Submission to Gambling Machine Harm Minimisation Measures Consultation Paper

Melton City Council
January 2017

Context for the City of Melton Submission

As the Harm Minimisation Consultation Paper (CD/16/572712*) and the issues outlined within appear limited, it’s difficult to appreciate a clear line of site to public-health approach based on holistic harm-minimisation practice. No indication is provided that significant research including the recent prevalence and harm studies have been considered.1 As a consequence, the harm minimisation strategies listed, appear to be limited in scope to minor and incremental tweaking of current EGM venue operational environments, and not concerned with seeking to address broader gambling related harms through a public health promotion lens.

Melton City Councils’ Responsible Gambling Policy adopts a public health promotion and prevention, harm minimisation lens which it applies to all gambling products (not limited to Electronic Gaming Machines). The relationship between all the methodologies Indicated by the Melton City Council submission is illustrated by figure 1 below.

Figure 1. Elements and Approaches of the Harm Minimisation Agenda

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Harm Minimisation Measures

Melton City Council Responsible Gambling Policy recognises that preventative practice is underpinned by the importance of maintaining a mindful connection with the personal resources being expended while gambling. Any mechanism which seeks to disrupt such connections or to otherwise diffuse gambling patrons’ locus of control, must be viewed for being counter to meaningful harm reduction practice.

Cash Economy

Maintaining a cash economy, limiting the ready availability to cash and maintaining a real time connection with how much the responsible gambler is expending (in both monetary terms and amount of time spent gambling), is of central significance to any harm minimisation. Reinforcing the ability to plan from the outset and maintain an active mindfulness over how much the gambler is willing to lose, forms the basis of YourPlay, Victoria’s pre-commitment Scheme.²

Perhaps the most significant structural harm minimisation measure of the past decade was the removal of ATMs from Victorian Gaming venues.³ Since their removal, the ongoing availability of EFTPOS, has arguably bridged any real positive harm reduction impact that ATM removal might otherwise have achieved.

As limiting opportunities for spontaneous access to cash remains of significant importance to mitigating harms for those most at risk of harmful gambling practice, questions 1 to 6 of the Consultation Paper have been addressed against this premise. Question 7 refers to TITO technologies, which can directly undermine harm minimisation measures, and may even deliberately seek usurp them. Question 8, refers to the role for Codes of Practice and striking the right balance between duties of care and regulatory compliance. This submission centres around the integral importance for getting the role, function and implementation of these Codes right and asserts that everything else considered a harm minimisation measure, should coherently be hinged from these.

Q.1. Is the current $200 per EFTPOS transaction limit appropriate? If not, what other regulatory measures would support the objectives of the Act?

The ongoing availability of EFTPOS within gambling venues has arguably filled any void created by ATM removal. Consequently, instantaneous availability of cash has not been stemmed in any meaningful way. However, just as the removal of ATMs was a significant step forward, further strides to reduce spontaneous and relatively immediate access to cash are now required. Within an environment where the $200 per transaction limit is offering limited harm reduction utility and where EFTPOS facilities are to remain available within gambling environments, such facilities should be provided with a predetermined and venue daily limit set (perhaps a $200 daily limit). While it is unclear how this operationally could be


³ Hare, S. (2015), Study of Gambling and Health in Victoria, Victoria, Australia: Victorian Responsible Gambling Foundation and Victorian Department of Justice and Regulation, (pg 43, 1).
achieved, it’s an element of gambling operations that should also be included in the venues Code of Conduct once operations have commenced, as well being committed to in an application for new licence or licence variation, forming part of the requisite Social and Economic Impact Assessment considerations. It could also be included as a condition of planning permit or licence (perhaps by mutual consent).

Q.2. Is the current $1,000 threshold for the payment of winnings by cheque appropriate? If not, what should be the limit and why?

Increasing opportunities for consumers of gambling products to make responsible choices over their own cash and time management is always preferred. Gamblers electing to cash in their monetary entitlements for amounts less than $1,000 (but not less than $200 for example), to be transferred to their accounts via EFT to their own accounts, should be made available and encouraged.

Q.3. Should payment by EFT be permitted in addition to, or as a replacement for, payment by cheque?
Cheque should be replaced by EFT wherever possible. The inclusion of pre-nominated accounts for EFT payment may also prevent unconscionable conduct and other forms of money laundering as well.

Q.4. Are there other payment methods that should be considered for the payment of credits / winnings?

Payment via EFT solely, may also reduce opportunities for money laundering, enhance opportunities for an audit trail and the provided an ability for the gambler to keep an eye of their gambling related spending. All of these preventative opportunities are not presently available under the current cheque payment arrangements.
EFT payment might be introduced and cheque payment scaled out. This would provide the opportunity for more meaning impact evaluation and cost benefit assessments to be drawn.

Q.5. Should venue operators be able to exchange personal cheques for cash?

