

Gaming Machines Amendment (Gambling Harm Minimisation) Bill 2020

Explanatory paper

September 2020

Public consultation

The NSW Government is seeking feedback on the proposed *Gaming Machines Amendment (Gambling Harm Minimisation) Bill 2020*. The reforms being introduced by this Bill respond to the need to identify and support gaming machine players who are experiencing problems and harm from their gambling. It also aims to improve the way hotels and clubs minimise gambling harm through proactive interactions with players. Overall, the Bill is aimed at improving the regulatory framework for responsible conduct of gambling in NSW.

Submit your feedback on the proposed changes before **11.59pm 30 October 2020**.

Your feedback will be carefully considered before the Bill is finalised and introduced into Parliament.

You can provide your feedback:

- ▲ using the online form at the Customer Service website
<https://www.customerservice.nsw.gov.au/consultations/Laws-that-help-minimise-gaming-harm>
- ▲ by email: gaming.policy@liquorandgaming.nsw.gov.au
- ▲ by mail to:

Liquor & Gaming NSW - Policy & Legislation
Gaming Machines Amendment Bill 2020
GPO Box 7060
Sydney NSW 2001

Please note that all submissions will be published, unless you ask for your submission to be treated as confidential.

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1. Introduction

This paper outlines the proposed regulatory changes under the *Gaming Machines Amendment (Gambling Harm Minimisation) Bill 2020*. The Bill will update the *Gaming Machines Act 2001* to improve how hotels and registered clubs minimise gambling harm and provide support to gaming machine players.

The framework for the responsible conduct of gambling in NSW is currently based on an ‘informed choice’ model. This model is aimed at minimising gambling harm by ensuring that consumers have enough information to allow them to make choices about their gambling, while prohibiting certain industry practices that might place a person at risk of, or exacerbate, gambling harm.

Despite the current harm minimisation obligations in place, gambling harms from gaming machines continue to rise.

While some venues go above and beyond their regulatory obligations to help people experiencing harms, others fall short of meeting even their minimum obligations. Liquor & Gaming NSW’s proactive compliance operations have identified a number of significant breaches by venues.

While self-exclusion schemes are available, it is often easy for excluded gamblers to access venues.

Research commissioned for the NSW Responsible Gambling Fund indicates the current minimum requirements, even when implemented appropriately, are not enough to effectively prevent harm. In particular, the evidence suggests that the informed choice model is failing to have a meaningful impact on minimising gambling harm, as venues have no regulatory obligation to intervene with patrons who are displaying problematic behaviours, unless they ask for help.¹

In addition, research shows that self-exclusion schemes need to be backed by effective ways to detect breaches, have greater reach, and a better mix of positive and negative incentives to change behaviours in both individuals and venues.

To better enable venues to proactively engage and assist people who are experiencing or are at risk of gambling harm, the proposed changes focus on:

- ▲ Active intervention and enhanced harm minimisation training requirements.
- ▲ Variable self-exclusion periods.
- ▲ Changes to referrals for gambling counselling services.
- ▲ Third-party and venue-initiated exclusions.
- ▲ Disincentives to breaching exclusions.
- ▲ A single state-wide online exclusion register.
- ▲ New offence provisions and increased penalties.
- ▲ Whistle-blower protections.

¹ Hing, N., Russell, A. & Rawat, V. (2020). Responsible Conduct of Gambling. [Central Queensland University]. Commissioned by New South Wales Responsible Gambling Fund, Sydney

2. Key figures

The *NSW Gambling Survey 2019* found that gambling participation is decreasing, with 16% of the population playing gaming machines in the past 12 months, falling from 27% in 2011.

The 2019 survey also found that 1% of the general adult population are classified as problem gamblers according to the Problem Gambling Severity Index (PGSI), with 2.8% considered to be moderate-risk and 6.6% as low risk. Of those who do gamble, 7.2% are considered to be a moderate-risk or problem gambler.

Since the last survey of NSW gamblers in 2011, there has been an increase in the proportion of problem gamblers from 1.2% to 1.9%. The prevalence of moderate-risk gamblers has also increased from 4.5% to 5.2%.² Of the population that gamble at least weekly, 13% were categorised as problem gamblers compared to just under 2% of people who gamble less frequently than once a week.³

This translates to approximately 56,000 people within the NSW adult population experiencing severe gambling related harm (problem gamblers). Research indicates that each problem gambler can affect up to six people around them. There is also approximately 500,000 people in NSW experiencing or at risk of gambling related harm (low to moderate-risk gamblers).

In 2017-18, total gaming expenditure in NSW was \$8.6 billion. Gaming machines in hotels and clubs contributed \$6.4 billion (or 74%) of this total.⁴ As at 20 September 2020, there were 2,410 venues (clubs and hotels) holding 94,090 gaming machine entitlements. In addition, The Star casino is authorised to operate up to 1,500 gaming machines.

The *NSW Gambling Survey 2019* examined the relative contribution of each gambling activity on the degree of harm experienced. By far the strongest impact was observed for electronic gaming machines, having almost double the impact per person than the next largest category (online poker games).⁵

The 2019 survey found 2% of NSW gamblers tried to exclude themselves from a gambling venue through a formal self-exclusion process within the venue in the previous 12 months. Of these gamblers who have tried to exclude themselves, around one third (34%) self-excluded from just one venue, while just over one third (35%) had self-excluded from three or more venues. However, 92% of excluded persons who attempted to re-enter these venues were successful.⁶

Client data from NSW Gambling Help services in 2019/20 shows that gaming machines are the principal gambling activity for 71% of clients seeking help for gambling issues. It also shows that, of those clients, 42% were diagnosed with depression, 32% had thoughts about committing suicide, 9% had attempted suicide.

² Central Queensland University. (2019). *NSW Gambling Survey, 2019*. Commissioned by New South Wales Responsible Gambling Fund, Sydney

³ *ibid.*

⁴ Queensland Government Statistician's Office. (2019). Queensland Treasury, *Australian Gambling Statistics*, 35th edition

⁵ Central Queensland University. (2019). *NSW Gambling Survey, 2019*. Commissioned by New South Wales Responsible Gambling Fund, Sydney

⁶ *ibid.*

Thirteen per cent also admitted to having committed an offence to fund their gambling habit, 12% had issues with alcohol and 20% reported drug addiction.

3. Current harm minimisation requirements

Venues in NSW are currently required to offer a self-exclusion scheme to patrons that approach them for assistance. In addition, venues are required to offer information about the availability of gambling counselling services. Venue staff working on the gaming floor, as well as hotel licensees and club secretaries, are required to undergo Responsible Conduct of Gambling (RCG) training, and a five yearly online refresher course which outlines their obligations for supporting patrons.

3.1 Self-exclusion

Self-exclusion is a voluntary program that allows a person who is experiencing gambling related harm to ban themselves from the gaming areas of hotels and clubs, and from the casino. All venues with gaming machines must offer the option to self-exclude.

NSW venues can run their own self-exclusion schemes to provide more flexibility in how they support people who want to control or stop their gambling. These schemes must meet the minimum requirements set out by law.

The minimum requirements for hotels and clubs are prescribed by clause 45 of the Gaming Machines Regulation 2019. The requirements for casinos are set out in section 79(3) of the *Casino Control Act 1992*, which includes winnings being forfeited to the Responsible Gambling Fund if an excluded person gambles on the premises.

Participants can agree to be excluded from gaming areas within venues, specific gaming activities (only for the casino), or from entire venues. The minimum period for self-exclusion is 6 months. The participant is not able to have the agreement revoked during this time.

Venues must provide patrons with the opportunity to seek legal or other professional advice before making the agreement. Venues must also provide in writing the contact details of a gambling counselling service to the participant. Venue gaming staff must also be able to readily identify the self-excluded patron, whether by means of a recent photograph or otherwise.

Clubs and hotels may choose to engage an approved gambling counselling service to operate their self-exclusion scheme or run their own scheme. An industry run Multi-Venue Self-Exclusion scheme (MVSE) is operated by ClubsNSW. The MVSE is operated online at mvse.com.au and allows a person to exclude themselves from multiple clubs and hotels. This can only be arranged with a participating venue or off-premises with the assistance of a designated gambling counsellor.

A further scheme is operated by independent program provider Betsafe and The Star casino also operates a self-exclusion scheme and provides counselling services.

Unlike almost all other jurisdictions, there are no penalties for venues or individuals who fail to prevent an excluded person from accessing premises.

