



Government of South Australia
Office of the Liquor and Gambling
Commissioner

Liquor and Gambling Commissioner
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Independent Gambling Authority
Review 2006 - Regulatory Functions

**Codes of practice, game approval and
gaming machine licensing guidelines**



1 FIRST STAGE CODES OF PRACTICE

Since the introduction of the codes of practice on 30 April 2004, there have been a number of issues relating to the interpretation of various clauses of the codes.

There are differing opinions from the Crown Solicitor, licensees, industry bodies and other legal practitioners as to the meaning of a number of clauses. This has proven to be a hindrance to licensees understanding of the requirements and ensuring compliance. I believe that the variation in interpretation is due to the wording not being precise or entirely clear.

1.1 Responsible Gambling Code of Practice - Gaming Machine Venues

1.1.1 *Clause 4.(2) states: "the gambling provider will ensure that the time of day is prominently displayed throughout gambling areas".*

There is argument by some licensees as to what is a prominent position.

1.1.2 *Clause 4.(3) states: "the gambling provider will take all reasonable and practicable steps to ensure that a person plays no more than one gaming machine at a time..."*

This has proven to be a confusing issue for many licensees seeking a clear definition of what constitutes 'playing' a gaming machine.

To clarify the position and based on a number of scenarios put to me by licensees, I provided guidance to licensees in January 2005, applying the following principles:

- A patron is not considered to be playing a machine if he or she has pressed collect and is awaiting attendance by a gaming employee to pay winnings.
- If while playing a machine, a machine fault occurs where the player is unable to continue play or collect coins and the machine requires attendance by either an approved staff member or technician, the player may proceed to another machine.
- A machine is not being played if it has been "reserved" provided there are no credits left on the machine. Conversely, if a patron leaves credits on a machine, reserves that machine and proceeds to play another, this is considered to be playing two machines at a time.
- A gaming machine is being played while it is in "free spin" mode.

I suggest that the playing of a gaming machine should be defined within the code. However, as in the above case, it may be easier to define what does not constitute playing a gaming machine.

Words such as "all reasonable and practical steps" make enforcement extremely difficult.

It might be preferable to make it an offence for a licensee to allow a person to play more than one gaming machine at a time and then provide a defence that the licensee took all reasonable steps to ensure that a person plays no more than one gaming machine at a time including 3.(a) and (b).

Further, consideration should be given to amending the Act to provide that it is an offence for a person to play more than one gaming machine at a time.



1.1.3 Clause 6.(1)(c) states that "the gambling provider will take all practicable steps to ensure that alcohol is not supplied to reward, promote or encourage continued gambling".

Non-compliance with this clause is difficult to prove. It is difficult to prove whether the supply of alcohol actually contributed to continued gambling and whether the supply was intentional.

The most common questions I receive from licensees relate to:

- the provision of free or discounted drinks for regular patrons. In particular, whether the licensee can still continue such a practice and whether it makes a difference which room or area of the hotel the drinks are supplied;
- whether free alcoholic drinks can be provided in a 'pokie meal deal';
- whether alcohol can be offered as a prize in a promotion (i.e. either a free drink at the hotel or packaged liquor).

(Although this (in reference to the last two points) would be a moot point if all inducements are prohibited as part of the second stage issues of the codes).

Determining whether or not these types of practices offend this clause has proven difficult, particularly in trying to establish whether the provision of the alcohol is actually rewarding, promoting or encouraging continued gambling. For example, packaged liquor may be offered as a prize (reward) in a promotion where entry into the promotion is dependent on a person playing a gaming machine. However, the connection to continued gambling is not apparent.

This clause needs to be clearer and more precise as to exactly what the Authority is seeking to prohibit.

I suggest that it would be clearer if the code simply prohibits specific practices such as - a licensee offering or supplying free or discounted drinks to patrons in a gaming area. However, in relation to this specific practice, the code would need to be drafted in such a way so as to combat the problem of licensees circumventing the code by redirecting a patron in a gaming room to another area of the premises.

As with my comments on the previous clause, the code should provide that such practices are prohibited and provide a defence that the licensee took all reasonable steps to ensure that it does not happen.

1.1.4 Clause 6.(2) states that "the gambling provider will ensure that a person is not served alcohol while seated or standing at a gaming machine".

There has been much conjecture as to the meaning of 'served'. The AHA and its legal representative have argued that 'serve' merely pertains to the delivery of a drink and does not extend to taking an order for a drink.

As serve has not been defined in the code, *Gaming Machines Act* or *Liquor Licensing Act*, in providing guidance to licensees, I adopted the ordinary dictionary definition which says: "to attend to (customers) in a shop". Attending to customers (in a shop that provides food and beverage) normally involves taking a person's order and serving them the goods.

I therefore advised licensees that serving meant both taking a person's order and serving them the drink.



I suggest that this clause be re-worded to make it clearer about which interpretation presides.

If the intention of this clause is to provide a break in play then the clause should prevent a staff member from both taking an order and delivering the drink when the person is at the machine. Further more, it should be extended to all beverages, not just alcohol.

