

# NCOSS Submission:

Local Impact Assessment Review

14 June 2017

## About NCOSS

The NSW Council of Social Service (NCOSS) works with and for people experiencing poverty and disadvantage in NSW to make positive change in our communities.

As the peak body for health and community services in NSW for over 80 years we support the sector to deliver crucial services that make a difference.

We work directly with communities to identify the challenges they face and solutions that will allow them to overcome those challenges.

Through collaboration with communities, services and across government, the private sector and other civil society organisations we work to see these solutions become a reality.

Together we advocate for a NSW free from poverty and inequality.

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## Introduction

Thank you for the opportunity to provide input into the review of the Local Impact Assessment (LIA) process.

We believe the review is both necessary and timely. It is necessary because electronic gaming machines, as one of a growing number of gambling options, continue to be the overwhelming cause of gambling problems. For that reason, they require effective regulation to mitigate against their harmful effects, particularly on people living in poverty and in socially disadvantaged areas<sup>1</sup>. The review is timely because local government mergers in NSW are likely to affect the way regulation of electronic gaming is undertaken by the Liquor and Gaming Authority (the Authority).

### NCOSS's position on electronic gaming machines and their regulation

Before responding to the questions raised in the discussion paper, we would like to make our position on gambling, in particular electronic gaming machines, known to the Authority as well as make a few general and important observations about gambling, the gaming industry and how these are regulated.

We wish to do this for two reasons.

The first is that as an organisation, NCOSS works towards a NSW that is free from poverty and disadvantage. Problem gambling causes significant financial hardship and stress on the people and communities we represent and to whom our members provide care and support. The harms from problem gambling are not just financial – they include suicide, depression, relationship breakdown, job loss, bankruptcy and crime.<sup>2</sup> NCOSS acknowledges the role clubs play within their communities in offering a range of social activities, but believe it is unethical for these clubs to rely on gambling and profits derived from gambling to support these activities.

The second reason relates to NCOSS's (mandated) role in the LIA process. Under clauses 37 and 41 of the *Gaming Machines Regulation 2010* NCOSS is required to be notified of and consulted with on applications to increase gaming machines. It is incumbent upon us therefore to put forward our views on the regulation of electronic gaming machines to ensure the objectives of the legislation are met.

In light of the above, we would like to take the opportunity to affirm the following principles in relation to gambling and electronic gaming machines:

- **Electronic gaming machines, as the dominant form of gambling in NSW, exact significant social and financial costs on people experiencing poverty and those who live in low socio-economic areas. Gambling losses are higher in areas of relative socio-economic disadvantage and are borne by communities that can least afford such losses. Seen this way, gambling can be a driver of further disadvantage amongst already vulnerable groups.**<sup>3</sup> NCOSS notes the findings of the 2011 NSW Gambling Survey which examined the prevalence of gambling in NSW. Of serious concern to us is the level of participation in gambling and problem gambling among Aboriginal people. According to the survey, Aboriginal people were more likely than others to gamble (72% compared with 65%), were more likely to be problem gamblers (1.7% compared with 0.8%) and also moderate risk gamblers (4.3% compared with 2.9%).<sup>4</sup> **Given the extreme levels of poverty and vulnerability experienced by Aboriginal people, we believe it is imperative the Authority use**

<sup>1</sup> NSW Office of Liquor, Gaming and Racing, Responsible gambling Fund Client Data Set Annual Report 2006-07, 33 <[http://www.olgr.nsw.gov.au/pdfs/CDS\\_06\\_07.pdf](http://www.olgr.nsw.gov.au/pdfs/CDS_06_07.pdf)> at 16 April 2009.

<sup>2</sup> Productivity Commission (2010) *Gambling*, Report no. 50, Canberra.

<sup>3</sup> Rintoul, A., Livingstone, C., Mellor, A. & Jolley, D. (2013). Modelling vulnerability to gambling related harm: How disadvantage predicts gambling losses, *Addiction Research & Theory*, vol. 21, no. 4, pp. 329-338.

<sup>4</sup> Olgivy Illumination (2011) *Prevalence of Gambling and Problem Gambling in New South Wales*

its regulatory powers to ensure zero-harm is brought to bear from electronic gambling machines in communities where there are significant numbers of Aboriginal people.