3.2 Gambling counselling services

Self-exclusion schemes are regarded as being more effective if participants also get counselling and treatment for their gambling-related problems.⁷ Venue operators are required to make available to patrons the name and contact details of a gambling counselling service.

The following organisations have been approved to provide gambling counselling services to patrons of hotels and clubs:

- ▲ AHA (NSW)
- ▲ ClubsNSW
- ▲ Betsafe
- ▲ Any other body that receives funding from the Responsible Gambling Fund to provide gambling-related counselling and treatment services (Gambling Help Services are funded through the Responsible Gambling Fund and provide counselling services in more than 250 locations across NSW).

3.3 Responsible Conduct of Gambling (RCG) training requirements

RCG training in NSW is a principal feature of the current harm minimisation framework. It is aimed at promoting responsible gambling environments within venues that allow patrons to make informed choices about their gambling.

It is currently mandatory for gaming-related venue staff, as well as hotel licensees and club secretaries, to complete RCG training through an approved training provider. The training allows venue staff to understand gambling laws and requirements for responsible conduct of gambling in venues and indicators of 'problem gambling'. Gaming-related staff also need to complete an online RCG training refresher course every 5 years.

Venue staff must provide support to patrons who request help with their gambling, through providing access to self-exclusion arrangements and counselling services. Currently venue staff are not required by law to intervene with patrons displaying problematic gambling behaviours unless they have asked for help.

4. Third-party exclusions and venue exclusion orders

Some Australian jurisdictions allow for the involuntary exclusion of patrons experiencing gambling-related harm at the request of a third-party (e.g. family member, friend etc) or at the venue's own volition.

NSW does not currently have a legislated third-party exclusion scheme for hotels and clubs. However, hotels have common law rights to exclude people from their venues, and clubs can establish third-party exclusion schemes for club members through amendments to club rules.

Despite having the ability to do so, venues have been reluctant to exclude people due to concerns about potentially breaching club membership rules or discrimination

⁷ Productivity Commission. (2010). *Gambling*. Report no. 50, Australian Government: Canberra

laws. However, Liquor & Gaming NSW is aware of some individual clubs that have amended their constitutions to enable third-party exclusions at their venues.

The Star casino operates an informal third-party venue exclusion scheme under the provisions of the *Casino Control Act 1992*.

5. Approaches to harm minimisation in other jurisdictions

Many jurisdictions are moving to a broader harm minimisation approach that addresses gambling harm across the spectrum of gamblers through proactive intervention. This approach replaces a simple informed choice model that focuses only on gamblers who seek help, usually when they are already experiencing severe harm and problems⁸. This means any intervention is often too late, with harms already manifesting. The key features of the regulatory framework for harm minimisation in other jurisdictions are discussed below.

5.1 Proactive intervention

A more proactive approach to identifying and intervening with patrons displaying problematic gambling behaviour is in place in the Australian Capital Territory (ACT), Victoria, Queensland, Northern Territory and New Zealand.

The ACT requires all gambling venues to appoint a dedicated, trained gambling contact officer who engages with, and provides support to, patrons displaying problematic gambling behaviour.⁹ This can include providing patrons with information about gambling counselling services and self-exclusion arrangements. Other venue staff are required to inform the gambling contact officer of any patrons showing signs of problem gambling behaviour.

Gaming venues in Victoria are required to identify and respond to patrons displaying signs of gambling-related problems.¹⁰ To assist venues in meeting these responsibilities, venue support workers are funded by the Victorian Responsible Gambling Foundation through the Gambler's Help Venue Support Program.

Under its voluntary responsible gambling code of practice, Queensland gaming venues must have a customer liaison officer available during approved gaming hours.¹¹ The customer liaison officer provides appropriate information to help patrons with gambling-related problems and support staff in assisting these patrons. Commercial gambling providers in the Northern Territory are required to appoint a community liaison officer available during approved gaming opening hours, with similar responsibilities as Queensland's customer liaison officer.¹²

⁸ Hing, N., Russell, A. & Rawat, V. (2020). Responsible Conduct of Gambling. [Central Queensland University]. Commissioned by New South Wales Responsible Gambling Fund, Sydney

⁹ ACT Gambling & Racing Control (Code of Practice) Regulation 2002

¹⁰ Victorian Responsible Gambling Foundation. (2018). Venue Support Program. Viewed on 24 September 2020, <https://responsiblegambling.vic.gov.au/reducing-harm/gaming-venues/venue-support-program/>

¹¹ Queensland Office of Liquor and Gaming Regulation. (2019). Customer Liaison Officers. Viewed on 24 September 2020 <https://www.business.qld.gov.au/industries/hospitality-tourism-sport/liquor-gaming/liquor/training/gaming/rsg-refreshers/problem-gambling/customer-liaison-officers>

¹² Northern Territory Government. (2020). NT Code of Practice for Responsible Gambling 2016. Viewed on 24 September 2020 <https://nt.gov.au/industry/gambling/gambling/gambling-codes-of-practice/nt-code-of-practice-for-responsible-gambling-2016>

5.2 Training requirements

The ACT has a two-tiered gambling training program, with gambling contact officers required to complete a higher level of training (Gambling Contact Officers course) than gambling-related venue staff (Responsible Service of Gambling course). While venue staff are required to complete a training program every three years, gambling contact officers must complete an approved training session annually.¹³

All Victorian gaming-related venue staff must complete free, approved Responsible Service of Gaming training that comprises an online course and a face-to-face session delivered by a venue support worker in a gaming venue. Staff must complete refresher training every 3 years, commencing in 2020.¹⁴

Some jurisdictions have a shorter refresher period. While NSW requires staff to undertake a Responsible Conduct of Gambling training refresher course every 5 years, the Northern Territory requires this annually and South Australia every 2 years.¹⁵

5.3 Gambling incident register

Gaming venues in the ACT, Victoria, Northern Territory and New Zealand are required to keep a gambling incident register.

ACT venues are required to record gambling incidents and the steps taken to address them, including details of patrons displaying problematic gambling behaviour.¹⁶

Victorian gaming venues are also required to record gambling-related incidents and follow-up action taken by venue staff.¹⁷ This includes detection of self-excluded person in gaming areas, identification of patrons displaying problematic gambling behaviours and occasions when staff provide patrons with information on gambling help and counselling services.

Northern Territory venues are required to record gambling-related issues or complaints reported by a patron, and the action taken to resolve the issue. Details of excluded patrons must also be included in the register.¹⁸

¹³ ACT Gambling and Racing Commission. (2020). Education and Training. Viewed on 24 September 2020 <https://www.gamblingandracing.act.gov.au/industry/education-training>

¹⁴ Department of Justice and Community Safety, Victoria. (2020). Responsible Service of Gaming training. Viewed on 24 September 2020 <https://www.justice.vic.gov.au/safer-communities/gambling/responsible-service-of-gaming-training>

¹⁵ Northern Territory Government. (2020). NT Code of Practice for Responsible Gambling 2016. Viewed on 24 September 2020 <https://nt.gov.au/industry/gambling/gambling/gambling-codes-of-practice/nt-code-of-practice-for-responsible-gambling-2016>; Hing, N., Russell, A. & Rawat, V. (2020). Responsible Conduct of Gambling. [Central Queensland University]. Commissioned by New South Wales Responsible Gambling Fund, Sydney

¹⁶ ACT Gambling & Racing Control (Code of Practice) Regulation 2002

¹⁷ Victorian Commission for Gambling and Liquor Regulation. (2018). *Gambling Information Sheet – Responsible Gambling Register*. Viewed on 24 September 2020 https://www.vcglr.vic.gov.au/sites/default/files/uploadGambling_fact_sheet_-_Responsible_Gambling_Register.pdf

¹⁸ Northern Territory Government. (2020). NT Code of Practice for Responsible Gambling 2016. Viewed on 24 September 2020 <https://nt.gov.au/industry/gambling/gambling/gambling-codes-of-practice/nt-code-of-practice-for-responsible-gambling-2016>

5.4 Exclusion schemes

The main features of exclusion schemes across jurisdictions are:

- ▲ An individual or venue may enter into a formal exclusion agreement enabling the person to be excluded from gambling venues or from participating in specific types of gambling.
- ▲ In some jurisdictions a third-party can request for the exclusion of a patron from venues or gambling activities (South Australia and Tasmania).
- ▲ Typically, individuals request self-exclusion at the venue or online. Tasmania is an exception, with an individual entering an exclusion scheme through a gambling help provider.
- ▲ Gambling counselling services complement the formal exclusion agreement.
- ▲ A minimum exclusion period ranging from 6 to 12 months (New Zealand has no minimum period, while in the ACT a self-exclusion can be revoked at any time).
- ▲ Reliance on photographs as the primary method of recognition/detection (South Australia mandated facial recognition technology for all venues operating 30 or more gaming machines, taking effect from December 2020).
- ▲ A penalty or disciplinary action against venues which fail to detect individuals breaching their exclusion, except in NSW and Western Australia (note that WA does not have gaming machines in club and hotels).

