

02 July 2019

Remake of the Gaming Machines Regulation
Liquor & Gaming NSW
GPO Box 7060
SYDNEY NSW 2001
Via email: gm.regulation@liquorandgaming.nsw.gov.au

To whom it may concern,

RE: Remake of the Gaming Machines Regulation

The Gaming Machines Regulation 2010 is due to expire on 1 September 2019. Before the proposed Regulation can be made law, a formal public consultation process must take place in line with the *Subordinate Legislation Act 1989*.

The Australian Hotels Association (AHA) NSW is pleased to make a contribution to this process.

The following submission makes comment on the changes proposed within the Regulatory Impact Statement prepared by Liquor & Gaming NSW, as well as proposes a small number of additional changes to the Regulation.

Should you require further information or wish to discuss any of the issues raised in the attached submission, do not hesitate in contacting me on [REDACTED] or via email [REDACTED].

Yours faithfully,

JOHN WHELAN
Chief Executive Officer

► Who We Are

The Australian Hotels Association (AHA) NSW is a federally registered industrial relations association representing the interests of more than 1,800 hotels, pubs, taverns, and small bars throughout New South Wales.

In addition to the sale and supply of alcohol by retail, hotels offer a wide range of ancillary services, such as excellent food, wagering, accommodation, live music, and the provision of gaming in the form of Electronic Gaming Machines (EGMs).

Our members employ more than 70,000 people, donate more than \$25 million per year to charitable, community and sporting organisations, serve over 2.5 million meals every week, host 75,000 nights of live music every year, and contribute well in excess of \$1 billion in taxes and other levies annually to all levels of Government.

► Proposed Gaming Machines Regulation 2019

The AHA NSW supports the objectives of the proposed Gaming Machines Regulation 2010 and as such, broadly supports the proposal to remake the Regulation with amendments, rather than allowing the regulation to lapse.

This submission will address the changes proposed in Part 8 of the Regulatory Impact Statement, as well as submit a small number of additional changes for consideration.

► References to ‘NSW Office of Liquor, Gaming and Racing’

These changes are supported.

► 8(4)(f) Suitable space between gaming machines [removal]

This change is supported.

► 11 Faulty Gaming Machines [cf.10 Proposed Reg]

The definition of “immediately” is unclear in the context of the Regulation, and if taken to mean “before any other possible action is taken” may lead to negative outcomes. For example, in situations where urgent competing demands arise at the same time as the discovery of a faulty gaming machine, such as an incident of antisocial behaviour, it may not be practicable or desirable for the licensee or other staff to address the faulty gaming machine first.

While AHA NSW support the intent of the change, wording suggesting “as soon as is practical to do so” may better serve the purpose of the Regulation.

► 17 Clubs required to record certain information in relation to gaming machines [cf.15 Proposed Reg]

AHA NSW has no view on this change as it does not relate to hotels.

▶ **18 Additional records by clubs [cf.15 Proposed Reg]**

AHA NSW has no view on this change as it does not relate to hotels.

▶ **20 Clearance and refilling of gaming machines in clubs [cf.17 Proposed Reg]**

AHA NSW has no view on this change as it does not relate to hotels.

▶ **21 Display of information concerning chances of winning prizes on gaming machines [cf.18 Proposed Reg]**

These changes are supported.

▶ **22 Approval of English and other community language player information brochures [cf.19 Proposed Reg]**

These changes are supported.

▶ **23 Provision of player information brochures [cf.20 Proposed Reg]**

These changes are supported.

▶ **24 Provision of player information brochures in community languages [cf.21 Proposed Reg]**

These changes are supported.

▶ **25 Dangers of gambling – notice to be displayed on gaming machines [cf.22 Proposed Reg]**

The AHA NSW supports the change to the extent that it removes the possibility for three individual penalty notices to be issued for the failure to display one sign.

The AHA NSW notes the new provision allowing for the sign to be displayed by means of a “permanently visible light emitting display that forms part of the gaming machine”, in a form approved by the Authority and obtained from Liquor & Gaming NSW. Consideration should be given to the creation of a defence to prosecution if the electronic sign is not displayed through no fault of the operator – i.e. in the event of malfunction or other technological failure – and the operator has not been alerted to the failure.

