unless ordered under 40K.1.c or d
40M {gambling counselling services}	it is unclear why the AHA or ClubsNSW are considered prescribed gambling counselling service providers, but other gambling counselling services which do not receive funding from the RGF are not - a person should be able to seek gambling counselling from any properly qualified counsellor regardless of that counsellors funding source
[16] {failure to ensure qualified gambling contact officers employed}	the penalty should be substantially higher for not employing sufficient qualified staff
50A {functions of gambling contact officer}	support as these will lead to an improved Responsible Conduct of Gambling culture, particularly the requirement to engage with patrons exhibiting concerning behaviour which should be mandatory

#### WHAT IS MISSING?

<b>Gaming Machine Act 3 Objects - suggested amendment</b>	<b>amend 3(a): “to minimise harm associated with gambling activities,”</b>
scope of penalties	The recent ILGA actions against ALH pubs showed that where a venue is a subsidiary of a group, only the licensee or venue management might be penalized - there should be potential to levy penalties on all levels of the management and ownership chain of venues, and penalties should be levied there and not on non-managerial staff
limits on exclusions	there should be no limit to the number of venues a person can seek self-exclusion from
procedure for venue-led exclusion	unlike 40F in the Regulations, which is specifically for family led applications, there is no procedure outlined for a venue initiated exclusion
provision of counselling	if a person self-excludes using an online portal without the assistance of a gambling counsellor, the system should trigger a “warm referral” so that a qualified gambling counsellor contacts the person within 7 days to offer counselling
privacy	throughout the revised system, more privacy protection is needed, particularly making it an offence to monetize in any way the data held on the state-wide register or an individual venue incident register
research	de-identified data from the state-wide register should be available for research and policy development

cashless gambling	see recommendations above
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#### COMMENTS RELATED TO THE EXPLANATORY PAPER

A welcome shift in focus is observable in the paper, which recognizes that an informed choice model does not require proactive responses by venue staff, and leads to policy settings only aimed at those who seek help, and have sought help well after harm occurs. The focus of the reforms is to correct poor venue behaviour, and improve outcomes for those who seek help, and to get help for those who need it.

#### 6.1 Active intervention

##### Register:

The level of behaviour expected to be recorded on the register is inconsistent with the behaviours which are recorded on an alcohol incident register, and might lead to the unintended consequence that staff deliberately avoid noticing concerning behaviour in order to avoid paperwork. The gambling incident register also does not require notices of failures in regard to RCG competency cards, WHS or public liability incidents, detection of minors attempting entry to gambling rooms or patrons requiring medical assistance. The requirement for noting faulty gaming machines could be transferred from the alcohol incident register to the gambling incident register for consistency. As an example, Attachment B in the explanatory papers suggests that if a staff member observes a patron exhibiting two “general signs” of concerning behaviour, they should record this on the venue incident register. There appears to be no expectation that the patron is identified, so it is not clear how simply recording this would either build up a pattern of behaviour which could be used as evidence in a third party exclusion order application, or to demonstrate that the venue had correctly identified someone who might benefit from intervention, and that indeed, that intervention took place.

##### Intervention:

We welcome the intention of the legislation to encourage staff to report concerning behaviour to the Gambling contact officer and for that person to proactively intervene with patrons. We suggest consultation with staff, not management, regarding practicalities of these requirements, particularly with regard to shift changes and pressure from management to not interrupt revenue generating behaviour.

##### Advanced RCG:

This is overdue. Consideration should be given to Victoria’s decision to remove training from RTOs and to provide training via the VRGF directly.

#### 6.3 Referrals to gambling counselling services

We appreciate the intention of the requirements that venues notify patron's counsellors of (attempted) breaches, however, we are concerned again about privacy provisions, and the unintended interpretation that recording breaches is seen as punitive.

Having counsellors notify venues, with permission, when clients reveal attempted breaches, could be useful. It is more useful if a counsellor, with their client's permission, can access the register to determine if the client is attempting to breach their deed. It is less obvious why the Register should be accessed by venues as part of a simple identification cross-check. It cannot assist other venues in being vigilant, unless they are themselves breaching privacy restrictions to enquire into an individual's behaviour. If the venue is undertaking all reasonable steps, they should pick up people who are attempting to breach their exclusion orders.

#### 6.4 Third party exclusions

We remain concerned that the system is in the hands of the venues which have been hosting the harm, and failing to act. If an independent adjudicator determines that exclusion is necessary, the venue should not have the right to disagree, given the obvious conflicts of interest.

Particularly in smaller venues, and in regional and rural venues, confidentiality and privacy will be impossible if venues control the process. Venue managers and/or staff are not trained counsellors, or social workers or even marriage counsellors - they do not have the skills to deal with these complex issues. Families must have access to an independent adjudicator, ideally who has a background in gambling counselling. If the adjudicator supports the family's application, then all reasonable steps must be taken to contact the person to inform them of the decision and to offer counselling, before they are entered onto the State Wide register. This will reduce the chances of a person arriving at a venue to find they are excluded, and to reacting negatively to that news.

The independent adjudicators could be existing gambling counsellors, especially in regional and rural areas, and funded for this work through the RGF.

We believe that the legislation and regulations would benefit from consultation with IPV/FDV practitioners who can recommend ways in which family members can better be protected from retaliation.

#### 6.5 State wide register and Online exclusion portal

These are excellent recommendations.

We would suggest that if a person self-excludes through the online portal, that this triggers a warm referral to a gambling counsellor who should respond within 7 days. This should be, outside of court orders and activity statements, the only way in which an individual's details are released from the register.

#### 6.6 Disincentives

We understand that the intention of these measures is to remove incentives for individuals to gamble. However, we note that for winnings to be forfeit means the venue will have to self-disclose

that their systems failed to detect someone who is on the Exclusion register, and therefore risk a substantial fine. Additionally, depending on how much someone in this situation has gambled and won, the venue may still be making a profit, from earlier losses which exceed the winnings. To incentivize venues to detect people earlier, it may be preferable to include a reimbursement of losses to the gambler as well as forfeiture of winnings to Treasury.

## 6.9 Whistle-blower protections

We are advised that these provisions, while based on the WHS Act, are inferior. We recommend advice be taken to ensure these are the strongest possible protections.

### Attachment B

#### Signs of risky behaviour and actions for staff

While these signs seem appropriately graded, we recommend consultation with gambling counsellors and people with lived experience as a sense check that the thresholds are correctly set.

With regard to actions when strong signs are observed, the requirement that the gambling contact officer recommends venue-led exclusion based on an assessment that the person is at risk of harm or of causing harm to others may be beyond the competency of the Gambling contact officer, even with advanced RCG, to judge. Further work on how best to respond to seriously concerning behaviour is needed. It may be that the Gambling Contact Office may directly engage the independent adjudicators who would be better placed to consider all aspects of the person's situation.

Simply identifying the strong signs of concerning behaviour should be enough to warrant offering counselling. The gambling contact officer should not be expected to make diagnostic assessments of risk of harm.

### Attachment C - Reasonable steps

The proposed legislation should contain the most basic of these steps, which is checking every person's identity against the statewide exclusion register at the entrance to the venue or within 15 minutes of them entering the gambling room (in the case of a pub with separate gambling room entrances). How that check is made (identification scanning or FRT or some other technology) is up to the venue.

This appendix, as in the legislation and regulations, stresses that venues must undertake all reasonable steps, but then outlines a number of steps which might be taken, depending on the venue. This seems contradictory. We strongly support maintaining the "all reasonable steps" obligation on venues

[ENDS]