



ALLIANCE FOR
GAMBLING REFORM



Fighting to reduce gambling harm

Submission to NSW Government consultation on facial recognition technology in hotels and clubs

March 28 2025

Authors

Wesley Mission, one of Australia's largest Christian non-profit community organisations, operates over 120 programs across 144 locations, and our core mission is to assist those in need. We acknowledge that we currently operate and manage the NSW Gambling Helpline and hold the GambleAware contract for Northern Sydney and the Central Coast, providing gambling counselling and community engagement services.

Separately to those services, gambling reform is a key component of the Board endorsed advocacy program of Wesley Mission. Our CEO and Superintendent Rev Stu Cameron sat on the Independent Panel for Gambling Reform. We are routinely included as key stakeholders in government consultation around gambling reform.

Currently over 40 faith and civil society organisations have joined the Wesley Mission gambling reform campaign, collectively representing hundreds of smaller congregations and local level organisations.

The Alliance for Gambling Reform is a national advocacy organisation working to reduce gambling harm in Australia. We partner with other organisations and with local councils to reduce the alarming level of gambling harm in Australia, we work to change the laws and rules governing the gambling industry.

We do not seek to ban gambling. Rather we seek to influence government to minimise the harmful behaviours of the gambling industry and to give voice to those who are impacted by gambling harm.

We are a registered health promotion charity and are funded by donations and grants from individuals, foundations, trusts, local government and other sources that do not have ties to the gambling industry. We are not affiliated with any political party.

For further contact in relation to this submission:

Jim Wackett, General Manager, Advocacy and Government Relations

Jim.wackett@wesleymission.org.au

Executive summary

Wesley Mission and the Alliance for Gambling Reform thank the NSW Department of Liquor and Gaming for the opportunity to participate in this consultation process.

Facial recognition technology (FRT) is a tool to aid in the identification of people who are so harmed by gambling that they have taken the significant step to exclude themselves from premises with Electronic Gambling Machines (EGMs).

Australian Privacy Principle 3 states clearly that sensitive biometric data, which includes images of faces, can only be collected by an organisation if reasonably necessary for a function or activity of the entity. It is also clear that if an alternative method for the function or activity is possible, then that should be used. Clause 5.4 in the Draft Code of Conduct already suggests mission creep, in allowing FRT to be used “for other regulatory obligations” when the thrust of the consultation paper is about restricting it ONLY for the purposes of gambling (self) exclusion registers.

Wesley Mission and the Alliance for Gambling Reform believe that if a mandatory cashless payment system was introduced into NSW, it could interact with the exclusion register so that an excluded person’s cashless account (digital or on a physical card) would be disabled, rendering them unable to gamble on machines in the inscribed venues. There would be no need to collect their sensitive biometric data.

It will take time until a mandatory cashless system is in use in NSW. As an interim measure, some effort should be put into improving the current exclusion system which has proven inadequate.

FRT should not be considered a harm minimisation measure. Better identification of people who are already harmed does not stop anybody else becoming harmed.

FRT will not exclude people from a venue. Staff intervention will still be needed. There is no evidence that will occur more frequently than it currently does, without some kind of financial incentive to venues.

In summary

- FRT is not a harm minimisation measure, it is a tool to aid in identification of people on the exclusion register
- The collection of sensitive biometric data on all customers for the potential use of excluding a very small number is disproportionate
- Alternative, less invasive, and genuine harm minimisation methods are possible and should be expedited such as:
 - Shutting down poker machines from midnight to 10am
 - Implementing a mandatory cashless payment system with loss limits
- FRT should not operate in NSW until ‘model laws’ are in place at state and federal levels to properly regulate these kinds of surveillance systems, including the protection of human rights and any code of conduct should therefore be mandatory.
- Venues should be required to maintain other methods of identifying excluded persons, to ensure that if FRT systems go offline or are overturned, the exclusion system can still operate.
- FRT systems should only be approved when independently evaluated to be satisfactory in identifying people of colour, women, older people and those living with disabilities.
- Significantly more consultation should take place among communities likely to be incorrectly identified by FRT, before any system is implemented, consent procedures are defined and processes established to deal with false positive identifications.
- Significant penalties should be imposed for using FRT for anything other than identifying excluded persons, subject to separate stringent guidelines related to identifying money-laundering being approved.
- Existing FRT systems should be disabled until regulations and approvals are in place.
- Venues should be penalised if they fail to take all reasonable and lawful steps to enforce exclusion deeds.