▶ **26 Counselling signage – notice to be displayed [cf.23 Proposed Reg]**

The AHA NSW supports the change to the extent that it allows a more flexible approach to mandatory player information requirements by allowing the Authority to approve the content and design of the sign.

However, the AHA NSW notes that as currently drafted, the clause is not specific to hotels with approved gaming machines, and that a literal reading implies that non-gaming hotels must also display this sign. Clarification that this clause only relates to those hotels with approved gaming machines is required.

The AHA NSW further notes that the proposed clause is no longer applicable only to the main entrance to the hotel, but now stipulates that the notice must “be positioned in a way that is likely to cause each person entering the hotel or club premises to be altered to its contents”.

The new construction of the clause implies that all entrances to the hotel must display the notice, whether or not that entrance is the main entrance, and whether or not the person is entering the hotel for the first time (i.e. from the street, road or footpath). It is conceivable that this clause could be taken to mean that the notice must be displayed at each entrance to the physical building itself, i.e. from a beer garden, balcony, or courtyard.

The AHA NSW submits that the wording of Clause 26 of the current Regulation regarding “main entrance” be retained.

► **27 Signage to be displayed on ATMs and cash-back terminals [cf.24 Proposed Regulation]**

The AHA NSW supports the change to the extent that it allows a more flexible approach to mandatory player information requirements by allowing the Authority to approve the content and design of the sign, and for the sign to be displayed in the vicinity of the ATM.

Similar to the above, the AHA NSW notes that as currently drafted, the clause is not specific to hotels with approved gaming machines. Clarification that this clause only relates to those hotels with approved gaming machines is required.

Similar to proposed Clause 23, the AHA NSW notes the new provision allowing for the sign to be displayed by means of a “permanently visible light emitting display that forms part of the gaming machine”, in a form approved by the Authority and obtained from Liquor & Gaming NSW. Consideration should be given to the creation of a defence to prosecution if the electronic sign is not displayed through no fault of the operator – i.e. in the event of malfunction or other technological failure – and the operator has not been alerted to the failure.

► **28 Display of clocks [removal]**

This change is supported.

► **33 Exemptions from dealing in cheques and from locating cash dispensing facilities away from gaming machines [removal]**

This change is supported.

► **34 Interpretation (LIA provisions)**

This change is supported.

► **38 Class 1 LIA – information to be provided [cf.33 Proposed Reg]**

The AHA NSW supports any change that clarifies the information required to be provided to the Authority in Class 1 Local Impact Assessments.

However, the changes in the proposed clause appear to introduce more uncertainty for applicants by leaving open the possibility of the Authority requesting changes to Local Impact Assessments that have already been submitted for approval.

Hoteliers typically engage external consultants or licensing solicitors to prepare Local Impact Assessments, at considerable expense. Introducing a clause that stipulates an LIA must include “any other information that may be required by the Authority” raises the possibility that applicants will be forced to re-engage these consultants for work already completed, with associated monetary costs.

The AHA NSW does not object to the Authority having the power to request additional information to assist in decision making processes. However, we submit that any information required by the Authority to be *included in* an LIA should be specified before the preparation of the document, and that additional information required after submission should continue to be provided to the Authority without the need for the alteration of the LIA itself.

Therefore, the AHA NSW submits that proposed clause 33(f) be deleted.

The AHA NSW further notes that information regarding the authorised trading hours of all licensed premises in New South Wales is currently held by Liquor & Gaming NSW, and submits that agency may be in a position to provide this information to the Authority.

► **39 Class 2 LIA – information to be provided [cf.34 Proposed Reg]**

See above (38 Class 1 LIA – information to be provided).

► **41 Consultation and advertising requirements [cf.37 Proposed Reg]**

These changes are supported.

► **45 Transitional provision – threshold increase applications for prospective hoteliers [removal]**

This change is supported.

- ▶ **45A Date on which gaming machine threshold is to be decreased by number of AADs previously surrendered [removal]**

This change is supported.