However, if the intention of this clause is to address the issue of the link between alcohol and gambling, then I suggest that the consumption of alcohol while seated or standing at a machine be prohibited altogether.

1.1.5 Clause 8.(2) states that “the gambling provider will, if requested to provide a cheque in respect of a prize, winnings or redemption of credits in aggregate of \$1000 or more, provide the cheque within the 24 hours after the patron makes the claim”.

As a responsible gambling measure and a consumer right, it is appropriate that venues pay any and all winnings to players on request.

The AHA have argued that holding large amounts of cash on the premises is a security risk, (and to that extent I agree) and that there isn't always someone present at the venue with authority to sign cheques. I believe this was the basis for the current provision of allowing 24 hours to provide the cheque.

However, it seems that requiring a player to revisit the gaming venue the next day to collect a cheque could encourage a potential problem gambler to revisit the gaming machines.

I believe this is an undesirable consequence. In my opinion, the licensee should ensure that staff with appropriate authority are on duty, e.g. gaming manager, at all times when gaming is conducted to enable a cheque to be paid on request.

1.1.6 Clause 10. Staff and training

Sub-clause (1)(a)(ii)

This clause provides for advanced training for “appropriate senior staff”. Gaming areas can only be supervised by an approved gaming machine manager. The definition of an approved gaming machine manager in section 3 of the *Gaming Machines Act 1992* also includes directors or members of the governing body of a body corporate that holds a gaming machine licence.

This clause should refer to an approved gaming machine manager.

Sub-clause (2)

This clause provides that external training providers must be appropriately accredited in a manner acceptable to the Authority. There is no similar requirement for training provided by the peak bodies. The peak bodies should be subject to the same conditions as external providers such as TAFEs. This will provide for consistent and quality training.



Sub-clause (7)

This clause provides that if a gambling provider provides training through an external provider (such as a TAFE or university), the provider will have taken to comply with sub-clauses (3) and (4). However I note the omission of sub-clause (5). This appears inconsistent with sub-clause (8) which is a similar provision referring to training provided by a peak body.

This would mean that a hotel or club would be required to arrange for an audit of courses conducted by tertiary institutions. This does not seem practical and defies logic since if the course was conducted by the AHA, the audit would not be required.

1.1.7 Clause 11. Definitions and interpretation

The definition of 'ATM' used in the Responsible Gambling Code is inconsistent with the definition of 'cash facility' already contained in the *Gaming Machines Act 1992*, *Casino Act 1997* and *Authorised Betting Operations Act 2000*. I believe where possible, consistent terms should be used.

Many licensees have been confused by the use of 'ATM' in the body of the code and have been unaware that ATM means ATMs and EFTPOS facilities.

The definition also includes devices '...near premises'.

I question whether the code of practice can be applied to an area which is not part of the licensed premises.

1.1.8 Use of consistent terms generally

Throughout the code, the term 'gambling provider' is used. Terms such as these should be consistent with those used under the *Gaming Machines Act*. The code should refer either to, the holder of a gaming machine licence or licensee.

1.2 Responsible Gambling Code of Practice - Casino

Most of the issues described above apply equally to the Casino Responsible Gambling Code of Practice.

1.2.1 Clause 4.(3)(b) provides that "the gambling provider displays a warning sign that it does not permit any person to play more than one gaming machine at a time".

This clause is identical to the requirement for gaming machine venues. Typically, gaming areas within hotels and clubs are small rooms. 'Gambling area' in the Casino Responsible Gambling Code has been defined as a public area of the Casino. This is effectively the entire premises.

Clause 4.(3)(b) states that the casino must display a warning sign. A literal interpretation is such, that as long as the casino has at least one sign displayed in the entire casino complex, it has complied with this requirement.

I do not believe that one sign is sufficient to adequately warn patrons. Consideration should be given to refining this clause for the casino, to ensure that there are adequate signs throughout all areas of the casino where there are gaming machines.



It should be noted that I imposed a licence condition on all gaming machine licences that a sticker displaying the same warning message, be affixed to all gaming machines in hotels and clubs. The authority may wish to consider a similar provision for the casino.

1.3 Advertising Code of Practice

1.3.1 *Clause 3.(2)(f) states that "the gambling provider will ensure that, when it advertises its gambling products, the advertising does not state or imply that gambling is a means to pay for household staples, education or rent, or to meet mortgage commitments".*

I believe that the basis for this clause came from an incident some years ago, where a venue ran a promotion in the gaming room, where the prize was to pay the winner's electricity bill.

There are two concerns with this clause. Firstly, in the majority of cases, it is difficult to conclude whether the advertisement is actually stating or implying that gambling is a means to pay.

Legal advice I have received on this issue (which I have previously provided to the Authority) argues that a promotion conducted by a licensee where for example the prize is a hamper of food items, may offend this clause (even though the advertisement itself might not necessarily provide full details of the prize) as it merely *implies* that paying for a gambling product provides an indirect means by which to pay for household staples.

It is suggested that the clause be worded such that it simply prohibits certain practices. For example, the clause could state that, "...the gambling provider will not, in conjunction with loyalty schemes or inducements, offer the following prizes...".