Background

It is useful to set out the steps that have led NSW to be considering FRT rather than effective harm minimisation measures, as that history influences much of the design of the system.

In 2020, the then-Minister responsible for gambling, Victor Dominello, proposed a Gambling Harm Minimisation Bill. Part of that Bill addressed the low numbers of people who, having excluded themselves, were still able to gamble. The Bill included suggestions on mechanisms to improve identification, including FRT. At the time, hotels and clubs rejected this idea due to its cost, compliance burden, red tape and invasion of privacy¹.

Two years later, ClubsNSW and AHA(NSW) announced that they had solved the issue of racial and gender identification bias, compliance, cost and red tape and would be rolling out FRT in every venue in NSW – this was despite no changes to laws in NSW regarding privacy and surveillance in the intervening period². It was also announced without any independent trials, nor the publication of results of the industry's testing.

It is instructive to compare this approach from the gambling venues with their resistance to mandatory cashless gambling, and their insistence on trials and public evaluations.

This industry-led rollout having started in 2022, the announcement by the ALP that they would mandate FRT in gambling venues if elected was unexpected³.

Details

Our concerns about FRT should not be taken as opposition to improving the exclusion system in NSW but given that the state wide exclusion register will take some time to build, there is ample opportunity to halt the use of FRT until the clear issues around its use are addressed.

It would be far better for the government of NSW to invest in preventing harm occurring in the first place, or if it does occur, minimising the impact. Using public health terminology, short of removing 87,000 poker machines from community spaces in NSW, shutting down all poker machines in all venues from midnight to 10am is a primary intervention. Committing to, and delivering on, a mandatory cashless payment system with loss limits is a secondary intervention.

There is no reliable data on the number of people who have taken out self-exclusion deeds, given the fragmented nature of the system – there are two separate multi-venue systems (ClubSAFE and BetSAFE) and some venues still maintain their own, site specific, registers. However, estimates in state prevalence surveys are that around 4% of adults engage in moderate to high-risk gambling, and that these are the people most likely to be self-excluded⁴. Anecdotally, we know from gambling counselling services that only a small number of people who might benefit from self-exclusion take that step. Those numbers are well below the 21% of adults in NSW who are currently harmed by their own or another's gambling⁵. Most of those people will not benefit in any way from FRT. No one will be prevented from being harmed anew.

On the other hand, every person who enters a gambling hotel or club will be subject to the invasion of their privacy, and the risk that they are falsely identified.

¹ 25 Sept 2020 [Pokies venues could ban problem gamblers reported by family members under proposed NSW legislation - ABC News](#)

² 19 Oct 2022 [Clubs and pubs join forces on facial recognition - Club Management](#)

³ 3 Feb 2023 [NSW parties undecided on telling gambling venues which facial rec to use - Security - Software - iTnews](#)

⁴ NSW Gambling Survey 2024, Commissioned by the NSW Responsible Gambling Fund, Browne et al 2024

⁵ NSW Gambling Survey 2024, Chapter 6, Browne et al 2024

In our opinion, this consultation process should have asked the following questions:

- Will FRT ensure more people who are excluded are identified and then excluded by the venue management?
- Is this the best way to stop people gambling who have recognised they need assistance?
- Are there other mechanisms by which people can be helped to avoid harm so they do not need exclusion?
- Should this be the government's primary focus for gambling harm minimisation?