- ▶ **45B Gaming Machine Lease Levy [cf.138 Proposed Reg]**

These changes are supported.

- ▶ **46 Gaming Machine advertising and signs – exclusions [cf.41 Proposed Reg]**

These changes are supported.

- ▶ **46(1)(h)-(j) Gaming machine advertising and signs – exclusions [removal]**

This change is supported.

- ▶ **48 Provision of player activity statements under player reward schemes [cf.42 Proposed Reg]**

These changes are supported.

- ▶ **52 Provision of problem gambling counselling services [cf.44 Proposed Reg]**

While the AHA NSW supports the intent of this change, clarification of what constitutes an appropriate “qualification” should be considered.

- ▶ **53 Self-exclusion schemes [cf.45 Proposed Reg]**

These changes are supported.

- ▶ **54 Provision of gambling contact cards [cf.46 Proposed Reg]**

These changes are supported.

- ▶ **55 Offering inducements to gamble [cf.47 Proposed Reg]**

These changes are supported.

- ▶ **96 Issuing of player cards [cf.94 Proposed Reg]**

These changes are supported.

- ▶ **101 Player activity statements – player accounts [cf.97 Proposed Reg]**

These changes are supported.

▶ **109 Records of gaming machine tickets issued [cf.104 Proposed Reg]**

These changes are supported.

▶ **112 Records to be made on redemption [cf.107 Proposed Reg]**

This change is supported.

▶ **149A Expiry of hardship gaming machine approvals- exemptions for certain hoteliers [removal]**

This change is supported.

▶ **156A Meaning of “metropolitan area” [cf.147 Proposed Reg]**

These changes are supported.

▶ **162 Savings provision – construction of certain references to Licensing Court and Liquor Administration Board [removal]**

This change is supported

▶ **Schedule 3 – Penalty notice offences**

These changes are supported.

▶ **Fees – generally**

These changes are supported.

▶ **Further Suggested Amendments to the Proposed Regulation**

▶ **Payment of prize money by cheque or electronic funds transfer [see cl.30 (2010 Reg), cl.26 (2019 Reg)]**

The drafting of the clause implies that in the first instance, players are to be paid so much of the total prize won a gaming machine exceeding \$5,000 by means of a crossed cheque, unless the player specifically requests an electronic transfer of funds to their nominated account.

Increasingly, electronic payment facilities are not only available to hoteliers, but have become industry standard. The AHA NSW believes that both cheque and EFT methods of payment should be available in the first instance, without requiring a specific request from a player.

The AHA NSW submits that the words “if the person so requests” be removed from proposed Cl. 26(1)(b) and Cl. (30)(2) in order to achieve this.

► **Location of cash dispensing facilities away from gaming machines [see cl.32 (2010 Reg), cl.28 (2019 Reg)]**

The AHA NSW continues to support the prohibition on locating ATMs and other cash dispensing facilities within gaming machine rooms.

However, the current drafting of the relevant clause – in particular the use of the word “transfer” – implies that modern facilities allowing for the purchase of food and beverages, including “tap and go” as well as EFTPOS more broadly, cannot be located in bars in gaming rooms.

Consideration should be given to amending the clause to clarify that facilities allowing for the transfer of electronic funds for non-gaming products and services, such as food and beverages, are permitted in areas of licensed premises in which gaming machines are located.

► **RCG Training [see Part 3 Division 5 (2010 Reg & 2019 Reg)]**

Responsible Conduct of Gambling (RCG) training is strongly supported by AHA NSW as a practical harm minimisation tool for all staff engaged in duties involving gaming machines. The AHA NSW also supports ensuring that training is subject to a process of continuous improvement, including methods of delivery.

Online training and education is increasingly preferred by younger students, and may be the only practical method of delivery for students located in regional and remote areas.

There is precedent for online training in the hospitality industry to be delivered in a way that meets this growing expectation while maintaining the highest standards of course integrity.

For example, the Liquor Regulation now allows a limited number of approved Registered Training Organisations (or those Registered Training Organisations nominated by an industry association) to provide online Responsible Service of Alcohol training courses, and the mandatory Privacy course for ID scanner operators in the Kings Cross Entertainment precinct is only delivered online.

