

Submission to the Tasmanian Liquor and Gaming Commission review of the Responsible Gambling Mandatory Code of Practice for Tasmania

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Introduction

In considering this review of the mandatory code, I urge the Tasmanian Liquor and Gaming Commission (the Commission) to put first at all times its role to “foster responsible service of gambling” and to “minimise harm”. The Commission does not have a role in protecting the financial interests of gambling businesses. I am aware that in past consultations, the industry has lobbied hard against initiatives the Commission planned to introduce and that as a result of that lobbying, the industry’s requests were met. I am therefore pleased to see there will be no consultation after this initial period.

While I understand the Commission’s desire to focus on the impact that increased competition will have as a result of the Future Gaming Market (FGM) legislation, I am disappointed that it decided to exclude a review of the other items of the Mandatory Code. It is my understanding that the Commission is statutorily required to conduct a review of the complete Code “at least every five years” (Tasmanian Liquor and Gaming Commission 2020, p 4).

In particular, I would like to see the following items reviewed before the new FGM regime comes into operation:

- effectiveness of the EFTPOS cash withdrawal daily limits(4.5);
- the four practices listed for payment of “winnings” (section 5);
- the three practices for the service of food and alcohol (section 7);
- consideration of the intent of section 9 (staff training); and
- the intent of the requirement to provide information to players about the “odds, pay scales, return to player and take out rates (where applicable)” for gaming machines (10.1 d).

These areas of the Code have particular roles to play in consumer protection, therefore could and should be reviewed now. I do not consider it acceptable to wait another five years for the next scheduled review. For this reason, I include some commentary on these items from the Mandatory Code and urge the Commission to review them.

Recommendation 1: That all aspects of the Mandatory Code be reviewed, as per statutory requirement.

A Review of Advertising in the Code

Gambling is not an essential service or product and contributes very little to employment. Conversely, gambling causes harm to individuals and communities. There is therefore no public benefit in allowing the advertising of gambling.

It is pertinent to consider the role of the Commission in allowing advertising of gambling products.

Advertising normalizes a product or service. Livingstone (2019) makes the case that the principal use of advertising for products such as tobacco, alcohol or gambling is “to ‘normalise’ the product and associate it with enjoyable and desirable activities, such as sport” (page 7). Research commissioned by the Victorian Responsible Gambling Foundation found four times as many gambling ads per hour during sports programs than non-sports programs (O’Brien & Iqbal, 2019). In 2018, the [Australian Media and Communications Authority](#) (ACMA) [banned gambling ads](#) during sports programs between 5am and 8:30pm. I would appreciate clarification from the Commission as to whether our Mandatory Code (1.17) needs to be updated to reflect these rules as our Code currently permits advertising of gambling at any time of the day (including the times that children are most likely to be watching) if it is during a sports broadcast.

<p>Question: Please provide clarification on whether the Mandatory Code needs to be updated to reflect Australian Media and Communications Authority (ACMA) rules relating to the advertising of gambling?</p>

By its nature, advertising encourages people to consider the product which is being advertised. While governments and regulators have decided to ban certain advertising (e.g. cigarettes under all circumstances and alcohol under specific circumstances) or to require some products to provide accurate and universal warning labels (e.g. cigarettes and alcohol), gambling products have been allowed to be advertised with vague references to harm and with no product information (see Recommendations 8 and 9 below).

Poker machines in particular are a harmful product. As reported by the TLGC in its submission to the Joint Select Committee on Future Gaming Markets, “*this [electronic gaming machines] is not just ‘any’ product and its capacity for harm for some people is extremely high*” (Tasmanian Liquor and Gaming Commission 2016, page 1). How long someone can safely use them is not clear. How much someone can safely lose to them is not clear. The phrase “gamble responsibly” therefore does not provide clear guidance to a user, for what does “responsibly” mean?

Advertising of gambling products does not contribute to “responsible service of gambling” or to harm minimisation. It is only of benefit to the operators of a gambling business. With the enactment of the Future Gaming Market, individual operators will have more interest in competing for customers, as identified in the discussion paper (Stenning & Associates 2021).

A large reason the gambling industry pushed for individual licenses was because it wants to expand the market value of the gambling product. The Tasmanian Hospitality Association’s submission to the Joint Select Committee included an accompanying report called *The Tasmanian Gaming Review*¹, in which it is reported that Tasmanians spend less of their Household Disposable Income (HDI) on poker machines than people in other states due to poor marketing by Federal Hotels. The THA set the goal of achieving 1% of HDI spent on pokies. If achieved, this would double industry profits and therefore double the customer losses – at the time of their submission, I calculated that their goal was to increase spend (losses from the Tasmanian community and income to operators) on poker machines from \$114 to \$234 million annually.

For the reasons outlined above, I urge the Commission to ban all advertising of poker machines. This would bring us into line with other states, as shown in the Stenning and Associates (2021) review.