The main difference in approach relates to penalising participants and venues for breaching an exclusion agreement. Four jurisdictions apply a penalty to participants who breach their exclusion agreement, while five do not. Seven jurisdictions apply a penalty to venues who fail to detect breaches, while only two do not (NSW and WA).¹⁹

More details on the exclusion schemes across jurisdictions are provided in **Attachment A**.

6. Proposed regulatory reforms

The proposed reforms have been developed in response to the increase in problem and at-risk gambling among gaming machine players and some concerning examples of significant non-compliance with existing harm minimisation obligations by NSW clubs and hotels.

The current informed choice model does not require venues or staff to proactively approach gamblers displaying problematic gambling behaviour, rather a patron must approach them. Gamblers experiencing harm are often in denial about their gambling. Recent research shows low levels of gamblers approaching venues for

▲ ¹⁹ In NSW, Victoria and the ACT a person who is excluded from a casino and is found gambling on the premises forfeits their right to any winnings.

assistance, while high levels of problematic gambling behaviours are being observed by venue staff.²⁰

This highlights the need for a harm minimisation regulatory framework that proactively addresses gambling harm across the spectrum of gamblers, similar to the frameworks in other jurisdictions.

While many venues take harm minimisation seriously, there is an ongoing conflict between a venue seeking to maximise profits from gaming operations and the problem gambler (often their most profitable patrons) getting the help they need. Stronger incentives (and disincentives) are needed to help change behaviours.

The proposed amendments will improve how hotels and clubs minimise gambling harm and provide support to gaming machine players.

6.1 Active intervention and better internal management practices

The proposed measures in the Bill are targeted at addressing poor venue culture and encouraging venues to do more as part of their social licence to operate gaming machines.

- ▲ Venues will be required to:
 - Implement measures modelled on the ACT framework to identify and support gamblers exhibiting problematic behaviour.
 - Have a person on duty that has completed advanced Responsible Conduct of Gambling training (and therefore can be designated as a ‘gambling contact officer’) whenever gaming machines are being used.
 - Keep an up-to-date gambling incident register.
- ▲ Venue staff will be required to actively monitor patrons’ behaviours, and record details of any incidents where a patron displays problematic gambling behaviours in the gambling incident register. Additionally, they are to advise the gambling contact officer of incidents and any person in the venue likely to be experiencing problems with their gambling.
- ▲ The gambling contact officer will be required to engage with gamblers who are displaying problematic behaviour, refer them to support and counselling services and provide them with the opportunity to self-exclude.
- ▲ If it is evident that a person is experiencing gambling-related harm, but does not wish to self-exclude or seek other help, the venue can issue an exclusion order to involuntarily ban that person from the venue if it is considered to be in that person’s best interest.
- ▲ The venue will be required to suspend the membership of any gaming machine rewards scheme or player account of an excluded person and stop providing an excluded person with promotional material.
- ▲ The venue will also be required to return any funds the person had in their player reward account or on their member card.

²⁰ Hing, N., Russell, A. & Rawat, V. (2020). Responsible Conduct of Gambling. [Central Queensland University]. Commissioned by New South Wales Responsible Gambling Fund, Sydney

- ▲ A gambling incident register, similar to the liquor incident register, will need to be maintained to record gambling incidents and the steps taken to address the incidents.

Assessment of proposal

There is currently no obligation for venues to monitor patrons and intervene when gambling-related harm is apparent. There is also evidence that employees can be discouraged from doing so.²¹ The current RCG training suggests that venue staff not approach patrons, rather they should refer any issues to a manager.

Recent research found that venue staff are initially very responsive to patrons who asked for help but provided little assistance to patrons displaying problematic gambling behaviour if they do not ask. Action was more likely to be taken when patrons were aggressive, borrowing money or had left children outside unattended.²²

It is proposed that the Secretary will issue guidelines to assist staff to identify problematic gambling behaviour in a consistent manner across all NSW venues. To this end, the problematic gambling indicators set out in draft guidelines entitled “*Signs of risky and problem gambling behaviour: Know the signs and how to act*” (**Attachment B**) were developed in consultation with the NSW Office of Responsible Gambling, based on research about behavioural indicators undertaken by Gambling Research Australia.²³

It is proposed that the level of intervention will be relative to the level of the problematic gambling behaviour displayed. When venue staff observe patrons displaying low or probable signs of problematic gambling behaviour, as detailed in the guideline, they will be required to monitor the patron’s behaviour and record the incident in the venue’s gambling incident register. Venue staff will also be required to notify the gambling contact officer of the incident.

For patrons displaying strong signs of problematic gambling behaviour, it is proposed that the gambling contact officer will engage with the patron. In doing so, the gambling contact officer is to refer the patron to support and gambling counselling services and provide the opportunity for self-exclusion.

Where the patron does not wish to self-exclude, the gambling contact officer is to consider other avenues to help the patron, including excluding the patron by way of a venue-initiated exclusion order.

While interacting with patrons in these circumstances can be challenging, intervention is necessary to support patrons and ensure responsible gambling practices at the venue. Training to support this approach is outlined in section 6.8.

It is not suggested that venues should exclude a patron based on an initial observation. The initial observation by a staff member is expected to lead to further inquiries which may result in the venue excluding someone because it is in the patron’s best interest. This is particularly the case if the person displaying the

²¹ *ibid*

²² *ibid*

²³ Dr P Delfabbro et al. (2007). *Identifying Problem Gamblers in Gambling Venues*, Gambling Research Australia; Dr A Thomas et al. (2014). *Validation study of in-venue problem gambler indicators*, Gambling Research Australia

problematic behaviour has refused to self-exclude or to seek other assistance such as counselling.

When the responsible service of alcohol regime was introduced requiring active intervention by staff, concerns were raised by industry that patrons would take offence and staff would be at risk. Responsible service of alcohol intervention is now a normal part of a venue's business operations.

There is anecdotal evidence from venues in the ACT that when gambling contact officers engage with patrons, almost all patrons are appreciative of the venue showing an interest in their welfare. Further, patrons are not being 'scared away' from venues as a result of these measures.

It is proposed that the Secretary will issue guidelines to assist a hotel or club to understand the reasonable steps they can take to ensure the gambling contact officer is carrying out their duties properly. This would also provide gambling contact officers with guidance on their responsibilities.

Venues will also be required to maintain a gambling incident register to record gambling incidents and the steps taken to address them. It will provide the venues a better understanding of events that affect the wellbeing of patrons and assist venues to develop suitable strategies to reduce the risk of gambling related harm.

The proposed incident register, which will be much like the alcohol incident register, aims to improve the current gambling harm minimisation measures and patron assistance. Options for the register to be maintained online will be explored to reduce administrative burden.

Cost benefit analysis of proposal

Better internal gambling management practices and the provision of appropriate and timely assistance to gamblers exhibiting problematic gambling behaviour will have significant social benefits.

There are costs to the community from gambling, and significant health, financial and emotional costs to the individuals and families directly affected. The requirements of active intervention will reduce these costs and assist communities dealing with gambling related harm.

The requirements to have a dedicated gambling contact officer on duty when gaming machines are in operation and to maintain a gambling incident register may represent a small increase in costs to clubs and hotels. Note that the requirement is not to have an additional person on staff to be the Gambling Contact Officer over and above the number of staff that would normally be on duty. Rather, it is only a requirement that among rostered staff, one person has completed the necessary training and can be designated as the Gambling Contact Officer for that shift.

The cost of advanced RCG training will be subsidised by the Responsible Gambling Fund in the initial implementation period for small, rural and regional clubs and hotels. Venues will also be provided with ample time in which to transition to the new arrangements.

6.2 Variable self-exclusion periods

It is proposed that, after the initial 6 months exclusion, venues and patrons will be able to agree to more flexible periods, allowing patrons to self-exclude for shorter or longer periods than 6 months.

