

NEW SOUTH WALES
DRAFT GOVERNMENT BILL

**Gaming Machines Amendment (Gambling
Harm Minimisation) Bill 2020**

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public consultation draft

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**Gaming Machines Amendment (Gambling
Harm Minimisation) Bill 2020**

No , 2020

A Bill for

An Act to amend the *Gaming Machines Act 2001* to make further provision with respect to gambling harm minimisation; and for other purposes.

public consultation draft

Gaming Machines Amendment (Gambling Harm Minimisation) Bill 2020 [NSW]

The Legislature of New South Wales enacts—

1 Name of Act

This Act is the *Gaming Machines Amendment (Gambling Harm Minimisation) Act 2020*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

Schedule 1 Amendment of Gaming Machines Act 2001 No 127

- [1] **Section 39 General 6-hour shutdown period after 1 May 2003**
Omit “100 penalty units” from section 39(1). Insert instead “250 penalty units”.
- [2] **Section 40 Approval of 3-hour shutdown period on weekends and public holidays**
Omit “100 penalty units” from section 40(2). Insert instead “250 penalty units”.
- [3] **Section 40A Approval of limited shutdown period on hardship grounds**
Omit “100 penalty units” from section 40A(2). Insert instead “250 penalty units”.
- [4] **Section 41 Approval of different shutdown periods for “early openers”**
Omit “100 penalty units” from section 41(4). Insert instead “250 penalty units”.
- [5] **Part 4, Division 2A**
Insert after Division 2—

Division 2A Exclusion of persons from hotels and clubs

42A Definitions

In this Division—

excluded person, in relation to a venue, means—

- (a) a person who has entered into a self-exclusion arrangement that relates to the venue, or
- (b) a person who is subject to an exclusion order that prohibits the person from entering or remaining in the whole of the venue.

Note. An exclusion order prohibits the excluded person from entering or remaining in the whole of each venue, within 5 kilometres of the venue of the hotelier or club that made the order, in which approved gaming machines are located. Accordingly, the person is an excluded person in relation to each of the other venues. See section 42E.

exclusion application—see section 42C(1).

exclusion order—see section 42C(1).

family member—see section 42C(2).

gambling counselling service provider means a body prescribed by the regulations as a gambling counselling service provider.

gaming area of a venue means a part of the venue in which approved gaming machines are located.

Online Exclusion Portal means a web-based tool, approved by the Secretary, by which a person may enter into a self-exclusion arrangement.

personal gambling counsellor means a person who—

- (a) has appropriate gambling counselling qualifications, and
- (b) is employed or engaged by, or whose services are accessed through, a gambling counselling service provider.

relevant exclusion area of a venue—

- (a) for a person who has entered into a self-exclusion arrangement—see section 42B(1)(b), or
- (b) for a person who is subject to an exclusion order—see section 42E.

relevant person means a person who is the subject of an exclusion application.

responsible person means—

- (a) for a hotel—the following—
 - (i) the hotelier,
 - (ii) the manager of the hotel,
 - (iii) an employee of the hotelier or manager,
 - (iv) any other person involved in the conduct of gambling activities in the hotel, or
- (b) for a club—the following—
 - (i) the secretary of the club,
 - (ii) a director of the club,
 - (iii) an employee of the club,
 - (iv) any other person involved in the conduct of gambling activities on the club premises.

self-exclusion arrangement—see section 42B(1).

spouse of a relevant person means—

- (a) a person to whom the relevant person is legally married (including a husband or wife of the relevant person), or
- (b) a de facto partner of the relevant person.

Note. “De facto partner” is defined in section 21C of the *Interpretation Act 1987*.

State-wide Exclusion Register—see section 42L.

42B Self-exclusion arrangements

- (1) For the purposes of this Division, a **self-exclusion arrangement** is a written undertaking—
 - (a) that is voluntarily entered into by a person in accordance with the regulations, and
 - (b) that prohibits the person from entering or remaining in an area of a venue nominated by the person (the **relevant exclusion area**).
- (2) A self-exclusion arrangement may relate to a single venue or to multiple venues.
- (3) The relevant exclusion area may comprise—
 - (a) 1 or more of the gaming areas of the venue, or
 - (b) the whole of the venue.
- (4) A hotelier or club authorised to keep approved gaming machines must—
 - (a) display in each gaming area of the venue a notice, in the form approved by the Secretary, about the availability of self-exclusion arrangements, and
 - (b) publicise the availability of self-exclusion arrangements and information about how they operate to the patrons of the venue, and
 - (c) ensure that a person is, before entering into a self-exclusion arrangement, given the opportunity to seek independent legal or other professional advice at the person’s own expense as to the effect of the arrangement, and
 - (d) assist a person who proposes to enter into a self-exclusion arrangement to do so, and

- (e) provide a person who enters into a self-exclusion arrangement with information about gambling counselling services, including the name and contact details of a gambling counselling service provider, and refer the person to those services unless the person elects otherwise, and
- (f) make a record of each self-exclusion arrangement in relation to the venue in the State-wide Exclusion Register, and
- (g) comply with any requirements of the regulations relating to the recording of information in the State-wide Exclusion Register.