No. Gambling operators should place themselves at arm’s length from being seen as a contributor or enabler of gambling related harms. Such commitments and requirements should be part of the Gambling Code of Conduct (and condition of Gaming licence) for each venue and should stipulate how the gambling venue is required to separate itself from all operational aspects that could be seen as enabling harmful gambling behaviours. This is particularly relevant in light of recent case law leaving the door ajar to the ‘duty and standard of care’ owed by gambling operators to gambling their respective clientele.4

With the impact of the recent changes to the DSM V—replacement of ‘gambling pathology’ with ‘gambling disorder’ yet to be fully realised, it may be even more prudent for the gambling industry to demonstrate ‘reasonableness’, ‘fairness’ and ‘transparency’ in all dealings with their clientele. As a minimum, the cashing of personal cheques, should be viewed as falling well below the harm minimisation bar and not be a behaviour a responsible gambling service should be seen to be engaging in.

If not a voluntary undertaking, Licence conditions should impose such requirements on operators.

Q.6. If cashless gaming and or TITO is introduced, how should they be regulated so that they are consistent with other measures that limit access to cash? What harm minimisation measures should apply?

The benefits of the age of a cashless society should be exploited in so far as its supports harm reduction potential but not to undermine it. Accordingly, the payment via cheque method to the gambler (over a set amount and at the election of the patron at other times) should be scaled out and replaced by an EFT payment.

Healthy scepticism should be applied to any attempt by the gambling industry seeking to exploit opportunities for cashless gambling technologies. As previously indicated, the removal of the need to handle cash and any other means of resulting in a disconnection with full awareness of each decision to gamble is counter to harm minimisation prevention and practice as should be viewed accordingly.

Any convenience afforded by new technologies should not be at the cost of increased risks to harm. Cashless gambling and Ticket-in Ticket-out (TITO) should not be legalised in the absence of a mandatory pre-commitment regime. Any form of TITO technology should be limited and only introduced once founded on evidence not to produce more harm than it is able to demonstrably reduce.

Q.7. What opportunities are there to improve the way codes operate in Victoria?

- Are there other models that would be more effective? If so, what are they?
- Would a more prescriptive approach for all venue operators be better? Could the operation of codes be simplified?
- Are there other matters that should be provided for in the Ministerial Direction for codes?
- What requirements for loyalty schemes should be included in a code to promote responsible gambling?

Does the annual review process contribute to fostering responsible gambling? If not, why not? Are there other options to ensure that the codes meet this aim?

Codes of Practice need to clearly stipulate what they are aimed to achieve and the operational mechanisms aimed at achieving them. Leading a seamless harm reduction agenda, requires openness and transparency, whereby removing all ambiguity as to the agreed roles and obligations of all those involved in the gambling industry. Continuing to follow piecemeal and seemingly disconnected structural approaches to preventing harms will continue to have limited utility, in the absence of a clearly established prevention agenda.

Industry language which disguises ‘losses’ as ‘expenditure’ and ‘spending’ seeks to restrain the financial harms that are known to come from gambling in the shadows, and this runs counter to health promotion and prevention. Codes of conduct have the opportunity to stipulate a venues duties and standards of care, as well as outline expectations of patrons and their personal responsibilities and obligations to themselves, the venues and staff and the broader membership community.

The Code should make it clear that venue staff have a duty to care for their patrons and that patrons observed to have been gambling for x amount of time, can be expected to be interrupted by staff and that this is a condition of entry to the gambling area. This will support a culture of staff intervention and effective and engaged patron management and will enable the connection to RSG training, competency and operations to be drawn. Without such
clarity and line of sight, even effective RSG practice will seem to be a strange bed fellow within the context of daily gambling venue operations. Staff need to be fully cognisant of their role and responsibilities for preventing harm, just as patrons do. Having the opportunity to practice relationship building in an open and transparent manner, can only enhance RDG practice.

Codes of Conduct/Practice should and can be so much more, they must be explicit as to the conditions of entry and be developed and overseen be an independent body, working in unison with an independent Ombudsman.

The Code should be tested for demonstrable compliance and its ability to achieve its desired venue operational, behavioural and competency requirements by an independent body. With any recommendations for improvement attached to the requirements of the Gambling operators’ Licence.

Q.8. Should the requirement to interact with customers who are showing signs of distress from gambling be part of codes, or should a separate offence be created for venue operators who fail to respond to suspected problem gambling?

Q.13. Should there be a separate offence for venue operators who knowingly allow self-excluded persons to enter or remain in the venue?

It should be a core duty to interact with all customers, including those that may be at risk of distress. Removing the ambiguity as to the duty to interact with customers in the code of practice, making it explicit and creating and environment where such interaction is expected will assist both staff and customer ability to interact, not only in time of duress, but on regular occasions. Creating an expectation of regular, frequent interaction will support the confidence of staff when they need to do so, and will help them identify when that situation arises.

A blatant failure to respond to demonstrations of problem gambling should be dealt with under a separate offence. As operators of a high-risk and potentially harmful product, gambling venue operators have a duty of care to ensure that their customers are not harmed by their product, as far as is practical. This duty not only applies to gaming machine area environments but to all gambling products on the premises. Gambling operators should be vigilant across the operations of the entire venue and be cognisant of the interplay of alcohol and other intoxicating substances and their affect on judgement and levels of distress.