We support the intention of the government (Consultation Paper, p. 7) to prohibit the use of FRT for customer tracking, surveillance (though not apparently of staff), marketing or other forms of service delivery. We note this list does not include a prohibition on selling or supplying data to third parties to undertake any of these activities – it might be implied but should be explicit.

Key Questions

1. Should FRT in hotels and clubs be solely used for identifying individuals excluded from the venue as part of a self-exclusion scheme or should it be used for other purposes, such as third-party exclusions, including for anti-money laundering reasons?

The proposed statewide exclusion register (see other consultation) is designed to also provide for third party exclusions – this is a sensitive matter where family are intervening. Assuming that can be managed, then anyone on the exclusion register should be excluded, and if FRT is used for that purpose, it should be used for anyone.

The NSW Crime Commissioner requested a cashless gambling system to address money-laundering concerns, he did not ask for FRT. Again, for the exclusion register, there is discussion of giving the police the powers they have for the casino to apply to have someone excluded if the police believe (or can prove, as the case may be) that they are engaged in money-laundering. If that occurs, that person should be excluded, and FRT may be part of the system of identification.

However, FRT should not be used to determine if someone is engaged in money-laundering because to do so requires far more than a one-to-many match of a facial image. It requires a surveillance capacity and analysis that the behaviour of a person is consistent with money-laundering activity. The government is proposing to prohibit both these uses of FRT, which we support, so we do not support using anti-money-laundering as a loophole. There are better ways to address money-laundering. An identity linked cashless gambling system is one of them.

2. Could consent be obtained from customers entering a venue in a way other than, or in addition to, signage? If so, how?

The signage given as an example would need to be approved by both the NSW Privacy Commission and the Australian Information Commissioner to have any hope of standing up to legal challenge. In addition, the example signage is only in English. There are many customers of hotels and clubs in NSW who do not read English at all, or insufficiently to confirm that they have given implied consent.

The signage only says that a person's image will be recorded. It does not say it will be compared to a database, nor does it explain if the image will be saved or immediately deleted. It does not say what will happen if there is a false positive identification (when the FRT system match to the database falsely identifies the person as someone who has been excluded), nor what other mechanisms a venue will use to identify a person if a false negative is returned by the FRT (the system fails to identify someone who has actually excluded themselves).

It seems very likely that it will prove difficult to ensure all patrons of venues are giving fully informed, freely given implied consent to be subject to FRT simply by walking past a sign. In addition, if events are held at a venue, patrons can be expected to argue that they had no reasonable other option, and therefore their consent is invalidated.

It may be that sign-in processes at club entrances will have to include an explicit warning, ideally verbally by staff, that proceeding past that point will be taken as giving consent to participating in FRT processes. Staff could expect to be questioned on the details. This does not seem possible to implement for hotels under current operating procedures but could be brought in as a new system for entering gambling rooms in hotels, requiring constant staff attendance.

3. Is it appropriate to use FRT to identify certain customers who have not given their express consent? For example, those excluded via a third-party process due to harm minimisation concerns or suspected involvement in criminal activity.

This question is unclear. If we assume that a mechanism involving signage and verbal warnings, similar to that outlined in our response to question 2 above, has been implemented, it is not clear how a customer can be on the premises without having given their express consent. We have noted an exemption that will have to be made when an event is taking place at a venue.

If the "express consent" refers to having their photograph incorporated into the exclusion register, or not, then obvious issues remain. This question should be resolved through the Third-Party Exclusion Consultation process.

Legal advice should be obtained by the government as to whether merely suspecting someone of involvement in criminal activity is sufficient to allow the capture and storage of their photograph. This is beyond our expertise.

4. How can express consent be gained from people already on a self-exclusion register before FRT is installed in a venue? Should they be immediately subject to FRT?