Assessment of proposal

The current minimum self-exclusion period in NSW is six months. This is seen as necessary to allow a person enough time to get assistance and remove themselves from their gambling routines. This is consistent with the suggested minimum put forward by the Productivity Commission in its 2010 report on gambling in Australia.

Research into self-exclusion schemes has recommended flexibility for patrons, with a range of time periods to be offered.²⁴ Providing patrons this flexibility can improve the effectiveness of self-exclusion by allowing it to be used as a behaviour management tool.

This approach is supported by the recommendations of the Productivity Commission which recommended that there be a balance between flexibility and binding agreements by providing the potential for self-excluded people to revoke their agreements after an appropriate minimum period, subject to evidence of attendance at a counselling service.²⁵

Cost benefit analysis of proposal

There are no related costs associated with this proposal. However, it represents a benefit to patrons by providing increased flexibility, which will encourage patrons to take regular breaks from gambling activity.

6.3 Changes to referrals for gambling counselling services

A period of self-exclusion is generally regarded as more effective when accompanied by gambling counselling. The Bill proposes the following changes around referrals for gambling counselling services:

- ▲ Gambling counselling referrals for self-excluded patrons will be an 'opt out' arrangement, that is unless the patron indicates they do not wish to receive gambling counselling, the venue will arrange an automated referral to a counselling service.
- ▲ Self-exclusion scheme participants will not be forced to attend counselling after the referral, i.e. it will not be mandatory for the self-excluded person to undertake counselling if they do not wish to do so.
- ▲ Venues will be required to notify an excluded patron's counsellor (if they have one) of any breaches or attempted breaches of the patron's exclusion agreement or order, and enter it into the State-wide Exclusion Register.

²⁴ Dr S Gainsbury. (2014). Review of Self-exclusion from Gambling Venues as an Intervention for Problem Gambling 30(2) *Journal of Gambling Studies* p.229-251

²⁵ Productivity Commission. (2010). *Gambling*. Report no. 50, Australian Government: Canberra

- ▲ Counsellors can notify the venue and enter it into the State-wide Exclusion Register if an excluded person has admitted breaching or attempting to breach the exclusion agreement or order, with the consent of the excluded person.

Assessment of proposal

The automatic referral with an opt-out arrangement will mean a person will need to give active consideration as to whether they want counselling. People who have self-excluded and are not interested in undertaking formal counselling will be provided with guidance on access to alternatives to counselling, such as the Office of Responsible Gambling's online assistance and self-help tools.

Requiring venues to notify the counsellor of a breach of an agreement would provide important feedback to the counsellor regarding their client's progress, or lack thereof, and allows for intervention from the counsellor.

Counsellors will also have the option of notifying the venue when a participant admits to a breach or attempted breach of the exclusion agreement or order, if the person has consented to this. This will assist the venue in taking reasonable steps to prevent the excluded person from entering the venue or gaming area.

Requiring counsellors and venues to record a breach or attempted breach by an excluded person into the State-wide Exclusion Register allows other venues to be more vigilant and possibly improve their detection measures to ensure the excluded person does not gain entry.

Cost benefit analysis of proposal

The proposed amendment represents a benefit to participants by encouraging them to access free assistance provided by counselling services.

It is expected to have minimal cost implications for the venue. Venues are already required to offer self-exclusion and provide participants with information about gambling counselling services. Any impact on a venue will be associated with time spent providing information to an excluded person and notifying the person's counsellor of any attempted breaches of the exclusion agreement or order. This role will be undertaken in most cases by the gambling contact officer (i.e. the person on duty with advanced RCG training).

6.4 Third-party and venue exclusions

The Bill provides that:

- ▲ Venues can exclude a person experiencing gambling harm of its own volition, or on application by a family member.
- ▲ It is proposed that a family member will be defined as:
 - a spouse or former spouse of the relevant person,
 - a de facto partner or former de facto partner of the relevant person,
 - a child of the relevant person or any of the above; or a child of whom the relevant person, or any of the above has care and control,
 - a parent or stepparent of the relevant person, or any of the above, and
 - a sibling or stepsibling of a relevant person, or any of the above.
- ▲ The family member's identity and personal details are to be kept confidential.

- ▲ Venues must refer the family member who wishes to make an application to support and counselling services to discuss their concerns prior to any application being lodged.
- ▲ The family member may then lodge an application with the venue themselves or request the gambling counsellor to do so on their behalf.
- ▲ A venue's gambling contact officer is to assess the application based on the information available to the venue and consider the information provided by the family member.
- ▲ The gambling contact officer is to engage with the relevant person and provide support, including counselling service information and the opportunity to self-exclude. If the relevant person chooses to self-exclude, no further action is required.
- ▲ If the relevant person does not wish to self-exclude, the gambling contact officer is to make a recommendation to the licensee about whether to issue an exclusion order, based on belief on reasonable grounds that the relevant person is at risk of harm to themselves, or is at risk of causing harm to a family member, because of gambling. If an exclusion order is proposed, the relevant person is to be provided with an opportunity to make representations to the venue.
- ▲ The licensee is to decide within 21 days of receiving the application. In making this decision, the licensee is to consider: the gambling contact officer's recommendation, information from the family member and any representations from the relevant person.
- ▲ In complex cases, the licensee may seek external advice from an independent adviser pre-approved by the Secretary for this purpose. Licensees will need to provide their proposed decision and the evidence they relied on to reach this decision.
- ▲ The adviser is to review the licensee's proposed decision and indicate whether in their opinion the decision is appropriate in the context of the evidence considered.
- ▲ An exclusion order will apply to all the hotels and registered clubs within a 5km radius of the issuing venue and will be for a minimum of six months.
- ▲ A person aggrieved by a decision to exclude, or not exclude, a person may apply to have the decision reviewed by the Independent Liquor & Gaming Authority:
 - in the case of the excluded person, within 14 days of the order being served on them, and
 - in the case of the family member, within 14 days of being notified of the decision not to exclude.

Assessment of proposal

There is no doubt that exclusions are most effective when initiated by the person experiencing harmful gambling themselves. However, many people do benefit from external interventions, and a forced exclusion can provide the impetus for a person to understand their problem and seek help.

A strong signal of harmful gambling is when family or friends of a patron approach a venue for help. The Productivity Commission's 2010 report recommended that

subject to evidence and due process, there should be a capacity for family members to make applications for third-party exclusions and for nominated venue staff to initiate involuntary exclusions of gamblers on welfare grounds.²⁶

Recent research found that many venues have established procedures for how to respond to concerned family or friends, although this typically involves providing gambling counselling service information to those raising concerns. Further, they did not typically try to assist the patron in question.²⁷

In the absence of a legislated requirement, hotels and clubs have been reluctant to exclude people at the request of a third-party or of their own volition due to concerns about potentially breaching club membership rules or discrimination laws. However, some clubs in NSW have amended their constitutions to allow third-party exclusion.

The proposed new measures will remove any doubt about a venue's responsibility and capacity when it comes to helping people who are experiencing, or at risk of experiencing, harm from gambling activity.

It is proposed that an exclusion order will be for a minimum period of 6 months and will apply to all venues within a 5km radius. This 'exclusion zone' is a measure proposed by industry, to ensure a multi-venue aspect to an exclusion order.

This differs from self-exclusion arrangements where a person has identified that they are experiencing harm from gambling. Under a self-exclusion arrangement, a person can nominate to be excluded from:

- ▲ only the gaming areas of a venue, or of multiple venues,
- ▲ the whole of a venue, or of multiple venues, or
- ▲ a combination of both.

For example, a person may elect to self-exclude from only the gaming areas of venues A and B (so they can still visit the venues to socialise or enjoy a meal and entertainment) and self-exclude from venues C and D entirely.

Potential risk of domestic and family violence

Research on third-party exclusion schemes has suggested a correlation between gambling and domestic violence, with over one-third of 'problem gamblers' having reported as being perpetrators of intimate partner violence.²⁸ Family members interviewed for the study were concerned about the possibility of domestic violence and aggression from the person they are concerned about if they were to request a third-party exclusion. To minimise the risk of potential domestic and family violence to a family member, the proposed scheme has several protection measures.

Importantly, a family member's application for an exclusion order will not be the sole deciding factor in the exclusion process, noting that exclusion orders can be initiated by a venue itself and the licensee will be making the final decision.

²⁶ *ibid.*

²⁷ Hing, N., Russell, A. & Rawat, V. (2020). *Responsible Conduct of Gambling*. [Central Queensland University]. Commissioned by New South Wales Responsible Gambling Fund, Sydney

²⁸ Schottler Consulting. (2017). *The harm minimisation impact of third-party exclusion schemes and possible future directions for NSW*. Liquor & Gaming New South Wales, Sydney.

