

Second Review of the *Responsible Gambling Mandatory Code of Practice for Tasmania*

Final Outcomes Paper

September 2022

Second Review of the Responsible Gambling Mandatory Code of Practice for Tasmania - Final Outcomes Paper

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Acknowledgements

The Tasmanian Liquor and Gaming Commission is mindful of the increased demand on stakeholders recently to provide feedback on gambling related matters and would like to especially thank all stakeholders who participated in this consultation process.

The Commission would also like to acknowledge Stenning and Associates Pty Ltd for its initial desktop review.

The support and advice provided by the staff of the Liquor and Gaming Branch has been significant and is much appreciated.

Introduction

Background

The Tasmanian Liquor and Gaming Commission is an independent body responsible for the regulation of gaming and wagering activities in Tasmania. The Commission is committed to fostering responsible service of gambling and ensuring the harm from gambling is minimised.

In 2012, the Commission introduced the *Responsible Gambling Mandatory Code of Practice for Tasmania* (the Code) mandating a variety of best practice measures designed to minimise harm from gambling in the Tasmanian community. The Code establishes conditions under which prescribed licence holders can offer gambling related products to patrons across the following 10 areas:

- advertising;
- inducements;
- player loyalty programs;
- access to cash;
- payment of winnings;
- lighting;
- service of food and alcohol;
- clocks in gaming areas;
- staff training in recognising people with gambling problems; and
- information to players.

The Code is designed to:

- minimise harm from gambling and promote responsible gambling practices in Tasmania;
- ensure gambling environments are safer, and present gambling products in a responsible manner;
- ensure that patrons and the gambling industry have an understanding of their rights and responsibilities in relation to the matters covered by the Code;
- assist patrons to make informed decisions about their gambling practices; and
- ensure that gaming staff have the opportunity to develop additional skills to assist them to engage with patrons who may be displaying harmful gambling behaviours.

A link to the Code and supporting Commission Rules is available at www.treasury.tas.gov.au/liquor-and-gaming > Quick links > Responsible Gambling Mandatory Code of Practice.

Five-yearly review of the Code

The *Gaming Control Act 1993* requires that the Commission reviews the Code at least once every five years ensuring the harm minimisation measures continue to be effective, relevant and sufficient.

The first review in 2017 included independent desktop research comparing Tasmania's framework against national and international jurisdictions, and an extensive stakeholder consultation process. Whilst the Code was found to be effective in achieving harm minimisation objectives, the Commission implemented a number of enhancements to further ensure gambling is offered in a responsible way.

The second review is due to be completed by 30 September 2022.

Industry reforms impacting the 2022 Code Review

The Tasmanian gaming environment will undergo significant changes with restructure of the industry from 1 July 2023 to implement the Government's future gaming market reforms. The changes include the creation of individual venue licences to operate Electronic Gaming Machines (EGMs). Venue operators will be responsible for almost all aspects of EGM operations in their venue, will have a greater choice of how to conduct their gaming business and will retain a greater share of EGM revenue. The Commission considers this five-yearly review provides an opportunity to identify what measures are most needed now to ensure regulation supports the new reforms.

Separate to the Code review, the Commission investigated the extent to which facial recognition and player card-based gaming technologies for gaming machines could minimise gambling harm, including the costs and benefits of implementation in casinos, hotels and clubs. The outcomes of this investigation were provided in a separate report to the Treasurer.

At the time of preparation of this paper, the Government announced that it will work with the Commission to implement the first state-wide player card gaming system with pre-commitment in Australia, further strengthening gambling harm minimisation for the Tasmanian community. The Commission supports this announcement and considers mandatory pre-commitment will achieve significant harm minimisation outcomes.

The Commission's report to the Treasurer and the Government's response are available on the Liquor and Gaming Branch website at www.treasury.tas.gov.au/liquor-and-gaming > Community Interest > Public consultation > Past > Harm Minimisation Technologies.

Review Process

The Act does not stipulate how a review is to be conducted, with the process to be used at the Commission's discretion. The Commission adopted a two staged process (similar to the first review) and, in determining the scope, took into consideration the:

- timing of amending the Code prior to the introduction of significant gaming industry reforms;
- comprehensive nature of the first Code review (which also included a literature review);
- investigation undertaken by the Commission (under direction from the Government) on facial recognition and player card gaming technologies to potentially minimise gambling harm in Tasmania; and
- outcomes from the recent New South Wales inquiry and two Royal Commissions (Victoria and Western Australia) into casino gaming operations.