We assume that currently, people who self-exclude give permission for the photo of themselves which they upload to the relevant self-exclusion register, be used for the purposes of identifying them to in fact exclude them from the venue. Since FRT is an alternative identification tool, it is not clear that a new consent would be required. However, natural caution suggests that every person on a register that will be connected to an FRT system should be contacted to inform them of the new system and their positive acknowledgement should be obtained before proceeding.

If the person cannot be contacted, or does not respond, the venues they are excluded from will have to continue their current manual processes until that consent situation changes, or the person removes themselves from the register.

5. What other measures can be taken to ensure that customers' privacy is being protected when FRT is in use at a hotel or club venue?

We have grave concerns that customer's privacy can be protected, given the nature of FRT, data storage and human nature, which is part of our objection to this whole process. We make further remarks under Q. 9

Consultation Paper p 10 – 11 asks for feedback on whether smaller venues should be included or exempted from the proposed FRT system, noting that if exempt, self-excluded customers who attempt breaches would find it easier to do so in these venues.

We believe that venues should not rely on FRT alone for identification, regardless of size. We do not support mandating FRT, so any venue that chooses not to implement the system should be operating identification procedures anyway.

6. Should FRT providers need to receive formal approval before installing their system in hotels and clubs? If so, who should give the approval and what should the process be?

Yes. We favour the South Australian system, where a regulator must approve a system before it is installed. This ensures that the identification system is robust, that the software does not contain the capacity to misuse data, and other technical requirements are in place. We see no reason why this system should not be in place in NSW, whether FRT is mandated or not. If the industry jumped the gun, that is their problem. Customers should not pay the price through risks of privacy or data security breaches.

Existing FRT systems, installed prior to a proper regulatory system, should be disabled until either approved by the regulator or removed and replaced by an approved system. If that involves additional expense for a venue, that is due to their business decision to deploy a system that was clearly known to be potentially unlawful and for which enabling legislation had not passed. No reimbursement or compensation should be paid.

7. Should FRT be rolled out uniformly for all gaming venues or should there be any specific considerations for certain types of venues? For example, should there be any specific considerations or transition periods for smaller hotels and clubs?

The gambling industry can't have it both ways. They can't roll-out a surveillance system which may breach the Australian Privacy Provisions and has insufficient other restrictions to prevent its use for marketing purposes, then engineer that the government mandates its roll out, post-facto, then demand transition periods or exemptions.

FRT should not be allowed to operate in any venue until the legal framework at state and federal level is resolved. It should be subject to strict and enforceable codes of conduct, guidelines and regulations. Again, it should not be mandated. In that case, it is a business decision of each venue whether to deploy the technology or not, and they should only be allowed to install systems pre-approved by regulators.

8. *Should venues continue to be able to decide whether FRT cameras are installed at the venue entrance or in the gaming room only? If no, which option should be mandated? Are there any more suitable locations for installing cameras?*

Given that a person can self-exclude from either the entire venue or just the gambling room(s), then cameras will have to be installed at all entrances to the venue AND all entrances to all gambling rooms. It seems likely that in larger venues, cameras may have to be installed in locations that give better visibility than entrances, however, multiple cameras allow the potential for tracking customers through the venue and using that data for marketing purposes. This should not be allowed.

9. *Are there any additional measures that need to be in place to keep customer information secure when operating FRT? If so, what measures?*

The Consultation Paper sets out the following intentions:

- *only collecting the minimal data necessary to identify and assist excluded customers*
- *strong password protections, including Multi-Factor Authentication (MFA)*
- *allowing only authorised people to access the system, including role-based permissions*
- *firewall protected web servers and end-to-end data encryption*
- *storing data only on Australian-based servers*
- *documented data deletion processes*
- *data security audits and logging mechanisms.*

We recommend following the South Australian system where alerts can only be received on devices which cannot be seen by the general public or anyone other than authorised staff.

The first point, on collecting the minimal data necessary, obviously refers to the collection of biometric data at a venue, and not the collection of data from a person when they place themselves, or are placed, on the register.

