

Submission to the Tasmanian Liquor and Gaming Commission regarding facial recognition technology and card-based gaming technologies

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5 May 2022

Introductory comments

This submission is in no way to be understood as an endorsement of the execrable reform and legislative process that gave rise to the politically motivated Ministerial direction to the Tasmanian Liquor and Gaming Commission (the Commission) to undertake this consultation and report.

If the government or opposition had any interest in genuinely reducing the harm caused by poker machines in the Tasmanian community, they would have included or supported the inclusion of existing well-understood, evidence-based harm prevention and reduction measures in the recent reform of Tasmanian policy and legislation. This did not occur – the inclusion of any such measures was blocked at every turn by both the government and opposition.

The parameters of the Ministerial direction to undertake this consultation and report were dictated by industry interest, and any resultant government policy or regulatory action derived from it will no doubt continue to be primarily at the direction of industry and in the interests of protecting revenue derived from gambling harm.

It is a bald-faced travesty that the state government, assisted by the opposition, limited this examination of poker machine harm minimisation measures to two technologies only, and refused to include numerous measures that all expert evidence and advice, including from the Commission itself, has indicated would be immediately efficacious in preventing and reducing harm. Such well-supported measures include: \$1 bet limits, slower spin speeds, prohibition of losses disguised as wins and false near misses, mandated breaks in use of machines, and shorter opening hours for gaming rooms.

According to the consultation correspondence, the Ministerial direction has specifically asked the Commission “to investigate the extent to which facial recognition and player card gaming technologies for electronic gaming machines in hotels, clubs and casinos could minimise gambling harm in Tasmania.”

I will be very interested to see the result of this investigation and any specific figure or quantum the Commission arrives at in terms of the extent to which these technologies could minimise gambling harm, and the metrics that would be utilised to gauge any reduction in gambling harm from current levels.

It is explicitly understood by all researchers, regulators, and industry and community stakeholders that the foremost indicator of a material reduction in gambling harm would be a distinct measurable reduction in revenue. It is well accepted that in the current environment, at least forty per cent of poker machine revenue comes from harmful gambling. Therefore, a material reduction of gambling harm

would see harm-derived revenue decrease. Noting this, I expect that if the assessment by the Commission is that these two technologies are likely to reduce or minimise gambling harm in Tasmania, the report will include an estimation of the reduction in revenue that could be expected to occur as a result of their implementation.

The consultation questions posed are very limited in their focus. I particularly note the core question on each of the technologies asks the submitter to share views on the costs/benefits/implementation issues ‘for players’ and ‘for venues’. It is important to recognise that gambling harm and its minimisation is not just a matter for venues and those engaged in gambling, but of relevance also to the government and to the community broadly, as both are impacted by and bear the costs of it.

Facial recognition technology

During the Parliamentary debate on the *Gaming Control Amendment (Future Gaming Market) Bill 2021*, I commissioned work to look into the proposed gaming bill and amendments as they arose, including an examination of facial recognition technology (FRT). I believe the Stenning report concurs with my findings: there is no evidence that facial recognition technology will be effective in preventing or reducing harm.

FRT is limited in scope for reducing harm: it is useful only for identifying people who are already excluded from gambling venues. FRT is not a prevention measure as it is only of relevance to those people who are already at an extremity of harmful gambling such that they have sought help and placed themselves on a self-exclusion list. Research indicates that as few as 1 in ten people who experience problematic, harmful gambling seek help, and a sub-set of those people voluntarily self-exclude.

As of 22 February 2022, there were 362 people excluded from gambling venues in Tasmania (Treasury website) while the TLGC estimated in 2016 there were at least between 1600 and 3200 people who would fit the category of “problem gamblers” with a further at least 4,600 - 7,000 people in the moderate risk category.¹ Clearly the vast majority of Tasmanians harmed by gambling are not on the self-exclusion list and will therefore not be assisted in any way by this technology, even were it to be effectively implemented and enforced in all venues.