The scope did not include consideration of products under the future gaming market reforms that are not yet operational such as high roller casino activities, fully automated table games and simulated racing events, as the requirements and technical standards for these products are yet to be developed. Harm minimisation strategies for these products will be considered under a separate review, in the event they are required.

Stage One

Desktop research was conducted independently by Tasmanian consultancy firm Stenning and Associates Pty Ltd (completed in December 2021). The Stenning research compared Tasmania's Code with harm minimisation frameworks in other Australian jurisdictions, identified key changes since the 2017 review and identified expected impacts of the Government's future gaming market reforms.

The Stenning review concluded that the Code continues to compare favourably nationally, with most areas covered by the Code being equal to or stronger than other Australian jurisdictions. Analysis of the potential impacts on the future gaming market reforms concluded that, overall, there is unlikely to be a major impact on gambling behaviour. However, there may be potential for individual venue licensees to try a variety of approaches to attract gambling customers, which might see increased activity and diversity in advertising and inducement strategies and player loyalty programs.

A copy of the full Stenning Report is available at www.treasury.tas.gov.au/liquor-and-gaming > Community Interest > Public consultation > Past > Mandatory Code Review 2022.

Stage Two

Many people use EGMs as a legitimate recreational activity, causing no harm. However, for some people, excessive gambling or gambling beyond what they can afford to lose can lead to harm that negatively impacts their lives and also the lives of others and the broader community¹.

¹ The South Australian Centre for Economic Studies (2021). *Fifth Social and Economic Impact Study of Gambling in Tasmania 2021* (Volume 1)

In the context of the incoming reforms, the Commission determined to focus this review on the areas of the Code relating to advertising, inducements and player loyalty programs.

On 13 May 2022, the Commission publicly released a Stakeholder Consultation Paper for feedback on the proposed initiatives. Submissions in response to the Paper closed on 25 June 2022.

A total of 14 submissions were received, with one marked confidential. Three submissions were received directly from gambling licence holders, including Tabcorp and the Federal Group representing multiple gaming venues. Submissions were also received from the peak industry body, the community services sector, the health sector of Government, local Government and Tasmanian elected representatives.

Submissions, not marked confidential, are publicly available on the Liquor and Gaming Branch website at www.treasury.tas.gov.au/liquor-and-gaming > Community Interest > Public consultation > Past > Mandatory Code Review 2022.

Consideration of stakeholder feedback

There was a polarity of stakeholder views for the initiatives set out in the Consultation Paper, with industry and concern sectors having contrasting positions.

The industry sector opposed the majority of the proposed initiatives. Casino operators were of the view that the initiatives proposed due to the future gaming market reforms only apply to hotels and clubs, and therefore should not apply to casinos as there is no evidence or risk-based reason to do so.

In reaching its final decision on amendments to the Code for this review, the Commission determined all measures being implemented will apply equally across all gambling venues, including casinos. There is a strong basis for this decision as individual licensed venues will be operating in the new environment with casinos. The exception is a temporary stay on implementation of player loyalty programs in hotels and clubs pending a suitable mechanism for tracking player activity.

All other stakeholders were generally consistent with preferencing protective initiatives. Some respondents (primarily the community services sector) suggested far more restrictive measures should be imposed, including measures outside of the Code matters prescribed by the Act or the Commission's statutory powers.

The Commission was concerned by Anglicare and TasCOSS feedback that some venues are failing to provide appropriate care intervention and are allowing excluded persons to gamble.

Industry stakeholders also raised concerns about the effectiveness of the current responsible conduct of gambling training in providing staff with the skills to recognise and work with people experiencing gambling harm.

The Commission will subsequently be making decisions around regulation of licensing for special employees in the context of the new gaming environment and will also review the industry training requirements with a focus on ensuring licensees and their staff perform their duty of care responsibilities and regulatory obligations. These are broader issues and not all are captured by the Code. The Commission appreciates the feedback and will be progressing these issues separately to the Code review.