10. *How could the accuracy of FRT installed in hotels and clubs be monitored?*

11. *What measures should be put in place to ensure the FRT that is installed in hotels and clubs does not discriminate against certain populations?*

Controlled trials of the FRT systems should be made public and independently evaluated. Only those FRT systems which reach an acceptable error rate should be approved for deployment.

Those trials must include people known to be more likely to be misidentified, which is anyone who isn't a white man aged between 25 and 55. This includes people of colour, women, older people and people living with disabilities.

12. *What is the best way to ensure that venue staff continue to actively identify and manage excluded customers when FRT is installed on the premises? Are there any other backup measures that could also help to identify excluded customers?*

13. *What procedures should be in place to ensure that venue staff respond to FRT alerts (positive matches) appropriately?*

When an improved statewide register is operational, it can be expected to include many more people than the current systems with their artificial limits on venues. It may prove logistically impossible for all staff to be able to manually identify excluded persons, particularly noting the current low compliance levels in the existing system, which relies on staff memories. Our position is that if the exclusion register is linked to a mandatory cashless payment system, the card or account of the excluded person can be disabled, so that they are unable to gamble. Staff would more easily identify someone who is clearly trying to use machines with a disabled account or card and engage with them to leave the room or venue, depending on their exclusion settings.

We have reservations around the lack of privacy regulations for Gambling Incident Registers but are under the impression that they are used currently to inscribe every excluded person who is identified, and to detail whether they were successfully removed from the premises or nominated area. Venues should continue to use the GIR (although the privacy guidelines discussed in the consultation paper should be extended to GIRs which may mean that the current suite of apps which are most commonly in use will not be privacy-compliant), although audits of the FRT system should indicate if positive identifications have been made and can be compared with the GIR by Liquor and Gaming compliance officers. Any complaint around false positives or false negatives or the handling of a positive identification should trigger an automatic audit. By audit, we mean, in order to maintain data privacy, the system could simply note the time and, if relevant, the camera through which a positive identification was made, and a manual examination of the GIR could show what venue staff did in response to each notification.

Registered Gambling Officers should handle each FRT alert, as they should be handling each identification made under the current system. This may mean that the RGO system must be extended to all venues. That is the price venues will have to pay if they want to continue operating poker machines.

14. *Should a gaming venue be penalised if it fails to identify and remove an excluded customer from the premises or nominated area of the premise? Why/why not?*

It is without doubt a contributing factor to the current low levels of compliance that venues are not subject to any penalty for failing to honour an exclusion deed. This must change. Venues must be subject to significant penalties for failing to take all reasonable steps to exclude a person who has been properly identified as being on the exclusion register and who has excluded themselves from the venue or nominated area. That penalty should be a real deterrent, not a cost of doing business, and repeat breaches by venues should risk loss of liquor licence or forfeiture of machines and entitlements.

“All reasonable steps” would include, if FRT is deployed, reacting to an alert, approaching the person, verifying their identity and requesting that they leave. Given our concerns around the ethics of FRT as a tool, however, a venue should not be obliged to use FRT to meet the “all reasonable steps” definition. That does not exempt them from being obliged to use all other reasonable steps.

In the same way that venue security staff now escort people from the premises, using no more than reasonable force, a person can be removed. If, however, all these steps are taken and the person refuses to leave, then the venue still has the option of calling the police. We do not recommend that a person be threatened with a charge of trespass for failing to leave, because we do not feel criminalising addiction is helpful. These circumstances must surely occur under the

current system, and venues must have mechanisms in place. The only difference to now is that if they don't take these steps, they would be fined.

In addition, the person who gambled when excluded should not forfeit their winnings. The current system is penalising someone with an addiction, rather than the venue which supplies the addictive machine. The customer, if they leave the venue, should receive their stakes back, less winnings - i.e. they leave the venue with the money they started with – via a bank transfer once the sum is calculated. This is likely to be difficult, but if a mandatory cashless system was in place, the situation would not arise.