To ensure a family member is supported through this process, venues must refer them to a counselling service. This provides opportunity for the family member to have access to support services, including for any domestic and family violence they may be experiencing. It will also assist the family member in deciding to lodge the application with the venue themselves or request the gambling counsellor to do so on their behalf.

If the family member is under 18 years old, the gambling counsellor is required to make the application on their behalf.

Additionally, strict privacy restrictions will be in place to ensure a family member's identity or personal details are not disclosed. Any recording of gambling-related incidents in the gambling incident register must not include information about the family member's identity or personal details. Any unauthorised disclosure of their identities or personal details will be an offence carrying a maximum penalty of \$5,500.

In the interests of procedural fairness, the patron is to be provided with the reasons for a proposed exclusion order and allowed to make representations to the venue. It is recognised that there is a potential risk of inadvertent disclosure of a family member's identity when the gambling contact officer provides a patron with reasons, due to the nature of information provided.

For example, a patron could potentially identify a family member's involvement through personal information provided to the venue about a patron's gambling behaviour and financial situation. Care will need to be taken to avoid revealing the family member's identity and measures to be taken will be built into the advanced RCG training.

It is proposed that the venue must decide on an application by a family member within 21 days. This is intended to make sure applications are dealt with quickly, while providing time for a fair decision-making process, including allowing the person concerned to make representations to the licensee.

The Bill provides that an excluded person can apply to the Independent Liquor & Gaming Authority for a review of the exclusion order. A family member may also apply to the Authority where a venue has decided not to issue an exclusion order. An exclusion order will start when it is served on the patron and stays in effect unless the Authority makes a different decision.

Cost benefit analysis of proposal

There will be some costs associated with the processing of an exclusion order by a club or hotel. This will mostly be associated with the training of staff and time spent processing applications, including the fee for using an expert adviser where the venue uses this service.

However, it should be noted that the proposed new arrangements are an expansion of an existing requirement, rather than an entirely new requirement. The new arrangements enhance what is already required of clubs and hotels in meeting their obligations to minimise the harm associated with gambling and community expectations that gambling is conducted in a responsible manner.

It should also be noted that the cost of advanced RCG training will be subsidised by the Responsible Gambling Fund in the initial implementation period for small, rural and regional clubs and hotels.

The exercise of these new exclusion arrangements will provide significant benefits for people experiencing, or at risk of harm from problematic gambling behaviour and reduce costs to the community associated with problem gambling.

6.5 State-wide Exclusion Register and Online Exclusion Portal

The Bill proposes a State-wide Exclusion Register which will provide a central database of excluded persons.

The Online Exclusion Portal, a web-based tool, will allow individuals, independently or with the assistance of a counsellor, to exclude themselves online from one or more venues or gaming areas, without having to enter a venue. Individuals can still choose to self-exclude in person in a venue, if they wish to do so.

The State-wide Exclusion Register will enable all exclusions to be recorded in a central place, whether they are made through individual venues, existing exclusion schemes such as MVSE or BetSafe, or via the Online Exclusion Portal. The Bill requires all venues to record their exclusions (via an electronic process) in the State-wide Exclusion Register to ensure this.

Assessment of proposal

A State-wide Exclusion Register will form an online database of excluded persons in NSW. This will further assist venues to meet their obligations under the legislation, especially in preventing an excluded person entry to the venue or gaming areas.

Once a patron's exclusion details are entered into the State-wide Exclusion Register, each venue they are excluded from will be notified automatically. This will allow venues to have real-time up-to-date information on excluded patrons and reduces the chances of inadvertently allowing an excluded person entry.

In addition, if an excluded person who is receiving support through a counselling service has attempted to breach the exclusion, the venue can notify their counsellor to assist in having that person receive additional support.

Because venues, gambling counsellors and exclusion scheme providers will be sharing information in the State-wide Exclusion Register, strict privacy protections are being proposed to protect the privacy of the individuals who are excluded. Any unauthorised access or disclosure of personal information about any persons who are or were on the State-wide Exclusion Register will be an offence carrying a maximum penalty of \$5,500.

Once the State-wide Exclusion Register is operational, it is proposed that records of existing self-exclusion arrangements will be transferred into the Register. Advice will be sought from the Information and Privacy Commission NSW on the issue of moving those currently self-excluded onto the State-wide Exclusion Register. Feedback on this aspect of the proposal will be given careful consideration.

The Online Exclusion Portal and the State-wide Exclusion Register will be hosted on the NSW Gaming Exclusion Platform. It is proposed that the NSW Gaming Exclusion

Platform will have the capacity to provide an interface for facial recognition providers to link in-venue systems with the State-wide Exclusion Register.

Cost benefit analysis of proposal

It is proposed that the NSW Gambling Platform, the Online Exclusion Portal that it will host and the State-wide Exclusion Register, will be built and maintained by the NSW Government through funding from the Responsible Gambling Fund.

By providing interoperability with facial recognition providers, it will not only provide a central database of excluded persons but also enhance a venue's ability to detect an excluded person by using technology. While the cost of investing in these digital tools is a high investment for government, it is expected to yield long-term benefits for community.

The proposed State-wide Exclusion Register represents a benefit to patrons and the community, by enabling exclusion from multiple venues and ensuring those who seek help through exclusion systems are identified and given the level of assistance they need in a prompt manner. In the future it is also intended to link in with the two Sydney casinos and national self-exclusion register for online wagering.

6.6 Disincentives to breaching exclusions

The Productivity Commission recommended that prizes won by people shown to be in breach of self-exclusion orders should be forfeited to government revenue. The Commission noted that forfeiture of prizes won by a self-excluded patron would reduce the incentive to breach.²⁹

The Bill provides that:

- ▲ A person subject to an exclusion order will be prohibited from gambling in a club or hotel.
- ▲ The venue will be required to suspend the membership of any gaming machine rewards scheme or player account of an excluded person and stop providing an excluded person with promotional material.
- ▲ The venue will also be required to return any funds the person had in their player reward account or on their member card.
- ▲ A person prohibited from gambling in a club or hotel will not be entitled to any winnings from gambling in that club or hotel.
- ▲ There will be a requirement that they must forfeit any prizes to the venue operator.
- ▲ Prizes will include the monetary value of any non-monetary or promotional prizes and any credits on the gaming machine.
- ▲ The venue will be required to pay the amount of any such prizes to the Responsible Gambling Fund within three months of forfeiture.
- ▲ A penalty is to apply if venues fail to pay accordingly.

²⁹ Productivity Commission. (2010). *Gambling*. Report no. 50, Australian Government: Canberra

Assessment of proposal

The *Casino Control Act 1992* requires any winnings by an excluded person to be forfeited to the Responsible Gambling Fund. This is a disincentive to gamble and is an opportunity to refer patrons to counselling services. In 2019, 29 excluded people were required to forfeit their winnings at The Star casino.

The process involving the venue being responsible for remitting the forfeited prizes is like that already applying to clubs and hotels in respect of unclaimed jackpots and gaming machine tickets which are paid into the Community Development Fund.

Forfeiture of prizes by excluded patrons will serve as a strong disincentive to breach their exclusion agreement or order. It also provides a more direct connection between breaching their agreement and the consequences than a fine or other penalty. It is expected that the prize forfeiture requirement will serve as a disincentive for an excluded person to gamble at all.

Introducing prize forfeiture in the ACT has not resulted in participants revoking their self-exclusion agreements. Self-excluded patrons in the ACT have advised that they need a disincentive to gamble. South Australia also introduced prize forfeiture for excluded patrons in 2019.

Cost benefit analysis of proposal

Venues already transfer any unclaimed jackpot prizes and the value of any unclaimed gaming machine tickets to the Community Development Fund. Since the machinery for monetary transfers to the Community Development Fund are already in place, it is anticipated that the venues will incur no additional expense in fulfilling their obligation to pay forfeited amounts to the Responsible Gambling Fund.

The significant social benefit of this measure lies with the deterrent nature of the proposal, while encouraging excluded patrons to comply with the exclusion agreements or orders.

6.7 New offences and increased penalties

NSW and WA are the only jurisdictions in Australia that do not impose penalties for venues that fail to prevent an excluded person from entering and/or remaining in a venue or gaming area (noting that WA does not have gaming machines in clubs and hotels). The Bill introduces a new offence with a maximum penalty of \$27,500 for a venue that fails to take all reasonable steps to prevent an excluded person from entering or remaining in an excluded area.