Some comments from the community sectors implied that the Commission had not considered all of the Code measures, requesting a further review be undertaken. As noted, the Commission, in scoping this review, considered all areas of the Code, but determined that this five-yearly review focus on player protection in the context of the industry reforms. This decision is consistent with the Commission's independent statutory function and its responsibilities under the Act with regard to reviewing the Code.

The Commission is confident that the significant enhancements to the Code from the 2017 review have made a positive sustainable impact and a measurable reduction in gambling harm since that time. This is supported by the findings of the:

- Stenning review that the Code continues to provide a broader range of controls than other jurisdictions, exceeding them in numerous areas; and

- *Fifth Social Economic Impact Study of Gambling in Tasmania* (released 2021), showing Tasmania had the lowest prevalence rates recorded for all risk categories compared with gambling surveys of other jurisdictions at the time (South Australia, Victoria and New South Wales). Since the last Code review, the prevalence rate for problem gambling had a marked decrease from 0.6% in 2017 to 0.4% in 2020 (or from approximately 2 500 to 1 700 adult Tasmanians²).

Further, the recent announcement to implement mandatory pre-commitment for people who play EGMs is significant and highly relevant to the context of this review. The impact a robust pre-commitment system for EGMs will have on minimising harm cannot be overstated. This is the gold standard for protecting people from losing more than they can afford, surpassing many of the existing Code measures that aim to provide this protection for vulnerable people.

² Australian Bureau of Statistics (3101.0 Estimated Resident Population by Age, Tasmania - 30 June 2017 and 30 June 2020)

Enhancements to the Code

The Consultation Paper was developed in an environment prior to submission of the Commission's report on harm minimisation technologies and a decision by Government to implement state-wide player card gaming with pre-commitment. The Commission recognises the strength of this harm minimisation initiative and that secondary controls will be reviewed after the player card gaming system is introduced. In this light, it has subsequently reviewed the options proposed in the Consultation Paper.

Following consideration of relevant arguments put forward in the submissions (also made before a decision on player card gaming) and the Stenning research, the Commission concluded that:

- two of the proposed initiatives are to be progressed - one as originally intended and one adapted to accommodate the issues raised in stakeholder feedback (with the two alternatives falling away by default); and
- also to be progressed are two additional enhancements to player loyalty programs and a moratorium applied to hotels and clubs from operating programs until player card gaming is fully implemented.

An explanation supporting the Commission's position on the initiatives is provided below. Attachment A lists and summarises the review outcomes of the initiatives.

Advertising

The Commission sought feedback on two alternative options to limit external signage and displays advertising gaming machines:

1. Ban all outdoor signage/displays advertising or promoting gaming machines; or
2. Limit the ban on outdoor signage/displays advertising or promoting gaming activities within proximity of where children frequently gather, for example, near schools, childcare centres and bus stops/shelters.

Most stakeholder submissions, other than industry, favoured a broad ban on all outdoor signage/displays advertising or promoting gaming machines (Option 1). Option 2 to limit the advertising ban within proximity of where children frequent was not preferred as, although it limits the impact to children, it is less helpful for other vulnerable people. More than half of these submissions requested consideration of extending the ban to other types of advertising falling outside the scope of this review.

A number of these stakeholders cited research, in addition to references in the Consultation Paper, that suggests exposure to advertising leads to a greater likelihood of gambling participation, particularly for those experiencing higher levels of harm.

Venues and industry representatives were opposed to any restrictions, although the Tasmanian Hospitality Association acknowledged advertising must not promote unrealistic ideas of gambling. There were strong views that venue owners should be able to advertise their gambling products as part of their business offerings, which also assists people to make an informed choice before deciding to enter a gambling venue (including alerting self-excluded people). One submission proposed that if advertising were banned, venue

names and brands should still be permitted to support not-for-profit organisations that rely on corporate sponsorship.

Conclusion

While national and international research demonstrates mandatory pre-commitment is the most effective tool for supporting players to stay within spend limits, the Commission remains concerned about the potential for active promotion of gambling on EGMs, including overt signage that is designed to attract attention such as large billboards and neon signs. On balance, the Commission also acknowledges the arguments proffered by industry about having the capacity to advertise business services and available gambling products, and that people should be informed about the products offered within a venue before making a choice to enter.