To allow for the future development of an analogous online RCG course, the AHA NSW submit that the Gaming Machines Regulation 2019 be amended to include a clause similar to Clause 78 of the Liquor Regulation 2018, namely;

Additional approval to provide particular training courses online

(1) An approved training provider who is the TAFE Commission, an industry association or a provider nominated by an industry association may apply to the Secretary for an additional approval to provide a Responsible Conduct of Gambling course online.

(2) An application by a provider nominated by an industry association must be accompanied by written confirmation of that nomination. The

written confirmation must include an explanation of the relationship between the industry association and the provider.

(3) An application for an additional approval must be made in the form approved by the Secretary and be accompanied by the prescribed fee.

(4) The Secretary may grant an additional approval only if the Secretary is satisfied that the approved training provider has appropriate measures in place:

- (a) to verify the identity of persons undertaking the training course online, and
- (b) to assess the competency of those persons, and
- (c) to minimise the potential for fraudulent activity.

(5) In this Division, a reference to an approval to provide training courses includes a reference to an additional approval to provide an approved training course online.

► **Time within which threshold increase applications be dealt with [see cl.44A (2010 Reg), cl.40 (2019 Reg)]**

The AHA NSW notes that threshold increase applications not required to be accompanied by an LIA are low-risk, involving either an increase in gaming machine threshold for a venue in a Band 1 area, or the transfer of Gaming Machine Entitlements between venues in the same area (thus not raising the overall number of entitlements in a community).

Non-LIA applications either meet the set criteria or they do not. They do not require consideration by ILGA and only involve an administrative licence adjustment. The AHA NSW submits these applications be subject to streamlining through the Service NSW 'Easy to do Business' program.

Given the low-risk nature of these non-LIA applications and in the interest of red tape reduction, the AHA NSW submits that the timeframe stipulated in proposed clause 40(1)(a) be changed to 7 days.

► **Records and requirements related to prizewinners [see cl.87 (2010 Reg) & cl. 85 (2019 Reg)]**

Proposed clause 85(b) stipulates that hoteliers must keep a written record of the serial number of gaming machines on which a progressive jackpot prize is won.

However, the AHA NSW notes that jackpot controllers in venues typically only record and report machines by their GMID number, rather than their serial number, which refers to the physical 'box' rather than the processor. Although these numbers serve a very similar purpose and refer to the same machine, they are not identical.

The AHA NSW submits that proposed clause 85(b) requires clarification to this effect.

▶ **Authorised Progressive Systems – reading and recording of meters and jackpot reconciliations [see cl.89 (2010 Reg), cl.86 (2019 Reg)]**

The AHA NSW submits that as these functions are now undertaken by the Centralised Monitoring System, this clause be removed.

▶ **Records to be made on redemption, records and other material [see cl.113, 115 (2010 Reg), cl.108, 110 (2019 Reg)]**

When read in conjunction, both the existing and proposed clauses appear to require all physical gaming machine tickets issued by a venue to be kept for a period of three years.

This is an onerous requirement, placing a large and ongoing burden on venues that may not have the physical capacity to store a large volume of tickets for such an extended period of time.

The AHA NSW submits that these clauses be amended to specify that individual gaming machine tickets should not need to be stored for the mandatory period of three years in proposed clause 110, and that consideration be given to specify that an electronic register of tickets issued is taken to be a record for the purposes of proposed Clause 108.

▶ **Use and control of CMS data [see cl.116 (2010 Reg), cl.111 (2019 Reg)]**

The AHA submits that industry associations representing venues with approved gaming machines connected to the Centralised Monitoring System be permitted to access CMS information. Strict confidentiality provisions would apply. This could be achieved by inserting under cl.111(1)(i):

(j) An industry association, being the Australian Hotels Association NSW or ClubsNSW.

▶ **Conclusion**

The Australian Hotels Association NSW broadly supports the proposed Gaming Machines Regulation 2019.

With minor changes as proposed in this submission, we believe the Regulation will provide the appropriate administrative framework to ensure the objectives of the Gaming Machines Act continue to be met.