PHIL BENNETT
CONSULTING

8th July 2019

Remake of the Gaming Machines Regulation
Liquor & Gaming NSW
GPO Box 7060
SYDNEY NSW 2001

Dear Sir/Madam,

Re: Proposed Gaming Machines Regulation 2019

Thank you for the opportunity to make a submission concerning review of the proposed Gaming Machines Regulation 2019.

The amendments already proposed and included in the Public Consultation Draft are mostly welcomed.

Please find the attached list of additional suggested amendments and a brief explanation of the reasoning for my views.

Should you require further information or wish to discuss any part of my submission, please do not hesitate to contact me by email [redacted] or on my mobile phone [redacted].

Yours faithfully.

Phil Bennett
Managing Director

P.O. Box 456, Penrith NSW 2751
Tel: [redacted] Phil Bennett: [redacted]
Email [redacted] www.philbennett.com.au
Legal Gaming & Hospitality Management Pty. Ltd. ACN: 003 865 558

SUBMISSION TO LIQUOR & GAMING NSW
CONCERNING THE PROPOSED GAMING MACHINES REGULATION 2019

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1. About the writer

I have been a consultant in the field of gaming machine management and compliance for the past 30 years. In the 1980's, I served the NSW Treasury, Liquor Administration Board and the Chief Secretary's Department with responsibility for development of gaming machine policy and legislation. My work included the merging of gaming machine legislation into the new Gaming Machines Act and the Gaming Machines Regulation, which was formerly split between the Liquor (for hotels) and Registered Clubs (for clubs) legislation. I was also responsible for introduction of the licensing scheme for gaming machine industry participants, progressive jackpot systems and other reforms enacted in the Gaming Machines Act and the Regulation. I have sound knowledge of the legislation and the intention of various gaming machine laws.

2. Introduction

This submission addresses the proposed Gaming Machines Regulation 2019 (the 2019 Regulation) and suggests amendments to some provisions of the 2019 Regulation that are:

- obsolete;
- inconsistent with the Gaming Machines Act 2001 (the Act) and other gaming legislation; or
- contrary to current industry practices and/or technologies.

I note that many clauses of the 2019 Regulation have survived for more than 30 years. This review provides Liquor & Gaming NSW with an opportunity to rid the 2019 Regulation of some obsolete provisions and achieve better regulation.

References to clauses are those as numbered in the 2019 Regulation draft.

3. Clause 8(e) – Hotel gaming rooms

The retained subclause (e) of clause 8 is inconsistent with the provisions and intentions of section 44A of the Act. Introduction of the smoking prohibitions caused hotels to modify their gaming rooms often with louvres or see-through solutions which unintentionally increased the visibility of machines to persons outside hotels. Thus, complying with one law inadvertently resulted in many hotels being in breach of another. I suggest that Section 44A of the Act is an adequate regulatory measure and subclause (e) of clause 8 should be repealed.

4. Clause 10(2)(a) – Faulty gaming machines

The proposed amendment to subclause 2(a) of clause 10 by insertion of the word "immediate" makes compliance with the subclause problematic. It is unreasonable for the legislature to expect that a person who represents a venue will be standing at a gaming machine ready to switch it off at the precise time when that person becomes aware that a gaming machine is faulty. I suggest that the words "as soon as reasonably practicable" should be inserted instead of the word "immediate" in subclause (a) of clause 10(2).

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5. Clause 11(2) – Other requirements relating to prizes

The wording of retained clause 11(2) is now not strictly correct for some products, such as a collection of gaming machines with RTP of much less than 85% that are combined with a related progressive jackpot system, e.g. Cash Express, Fa Fa Fa, etc. I suggest that subclause 11(2) should be amended to recognise such products.

6. Clause 11(3)(c) – Other requirements relating to prizes

In clause 11(3)(c) it implies that a prizewinner has a right to choose to receive money instead of any non-monetary prize awarded. That old provision is inconsistent with the newer section 45 of the Act, which prohibits a "promotional prize" in the form of cash. I suggest that subclause (c) of clause 11(3) should be repealed.

