



**Submission to Regulatory Impact
Statement - Gaming Machines
Regulation 2019**

ClubsNSW
Level 8, 51 Druitt Street
Sydney NSW 2000

www.clubsnsw.com.au
enquiries@clubsnsw.com.au

SUMMARY OF RECOMMENDATIONS

Regulation	Proposed Amendment	Reason
10 - Faulty gaming machines	Amend Clause (10)(2)(a) to replace ‘immediately’ with ‘as soon as practicable’.	The requirement to switch the gaming machine off immediately is impractical and will impede investigation of a potential faulty gaming machine.
15 - Clubs required to record certain information in relation to gaming machines	Remove clauses 15(6) and 15(7).	Redundant provision that currently do not provide any specific requirement.
22 - Dangers of gambling – notices to be displayed on gaming machines	<p>Replace clause 22 with the following:</p> <p>22 Dangers of gambling—notices to be displayed</p> <p><i>(1) A hotelier or registered club must, in accordance with this clause, display in the hotel or on the club premises:</i></p> <p style="padding-left: 40px;"><i>(a) a warning notice about gambling, and</i></p> <p style="padding-left: 40px;"><i>(b) a notice about getting help with problem gambling.</i></p> <p><i>Maximum penalty: 50 penalty units.</i></p> <p><i>(2) Each of those notices must:</i></p> <p style="padding-left: 40px;"><i>(a) be displayed in a manner approved by the Authority, and</i></p> <p style="padding-left: 40px;"><i>(b) be in a form approved by the Authority and be obtained from Liquor & Gaming NSW.</i></p> <p><i>(3) Nothing in this clause prevents both notices being displayed together as a single notice.</i></p>	Increase prominence of signage and reduce regulatory burden on venues.

33 and 34 - LIA— information to be provided	Remove clauses 33 (f) and 34(1)(g).	Ensure specific and streamlined application requirements reducing unnecessary red tape by removing the generic requirement to provide “any other information requested”.
45 - Self-exclusion schemes	Insert clause 45(g) <i>The participant must be prevented from withdrawing from the scheme prior to expiration of the period specified in the undertaking, unless the participant has undergone an assessment by a qualified problem gambling counsellor.</i>	Ensure appropriate harm minimisation processes are in place for participants seeking to revoke a self-exclusion.
106 - Persons or machines that may redeem gaming machine tickets	Replace the current clause 106 with the following: 106 Persons or machines that may redeem gaming machine tickets (1) An employee of hotel or a registered club may redeem a gaming machine ticket issued in the hotel or club. (2) A registered club may also authorise persons from any one or more of the following categories to redeem gaming machine tickets on its behalf: (a) the secretary of the club, (b) a member of the governing body of the club, (c) a member of the club. (3) An authorised person referred to in subclause (2) (c) may not redeem gaming machine tickets on behalf of the club except at a time when no club employee or duly authorised person referred to in subclause (2) (a) or (b) or is available to do so. (4) A registered club must keep a record (whether or not as part of another record) of the name, address and date of birth of each person who is authorised by the club as an authorised person under subclause (2).	Remove the requirement to authorise employees to redeem gaming machine tickets as this creates workforce inflexibility.

	<p>(5) A hotelier or registered club must ensure that, at all times during which the hotel or club is trading, there is at least one person available in the hotel or on the premises of the club to redeem gaming machine tickets.</p> <p>(6) Despite anything in this clause, gaming machine tickets issued in a hotel or on the premises of a registered club may be redeemed through the use of cash-back terminals approved, or of a class approved, by the Authority for the purposes of this subclause.</p>	
110 - Records and other material	Add <i>“Note. Section 11 (2) of the Electronic Transactions Act 2000 allows for hard copy documents that are required to be retained for a particular period to be retained in electronic format in certain circumstances.”</i>	Ensure clubs and hotels are aware that it is permissible to keep gaming machine ticket records in electronic format in certain circumstances.
138 - Gaming machine lease levy	Omit from 138(b) ‘for each year that the lease is in force’.	Ensure that the minimum lease levy contribution is not a barrier to the leasing of gaming machine entitlements.
GMR 2010 – 33 Exemption	Reinstate clause 33 from the Gaming Machine Regulations 2010.	Exemption may be necessary to facilitate MOU commitment to explore modern payment technologies.