- **NCOSS believes effective regulation is required to minimise and address the harmful effects of electronic gaming machines on people and communities.** The current LIA process is an important part of the regulatory framework but we believe aspects of the process should be strengthened to ensure more effective and meaningful community engagement in decision-making processes and better harm minimisation outcomes.
- **NCOSS supports continuation of a cap in gaming machine numbers and would like to see a tightened cap to allow for a further progressive reduction in gaming machine entitlements over the next 5 years.** We believe the current forfeiture policy of machines being returned to Authority is an effective means of achieving that objective but believe the policy should go further and include a ‘sinking lid’ in which all machines are returned to (and bought by) the Authority when a club or hotel ceases operation or wishes to divest. This will have the effect of speeding up the lowering of the cap and prevent risk of harm from gambling being caused by the transfer of machines from one gaming site to another. It is instructive to note that revenue and profits from electronic gaming machines have continuously and consistently increased despite a reduction in the number of electronic gaming machines.

## Electronic gaming machine turnover and losses vis a vis gaming machine numbers in NSW

Year	Turnover (millions)	Losses (millions)	Gaming machine #s
2009–10	\$65,388	\$6,673	100,284
2010–11	\$69,781	\$7,444	99,676
2011–12	\$72,765	\$7,767	99,283
2012–13	\$74,083	\$8,008	98,894
2013-14	\$76,718	\$8,242	98,435
2014-15	\$81,651	\$8,910	98,002

## NCOSS’s involvement in the LIA process

As the Authority knows, NCOSS is meant to be consulted with (as per clauses 37(2c) and 41(2b) of the regulation) each time a venue applies for gaming machine increases. However it has been quite some time since we have participated in the LIA process. We believe it has been at least seven years – or when the new regulation came into effect – since NCOSS has been notified of any application. This is despite the fact that some 150 applications have been lodged with the Authority during this period. We are not sure if this is an oversight on the part of the clubs/hotels or the Authority itself or if the guidelines regarding LIAs need to be updated to reflect NCOSS’s role in the LIA process. NCOSS also struggles to provide a meaningful assessment and response without being adequately resourced to undertake our regulated role.

For us this raises the obvious question about the validity of the LIAs that have been approved since the LIA process was introduced and the effectiveness of the process as a whole in assessing impact and minimising harm.

## Question 1 - Does measuring the risk of harm at the Local Government Area (LGA) level remain appropriate?

NCOSS believes measuring risk of harm at the LGA level may no longer be appropriate given recent council mergers and the fact that harm from electronic gaming machines is strongly correlated with proximity to the venue in which these machines exist.<sup>5</sup> Research conducted in the ACT in 2004 in relation to electronic gaming machines found that the closer a person lives to their local club, the higher their annual spend on gaming machines. Further, people living 3.5km from a club with gaming machines had more frequent sessions (32 per year) than those living further away (22 per year). This is consistent with a Victorian study that found people travel only 2.5km to gamble.<sup>6</sup>

As noted in the discussion paper, many LGAs have increased in size, or will once the amalgamation process is complete. As inferred, evaluating the risk to a community based on the spread and density of electronic gaming machines over a large geographical area may be difficult. These new LGAs are likely to have highly varying and different demographic and socio-economic profiles that may not be relevant to a club's application in assessing impact or provide the kind of nuanced analysis of risk and harm that the Authority will need to consider when determining an application to increase gaming machines.

This is not to say, however, that the impact on the broader community should not be taken into account, particularly when the Authority is looking at the concentration of electronic gaming machines in a defined zone. This is likely to be particularly important where there is a high level of destination gambling (e.g. Sydney CBD), or where LGA mergers have occurred. We therefore recommend that a more detailed assessment of impact take place at a local level, with consideration given to flow-on effects at the LGA level.

As noted in the paper, the ACT, South Australian and Queensland governments require clubs to consider the impact of gaming machines on the local area which is defined in their respective legislation. The ACT and South Australia use 3km and 2km radii, respectively, to assess social impact. In Queensland, the ABS Statistical Area Level (SAL) 2 is used to define local community and provides a more comprehensive, flexible and consistent way of defining statistical geography. **We favour a combination of the Queensland and South Australian approach in which the relevant SAL is used, with SALs which fall either partially or wholly within a 5km radius of the defined area of impact forming the basis for statistical analysis.**

## Question 2 - Should the LIA scheme continue to classify areas into Bands 1, 2, and 3?

In line with the position stated in Question 1, NCOSS believes the linking of the LIA process with the current banding structure may no longer be appropriate given this is likely to be affected by council mergers. The approaches adopted by other states, which the discussion paper describes in detail, favour the use of some type of *localised* impact assessment. This is an approach NCOSS would support because any application to increase a club's entitlement should first consider the impact on the immediate community. However, we believe the Authority should still take into account the number of electronic gaming machines in the LGA as a way of determining level of accessibility to these machines and the negative flow on effects on gaming sensitive sites and vulnerable communities.