Comments on the DRAFT Code of Conduct

A Code of Practice lacks any provision for action by government regulators against a venue for any breach. This is, regrettably, consistent with the *Gaming Machine Act* s49, which also contains no provision for a penalty for failing to conduct a self-exclusion system in accordance with the Regulations. While these gaps in enforcement remain, we do not see how this Code of Practice will assist in the government's commitment to minimise gambling harm.

We also note that in principle, a voluntary, self-regulated code of practice for an industry notorious for not acting to put gambling harm minimisation ahead of profit is unlikely to achieve the actual minimisation of harm. To the extent that FRT does provide better identification of individuals (yet to be demonstrated), it is being championed and installed by some of the same venues which have historically failed to either consistently identify excluded people, or, worse, failed to exclude people who they knew to be excluded.

Self-regulation by the hotels and clubs' industries does not have a good track record in NSW

FRT does not exclude people from venues. It identifies them.

Whether or not FRT is mandated, the Code should be converted to enforceable regulations. The industry no doubt prefers unenforceable Codes. The community is entitled to be protected by the force of law. That should be one of the social costs of operating poker machines in NSW.

Remarks

[text in italics is from the Code]

1. *[In NSW] FRT providers are not required to seek Government approval to install and operate FRT in venues under this Code. Rather, it will be up to venues to supply FRT providers with the attached checklist of technical and operational specifications (Attachment A). It is strongly recommended that venues also require their FRT provider to complete the attached statutory declaration that the technology installed in the venue meets the specifications.*

Liquor & Gaming NSW is committed to working with industry to help ensure that both existing and future FRT and exclusion registers comply with the Code. (p.1)

We note with concern that NSW will not be following the model of South Australia, where independent authorisation of systems was required before installation. There, the smaller number of venues, and the fact that guidelines were put in place before installation, meant that security and privacy criteria could be established, systems operators could have their products evaluated

against those criteria, and venues could select systems that had been pre-approved. Given the scope of the roll-out of FRT before even a Code of Practice existed, that pre-emptive approval has been made difficult in NSW. That does not mean a retrospective approval system cannot be introduced. We strongly recommend that venues are obliged to select FRT systems that have been approved by an independent authority or regulator (which might include Liquor and Gaming, or ILGA, suitably staffed). Existing FRT systems will have to be certified that they conform with existing approvals or be replaced.

We remind Liquor and Gaming, and the Minister, that the Objects of the Gaming Machine Act in NSW contain these statements:

3 (1) (c) to facilitate the balanced development, **in the public interest**, of the gaming industry,

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**.

Liquor and Gaming should consider whether undertaking only to work with the industry on implementing any changes to technology or practices is consistent with these Objects, or whether, as we contend, they should always work with the community and lived experience experts in addition to the industry.

2. *Self-exclusion is an important harm minimisation measure where a venue patron experiencing difficulties controlling gambling can sign an agreement to be excluded from one or more venues or areas of those venues for an agreed period, from six months to indefinitely. (p.2)*

Wesley Mission requests that the phrase “harm minimisation measure” be replaced by “identification measure”. FRT does not minimise harm. Nobody puts themselves on an exclusion register until significant and usually long-running, harm has already occurred.

3. *Integration of facial recognition technology with self-exclusion enables an automated process of identifying patrons who have self-excluded from a venue. This is more accurate and reliable compared to manual methods. (p.2)*

This statement is not backed by published evidence. Wesley Mission has previously supplied a referenced discussion paper setting out the issues around reliability of identification. While ClubsNSW and the AHA have claimed that their systems have now overcome the known biases around race, age, disability and gender, no evidence of these improvements has been made publicly available. Wesley Mission suggests publication of the trials the industry must have undertaken be made public as a goodwill gesture, to demonstrate to customers that they need not have concerns about false positives and to give assurances to those on the exclusion registers that false negatives will not occur.