INTRODUCTION

ClubsNSW welcomes the opportunity to contribute to the Regulatory Impact Statement (RIS) released by Liquor and Gaming NSW regarding the Gaming Machines Regulation 2019 (GMR).

Overall ClubsNSW is supportive of the proposed remake of the Regulation and focus on a risk-based approach. ClubsNSW submits that several minor amendments would further streamline the proposed Regulation, reduce red tape and improve harm minimisation.

The proposed amendments are presented in the order of the numbering of the clauses in the GMR.

GAMING MACHINE REGULATIONS 2019— PROPOSED AMENDMENTS

Part 2 Regulation and management of gaming machines— general provisions

Clause 10 Faulty gaming machines

Clause 10 has been amended to include that, if clubs become ‘aware’ of a fault that affects the playing or result of any gaming machine they must ‘immediately’ switch off the gaming machine. ClubsNSW submits that the revised wording is too broad, and that strict adherence is likely to create operational difficulties.

The proposed drafting casts a wide net that could cause clubs to technically to be in breach of the clause despite best endeavours to comply. Clause 2(a) stating clubs must ‘immediately’ switch off a gaming machine is concerning, since it is not entirely clear at what point a club legally becomes *aware* and needs to *immediately* switch off the gaming machine.

For example, it can occur that a player may make a complaint that a gaming machine is faulty and not paying prizes in the approved manner. Most of these complaints are made verbally. These complaints would usually cause the club to carry out an investigation to assess the legitimacy of the complaint, for example by reviewing previous play history in the audit menu to determine if a malfunction did indeed occur. In many cases there is no fault but rather a misunderstanding about the rules of the game.

Under a strict interpretation the requirement to switch off the gaming machine ‘immediately’ on becoming ‘aware’ of a fault could prevent the club from carrying out such an investigation.

ClubsNSW submits that replacing the word ‘immediately’ with ‘as soon as practicable’ would provide the necessary flexibility to assess the veracity of any allegation of a potentially faulty gaming machine.

Recommendation:

Amend Clause (10)(2)(a) replace ‘immediately’ with ‘as soon as practicable’.

Clause 15 - Clubs required to record certain information in relation to gaming machines

Clause 15(6) requires a record in relation to gaming machines to be made by, however it is unclear as to what report or records needs to be made.

ClubsNSW submits that the current wording is highly ambiguous as to the records which are required to be made for the purpose of this clause. ClubsNSW is of the view that the record keeping requirements under clause 15(2) of the Draft Regulation are comprehensive and that no further requirements are necessary.

In the event that Liquor & Gaming NSW or the Authority has a specific record keeping requirement in mind ClubsNSW submits that it would be best incorporated into clause 15(2).

Recommendation:

Remove clauses 15(6) and 15(7).

Part 3 Responsible gambling practices and other harm minimisation measures**Clause 22 Dangers of gambling – notices to be displayed on gaming machines**

ClubsNSW submits that the Regulation should provide the Authority with greater flexibility to determine the appropriate placement of dangers of gambling notices, rather than codifying this in the Regulation.

Recent research conducted by Office of Responsible Gambling found that current notices lacked cut through due to an overly cluttered environment.¹ The current quantity and placement of signage creates a “wallpaper” effect which results in few players noticing the current signage in venues.

The research found that gaming machine stickers, which are by far the most numerous signage, had the lowest total recall rate at 20 per cent. The report also identified that the gaming machine stickers created the most onerous compliance burden on venues, with staff required to conduct daily checks to ensure that stickers have not been peeled of gaming machines by players.

The cost of this compliance activity is high both in terms of labour costs and opportunity cost of having these staff engage in more meaningful harm minimisation activity.

In addition, should Liquor & Gaming NSW determine to update the messaging on the signage, as is anticipated in the Regulatory Impact Statement, then the compliance costs both capital and labour in removing and replacing over 95,000 notices is significant.