Recommendation 2: Prohibit all advertising of poker machines in Tasmania.

A review of Inducements and Loyalty Schemes in the Code

According to the Victorian Responsible Gambling Foundation, “Incentives or inducements are a form of marketing used to attract new customers or to trigger further gambling. There is also evidence they can lead to people underestimating the risks they are taking,”

(<https://responsiblegambling.vic.gov.au/resources/gambling-victoria/gambling-advertising/> viewed 19/6/22).

Like advertising, it is pertinent to reflect on the role for the Commission in permitting inducements and player loyalty schemes. Again, there is no public benefit in permitting these marketing tools. I argue that it does not matter what the inducement or loyalty scheme is targeting, if it is encouraging repeat visits, it is not in the public interest. Therefore, I see the issuing of birthday cards and keno or drink vouchers through the Oasis loyalty program to contribute to a person returning to the venue and being exposed to all the forms of gambling at that venue. Likewise, promotional prize draws and ‘free vouchers’ are designed to get the person to return and to spend money.

¹ The THA submission that is kept in the JSC files online only includes an extract from this report. The full report is kept in the Evidence Folders, in the Parliamentary Archives.

They are inducements and loyalty programs for the business, not the patron. Encouraging people into a gambling venue is encouraging people to gamble; encouraging people to gamble and to be loyal can lead to people being harmed by gambling. All inducements and loyalty programs are marketing tools that may lead to 'problem gambling'.

It was disappointing that the value of 'free' voucher allowed was increased following the 2017 Mandatory Code review from a cap of \$10 to \$15. This is not what the community services delivering gambling support programs recommended, nor what evidence indicated as a best practice harm minimization approach. There was no public benefit in increasing this cap.

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| <p>Recommendation 3: Prohibit 'free vouchers' offered as inducements to patronise gambling venues.</p> <p>Recommendation 4: If 'free vouchers' remain as permitted inducements, return the allowable maximum value to \$10.</p> |
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While I was pleased that the Commission introduced maximum caps for jackpots, the amount set (excluding casinos) for stand-alone (\$25,000) and for linked jackpots (\$60,000) are too high (Mandatory Code 2.8). Jackpots are inducements, as correctly identified in the Mandatory Code. Jackpots also have a negative effect on the Return to Player for the vast majority of customers who do not win the jackpot. As such, they should not just be reduced, they should be banned.

The questions raised in the consultation paper tinker at the very edge of inducements and player loyalty. If we are serious about wanting to protect consumers, we should ban jackpots. Jackpots are the biggest inducement offered by operators, so while the ACT "prohibits any inducement that encourages people to increase their intensity of betting" and South Australia "prohibits any inducement directed at encouraging patrons to gamble", jackpots fit this description (TLGC 2022 page 8, 9), all jurisdictions fall well short while permitting inducements in the form of jackpots.

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| <p>Recommendation 5: Prohibit jackpots, as they are the most significant inducement offered to increase the intensity of betting on poker machines.</p> <p>Recommendation 6: If jackpots remain as permitted, reduce maximum caps for jackpots to \$1,000 for stand-alone and \$2,500 for linked jackpots.</p> |
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Other areas of the mandatory code

I am concerned that the Mandatory Code is not being fully reviewed at this time, which does not appear to meet statutory requirements.

Question: Please provide clarification on when and how the following items these items will be reviewed:

- effectiveness of the EFTPOS cash withdrawal daily limits (4.5)
- payment of “winnings” (section 5)
- service of food and alcohol (section 7)
- staff training (section 9)
- information to poker machine customers about the “odds, pay scales, return to player and take out rates (where applicable)” (10.1 d)

Please see below for further comments I have on a number of the items from the Mandatory Code that are not included in this review, but warrant full review in line with statutory requirements and in the context of imminent major reforms.

Consideration of the intent of section 9 (staff training)

I believe that the intent of this section of the Code is so that venues can intervene when they observe customers are experiencing or at risk of experiencing harm. Training to “recognise people with gambling problems” is not enough if there is no requirement for staff to intervene.

Further, there will be new technologies introduced as a result of the FGM before the next review of the Mandatory Code. Will there be an update to the Responsible Service of Gambling course to assist staff to monitor these new technologies?

Tasmania is out of step to other states on the issue of staff intervention. In Victoria, Queensland, Northern Territory and NSW, gambling venues are either already required or will soon be required to intervene (Liquor and Gaming NSW 2020, page 5).

In Victoria, venue staff are required to identify the signs of risky behavior, with one person at each venue having the role to intervene as appropriate. In the ACT, their Code requires a designated staff member to discuss a person’s gambling behavior with them and offer assistance (Livingstone 2018, page 15).