7. Clause 12(c) – Records relating to prizes to be kept by clubs

All approved gaming machines now display the credit meter as a monetary value. Therefore, there is no need to make a record of the number of credits that are to be redeemed when subclause (d) requires a record of the monetary amount or value. I suggest that subclause (c) of clause 12 should be repealed.

8. Clause 12(f) – Records relating to prizes to be kept by clubs

Following on from the previous point, I suggest that subclause (f) of clause 12 should be amended by deleting the word "number" and inserting instead the word "value".

9. Clause 14 – Guarantee of prize payments from multi-terminal gaming machines

Clause 14 is a legacy provision from the days when multi-terminal gaming machines were first introduced. It is not currently possible for a player to win a prize exceeding $20,000 on a multi-terminal gaming machine. I suggest that the levels of compliance with clause 14 and others like it (clauses 87 and 89) and knowledge of them within the industry are very low. Even if a multi-terminal gaming machine offered a prize exceeding $20,000, there is no need for such a provision as there is adequate consumer protection law in other legislation. I suggest that clause 14 should be repealed.

10. Clause 15(5) – Clubs required to record certain information in relation to gaming machines

Subclause (5) of clause 15 is a legacy provision from the days when gaming machines had mechanical or electro-mechanical meters as their primary meters. Electronic (soft) meters are the primary meters of modern gaming machines, which reset from RAM failure rather than malfunction. It is not reasonable to expect a club to know instantly when a soft meter resets making compliance impossible. With the CMS and clubs' electronic metering systems, the need for a club to react as required is unnecessary. I suggest that subclause (5) of clause 15 should be repealed.

11. Clause 17(2) – Clearance and refilling of gaming machines in clubs

Subclause (2) of clause 17 does not reflect current practices that have evolved with advances in technology. Instead of making hand-written records, many clubs now rely on note counting machines which produce a printed tape and/or a flat file (e.g. formatted as a .txt or .csv etc.) which do not record a machine's serial number. The printed tape and the flat file might refer to the club's house number and/or GMID but not the serial number. I suggest that subclause (2) of clause 17 should be re-worded to reflect all current practices and technologies.

12. Clause 18(2)(a) – Display of information concerning chances of winning prizes on gaming machines

Clause 18(2)(a) has been the subject of different interpretations by gaming machine venues and compliance practitioners. The reason for this is that the provision begins by stating that the notice must be displayed in each part of a venue where approved gaming machines are located. It then goes on to specify that the notice must be displayed in a manner and in a place such that it would be reasonable to expect that a person entering the part of the venue, in which the notices are displayed would be alerted to their contents. The latter part of subclause 2(a) has been interpreted by some to mean that, notwithstanding the first requirement, the notice must be displayed at points of entry to the gaming areas, i.e. outside (not in) the gaming machine areas. It is suggested that subclause 2(a) should be amended to make it clearer where the notices must be displayed.

13. Clause 26(1)(b) – Payment of prize money by cheque or electronic funds transfer

Clause 26(1)(b) does not state that the EFT account nominated by the person must be an account that bears the prizewinner's name. Some venues have paid prizes by EFT to nominated accounts in the name of businesses, companies and other persons. I suggest that the proposed subclause (1)(b) should be amended to specify that the account must bear the name of the prizewinner.

14. Clause 26(2) & (3) – Payment of prize money by cheque or electronic funds transfer

Subclauses (2) and (3) of clause 26 do not appear to include prizes that are awarded by subsidiary equipment (e.g. progressive jackpots), which do not increment a machine's credit meter. I suspect it would have been the intention of the responsible gambling provisions that such payments of progressive jackpot prizes be similarly controlled. I suggest that the definition of "total prize money" should be re-worded to make it clear that the proposed clause 26(3) applies to all gaming machine related prizes that exceed $5,000 in value.