ClubsNSW submits that it would be beneficial to all stakeholders if the Authority were given the flexibility to determine the appropriate placement of the dangers of gambling notices in order to increase prominence and while simultaneously reducing the regulatory burden on venues.

¹ *Gambling Harm-Minimisation Signage – Final Research Report*, Liquor and Gaming NSW 2017

Recommendation

Replace the current clause 22 with the following:

22 Dangers of gambling—notices to be displayed

(1) A hotelier or registered club must, in accordance with this clause, display in the hotel or on the club premises:

(a) a warning notice about gambling, and

(b) a notice about getting help with problem gambling.

Maximum penalty: 50 penalty units.

(2) Each of those notices must:

(a) be displayed in a manner approved by the Authority, and

(b) be in a form approved by the Authority and be obtained from Liquor & Gaming NSW.

(3) Nothing in this clause prevents both notices being displayed together as a single.

Clause 33 and 34: LIA—information to be provided

The NSW Government recently conducted a comprehensive review of the Local Impact Assessment Scheme that resulted a significant reforming of the process. As part of the reforms to the LIA process, a commitment was made to streamline the application process by having clearly stated and unambiguous application requirements. ClubsNSW submits that Clause 33(f) and 34(g) undermines a streamlined approach by introducing an ambiguous provision requiring applicants to provide any other information that may be required by the Authority.

ClubsNSW submits that any additional information the Authority may require to process an LIA application should be identified and clearly stated in clauses 33 and 34.

Recommendation:

Remove clauses 33 (f) and 34(1)(g).

Clause 45 Self-exclusion schemes

Revocation

ClubsNSW submits that an amendment is required to ensure that a person seeking to revoke an existing self-exclusion, after the minimum 6 months period but prior to its expiration date, is required to undergo an assessment by a qualified problem gambling counsellor.

ClubsNSW through its ClubSAFE and Multi-Venue Self-Exclusion programs has identified that many individuals seeking to revoke their self-exclusion after the minimum 6-month period has elapsed display signs of an ongoing issue with gambling, including extremely strong urges to gamble.

ClubSAFE currently requires participants seeking to revoke an existing self-exclusion to undergo an assessment by a qualified problem gambling counsellor comprising at least six counselling sessions. Formalising this requirement in the Regulation would ensure a consistent approach across self-exclusion providers.

Note: ClubsNSW does not support counselling assessment being a requirement where a self-exclusion period has expired, as we are of the view that this creates a barrier to entry for those people seeking to use self-exclusion as a responsible gambling tool; such people may not require formal counselling and making this a mandatory requirement at the conclusion of self-exclusion is likely to stop them accessing scheme in the first place.

ClubsNSW supports an approach to self-exclusion where it is used as both an intervention for problem gambling as well as responsible gambling tool to support controlled gambling.

In our view requiring an assessment by a qualified problem gambling counsellor for people seeking to revoke an existing self-exclusion strikes an appropriate balance between supporting individuals experiencing gambling problems and ensuring that self-exclusion is universally accessible as a responsible gambling tool.

Recommendation

Insert clause 45(g)

The participant must be prevented from withdrawing from the scheme prior to expiration of the period specified in the undertaking, unless the participant has undergone an assessment by a qualified problem gambling counsellor.

Part 7 Gaming machine tickets

106 Persons or machines that may redeem gaming machine tickets

ClubsNSW submits that the requirement to specifically authorise individual employees to redeem gaming machine tickets creates an unnecessary regulatory burden that impacts workforce flexibility.

The casual nature of much of the employment in the hospitality sector can result in high rates of absenteeism. Having the necessary workforce flexibility to be able to cover shift when an employee fails to turn up for work is extremely important for clubs.

The requirement that an employee is formally authorised by the club to redeem gaming machine tickets with their name, address and date of birth kept on separate register often creates serious challenges when attempting to reassign an employee to a cover a shift.

Employees are required to hold a Responsible Conduct of Gambling (RCG) competency card before they can be involved in duties related to the keeping or operation of approved gaming machines. ClubsNSW submits that this qualification is sufficient for the purposes of understanding the regulatory requirements associated with the redemption of gaming machines tickets, such as the payout cash limit.