The Bill also introduces other offences, with the same maximum penalty amount, for a venue that:

- ▲ Fails to assist a family member wishing to make an application to exclude a patron or fails to decide on an application within the specified timeframe.
- ▲ Fails to record exclusions in the State-wide Exclusion Register.
- ▲ Fails to comply with the enhanced self-exclusion arrangements including failing to allow a person to enter into a self-exclusion arrangement.
- ▲ Allows an excluded person to participate in a player reward or loyalty scheme or send them promotional material.

- ▲ Fails to pay the prizes forfeited by an excluded person or minor to the Responsible Gambling Fund within three months.
- ▲ Fails to have a gambling contact officer (i.e. someone with advanced RCG training) on duty when gaming machines are being operated.
- ▲ Fails to take reasonable steps to ensure the gambling contact officer carries out their duties properly.

The Bill also increases the penalties on some existing harm minimisation offences from a maximum of \$11,000 to \$27,500.

Assessment of proposal

Reasonable steps to prevent excluded persons entering or remaining in excluded areas

Exclusion schemes were implemented with the intent of establishing a role for hotels and clubs in assisting patrons experiencing gambling-related harm. If an excluded patron goes undetected, the scheme ceases to be beneficial and is ineffective in reducing gambling harms.

A 2014 review of self-exclusion schemes recommended that penalties be imposed to make the schemes more effective and place greater requirements on venues to enforce self-exclusion schemes.³⁰ Later research into gambler self-help strategies found that many self-excluded patrons felt that venues did not monitor self-exclusion schemes or could be persuaded to allow self-excluded patrons to continue to access gaming areas.³¹

As part of the *NSW Gambling Survey 2019*, patrons who had self-excluded were asked if they had tried to re-enter the venue(s) they self-excluded from. Twenty-two per cent attempted to re-enter the venue(s) during the self-exclusion period. Of those who attempted to re-enter the venue(s), 92% were successful in doing so.³² This indicates that the existing self-exclusion arrangements are not working as intended.

NSW is not alone in seeking to improve on its self-exclusion framework. Some jurisdictions have made allowing a self-excluded patron to gamble a strict liability offence. This means that a club or hotelier is guilty of an offence whether or not they had measures in place to prevent a self-excluded person from entering the venue, or whether they were even aware that a self-excluded person had entered the venue and/or played gaming machines.

A strict liability offence is not being proposed for NSW. Under the proposed reforms, hotels and clubs which do not take reasonable steps to prevent excluded patrons from entering or remaining in the relevant excluded areas (i.e. gaming areas and/or the entire venue) will be penalised.

³⁰ Dr S Gainsbury. (2014). Review of Self-exclusion from Gambling Venues as an Intervention for Problem Gambling 30(2) *Journal of Gambling Studies* p.229-251

³¹ Prof D Lubman et al. (2015). *Gambler Self-Help Strategies: A Comprehensive Assessment of Strategies and Actions*. Gambling Research Australia

³² Central Queensland University. (2019). *NSW Gambling Survey, 2019*. Commissioned by New South Wales Responsible Gambling Fund, Sydney

It is proposed that the Secretary will issue guidelines to assist a hotel or club in determining what are reasonable steps. The draft '*Access to gaming machines – reasonable steps guidelines*' (**Attachment C**) was developed in consultation with the Office of Responsible Gambling. The guidelines provide information about the types of things that will be considered as 'reasonable steps'. Venues will have a defence against the proposed new offence if they can prove that they complied with the guidelines.

While visitors to clubs are required to be members or 'sign-in' and present identification, hotels do not require this of patrons. This makes it more difficult for hotels to monitor whether a person is excluded from the venue or gaming areas. While venues should continue to have a duty to ensure that excluded persons are not allowed to enter their premises, any requirements should reflect what is reasonable and practical for a venue to do so.

Emerging and existing technology could be used to support exclusion schemes, particularly regarding early identification of excluded patrons entering a venue. A review into self-exclusion schemes recommended for more to be done to monitor self-excluded patrons, such as by checking ID prior to entry as one would expect when buying alcohol or boarding a plane.³³

While facial recognition technology (FRT) has been around for some years, it is only recently that advances in camera resolution, light sensitivity and identification algorithms have made it an option for screening people entering hotels and clubs. The cost of this technology has also decreased significantly.

A 2018/2019 trial of FRT at 20 New Zealand venues resulted in the identification of a significantly higher number of patrons breaching their exclusion agreements than anticipated. In 2019, South Australia passed a law making FRT in gaming rooms compulsory for venues with more than 30 gaming machines to identify barred patrons and alert gaming venue staff when a barred patron is detected entering the gaming room. This requirement comes into effect from 3 December 2020.

There is clear potential for FRT to improve compliance with exclusions, particularly for larger clubs and hotels with multiple points of entry to the venue and/or gaming areas within the venue. FRT would be an improvement on the existing photo-based exclusion system.

The penalty amounts

It is proposed that the new offences and several existing offences will carry a maximum 250 penalty units (\$27,500).

The increased penalties will serve as a significant financial deterrent to non-compliance for venues. It is considered that they are equal to the level of harm that they are aimed at preventing and reflect community expectations.

Cost benefit analysis of proposal

Venues are likely to face additional costs in implementing measures that satisfy the 'reasonable steps' criteria. It is recognised that the implementation of new technology such as FRT represents additional costs as well as ongoing maintenance expenses

³³ *ibid.*

for venues. However, the reasonable steps test will ensure a fair approach to enforcement between larger venues that can afford to do more, and smaller venues.

Industry representative bodies may also have opportunities to enter into negotiations with technology providers on behalf and in the best interests of their members. This could also lead to savings for venues.

The wider community will benefit from the introduction of the proposed offences because it will deter venues from practices that may exacerbate gambling harm and encourage compliance with harm minimisation requirements.

6.8 Responsible Conduct of Gambling (RCG) training

The Bill will:

- ▲ Establish two-tiers of RCG training by introducing advanced RCG training for those with greater harm minimisation responsibilities (e.g. hoteliers and club secretaries) with a refresher course needed to be taken every 3 years.
- ▲ A person appointed as a gambling contact officer must have completed advanced RCG training.

Assessment of proposal

Venue gaming staff and managers must be properly trained to reliably identify patrons experiencing gambling-related harm and intervene in an effective way. The current RCG training program will be changed so there is a greater focus on the practical side of reducing gambling harm.

The revised program will support the proposed requirement for venues to identify gamblers behaving in risky manner and provide them with assistance.

Recent research found that industry employees felt training should focus on new developments and provide different levels of training according to the experience and job level of the employee.³⁴ The two-tiered model is intended to address this, with the advanced RCG training content to reflect the higher level of patron engagement and harm minimisation responsibilities of the gambling contact officer and venue management.

Currently, the liquor laws allow the Independent Liquor & Gaming Authority to suspend or revoke a person's Responsible Service of Alcohol (RSA) endorsement or disqualify the person from holding an RSA endorsement for up to 12 months, where the person has not met their obligations. The threat of losing an RSA endorsement is a major incentive for a person to comply with their RSA obligations.

However, there is no similar framework for gaming. It is proposed that similar action can be taken when a person does not meet their RCG obligations.

Cost benefit analysis of proposal

While the proposed measures represent additional training costs for industry, this will be offset by the benefits of having staff with an improved skillset and the ability to manage and mitigate risks of gambling harm.

³⁴ Hing, N., Russell, A. & Rawat, V. (2020). Responsible Conduct of Gambling. [Central Queensland University]. Commissioned by New South Wales Responsible Gambling Fund, Sydney

The cost of advanced RCG training will also be subsidised by the Responsible Gambling Fund in the initial implementation period for small, rural and regional clubs and hotels. After this period, it is expected that the costs of training will be covered in the same way as for RSA and current RCG training.

The revision of gambling course material and the advanced level of training for gambling contact officers will certainly benefit the wider community. Venue staff will be better trained to identify patrons experiencing gambling-related harm and intervene in an effective way.

It is considered that, given the existing RSA framework, it not unreasonable that a person can also lose their RCG endorsement for failure to meet their obligations under the legislation.

6.9 Whistle-blower protections

The proposed Bill provides legislative protections to allow staff to raise concerns in relation to a venue's harm minimisation obligations without fear of being dismissed or otherwise disadvantaged in their employment.