In line with similar restrictions in other jurisdictions, the Commission has determined all outdoor signage/displays must not:

- **depict, promote or encourage activity relating to playing electronic gaming machines, either in an explicit or implied manner; or**
- **immediately draw attention such as billboards or be illuminated.**

For clarity, signage will be able to advertise products available within the venue but, for EGMs, will not be able to promote EGM player activity. For example, “come play EGMs” would be non-compliant. This measure will apply to signage (including that containing written text, pictures, symbols) that gives any publicity to, or displays, promotes or encourages, gambling activity on gaming machines seen from outside of the gaming venue (including notices in windows), whether a physical structure or electronic.

This requirement will apply immediately from the date when the revised Code becomes effective.

As indicated in the Consultation Paper, the Commission intends to contemporise the Advertising Standards and supplementary Fact Sheet for all gambling areas, including the size and form of advertising, and adopting nationally consistent safe gambling messaging. The Commission will also include regulation specifically for the size and form of outdoor EGM signage/displays and take into consideration the feedback provided by stakeholders as part of amendments to the Standards.

Inducements including for Player Loyalty Programs

The Commission sought feedback on two alternative options to mitigate the potential for increased gambling from inducements:

1. Prohibit venue operators from offering free vouchers (or tokens and the like) and rewards points to be used for gambling purposes; or
2. Prohibit venue operators from offering free vouchers for any purpose.

The majority of stakeholder submissions, other than industry, supported a broad ban on venues from offering free vouchers for any purpose. One respondent did not support free vouchers earned through gambling activity nor vouchers issued for gambling activity. Some respondents requested consideration of even stronger action to ban other forms of inducements, such as jackpots.

Many of the comments provided suggest free vouchers are seen as incentivising frequent participation and higher losses, with no net benefit to consumers.

Conversely, venue operators were opposed to any restrictions on inducements, with one respondent suggesting that there is no strong evidence that inducements increase 'problem' gambling and that regulation should ensure inducements are used responsibly by industry. There was also argument asserted that free vouchers for non-gambling purposes, such as a free meal, act as a break in play.

The Tasmanian Hospitality Association supported the alternative option for limiting the ban to vouchers or rewards used for gambling purposes. It supported that other benefits such as complimentary food should be allowed, as otherwise it defeats the purpose of having a loyalty program. A venue operator also noted that, if there are no rewards for player loyalty programs, there would be no incentive for members to use their loyalty membership card and have their expenditure recorded.

Conclusion

The Commission accepted the view that banning free vouchers entirely disadvantages gaming venues, particularly compared to non-gaming venues that also offer free vouchers for their hospitality services. However, the Commission's position has not changed from the last review that vouchers and reward points that allow the player to add to gambling investment are not designed to reward for loyalty but are simply ways to encourage further gambling, e.g. through an extended time at a gaming machine, presumably incurring greater losses.

The Commission is of the view that a venue can reward its patrons in any number of ways unrelated to gambling activity.

The Commission has determined to prohibit venues from offering vouchers (or tokens, cash and the like) and loyalty rewards to be used for gambling purposes.

For clarity, vouchers can still be offered for non-gambling services and products. A gaming venue, like any non-gaming venue, is entitled to offer customer incentives that offer a range of rewards for patronage. However, those rewards must not be linked to player activity (unless part of a player loyalty program - discussed in the next section) and cannot be redeemed for any gambling activity (including vouchers to redeem cash).

This initiative will apply immediately from the date when the revised Code becomes effective.

Player Loyalty Programs

The Consultation Paper noted the future reforms may lead to increased player loyalty programs (PLPs) and programs potentially being run by third parties (i.e. captured as ancillary services on the Roll).

The Commission indicated its intention to conduct a broader review of the player loyalty program framework, including determining what measures are required to ensure a loyalty program offered by a venue operator or third party does not lead to increased gambling. In addition, the Commission's report on the outcome of its investigation of harm minimisation technologies noted that, should the Government introduce a player card gaming system, the Commission would further investigate whether controls are adequate where pre-commitment is attached to loyalty schemes.