Maximum penalty—250 penalty units.

42C Making of exclusion orders—general

- (1) A hotelier or club authorised to keep approved gaming machines may, on application by a person's family member (an *exclusion application*), or on the hotelier's or club's own initiative, make a written order (an *exclusion order*) that prohibits the person from entering or remaining in—
 - (a) the hotel, or
 - (b) the club premises (including, in the case of a club that has more than 1 set of premises, any or all of those sets of premises).
 - (2) For the purposes of this Division, each of the following is a *family member* of the relevant person—
 - (a) a current or former spouse of the relevant person,
 - (b) a child of the relevant person or of a current or former spouse of the relevant person,
 - (c) a sibling, step-brother or step-sister of the relevant person or of a current or former spouse of the relevant person,
 - (d) a parent or step-parent of the relevant person or of a current or former spouse of the relevant person.
 - (3) A hotelier or club must—
 - (a) refer a family member who proposes to make an exclusion application to a gambling counselling service provider, and
 - (b) following the referral, assist the family member to make the exclusion application, and
 - (c) decide, within 21 days of receiving an exclusion application, whether or not to make the exclusion order and inform the family member and the relevant person of the decision.
- Maximum penalty—250 penalty units.
- (4) An exclusion order—
 - (a) takes effect on the date that it is served on the excluded person in accordance with the regulations, and
 - (b) may be revoked at any time by the hotelier or club that made the exclusion order but not until after 6 months from the date it took effect.
 - (5) The regulations may make provision for or with respect to the matters to be considered, and the procedure to be followed, in deciding whether or not to make an exclusion order.
 - (6) A decision by a hotelier or club whether or not to make an exclusion order may be reviewed by the Authority in accordance with the regulations.

- (7) A club does not, in making or enforcing an exclusion order, contravene any provision of the *Registered Clubs Act 1976* or the *Anti-Discrimination Act 1977*.

42D Making of exclusion orders—*independent advice*

- (1) The Secretary may appoint personal gambling counsellors as persons (*independent advisers*) who may provide hoteliers and clubs an opinion on whether a proposed decision to make or not make an exclusion order is, in a particular case, reasonable.
- (2) The regulations may make provision for or with respect to independent advisers, including—
- (a) the procedure by which a hotelier or club may seek the services of an independent adviser, and
 - (b) the fee payable for use of an independent adviser, and
 - (c) the manner in which, and terms on which, an independent adviser may provide an opinion to a hotelier or club.

42E Extension of effect of exclusion order

- (1) A person subject to an exclusion order is prohibited from entering or remaining in the whole of each venue, within 5 kilometres of the venue of the hotelier or club that made the order, in which approved gaming machines are located (the *relevant exclusion area*).
- (2) Accordingly, the person is an excluded person in relation to each of the other venues.

42F Requirement to prevent excluded persons from entering or remaining in relevant exclusion areas

- (1) A hotelier or club must take all reasonable steps to prevent an excluded person from entering or remaining in the relevant exclusion area of the venue.
Maximum penalty—250 penalty units.
- (2) The Secretary is to issue guidelines setting out the reasonable steps that may be taken by a hotelier or club to prevent an excluded person from entering or remaining in the relevant exclusion area of the venue.
- (3) The guidelines are to be made publicly available in a manner the Secretary considers appropriate.
- (4) It is a defence to a prosecution for an offence under this section if it is proved that the hotelier or club complied with the guidelines referred to subsection (2).

42G Action by responsible persons in relation to excluded persons

- (1) It is lawful for a responsible person for a hotel or club, using no more force than is reasonable in the circumstances—
- (a) to prevent an excluded person from entering or remaining in the relevant exclusion area of the venue, and
 - (b) to remove the excluded person, or cause the excluded person to be removed, from the relevant exclusion area of the venue.
- (2) No civil or criminal liability is incurred by a responsible person for a hotel or club, or by the club itself, for any act done in good faith, and in accordance with this section, to or in respect of an excluded person.