Assessment of proposal

Venue staff may be reluctant to report breaches of harm minimisation requirements and instances where their venue is knowingly allowing excluded patrons to play its gaming machines for fear of retribution.

The proposed 'whistle-blower' protections are based on those in the *Work Health and Safety Act 2011* (NSW).

Information from staff about a venue not meeting its harm minimisation requirements allows action to be taken against the venue and improve outcomes for gamblers that may be at risk of harm. Staff who raise concerns about breaches of gaming welfare provisions deserve protection in the same way employees who raise workplace health and safety issues are protected.

Under the proposed protections for employees who report breaches of harm minimisation requirements, the venue will not be able to:

- ▲ dismiss a worker,
- ▲ terminate a contract for services with a worker, or
- ▲ alter the position of a worker to the worker's detriment.

Cost benefit analysis of proposal

It is recognised that venues will incur additional costs to establish, implement and maintain a whistle-blower policy. There is potential for peak industry groups to assist venues to manage this requirement and minimise cost impacts.

Attachment A – Exclusion schemes by jurisdiction

Australian Capital Territory

In the ACT, all gambling venues have a gambling contact officer, who is required by law to assist patrons with completing the *Self-Exclusion from Gambling Deed* form. The Deed allows a person to self-exclude from all venues (i.e. state-wide), or types of venues, or individual venues (including all venues in a region). Participants are also able to self-identify venues that are hotspots, i.e. those that the person believes they may have more difficulty in not visiting.

Venues and concerned family members may also initiate exclusion if there is concern for the participant's wellbeing. The minimum period for self-exclusion is six months and the maximum period is 3 years but may be revoked within the seven days cooling off period. Self-exclusion scheme regulation is consistent across all clubs, hotels, casinos, bookmakers and totalizator outlets.

Venues are also liable for failure to enforce a self-exclusion and may result in a maximum penalty of \$7,500 in accordance with ACT regulations.

Northern Territory

A multi-venue self-exclusion process was recently launched in the Northern Territory. Patrons must speak with a counsellor or a community liaison officer at a venue, who will enter the details into an online system and have the patron sign the printed self-exclusion deed. They will also take a photo of the patron. For a venue-by-venue self-exclusion, patrons must also provide a recent passport sized photo along with a self-exclusion notice.

There is a cooling off period of three days in which a patron can revoke the self-exclusion notice by contacting the relevant gambling venue, and the minimum self-exclusion period is three months. If a venue fails to take appropriate action to remove a self-excluded patron from a nominated area, there is a maximum penalty of \$19,625.

Queensland

Queensland has two types of exclusion – a venue-initiated exclusion where staff concerned about an individual's gambling behaviour can initiate barring from a venue, and a self-exclusion scheme.

Patrons may elect to self-exclude from gambling venues by completing a self-exclusion notice, including a recent photo of the person. In return they receive a self-exclusion order from the Queensland Office of Liquor and Gaming Regulation. Once a self-exclusion order has been received by the patron, the patron has a cooling off period of 24 hours to revoke the order. The minimum period for self-exclusion is 12 months, with a maximum period of five years.

A person who breaches their self-exclusion agreement or exclusion order can be issued with a fine of up to \$5,338. If a venue fails to take reasonable steps to prevent an excluded person from entering or remaining in the nominated area, there is a maximum penalty of \$33,362.

South Australia

South Australia offers different types of gambling exclusion: self-exclusion, involuntary barring under a 'barring order' or under a 'family protection order'. Changes made to the exclusion schemes under the 2019 legislative reforms that are yet to commence are detailed below.

A patron can exclude themselves from a part of, or the whole of, one or more venues. The exclusion can be for an unlimited period, with a minimum of 3 months if organised through a venue, or 12 months if organised through the Commissioner.

Venues and the Commissioner can involuntarily bar a person, if there is a reasonable apprehension or the person's behaviour indicates that the person is at risk of harm or is at risk of causing harm to a family member because of gambling. A third party, i.e. anyone concerned about the person's gambling behaviour, can request a barring order either through the venue or the Commissioner. If a venue refuses a barring request, they must notify the Commissioner who will review the decision. If the gambler does not agree to voluntary barring during this process, then a hearing will be held to determine if an involuntary barring order should be issued.

A person who breaches their barring order can be issued with a fine of up to \$2,500. If a venue fails to take reasonable steps to prevent a barred person from breaching their barring order, there is a maximum penalty of \$10,000.

An involuntary barring under a family protection order allows a person to be barred from gambling because it affects those dependent on them. A family protection order has a similar process as for the barring order. But it has more stringent criteria as to who can apply, because the family protection barring orders can impose significant personal and financial restrictions on a gambler including, barred from venue, compelled to attend counselling, wages paid directly to a family member, restriction on taking possession of personal property etc.

Tasmania

Tasmania's exclusion schemes allow a participant to be excluded by a venue, a third-party or the Tasmanian Liquor and Gaming Commission.

To self-exclude, a participant must contact the Gambler's Help service or the Gambling Helpline to make an appointment to arrange self-exclusion. In the appointment with Gambler's Help, the participant is assisted in completing a self-exclusion notice, and their photograph is also taken.

The minimum self-exclusion period is six months, and self-exclusion orders may not be revoked during this time. After 6 months, a self-exclusion order may be revoked through a Gambler's Help counsellor.

In Tasmania, self-excluded patrons in breach of their agreement can be issued with a fine of \$3,440. Venues that fail to detect the breach or allow self-excluded patrons to gamble can face a maximum penalty of \$17,200.

Victoria

In Victoria self-exclusion schemes are operated on a venue by venue basis. The Victorian branch of the Australian Hotels Association (AHA) and Community Clubs Victoria also operate their own self-exclusion schemes for venues that are members of these organisations, allowing multi-venue self-exclusion in a single application.

Venues offer an exclusion deed to be completed by participants, which are available either online or at venues on request. The minimum period is 6 months and the maximum is 2 years. Venues are expected to keep a recent photograph of the self-excluded participant for identification purposes to monitor the ban.

A licensed provider must not accept a wager from a self-excluded person, carrying a maximum penalty of \$39,653.

Self-Exclusion Features	NSW	ACT	NT	QLD	SA	TAS	VIC	WA	NZ
Minimum Period	6 months	6 months	3 months	12 months	3 months if organised through a venue; 12 months if organised through regulator	6 months	6 months	12 months	No minimum period
Minimum revocation period	6 months	May be revoked at any time Revocation has a 7-day cooling off period	3 months, 3 day cooling off period	12 months, 24 hour cooling off period	3 months if organised through a venue; 12 months if organised through regulator	6 months	6 months	12 months	An order cannot be revoked
Who can exclude a player?	Individuals	Individuals and venues	Individuals	Venues and individuals	Individuals, venues and third-party	Individuals, venues and third-party	Individuals	Individuals, casino staff and third-party exclusion	Individuals and venues
Penalties for venues failing to detect breaches	No	Max. fine \$7,500	Max. fine \$19,625	Maximum fine of \$33,362 for licensees or \$5,338 for another person who fails to detect a breach	Max. fine \$10,000	Max. fine \$17,200	Max. fine determined under disciplinary action	No	Max. fine NZ\$5,000
Individual penalties for breach	No	No penalty but letter from Scheme administrator	No	Max. fine \$5,338	Max. fine \$2,500	Max. fine \$3,440	No	No	Max. fine NZ\$500
Where can people sign up?	In person at a venue, or online through an industry run multi-venue self-exclusion program	In person at a venue, through a gambling help provider or by email to the scheme administrator	In person at a venue, or through a gambling help provider	In person at a venue or through Gambling Help	In person at venue or regulator or via telephone Can also be initiated via email or text message or by gambling help provider	Through a gambling help provider	In person at a venue	In person or via telephone	In person at a venue or by writing or phone, including under national multi venue exclusion

Attachment B - Signs of risky and problem gambling behaviour: Know the signs and how to act