Since releasing the Consultation Paper, and in-line with the Government's announcement to mandate player card gaming, the Commission undertook a preliminary review of the loyalty program measures for EGMs.

Conclusion

Firstly, the Commission determined that, to address any ambiguity between different types of loyalty programs businesses offer, a definition in the Code is needed for player loyalty programs applying specifically to gambling activities. A definition similar to that used in the Commission Rules is deemed appropriate.

Secondly, there is strong merit for requiring loyalty program systems to monitor EGM player activity (regardless of whether pre-commitment is used). The data can be used to establish behaviour patterns and monitor for signs of harmful behaviour occurring, enabling earlier intervention to check the player is not at risk of harm.

Thirdly, it is imperative that the Commission is able to obtain this type of data from player loyalty programs when required. Reasons include, but are not limited to, reviewing the effectiveness of the player loyalty program framework and individual schemes, identifying any concerns with gambling activity and harm minimisation strategies. Some de-identified personal information collected may be used for reporting. This will in no way compromise the protection of personal information.

The Commission has determined that:

- 1. A new definition be added for a player loyalty program that means a program that rewards players for participation in a gambling activity. Examples include complimentary prizes, promotions and vouchers (limited to non-gambling purposes).**
- 2. Player loyalty programs for EGMs must electronically record all player expenditure and the time spent playing EGMs for individual members.**
- 3. Licensees must provide information derived from a player loyalty program scheme to the Commission, when and as directed by the Commission. This may include information that identifies, or is capable of identifying, a person who is or was a participant in the loyalty scheme.**

Clearly defining PLPs as being tied to a person's gambling activity helps to distinguish PLPs from inducements. There are no loyalty programs currently operating in hotels and clubs that are linked to amounts of money spent on EGMs, and there is no capacity to record that level of data until the player card gaming system is in place. Therefore, until the system is fully implemented, a moratorium will be in place on hotels and clubs offering these programs, at which point the broader review will be completed. Hotels and clubs can continue to offer loyalty programs not related to participation in gambling activity.

The status quo for casinos will continue as they currently operate player card gaming with the capacity to track player activity and can provide this data to the Commission should it be requested.

These initiatives will apply immediately from the date the revised Code becomes effective.

Miscellaneous Amendments

In addition to the initiatives that will be progressed, the Commission will also make a number of miscellaneous amendments to update information and contemporise terminology in the Code. Some of these were noted by stakeholders and include updating broadcasting restrictions for gambling advertising to harmonise with the Australian Government's broadcasting rules and reviewing the terminology for 'problem gambler' and 'responsible gambling'.

Implementation of changes - next steps

The Commission will now commence drafting the amendments to the Code and update the Commission Rules to reflect the changes.

The Commission is aiming to finalise the Code amendments to take effect from 1 July 2023, allowing venues to align with the new licensing regime. The revised Code and Rules will be published on the Liquor and Gaming Branch website and affected licensees will be notified accordingly.

Attachment A - Outcomes summary of harm minimisation initiatives

Code Area	Option/initiative considered	To be progressed...
Advertising	Ban all outdoor signage/displays advertising or promoting gaming machines.	Yes - with amendment to specifically ban signage that depicts, promotes or encourages activity relating to playing EGMs, and signage designed to attract attention such as billboards and illuminated signage. Advertising of gambling products available within a venue will be allowed.
	Limit the ban on outdoor signage/displays advertising or promoting gaming activities within proximity of where children frequently gather, for example, near schools, childcare centres, bus stops/shelters.	No
Inducements including for Player Loyalty Programs	Prohibit venue operators from offering free vouchers (or tokens and the like) and rewards points to be used for gambling purposes.	Yes
	Prohibit venue operators from offering free vouchers for any purpose.	No
Player Loyalty Programs	Player loyalty programs for EGMs must electronically record all player expenditure and the time spent playing EGMs for individual members.	Yes A moratorium for hotels and clubs from offering PLPs will apply until the PCG system is fully implemented. Hotels and clubs can continue to offer loyalty programs not related to participation in gambling activity.
	Licensees must provide information derived from a player loyalty program scheme to the Commission, when and as directed by the Commission. This may include information that identifies, or is capable of identifying, a person who is or was a participant in the loyalty scheme.	Yes