Further, the only way FRT can be useful to those who are excluded is if the technology is mandated for every venue and has clear rules on use and enforcement. There are 93 venues operating poker machines in communities across the state. People who are excluded should already be well known in their local venue as they have spent so much time and money there, however, we know from Anglicare Tasmania research that people frequently gain access and gamble at their local venues while excluded. This access may be because of a disguise or because the staff are not required to check the exclusion list for every patron who enters. The purpose of FRT would be for a computer to identify when an excluded person tries to gain access to a venue while they are under an exclusion order. Technically, this could be effective, but it still leaves the question of what happens next.

The Stenning Report indicated that in some jurisdictions (New Zealand and the UK) facial recognition technology is not mandated, but rather is industry-led (page 6). I recommend that if FRT is introduced in

¹ <https://www.parliament.tas.gov.au/ctee/Joint/FutureGamingMarkets.htm>

Tasmania, the technology and operational requirements are mandated by the Commission under a set of rules, with regular inspections and audits carried out by the Branch.

Standards for the effectiveness of FRT need to be set up as 2-step process: a technological system that is effective at recognising and identifying people against an exclusion list, and a system of operational rules that guide effective intervention subsequent to identification. I cannot judge whether the system introduced in South Australia is effective or not, but were Tasmania to go down this path, we would at least need to trial rules similar to those introduced in South Australia that detail the in-venue management of people identified by FRT as being excluded (Stenning Report page 9).

We also need to consider the implications in New Zealand where it appears there is no government oversight of the FRT system (Stenning Report page 10). If a FRT system is introduced in Tasmania, it must be controlled and monitored by the Commission for the purposes only of assisting with identification of excluded gambling patrons.

I remain unconvinced of the likely efficacy of FRT in delivering any material reduction of the overall gambling harm caused by poker machines in Tasmania, primarily because it focuses on just one, very limited part of the spectrum of harm caused by this product. This view is supported by the Stenning Report, with its clearest result being the lack of evidence of the efficacy of FRT.

Further, in addition to a lack of evidence that FRT would be effective in reducing harm caused by poker machines, there are numerous questions that would need to be adequately answered before any contemplation of implementing this technology, including:

- If implemented, how would the success or otherwise of FRT be measured, and by whom?
- What measures would need to be in place to prevent FRT being used by venues for marketing purposes?
- What would be required in terms of staff training? Specialty staff?
- What greater 'duty of care' would the implementation of FRT place on venues, beyond that which they now bear?
- If implemented, what would be the role of the regulator in regards to monitoring and enforcing the use of FRT?
- Prior to any implementation, what formal assessment will be made of privacy issues arising from this technology?

Card-based technologies

In a nutshell, it is well-established that the only way card-based technologies are effective in delivering harm minimisation is when they are implemented universally in a particular market, and require pre-commitment limits to be set.

There is considerably more research and evidence available for card-based technology than FRT and it is of interest that some of the points raised as “traps” for card-based technologies could be assumed to also be associated with FRT if more research was available: for example, privacy and staff training (Stenning Report page 12).

As identified in the Stenning Report, card-based systems offer three key elements: identification of the user; the opportunity for a pre-commitment system; and cashless play. The first two elements are usually considered as having the potential to contribute to harm minimisation, while the ability for cashless play may contribute to harm minimisation (through accurate spending records) or, conversely, contribute to increased harm (through easy access to bank accounts).

There are variations in card-based systems such as whether they are voluntary or universal, named or anonymous, banking linked or not linked to the pre-commitment aspects of the card. The Stenning Report notes peer-reviewed research that indicates card-based technologies can be effective in reducing harm (page 14). This is not a surprise as the social services that assist people harmed by gambling have been calling for this technology to be introduced for many years. They know it could be effective, but only if it was universal. This is highlighted by the poor harm reduction results for Victoria’s YourPlay system, which was voluntary and allowed high loss limits.