As a minimum, consideration in relation to distress and harm, should not be limited to EGM’s and the supervision and intervention of the gaming floor.

This offense should cover all gambling venues in the state, regardless of type. Penalties for offences should be significant, and linked to venue revenue. As a guide, one penalty offence should be equivalent to the average daily EGM revenue for that venue.
Q. 9. Are self-exclusion programs best administered by the industry or by another body?

Q. 10. Should there be one self-exclusion program in Victoria?

Q. 11. How could self-exclusion programs be improved?

A self-exclusion system should be simple and easy to access, use, and allow a person to restrict themselves from as many venues as they require. This system should be covered by a single point of entry and administered by Gambler’s Help Services, or similar body established to oversee monitoring and compliance function. The ability for the program to cross municipal borders as well as State boundaries would be a worthy inclusion. A streamlined self exclusion program should be easy to engage with and less about protecting the potential for litigation of the venue operator, and more about maximising the impact of program itself – reducing the opportunity for harm to the individual.

The technology to record who is going in and out of venues is already available and only needs a Drivers License or passport for scanning. This particular scanner can be linked State wide and Australia wide and is already in use in late night venues all over, including Gambling establishments.

The scanners have a barred list function, the venues themselves could exclude patrons. It’s also a means of preventing under age patrons from entering the venue.

While smart phone and Ibeacon technologies might support the implementation of a self inclusion program, they rely on the patron to physically log in and create the account, whereas Scanner technology can enable the it’s the venue to exercise its responsibility and duty of care more seamlessly, whereby mitigating any opportunity or failed process on the part of the patron.

When Mark Brennan of the VCGLR at the time was passionate about all late night venues obligation to incorporate this technology and now the time is right for it to be seamlessly be applied to gaming venues operations as well.5

Q. 14. Should a new requirement to undertake advanced responsible service of gaming training be introduced?

Q. 15. If so, who should be required to complete the advanced training and what content should the training include?

Q. 16. Who should be responsible for the development and provision of the advanced training?

No matter what the training is called, the training itself is less important than the outcome and impact on operations it delivers. Clear whole of venue competency assessments would have more of an impact that requiring training for training sake. Venue behaviours, that demonstrate competence and clear linkages to commitments clearly stated in the Code.

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would be beneficial and readily unevaluated. If training (no matter its name) supports improved venue operations and harm reduction practice, then this would be of benefit. In isolation, without direct welcomed operational application, training would continue to provide only part of the solution.

Facilitation of Industry best practice, Codes of practice, training, behavioural competency standards and assessment and evaluation against them, should be developed and overseen by an independent body. This could be achieved by the establishment of an industry standards and recognition program. Such a system would showcase effective and responsible Gambling operators as well as provide industry examples of what can be effective harm reduction and conversely, what’s not.

Q.17. Do you think regional caps and municipal limits should be maintained? Why?

Q.18. Should regional caps be extended beyond the existing capped areas and if so, why

Q.19. Are the current regional cap and municipal limit levels appropriate?

In the modern gaming environment, it is unclear whether Caps and municipal limits offer the same utility as when they were their original applied. Placing limits on the industry’s ability to grow unchecked remains imperative, however the roe of arbitrary or otherwise rudimentary caps and limits in light of a regime of EGM allocations, the ability for Gaming Licences to be issued in the absence of valid town planning approval and perhaps even more importantly authentic community engagement is more perplexing.

The fact that the Licensing Commission is quasi judicial and not subject to the same level of jurist prudence accountabilities is a larger concern. Being adversarial, yet not subject to principle of stare decisis, or open to meaningful input from the community most impacts buy the commercial decision before them, creates more industry bias than any cap or limit mechanism could even hope to redress.

Caps and municipal limits may continue to have their place, however, once again only when it’s is understood and what they seek to achieve site coherently against the backdrop of a harm minimisation and prevention practice.

As outlined by the City of Melton submission, a whole sale end-to-end evaluation of the outcomes should to be achieved and regulation and practice mechanisms aimed at achieving them is required. Only then we will understand the role and effectiveness of Caps and other harm minimisation explored by this consultation. This review is commended, with much more authentic reform yet to be done.

Agreements, undertakings and commitments made by Gaming venue operators during the application process, aimed at demonstrating net community detriment, such as financial contributions towards local initiatives, should be included as a stated condition of licences; be followed up for compliance and run in perpetuity for the life of the licence. There are many cases where such commitments are not honoured and although relied upon to offset perceived detriment, once the agreed terms expire, no other detriment offset is offered in its place. Worse still, the commitment is never actually made good in the first place, with no mechanism to pursue the breach of agreement.
The commission should also implement a mechanism to reassess the degree of community impact against that claimed and based on figures and analytics by the applicant in the application process. Naive acceptance and acquiescence of industry-based retail gravity claims that no harm will come from a new or extension to existing gambling venue, does not reflect responsible harm reduction and regulation practice. This is another integral area of gambling regulation reform in need of holistic and purposive review.