4. *Venues are currently using FRT together with existing ClubSafe and BetSafe exclusion registers or individual club sign-in systems to manage exclusions more effectively.*

Venue management to date have given no grounds for confidence that they will now honour exclusion deeds and exclude people immediately they are identified. Wesley Mission repeats its statements that a key incentive for venue managers to do this would be a financial penalty for failing to take all reasonable steps to exclude patrons who have requested, or are subject to, exclusion. In addition to evidence that FRT systems have improved their identification capabilities,

we strongly recommend that those venues which have, pre-emptively introduced FRT be obliged to reveal data for the year preceding and for the year (or part year) after implementation on

- The number of patrons excluded from part or all of the venue
- The number of breaches detected
- The number of false positive identifications
- The number of patrons asked to leave the premises
- The number of patrons who left the premises
- The number of occasions when the police were obliged to be called

If FRT has enhanced the venue's capacity to identify and exclude patrons, a sharp increase in detections and exclusions should be noticeable in this data. There is no need to include patrons' names or other identifying information in this data release.

5. *It is important to note that the Australian Information and Privacy Commission may at any time exercise its regulatory power to investigate and take enforcement action in relation to a venue or FRT provider's compliance with the APPs. This is irrespective of that entity's compliance with this Code. (p 4)*

We are pleased to see the comments on the risk to venues of misusing FRT in the context of the powers of the Australian Information and Privacy Commissioner. We note that the Commissioner's determination over the use of CCTV in Bunnings, on a complaint lodged by Choice. We note this took over 18 months, and we still await the determinations on Kmart and the Good Guys. This indicates to us that the Commissioner, along with the NSW Liquor and Gaming Authority, is probably under-resourced to deal with the rapid expansion of surveillance technologies used by for-profit companies. This impacts on the ability of any and all oversight authorities to ensure compliance with this Code, or the APPs, in such an extensive and difficult context as gambling venues in NSW.

To address this, we recommend that venues installing, or having installed FRT under the Code be obliged to pay a levy into a fund which will finance additional Liquor and Gaming staff, trained and resourced to detect breaches of the Code. This levy would cease, naturally, if FRT was found to be unlawful to use in the circumstances of gambling venues. It would continue even if FRT was not mandated, but allowed.

Requirements for the installation and operation of facial recognition technology in venues in NSW

Although we feel that the Code is based on a false premise (that voluntary codes will dictate behaviour), we do recognize that the definitions and language (including the frequent use of "must" rather than "should") of the principles for the use of FRT are consistent with the APPs.

Privacy impact assessments (PIA):

We see no reason why any venue which deploys FRT should be exempt from the APPs, given the systems involve sensitive biometric data. This includes venues with turnover under \$3million annually. We recognise the impact on venues earning significantly less than this from their machines, but they may choose not to implement FRT – another argument to avoid the mandate.

The trained and resourced Liquor and Gaming staff we mention above might be expected to deal with the PIAs that every venue will be generating. We suggest that the PIA is also included in any Gaming Plan of Management, excluding technical information which may allow patrons to misuse the system or avoid it.

Installation

We also suggest that evidence of the trade credential of installers and the management log for modifications (both mentioned in the Installation section of the Code) be incorporated into the Gaming Incident Register.

2.4 Monitors, tablets, or other screen devices used to display images of excluded patrons to authorised staff must neither be accessible nor visible to other patrons or members of the public. These devices should also not be visible to unauthorised staff, nor linked in any way to systems which manage patron behaviour, such as loyalty schemes which prompt staff on patron's favourite orders or activities.

There is no directive to venues on what alternative system they should employ in the event that the FRT system is down.

Signage

It is insufficient for fully informed consent that signage only refers to the scanning and analysing biometric features. The storage and deletion of any such scan should be included in signage, and those signs should include at the very least a QR code taking patrons to sites where there is both more information and information in other languages.