- (3) No civil liability is incurred by a responsible person for a hotel or club, or by the club itself, if an excluded person enters or remains in the relevant exclusion area of the venue after all reasonable steps have been taken to prevent the excluded person from doing so.
- (4) However, this section does not limit or otherwise affect the civil liability of a person for negligence that causes personal injury to a person or the death of a person.

42H Prohibition on sending promotional or other material to excluded persons

- (1) If a person is, under this Division, prohibited from entering or remaining in the gaming area of a venue only, the hotelier or club must not send any promotional material to the person.
Maximum penalty—250 penalty units.
- (2) If a person is, under this Division, prohibited from entering or remaining in the whole of a venue, the hotelier or club must not send any promotional material or other information about the venue to the person.
Maximum penalty—250 penalty units.
- (3) In this section, *promotional material* means any written material that promotes or otherwise relates to the playing of approved gaming machines in a venue.

42I Prohibition on permitting excluded persons to participate in player reward schemes

A hotelier or club must not permit an excluded person in relation to the hotel or club to participate in a player reward scheme within the meaning of section 45.

Maximum penalty—250 penalty units.

Note. An exclusion order prohibits the excluded person from entering or remaining in the whole of each venue, within 5 kilometres of the venue of the hotelier or club that made the order, in which approved gaming machines are located. Accordingly, the person is an excluded person in relation to each of the other venues. See section 42E.

42J Player accounts and Smartcards of excluded persons

- (1) A player account opened by a person with a hotelier or club is suspended while the person is an excluded person in relation to the hotel or club.
Note. An exclusion order prohibits the excluded person from entering or remaining in the whole of each venue, within 5 kilometres of the venue of the hotelier or club that made the order, in which approved gaming machines are located. Accordingly, the person is an excluded person in relation to each of the other venues. See section 42E.
- (2) The regulations may make provision for or with respect to the return to an excluded person of funds in a player account opened by, or credit stored on a Smartcard issued to, the person.
- (3) In this section, *player account* and *Smartcard* have the same meaning as in section 45B.

42K Excluded persons prohibited from playing gaming machines

- (1) An excluded person is prohibited from playing an approved gaming machine in the relevant exclusion area (a *prohibited machine*).
- (2) An excluded person is not entitled to a prize from the playing of a prohibited machine.

- (3) A prize from the playing of a prohibited machine is forfeited to the hotelier or club by operation of this section.
- (4) A hotelier or club must pay the amount of a prize forfeited to the hotelier or club by operation of this section into the Responsible Gambling Fund established under section 115 of the *Casino Control Act 1992* within 3 months after the prize was forfeited.
Maximum penalty (subsection (4))—250 penalty units.
- (5) In this section—
prize includes the monetary value of the following—
 - (a) a non-monetary prize awarded to an excluded person from the playing of a prohibited machine,
 - (b) a promotional prize offered or presented to an excluded person under section 45 in connection with the playing of a prohibited machine,
 - (c) credits appearing on a prohibited machine being played by an excluded person.

42L State-wide Exclusion Register

- (1) The Secretary is to keep a register (the *State-wide Exclusion Register*) of all excluded persons.
- (2) The State-wide Exclusion Register is to be kept in the manner approved by the Secretary.
- (3) The regulations may make provision for or with respect to the State-wide Exclusion Register and, in particular, for or with respect to the following—
 - (a) information that is required or permitted to be recorded in the State-wide Exclusion Register,
 - (b) the administration and use of the State-wide Exclusion Register,
 - (c) recording and disclosure of, and access to, information in the State-wide Exclusion Register,
 - (d) without limiting paragraph (c)—
 - (i) the exchange of information, by means of the State-wide Exclusion Register, between the Secretary and hoteliers and clubs, and
 - (ii) information reporting requirements of hoteliers and clubs, and
 - (iii) the interoperability of the State-wide Exclusion Register with other services, registers and schemes, including facial recognition services.

42M Registering and notification of exclusion breaches

- (1) A hotelier or club must—
 - (a) record in the State-wide Exclusion Register any breach or attempted breach of a self-exclusion arrangement or exclusion order by an excluded person, and
Note. The hotelier or club must also record the incident in the venue's gambling incident register—see section 48A(2)(c).
 - (b) if the hotelier or club is aware a counselling provider provides gambling counselling services to the excluded person—notify the counselling provider of the breach or attempted breach.