ClubsNSW supports the requirement for clubs to duly authorise people who are not employees before they are eligible to redeem gaming machine tickets on behalf of the club. ClubsNSW also supports the requirement for a record to be maintained containing the details of such authorised persons.

Removing the requirement for specific authorisation of employees will greatly improve workforce flexibility without any increased risk to harm minimisation or integrity of gaming objectives of the Act.

Recommendation

Replace the current clause 106 with the following:

106 Persons or machines that may redeem gaming machine tickets

- (1) An employee of hotel or a registered club may redeem a gaming machine ticket issued in the hotel or club.
- (2) A registered club may also authorise persons from any one or more of the following categories to redeem gaming machine tickets on its behalf:
 - (a) the secretary of the club,
 - (b) a member of the governing body of the club,
 - (c) a member of the club.
- (3) An authorised person referred to in subclause (2) (c) may not redeem gaming machine tickets on behalf of the club except at a time when no club employee or duly authorised person referred to in subclause (2) (a) or (b) or is available to do so.
- (4) A registered club must keep a record (whether or not as part of another record) of the name, address and date of birth of each person who is authorised by the club as an authorised person under subclause (2).
- (5) A hotelier or registered club must ensure that, at all times during which the hotel or club is trading, there is at least one person available in the hotel or on the premises of the club to redeem gaming machine tickets.
- (6) Despite anything in this clause, gaming machine tickets issued in a hotel or on the premises of a registered club may be redeemed through the use of cash-back terminals approved, or of a class approved, by the Authority for the purposes of this subclause.

110 Records and other material

The note in clause 143 of the GMR states that section 11(2) of the *Electronic Transactions Act 2000* allows for hard copy documents to be retained in electronic format in certain circumstances.

ClubsNSW understand that section 11(2) of the *Electronic Transactions Act 2000* covers gaming machine tickets. However, it is still unclear to many clubs that they can keep gaming machine ticket records in electronic format. Clarifying this point by adding the same note to clause 110 of the GMR will reduce confusion about clubs' record keeping obligations.

Recommendation:

Add “*Note. Section 11 (2) of the Electronic Transactions Act 2000 allows for hard copy documents that are required to be retained for a particular period to be retained in electronic format in certain circumstances.*” To the end of clause 110 of The Gaming Machine Regulations 2019.

Part 9 Miscellaneous provisions

138 Gaming machine lease levy

ClubsNSW understand that the rationale for creating a floor for the gaming machine lease levy is to prevent operators from entering into leasing arrangements which minimise their obligation to contribute to the funding of gambling harm minimisation and treatment services around the State. However, ClubsNSW submits that the proposed floor of \$1,000 p.a. may be overly burdensome in limited commercial circumstances that are most likely to affect clubs.

On average, club gaming machine entitlements in NSW generate significantly lower amount of revenue compared to hotel gaming machine entitlements. A club seeking to lease out a low number of entitlements (e.g. a single entitlement) in an area with low gaming machine turnover, may find it difficult to negotiate a commercially viable leasing agreement under the proposed floor price of \$1,000 per annum.

ClubsNSW submits that most leases will be for a period of greater than 1 year, therefore removing the term of the lease from the levy floor calculation would assist in ensuring that the levy floor did not act as a barrier to gaming machine entitlement leasing in certain circumstances.

Recommendation:

Omit from 138(b) ‘for each year that the lease is in force’.

Gaming Machine Regulations 2010 clause 33

ClubsNSW submits that clause 33 of the Gaming Machine Regulations 2010 should be maintained. While this clause may not have been used in the past it has potential application into the future. The Memorandum of Understanding between ClubsNSW and the NSW government contains a commitment to:

“Explore modern payment technologies including how it could be used by players to set pre-commitment limits, while maintaining the existing ban on credit card use;”

ClubsNSW submits this clause may provide a legal pathway for this commitment to be enacted through the trialling of new payment technologies in clubs and hotels.

Recommendation:

Reinstate clause 33 from the Gaming Machine Regulations 2010.