NCOSS believes there is an opportunity, and indeed a need, to design a more nuanced system of gaming machine distributions that places a limit on the number of gaming machines per population area and explicitly considers indicators of a community's vulnerability to gambling harm. For example, limits could be set for particularly vulnerable communities (using the Australian Bureau of Statistics' Socio-Economic Indexes for Areas

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<sup>5</sup> Marshall, D., McMillen, J., Niemeyer, S. & Doren, B (2004) Gaming Machine Accessibility and Use in Suburban Canberra: A Detailed Analysis of the Tuggeranong Valley. *Centre for Gambling Research Australian National University* p.11

<sup>6</sup> Ibid

(SEIFA), as a marker of vulnerability). As socio-economic status can vary markedly within a Local Government Area (LGA), this assessment should be undertaken at the local community area in which the club operates its business, rather than the LGA level. As noted in the paper, the ACT, South Australian and Queensland require clubs to consider the impact of gaming machines on the local area which is defined in their respective legislation/regulation.

### Question 3 - Do the criteria used to determine risk remain valid?

NCOSS does not support any weakening of the requirements for clubs to demonstrate the potential social impact on local communities from changes in gaming machine entitlements. We believe an LIA modelled on the Class 2 LIA should be undertaken regardless of whether machines are being transferred within the area (clubs transferring machines within an LGA are currently exempt from the LIA process) or whether clubs want to increase the number of gaming machines. With LGAs expanding in size as a result of council mergers, one can foresee a situation in which more gaming machines are transferred or become a transferrable asset by virtue of boundary changes. The potential to increase gaming machine density in a local area could occur without a proper assessment of the impact.

What is more, we are concerned that clubs are using the Class 1 LIA process to make small incremental increases to their overall entitlement because they view the Class 2 LIA process as too onerous and stringent. The discussion paper acknowledges that few applicants have succeeded in increasing their entitlement under the Class 2 LIA process because it is a harder test, and must then apply for a lower number (within their entitlement band) using the Class 1 LIA process which has a lower threshold. **NCOSS argues that this undermines the regulatory framework and objects of the Act.**

If the Authority is not amenable to requiring clubs to undergo a Class 2 LIA for any increase, transfers or greenfield applications (new venues in new developments), then as a minimum we would recommend the Class 2 LIA be used for 10 or more machine increases with each applicant to demonstrate the test of an **overall positive benefit to the local community**. We believe the criteria in the Class 2 LIA is sufficiently similar to the requirements operating in other jurisdictions but recommend the inclusion of **'problem gambling or potential for gambling problems in the area'** in the criteria as this is something other states require of applicants but seems to be missing in the Authority's list of requirements.

### Question 4 - Should the existing community consultation process be amended?

NCOSS believes the current process for assessing the social impact of proposals for new or expanded poker machine facilities does not give sufficient weight to community interests. The opportunities for participation by local communities are limited and organisations such as NCOSS are not resourced to respond to lengthy documents prepared by private consultants. **The Authority should extend the timeframe for responding to assessments, require a broader range of community groups within the local area to be notified, and ensure organisations representing the community's interests are appropriately resourced to respond to proposals. We believe a three month stakeholder engagement (from time of submission) is an appropriate length of time for the consultation process.**

Community organisations should be consulted on applications to change gaming machine numbers in their locality and this should be done in a way that is mindful of the needs of the organisation. Not all community organisations will have the capacity, time, resources or knowledge necessary to assess and engage in the application process and develop meaningful submissions with sufficient weight. Preparation of submissions and assessment of the local impact, including an assessment of detriment and benefit, is complex and relatively specialised. This is quite difficult as evidence of the local benefit and detriment must be provided rather than opinion or global evidence.

Key to enabling stakeholders to effectively assess the social impacts of electronic gaming machines in their community is having access to the right kind of data. NCOSS believes the Authority has an important role to play in putting together datasets and gambling indicators that can facilitate detailed understanding of impacts on communities. The Authority should develop guidelines, information sheets, toolkits etc that can enable stakeholders to evaluate applications and the potential impact on their communities.

An open hearing or forum should be held where there is sufficient public interest in a submission. A threshold on the proposed number of gaming machines and/or the number of public responses received in relation to a submission may be considered as potential triggers for an open hearing or forum.