- (2) A counselling provider that provides gambling counselling services to an excluded person may, with the consent of the excluded person—
 - (a) record in the State-wide Exclusion Register any breach or attempted breach of a self-exclusion arrangement or exclusion order by the excluded person, and
 - (b) notify the relevant hotelier or club of the breach or attempted breach.
- (3) In this section—

counselling provider means—

 - (a) a gambling counselling service provider, or
 - (b) a personal gambling counsellor.

42N Exclusion applications on behalf of family members

- (1) A family member may request a counselling provider to make an exclusion application on behalf of the family member.
- (2) A family member who is under the age of 18 cannot make an exclusion application unless the application is made on behalf of the family member by a counselling provider.
- (3) Any thing under this Act that is permitted or required to be done by or in relation to a family member is permitted or required to be done by or in relation to a counselling provider that makes an application on behalf of the family member.
- (4) In this section—

counselling provider means—

 - (a) a gambling counselling service provider, or
 - (b) a personal gambling counsellor.

[6] Section 43 Prohibition on publishing gaming machine advertising

Omit “100 penalty units” wherever occurring in section 43(1) and (3).
Insert instead “250 penalty units”.

[7] Section 45A Disclosure of information in player activity statements

Omit “100 penalty units” wherever occurring in section 45A(2) and (3).
Insert instead “250 penalty units”.

[8] Section 45B Disclosure of information in relation to players

Omit “100 penalty units” from section 45B(3). Insert instead “250 penalty units”.

[9] Section 46, heading

Omit “**problem**”.

[10] Sections 46(1) and 194(1)(c1)

Omit “problem” wherever occurring.

[11] Section 47C Prohibition on certain cash dispensing facilities

Omit “100 penalty units” from section 47C(1). Insert instead “250 penalty units”.

[12] Sections 48A–48D

Insert after section 48—

48A Gambling incident registers

- (1) A hotelier or club authorised to keep approved gaming machines must—
- (a) keep and maintain a gambling incident register in the form approved by the Secretary, and
 - (b) ensure that the requirements of this section in relation to the register are complied with.

Maximum penalty—100 penalty units.

- (2) A gambling incident register is to record details of the following—
- (a) any incident in which a patron of the venue displays or engages in problematic gambling behaviour of the kind specified in guidelines issued by the Secretary,
 - (b) any exclusion application under Division 2A that is made, or that is proposed to be made, by or on behalf of a family member, including any occasion on which a family member makes contact or seeks information about the making of an exclusion order, and intervention by the venue in relation to a patron,
 - (c) any breach or attempted breach of a self-exclusion arrangement or exclusion order under Division 2A,
 - (d) any offence, or alleged offence, under Division 4, or any other incident involving a minor,
 - (e) any other gambling-related incident or matter of a kind prescribed by the regulations.

- (3) A gambling incident register must also record details of the action taken in response to the incidents, applications and other matters recorded in the register.

- (4) A gambling incident register must not record the identity or personal details of a family member who makes, or who proposes to make, an exclusion application under Division 2A.

- (5) The information recorded in a gambling incident register must be retained for at least 3 years from when the record was made.

- (6) A hotelier or club must, at the request by a police officer or inspector—
- (a) make any gambling incident register kept under this section available for inspection by a police officer or inspector, and
 - (b) allow a police officer or inspector to take copies of the register or to remove the register from the hotel or club premises.

Maximum penalty—100 penalty units.

- (7) A gambling incident register required to be kept by a hotelier or club under this section may be kept as part of an incident register required to be kept by the hotelier or club under section 56 of the *Liquor Act 2007*.

- (8) Guidelines issued by the Secretary for the purposes of this section must be made publicly available in a manner the Secretary considers appropriate.

48B Requirement to promote responsible gambling practices

- (1) A responsible person for a hotel or club must ensure that—

- (a) all reasonable steps are taken to promote responsible gambling practices in relation to approved gaming machines kept in the venue, and
- (b) those gambling practices are reviewed and rectified if the gambling incident register kept under section 48A identifies any misuse or abuse of gambling activities in the venue.

Maximum penalty—100 penalty units.

- (2) In this section, *responsible person* means—

- (a) for a hotel—the hotelier, the manager of the hotel or any other person engaged in the administration of the hotel or in the management of approved gaming machines in the hotel, or
- (b) for a club—the secretary of the club or any other person engaged in the administration of the club or in the management of approved gaming machines on the club premises.

48C Gambling contact officers

- (1) A hotelier or club authorised to keep approved gaming machines must ensure that at least 1 person who has completed an approved advanced RCG training course within the meaning of section 49A is on duty at the venue at all times when approved gaming machines are in operation at the venue.

Maximum penalty—250 penalty units.