Each venue in NSW is required to have a Gambling Contact Officer (Liquor and Gaming NSW 2020, page 11) whose role includes the responsibility to “engage with patrons displaying or experiencing problematic gambling behavior”, see whether they wish to self-exclude if appropriate and consider whether the hotel “should make exclusion orders” (page 8). This has been introduced because “the evidence suggests that the informed choice model is failing to have a meaningful impact on minimizing

gambling harm, as venues have no regulatory obligation to intervene with patrons who are displaying problematic behaviours, unless they ask for help” (Liquor and Gaming NSW 2020, page 1).

Recommendation 7: In line with other jurisdictions, include in the Mandatory Code a requirement for staff intervention when patrons display signs of harmful gambling behaviour.

The intent of the requirement to provide information to players about the “odds, pay scales, return to player and take out rates (where applicable)” for gaming machines (10.1 d)

The Gambling Support Program’s Strategic Framework 2019-2023 states “not understanding how gambling works can be a contributing factor to a person developing a problem with gambling” (p 5). There is a considerable amount of research that supports this (e.g. Law 2005, Productivity Commission 2010, Livingstone 2019) and the Commission raised its concerns about people misunderstanding gambling, in particular poker machines, in its submission to the Joint Select Committee.

Livingstone (2019) argues that “*the price of gambling is not well understood by many people who gamble, particularly amongst those who gamble on EGMs*” (page 8). For this reason, he recommends the provision of information at the point of sale (on the machine) to customers that explains in plain English the cost of using the machine: for example, “*half of the users of this game will spend a \$50 stake in six minutes or less betting two dollars per spin*” (page 3).

This recommendation is similar to that made by the Commission in its submission to the Joint Select Committee. While the development of the FGM did not address these concerns, there is now an opportunity for the Commission to act on the overwhelming evidence of harm caused by people not understanding how poker machines work by improving the section of the Code regarding information to players (section 10).

Recommendation 8: Introduce a requirement for all poker machines to display information that explains in plain English the cost of using the machine.

Recommendation 9: Introduce a requirement for all poker machines to display a public health warning indicating that the product can be addictive and harmful to some users.

Language used in the mandatory Code

The language used in the Mandatory Code should be modernised and in keeping with contemporary research. For example, Livingstone (2018) recommended to the ACT Government to remove the use of “responsible gambling” and “problem gambler” from legislation and regulation (page 29). He proposes its code of practice should be a code for “harm prevention and minimisation” and that it incorporate penalties for breaches of the code (page 30). NSW’s Gaming Machines Amendment (Gambling Harm Minimisation) Bill 2020 also removes the phrase “problem gambling” (Liquor and Gaming NSW 2020, page 9). The Commission could implement these recommendations during this review.

Recommendation 10: That language in the Mandatory Code, including its title, be modernised in keeping with the contemporary research base.

One code with regional variations?

There were benefits for the gambling industry in having one code across the state when all machines were owned by the one company. However, in moving to an individual license model, is there any reason the Code could not be adjusted to reflect the real impacts of certain areas? For example, the three highest loss LGAs are Glenorchy, Launceston and Devonport.

Question: Would the Commission consider introducing additional requirements under the Code for these areas of high-harm?

This would support the work of the Gambling Support Program in high-risk Tasmanian communities and also work in with the proposal for the Community Support Fund to be more focused on high risk areas.

References

Gambling Support Program 2019, *Gambling Support Program Strategic Framework 2019-2023*, Department of Communities Tasmania.

Law, M 2005, *House of cards: problem gambling and low income earners in Tasmania*, Social Action and Research Centre, Anglicare Tasmania, Hobart.

Livingstone, C. 2018, *A blueprint for preventing and minimizing harm from electronic gambling machines in the ACT*, Gambling and Social Determinants Unit, School of Public Health and Preventative Medicine, Monash University.

Livingstone, C et al 2019, *Identifying effective policy interventions to prevent gambling-related harm*, Victorian Responsible Gambling Foundation, Victoria.

Liquor and Gaming NSW 2020, *Gaming Machines Amendment (Gambling Harm Minimisation) Bill 2020 Explanatory Paper*, Liquor and Gaming NSW.

O'Brien, K & Iqbal, M 2019, *Extent of, and children and young people's exposure to, gambling advertising in sport and non-sport TV*, Victorian Responsible Gambling Foundation, Victoria.

Productivity Commission 2010, *Gambling*, Report No. 50, Canberra.

Stenning & Associates 2021, *Responsible gambling codes and harm minimization policies of Australian jurisdictions A desktop review*, Tasmanian Liquor and Gaming Commission, Tasmania.

Tasmanian Liquor and Gaming Commission 2016, *Submission by the Tasmanian Liquor and Gaming Commission*, submission No. 144, Joint Select Committee on the Future of Gaming Markets.

Tasmanian Liquor and Gaming Commission 2022, *Second review of the responsible gambling mandatory code of practice for Tasmania Stakeholder Consultation Paper*, Tasmanian Liquor and Gaming Commission, Tasmania.