A clear process for objecting to an application is required, with adequate timeframes and resourcing (perhaps with access to some ClubGrant funds set aside for this purpose). We note that an industry has sprung up to prepare community benefit statements and provide legal support to the industry against community objections.

In addition to the stakeholders listed in the regulation (i.e. local councils, police, local district health services and NCOSS), we argue there should be direct notification of the following:

- Welfare emergency relief and financial assistance providers
- Aboriginal groups (e.g. legal, health services, etc)
- Local providers of gambling and addiction counselling or treatment services
- Local physical and mental health care providers
- Local business and industry associations
- Local cultural groups
- Local community and residential groups

We believe the Authority should publish the results of the consultations with stakeholders and append these to the applicant's application.

## Question 5 - Should what constitutes a 'positive contribution' be more clearly defined?

NCOSS contends that the positive contribution test for Class 1 LIA applications does not adequately consider the potential harms to a community posed by problem gambling, and argues that the LIA process requires reform.

We do not support the idea that an applicant providing a donation to a community organisation/social service constitutes a 'positive contribution' as required under a Class 1 LIA as these donations are generally 'one-off' and disproportionate to the immediate and long-term harmful effects electronic gaming machines have on individuals and the community. What is more, it is difficult to submit arguments that result in the rejection of applications in this class because they are tied to a lower community standard (Class 1 LIA). This is made evident in the discussion paper which showed that nearly all (131 out of 136) Class 1 LIA applications were approved in the period between 2009 and 2016.<sup>7</sup>

If the Class 1 LIA is to be retained, then NCOSS would like to see elements of the Class 2 LIA incorporated into the process to ensure risk and harm from gaming machine increases are properly addressed before approval. This includes but is not necessarily limited to:

- Positive and negative impact on the local community
- Gaming sensitive sites in the community (e.g. schools, Aboriginal communities, social housing developments etc)
- Profile of problem gambling in the area
- SEIFA score

<sup>7</sup> The total was actually 151 Class 1 LIAs in this period but 15 were withdrawn.

- Results from stakeholder and community consultation

## Should the exemptions from the LIA process remain?

NCOSS believes there should be no exemptions from the LIA process for clubs seeking gaming machine increases. As noted earlier, LGAs are changing: their geographical limits have expanded and because of this there is greater scope for clubs to transfer electronic gaming machines within the expanded area with little or no scrutiny. We also do not support greenfield sites being exempt from the process, and consider the 150 gaming machine entitlement to be well beyond a reasonable limit for clubs to be exempted from the LIA process.

## Question 7 (a) - Does the current LIA scheme achieve the objectives of the Act? If not, how could it?

As highlighted in this response, there appears to be a significant gap between Class 1 LIA and Class 2 LIA. This is borne out in the data which shows that almost 96% of Class 1 applications for machine increases have been approved since the process came into effect. The paper acknowledges that applicants failing the Class 2 LIA process resort to the Class 1 LIA and seemingly make multiple incremental applications to achieve their desired quota. We see this a serious shortcoming in the process.

Changes to the Local Government Area boundaries – which are currently used to assess risk and harm – have the potential to see easier and greater opportunity for electronic gaming machines to be transferred between clubs. These transfers could occur without any LIA requirement and from our point of view that is another significant shortcoming of the process.

## Question 7 (b) - Should the requirement that a Class 2 LIA must demonstrate an overall positive impact on the community be maintained? If not, how should it be modified?

NCOSS believes the test of 'overall positive impact on the community' for Class 2 LIA applications **must be** maintained. Our view is that the test should apply across the board for all applications regardless of number, the band into which the club falls, or whether machines are being transferred within an area. This is consistent with our position that the community has a right to protect itself from the harm caused by electronic gaming machines.

## Conclusion

NCOSS strongly contests the notion that electronic gaming machines have or are able to make a positive contribution to the community. We recognise that clubs and hotels provide employment, financial support to local community groups (e.g. sporting) and space for people to socialise; but cannot reconcile this position with the harmful effects this form of gambling causes to individuals and the broader community. And while the LIA process goes some way to minimising these harmful effects, we believe the process has major gaps which the Authority needs to address to ensure the regulation is achieving the objectives of the Act. Enhancements to address these gaps have been proposed in our response.

We thank you for the opportunity to provide input into this process and would be happy to expand on any of the points raised in our submission. For further information, please contact Ben Folino, Policy and Research Officer, on 8960 7905 or email [ben@ncoss.org.au](mailto:ben@ncoss.org.au)