Storage

It is not clear to us how clause 4.3 regarding storing minimal information about a patron by the venue is consistent with the use of venue-specific, multi-venue or the proposed statewide, exclusion registers. This section may need complete rewriting.

There does not appear to be a statement about the immediate deletion of images and metadata for patrons who are not on the exclusion register(s).

Data use

Mission creep is already evident in 5.4 where FRT "may also be used for compliance with other regulatory obligations, including liquor banning orders or financial crime-related exclusions".

5.5 on data use is clear and strong, and we support the use of deidentified data being made available for public health purposes.

System performance

It is not clear to us how any venue can measure false negative identification, unless side by side with FRT it is using manual identification methods, and these are superior to FRT. In which case, why would they use FRT.

Requiring the venue to monitor its system reports but having no effective independent method to verify that they are, is setting up a system where no venue monitors its system reports. As all the data in the system reports is anonymised, there is no reason why this information cannot be made public, perhaps quarterly, allowing independent scrutiny by researchers or public health officers.

Complaints

Additionally, any complaint lodged by a patron in relation to any aspect of FRT, but particular regarding a breaches of storage or use of biometric data and metadata, should be recorded on the

venue's Gaming Incident Register so that a history of compliance is maintained in one place, with some chance of public accountability.

Staff actions

An addition to 7.1 would assist – if staff are notified within 60 seconds of an alert, they must respond to indicate that the notification has been seen. That response should include information on which staff member has responded, so that follow up on their actions is possible. If no staff member responds to an alert, that must be listed in the GIR.

7.5 to avoid duplication of effort, when the staff member who has interacted with the person is logging that into the system log, that should be automatically copied to the GIR.

Conclusion

We recognise limited moves by the former and current governments to address gambling harm and have observed an increase in the representation of community and harm reduction voices in consultations around developing public policy. This is an excellent start. It is by no means enough.

We have made specific requests for changes or additions to the Code:

1. That the Code becomes an enforceable guideline or regulation as soon as possible
2. We request that the phrase "harm minimisation measure" be replaced by "identification measure". FRT does not minimise harm. Nobody puts themselves on an exclusion register until significant and usually long-running, harm has already occurred.
2. We suggest that the industry release the results of trials they have undertaken, which underpin their claims of the improvements to FRT, to assure customers that false positives will not occur, and for those on exclusion registers, that false negatives will be minimised – that they will be identified and immediately escorted with dignity from the premises or gambling rooms.
3. Venues installing FRT under the Code be obliged to pay a levy into a fund which will finance additional Liquor and Gaming staff, trained and resourced to detect breaches of the Code.
4. Privacy impact assessments should form part of a Gambling Plan of Management, and actual PIAs should be attached to any venue's GPOM, redacting only technical information which would allow misuse.
5. Various aspects related to the installation and operation of FRT in a venue should be recorded on the Gaming Incident Register, including
 - a. Trade credentials (retrospectively if necessary) of installers
 - b. Interference with the system by patrons
 - c. Modification logs of software and hardware
 - d. Interactions after alerts
 - e. Failure to respond to an alert
6. Complaints by patrons regarding any aspect of FRT should be inscribed on the venue's Gaming Incident Register to build up a picture of the level of compliance for that venue.
7. Provision has been made for the aggregation of the anonymised data that the FRT systems will create, to provide a database of evidence for regulation, compliance, research and policy development. This should be funded by the industry. It is a welcome requirement.

Additional material

Wesley Mission circulated a discussion paper in early 2023 on Facial recognition technology. Apart from noting that the determination of the Bunnings case has been published, we see no reason to change our position from that paper.

[Advocacy | Facial-Recognition-Technology Discussion-Paper Wesley-Mission-Mar2023.pdf](#)

Model Law – [Facial recognition technology: Towards a model law](#)