General Signs		What to do
<p><i>Length of play</i></p> <ul style="list-style-type: none"> Starts gambling when the venue is opening or only stops when venue is closing Gambles most days <p><i>Behaviour during play</i></p> <ul style="list-style-type: none"> Gambles on two or more machines at once Rushes from one machine to another Significant increase in spending pattern Complains to staff about losing, or blames venue or machines for losing Rituals or superstitious behaviours (rubbing or talking to machine) 	<p><i>Money</i></p> <ul style="list-style-type: none"> Asks to change large notes before gambling Uses coin machine at least four times 	<p>Seen by themselves, these signs may be an early warning sign. Someone displaying several of these signs could be experiencing problems with gambling.</p> <ul style="list-style-type: none"> Monitor the person's behaviour If you observe a patron who is exhibiting two or more signs you should record what you have seen in the gambling incident register and notify your Gambling Contact Officer.
Probable Signs		What to do
<p><i>Length of play</i></p> <ul style="list-style-type: none"> Finds it difficult to stop gambling at closing time <p><i>Behaviour during play</i></p> <ul style="list-style-type: none"> Often gambles for long periods (three or more hours) without a proper break Plays very fast Gambles intensely without reacting to what's going on around him/her 	<p><i>Money</i></p> <ul style="list-style-type: none"> Gets cash out on two or more occasions through ATM or EFTPOS Avoids cashier and only uses cash facilities Puts large wins back into the machine EFTPOS repeatedly declined <p><i>Social behaviours</i></p> <ul style="list-style-type: none"> Becomes angry or stands over others if someone takes their favourite machine/spot 	<p>Someone displaying any of these signs is much more likely to be experiencing problems with gambling.</p> <ul style="list-style-type: none"> Monitor the person's behaviour Record what you have seen in the gambling incident register Notify your Gambling Contact Officer who will engage with the patron If a patron displays two or more Probable Signs escalate to Strong Signs approach.
Strong Signs		What to do
<p><i>Length of play</i></p> <ul style="list-style-type: none"> Gambles from opening to closing <p><i>Behaviour during play</i></p> <ul style="list-style-type: none"> Shows obvious signs of distress or anger (crying, holding head in hands, shaking, outburst towards staff or machine) 	<p><i>Money</i></p> <ul style="list-style-type: none"> Tries to borrow money from customers or staff <p><i>Social behaviours</i></p> <ul style="list-style-type: none"> Tells staff that gambling is causing them problems Significant decline in personal grooming and/or appearance over several days Friends or family raise concerns Conceals their presence at the venue (doesn't answer mobile phone, asks staff not to let others know they are there) 	<p>It is highly probable that someone displaying any of these signs is experiencing problems with gambling.</p> <ul style="list-style-type: none"> Monitor the person's behaviour Record what you have seen in the gambling incident register Notify your Gambling Contact Officer The Gambling Contact Officer will engage with the patron, refer to support and counselling services, provide them with the opportunity to self-exclude, and recommend an exclusion order be issued if it is considered that the person is at risk of harm or at risk of causing harm to others.

This summary was developed by the Office of Responsible Gambling based on international and Australian best practices and informed by key research. Research utilised includes: "Observable indicators and behaviours for the identification of problem gamblers in venue environments" and "Validation Study of In-Venue Problem Gambling Indicators".

Attachment C – Access to gaming machines – reasonable steps guideline

These guidelines are designed to help hotels and registered clubs understand what will be considered as reasonable steps for the purposes for preventing an excluded person from accessing gaming machines.

Overview

Venues need to always consider the objectives of gaming machines legislation, and their obligations under the legislation, to:

- ▲ Minimise harm associated with the misuse and abuse of gambling activities, and
- ▲ Foster responsible conduct in relation to gambling.

What is the law?

Section 42D of the *Gaming Machines Act 2001* requires a registered club or hotel to take all reasonable steps to stop an excluded person from entering, or remaining in, the excluded areas. The excluded areas may be the entire venue, or just the gaming areas.

An excluded person is someone who has:

- ▲ Voluntarily self-excluded themselves from the venue or the gaming areas, or
- ▲ Been issued with an exclusion order by the venue (including those initiated by family members), which apply to the entire venue.

Penalties of up to \$27,500 can apply if a venue fails to take all reasonable steps to prevent an excluded person from entering or remaining in the relevant excluded areas.

What reasonable steps do venues need to take?

Venues will need to take all reasonable steps to stop an excluded person from entering or remaining in the venue and/or gaming areas. 'All reasonable steps' is likely to be different from venue to venue, taking into consideration factors such as the type of venue, size of venue, location of gaming areas, hours of operation and financial capacity of the venue.

Reasonable measures

The steps venues can take to prevent an excluded person from entering or remaining in the venue/s or gaming areas are set out below.

While a venue is not required to take each measure under these guidelines, it needs to implement sufficient measures relative to its size, number of entry/exit points, volume of patronage etc to demonstrate it has taken all reasonable steps.

Overall, there is an expectation that there will be active efforts to prevent excluded persons from accessing gaming areas.

Placing signage at the entrance of the venue or the designated gambling areas stating this restriction (i.e. excluded persons not permitted entry) would not be considered to be sufficient to satisfy an 'all reasonable steps' test.

Available measures may include enhanced venue access controls, staff training, and patron engagement and education.

The two key facets of reasonable steps will relate to:

1. Steps to prevent entry
2. Steps to detect excluded person on the premises.

For some venues, such as clubs that already have sign-in requirements, entry controls might be the key focus. For venues such as hotels, greater focus might be on the monitoring of patrons in gaming areas.

Reasonable steps to prevent entry

Enhanced venue access controls might include:

- ▲ Documented processes are in place and implemented to ensure excluded persons do not enter the gaming areas.
- ▲ Recording of instances where excluded persons have attempted to enter and recent detections.
- ▲ Consistent implementation of ID checks at all entry points to the venue.
- ▲ Entry points to the venue being actively monitored, whether in person or via other means (e.g. CCTV).

- ▲ Appropriately trained security personnel (roaming and/or static) at venue entry/exit points.
- ▲ Linking electronic sign-in capabilities with exclusion register checks.
- ▲ Implementation of facial recognition technology, especially where CCTV capabilities are already in place.

Steps to detect excluded person on the premises

Regular update of excluded persons list

- ▲ Appointment of a Responsible Gaming Manager (for multiple venues) or individual (i.e. Gambling Contact Officer) to have responsibility to ensure exclusion processes are complied with.
- ▲ Records of excluded persons are kept up to date e.g. regular monitoring of the State-wide Exclusion Register (via the NSW Gaming Exclusion Portal).
- ▲ Linking excluded persons information to loyalty program data so that they can be detected if using a loyalty card.

Staff training

- ▲ Documented processes are in place and implemented to ensure staff familiarise themselves with photos and personal details of excluded persons on a regular basis.
- ▲ Staff are trained to identify excluded patrons and on the processes of approaching/interacting with suspected excluded persons (e.g. escalate to Gambling Contact Officer or duty manager).
- ▲ Documented processes are in place and implemented to ensure all breaches or attempted breaches are recorded in the venue's gambling incident register.
- ▲ Staff are trained regarding identification requirements and acceptable forms of ID.
- ▲ Staff duties and work practices are designed in a way that allows them to implement the relevant processes (e.g. ensuring adequate staffing to provide for monitoring of gaming areas).

Patron engagement & education

- ▲ Patrons are aware of the restrictions and penalties (e.g. via signage, direct communication to members).
- ▲ Patrons are advised of the high likelihood that they will be caught if breaching the exclusion order.

- ▲ Patrons are advised of the prize forfeiture provisions.

Use of facial recognition technology

Facial recognition technology can be an effective tool as a detection system for venues to maximise their compliance with exclusion schemes.

CCTV capability is a critical element of an effective facial recognition system and is already established in many venues (albeit with varying degrees of technical sophistication and coverage). In future, there will be the ability to link such systems with the NSW Gaming Exclusion Platform (containing the State-wide Exclusion Register), enabling venues to demonstrate a high degree of compliance with the 'reasonable steps' requirement.

Such systems would need to ensure:

- ▲ Coverage of relevant areas (e.g. a stand-alone gaming room in a hotel).
- ▲ Equipment is maintained.
- ▲ Links to external systems are operating.
- ▲ Alerts generated by the system are acted on.

Compliance and enforcement approach

These measures are not exhaustive. Additionally, the measures considered as reasonable steps for one venue may be different to another.

For example, it may be considered reasonable for a larger venue with multiple entry/exit points to implement facial recognition technology and/or ID scanning in order to prevent excluded persons entering the excluded areas as its main compliance measure, alongside other supportive measures. For a smaller venue, reasonable steps may be the non-technology-based measures. L&GNSW will employ a differentiated enforcement approach taking into consideration the venue size, number of entry/exist points, patron capacity, number of gaming machine entitlements for example.

Venues and responsible persons for venues have protection from civil and criminal liability if they use no more force than is reasonable to prevent an excluded person from entering or remaining in the exclusion areas.