I note the debate about whether the cashless feature of card-based technologies could lead to unintended consequences, as considered in New Zealand (Stenning Report page 15). My reading of this debate is the abstractness of cashless spending and ease of access to more money electronically and on site. It is obvious that with technological advances and public health approach during the covid-19 pandemic, that cashless transactions are becoming the norm and there is no reason they should not in gambling also. There is evidence that leaving a machine to access more cash could be helpful as a break in use, allowing the person to reflect on their gambling activity, however, to achieve the same end, a Government could choose to mandate enforced breaks when using cashless cards.

I also note there is debate raised in research reported by Stenning about privacy issues associated with cashless cards (page 16).

I believe that most if not all of the weaknesses and limitations acknowledged in regards to card-based technologies relate to the voluntary nature of systems in place so far. This relates either to the use of such a card being voluntary (a person can choose whether or not to use the card and set a limit) or the individual features used within a card being voluntary (a person who chooses to use a card can choose whether to place a limit on losses or time and how high these are set). It seems clear from the Stenning Report that the more features of the system are universal, the more likely it is that users will receive some benefit through minimising harm.

It is also obvious from the review by Stenning that it is important that the harm minimisation goals are made clear during this process.

It is obvious from the research summarised by Stenning and from my own commissioned research, there is much variation in card-based technologies and the regulations that are imposed alongside them. We must remember that these are tools to be used to meet a desired effect. The Government has stated its purpose in investigating this technology is to ascertain the extent to which it may minimise harm. The review conducted by Stenning clearly indicates that should card-based technologies be introduced into

Tasmania, they must be universal for all users and all venues and include loss and time limits that are effective and not easily changed during use.

It is my recommendation that, should card-based systems be introduced in Tasmania, all users of machines must be required to have an identity-linked card, that banking is linked to pre-commitment features and that certain pre-commitment features are pre-set and universal for every card.

My research has found there are other features that should be introduced alongside card-based technologies to reduce harm. For example, Sarah Hare's research for Gambling Research Australia found that people are more likely to exceed an expenditure limit they have set through a pre-commitment system if the machines offer a high number of free spins or features (Schottler Consulting 2006). The impact on expenditure of free spins and features has also been documented in other research, including Livingstone 2017. No doubt there are other such examples of complementary measures that should be thoroughly assessed if implementation of card-based technologies is contemplated in Tasmania.

Concluding Comments

Both facial recognition and card-based systems are technology-based approaches that have limited and conditional potential to reduce harm caused by gambling. I note a serious limitation of FRT is that it is only a useful tool for people who already excluded from venues and that this a very small percentage of those who experience harm. Further, the effectiveness of FRT will depend on the operational requirements within each venue. The major limitations for card-based technologies are defined by how much of the system would be made universal.

What must also be at the forefront of our minds is that any measure to reduce harm caused by poker machines in Tasmania is only as good as the regulatory requirements within which it is implemented and the adequate provision of capable, confident people to enforce it. The various royal commissions into casino operations in mainland states has conclusively demonstrated that self-regulation in the gambling industry is a disastrous failure, and we must guard against that in this state with a more active regime of monitoring and enforcement.

The Ministerial direction to undertake this work is an unfortunate waste of the time and resources of the Commission. I have no doubt the Commission already had the research, evidence and information available to understand the limited value and conditional circumstances under which these two technology measures would be relevant for consideration in Tasmania, particularly in light of the work done by the Commission on the introduction of card-based technologies in the casino premium player program.

That no state government since 2008 has asked the Commission to act in an unfettered, independent capacity to provide genuine advice on the best indicated and most appropriate harm prevention and reduction measures in regards to poker machines in Tasmania is a telling indictment on past and present governments.

Rather than be asked to provide expert, independent advice for public policy development and legislative reform processes, the Commission has been reduced to being a lackey entity, a component part of the policy and regulatory capture by vested interests that is endemic in Tasmania when it comes

to poker machines. I am deeply saddened that the Commissioners and staff involved in the Commission have been placed in this invidious position.

What I believe is required to restore the public's confidence in the Commission is to have it be a genuinely independent authority, able to provide unfettered, expert, independent advice to government and Parliament, as originally envisaged when it was first established under the initiative of the Legislative Council in 1993.

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