15. Clause 41(1)(b) – Gaming machine advertising and signs—exclusions

Clause 41 is defective because subclauses (1)(b) and (4) do not exclude a hotel from the offence provisions of section 43 of the Act in the same way that clubs are excluded. Typically, player reward schemes approved by the Authority in hotels and clubs are the means by which the venues send promotional material to members of their membership programs. Player cards and player reward schemes conducted by a hotelier are recognised by section 45 of the Act and in the proposed Part 6 (particularly clauses 90, 92 and 93) of the 2019 Regulation. Clause 34 of the Casino Control Regulation 2009 also excludes a casino operator from a parallel prohibition (section 70A of the Casino Control Act 1992) if it sends promotional material that includes gaming machine advertising to members of its membership program. The absence of exclusion for a hotelier in Clause 41 is inconsistent and inequitable with the notion that all gaming machines venues should receive the same relief. I suggest that clause 41 should be amended to provide similar relief to a hotelier, perhaps by adopting the wording of Clause 34 of the Casino Control Regulation 2009 applicable to a hotelier.

16. Clause 80(3) – Access to authorised progressive gaming machines or systems

Subclause (3) of clause 80 is a legacy provision from the days when gaming machines had mechanical or electro-mechanical meters as their primary meters. Electronic (soft) meters are the primary meters of modern gaming machines, which reset from RAM failure rather than malfunction. It is not reasonable to expect a venue to know instantly when a soft meter resets making compliance impossible. With the CMS and venues' electronic metering systems, the need for a venue to react as required is unnecessary. Moreover, any fault with a progressive meter of an approved machine or an approved system is adequately covered by subclauses (1) and (2). I suggest that subclause (3) of clause 80 should be repealed.

17. Clause 85(c) – Records and requirements relating to prizewinners (a hotelier)

All approved gaming machines now display the credit meter as a monetary value. Therefore, there is no need to make a record of the number of credits that are to be redeemed when subclause (d) requires a record of the monetary amount or value. I suggest that subclause (c) of clause 85 should be repealed.

18. Clause 85(f) – Records and requirements relating to prizewinners (a hotelier)

Following on from the previous point, I suggest that subclause (f) of clause 85 should be amended by deleting the word "number" and inserting instead the word "value".

19. Clause 87 – Guarantee of prize payments from authorised progressive machines and systems (hoteliers)

Clause 87 is a legacy provision from the days when progressive machines and progressive jackpot systems were first introduced. I suggest that the levels of compliance with the clause and knowledge within the hotel industry of its requirements are very low. There is no need for such a provision as there is adequate consumer protection law in other legislation. I suggest that clause 87 should be repealed.

20. Clause 88(9) – Authorised progressive systems—reading and recording of meters and jackpot reconciliations

Subclause (9) of clause 88 is a legacy provision from the days when progressive jackpot systems were first introduced. It is not necessary to separate the performance of such machines as a group in the net revenue analysis from other machines. Each machine is still separately listed and, in any case, the value of progressive jackpots should not be included in calculation of each machine's profit in the net revenue analysis. I suggest that subclause (9) of clause 88 should be repealed.

21. Clause 89 – Guarantee of prize payments from authorised progressive machines and systems (clubs)

Clause 89 is a legacy provision from the days when progressive machines and progressive jackpot systems were first introduced. I suggest that the levels of compliance with the clause and knowledge within the club industry of its requirements are very low. There is no need for such a provision as there is adequate consumer protection law in other legislation. I suggest that clause 87 should be repealed.

22. Clause 95 – Maximum amount held in player accounts or stored on Smartcards

Clause 95 refers to a Smartcard and Section 45B of the Act defines a Smartcard. There is now a range of other devices, e.g. tags, Smart Phones, etc. that can achieve the same outcomes which the gaming machine industry is in the process of developing. Yet, it appears that the legislation cannot accommodate new technologies owing to the definition that a Smartcard must be a card. Unfortunately, amendment of the Regulation will be insufficient as section 45B of the Act will also require amendment to achieve change to match current and future technologies. I suggest that the word "Smartcard" in the Act and in the 2019 Regulation should be amended to "Smartdevice" or some other appropriate word and section 45B of the Act should be amended by deleting the word "card" and inserting instead the word "device" or another suitable word.