- (2) The person required to be on duty is referred to in this Act and the regulations as the *gambling contact officer* for the venue.

- (3) In the case of a club with more than 1 set of premises, the club complies with subsection (1) only if at least 1 gambling contact officer is on duty at each set of premises.

- (4) The regulations may make provision for or with respect to the functions of gambling contact officers.

- (5) A hotelier or club must—

- (a) take reasonable steps to ensure that a gambling contact officer for the venue exercises the functions conferred or imposed on the officer under this Act or the regulations, and
- (b) ensure that the gambling contact officer for the venue is informed by members of staff about those patrons whom the staff members reasonably believe are experiencing problems with gambling.

Maximum penalty—250 penalty units.

- (6) The Secretary is to issue guidelines to assist a hotelier or club in determining the reasonable steps required to be taken for the purposes of subsection (5)(a).

- (7) The guidelines are to be made publicly available in a manner the Secretary considers appropriate.

48D Whistleblower protection for staff

- (1) A person must not engage in discriminatory conduct if the main reason for the discriminatory conduct is a prohibited reason.

Maximum penalty—250 penalty units.

- (2) For the purposes of this section, a person engages in *discriminatory conduct* if the person—

- (a) dismisses a member of staff of a hotel or club (a *staff member*), or

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- (b) terminates a contract for services with a staff member, or
 - (c) changes a staff member's position or working hours to the member's detriment, or
 - (d) refuses or fails to offer to engage a person as a prospective staff member, or
 - (e) treats a prospective staff member less favourably than another prospective staff member would be treated.
- (3) A person also engages in discriminatory conduct for the purposes of this section if the person organises to take any action referred to in subsection (2) or threatens to organise or take that action.
- (4) Conduct referred to in this section is engaged in for a *prohibited reason* if it is engaged in because the staff member or prospective staff member has disclosed or proposes to disclose to the Authority, the Secretary or an inspector—
- (a) the contravention by the hotelier or club of a gambling harm minimisation requirement, or
 - (b) concerns about the manner in which the hotelier or club is complying with a gambling harm minimisation requirement.
- (5) If, in proceedings for an offence under this section, the prosecution—
- (a) proves that the discriminatory conduct was engaged in, and
 - (b) adduces evidence that the discriminatory conduct was engaged in for a prohibited reason,
- the reason alleged for the discriminatory conduct is presumed to be the main reason for that conduct unless the accused proves on the balance of probabilities that the reason was not the main reason for the conduct.
- (6) In subsection (4), *gambling harm minimisation requirement* means a requirement imposed by or under this Division or Division 2 or 2A of this Part.

[13] Section 49 Self-exclusion of patrons from hotels and clubs

Omit the section.

[14] Section 49A Definitions

Insert in alphabetical order—

approved advanced RCG training course means an advanced course of responsible conduct of gambling training for the management and supervision of gambling operations in hotels and on club premises and that is provided—

- (a) by an approved training provider approved by the Secretary in accordance with the regulations in relation to the course, or
- (b) by or on behalf of the Secretary.

[15] Sections 49A (definition of “interim RCG certificate”), 49C and 49D

Insert “or approved advanced RCG training course” after “approved RCG training course” wherever occurring.

[16] Section 50 Minors prohibited from operating gaming machines in hotels or clubs

Insert after section 50(2)—

- (3) A minor is not entitled to a prize from the playing of an approved gaming machine that the minor is prohibited from playing under this section (a *prohibited machine*).
- (4) A prize from the playing of a prohibited machine is forfeited to the hotelier or club by operation of this section.
- (5) A hotelier or club must pay the amount of a prize forfeited to the hotelier or club by operation of this section into the Responsible Gambling Fund established under section 115 of the *Casino Control Act 1992* within 3 months after the prize was forfeited.
Maximum penalty (subsection (5))—250 penalty units.
- (6) In this section—
prize includes the monetary value of the following—
 - (a) a non-monetary prize awarded to a minor from the playing of a prohibited machine,
 - (b) a promotional prize offered or presented to a minor under section 45 in connection with the playing of a prohibited machine,
 - (c) credits appearing on a prohibited machine being played by a minor.

[17] Section 194 Evidentiary provisions

Omit section 194(1)(c2).

[18] Section 210 Regulations

Omit section 210(2)(g1). Insert instead—

- (g1) the establishment and conduct of self-exclusion arrangements under section 42B,
- (g2) the making and operation of exclusion orders under section 42C, including the matters to be considered when determining exclusion applications,
- (g3) the administration and use of the Online Exclusion Portal within the meaning of Part 4, Division 2A,