The second concern with this clause is the meaning of household staples. Legal advice I have received on this issue (which I have previously provided to the Authority) suggests that household staples is quite broad and may encompass any item purchased for household use. It is therefore suggested that 'Household Staple' be defined in the code.

This clause (and indeed many others in the Advertising Code) may be redundant in any event if inducements and loyalty schemes are prohibited in Stage 2 of the codes since such prizes are only offered in conjunction with promotions operated at the venue and are not prizes that can be won directly from playing a gaming machine. Also, of the hundreds of advertisements reviewed by my office, the majority relate to advertising a promotion, loyalty scheme or other inducement being offered at the venue.

1.3.2 *Clause 5 - Prize advertising*

This clause applies when advertising "*gambling products*" and the licensee refers to or relies on "*the value or nature of... prizes*" to be won. "*Prize*" is not defined in the code and it is unclear as to whether this clause was intended only to apply to prizes in respect of playing gaming machines or whether it extends to prizes which could be won as part of a promotion or loyalty scheme.

Based on legal advice, I have interpreted this to extend to promotions and as mentioned above, the majority of advertising relates to promotions being conducted within the gaming room, rather than machines themselves.



1.3.3 Clause 6.- Definitions and interpretation - Sub-clause (3) & (4) 'Win' and '\$'

Clause 6.(3) provides that:

Subject to sub-clause (4), advertising will be regarded as offending against clause 3(2)(g) if it contains material-

- (a) which is neither information which is reasonably believed to be factual nor opinion which is reasonably held; and*
- (b) which includes one or more of the following expressions (or anything analogous to them)-*
 - (i) "Win";*
 - (ii) "\$"*

I sought legal advice on whether advertising that includes the expression "Win" or the symbol "\$" necessarily offends clause 3.(2)(g) by virtue of clause 6.(3)(b).

The advice I received (which has been provided to the Authority) was that the use of the word "and" in clause 6.(3) clearly indicates that the requirements of that clause are cumulative, i.e. for advertising to meet the criteria set out in clause 6.(3) it must contain both "Win" or "\$" and also contain material "*which is neither information which is reasonably believed to be factual nor opinion which is reasonably held*".

If the intention of the Authority is to prohibit the use of "Win" and "\$" in advertising generally, then I suggest that Clause 6.(3)(a) should be removed and the remaining parts (clause 6.(3)(b) and 6.(4)) be contained within the main part of the code.

2. SECOND STAGE CODES OF PRACTICE

2.1 *Mandatory Warnings in Advertising*

A paper by Relationships Australia Queensland surveyed existing research on the effectiveness of warning messages. There is much research to support the efficiency of messages in simply increasing awareness and 'recall' but less support for the actual effectiveness of messages to reduce consumption. It concluded "that if warning labels are to be effective - in terms of both increasing informed consumer choice and changing consumer behaviour - then much more emphasis needs to be placed upon their design, content and presentation." They sight the difference between *information provision* and *information impact*. Many of the studies state the need to overcome "overexposure" to messages, suggesting that messages need to be refreshed or rotated on a regular basis.

There is also evidence to suggest that recall has as much to do with marketing as it does with the message itself.

The warning messages developed and adopted in Queensland were the subject of extensive market research and addressed many of the issues raised in the Relationships Australia paper.

I support the Authority's proposal to adopt the Queensland messages.



2.2 On- and in- venue signage

I agree with the Authority's proposal. I suggest that external signage be limited to only advertising that the hotel or club has "pokies" or a "Gaming Room". I suggest that signs should be limited to using only the words "pokies", "gaming" or "gaming machines". Signs stating the number of machines at the venue, or the type of machine (for e.g. denomination, particular games etc) should be prohibited. All slogans and other such statements such as "Highest payouts in SA" should be prohibited. Such statements are misleading and are effectively reinforcing false beliefs about gambling technologies.

Victoria currently prohibits external signage but provides for exemptions for signs which are directional in nature. Victorian regulations specify the size of signs allowed.

Consideration needs to be given as to whether signage that states 'pokies', 'gaming' or 'gaming machines' can only be permanently fixed to the premises or whether temporary signage such as sandwich boards are allowed.

Consideration should also be given as to whether illuminated signs should be prohibited.

2.3 Mandatory breaks in play

I refer to my earlier submission of 18 July 2003 in which I advised of the technical difficulties with this proposal and support the Authority's decision not to proceed at this time.

2.4 Screening of sights and sounds of gambling

As I advised in my earlier submission of 18 July 2003, I estimate that a significant number of gaming venues will require substantial alterations to comply with this requirement. The AHA and ClubsSA should canvass their members to obtain a realistic estimate of the cost to the South Australian industry of compliance. From my assessment of a random sample I expect that this would be quite substantial running to many millions of dollars.

2.5 Six Hour Break

There is no evidence to support the Authority's concerns that chains of hotels have or will stagger their opening hours to provide 24 hour trading.

Most 'chains' of hotels are not located within the same area and in fact, in some cases are quite dispersed across the metropolitan area.

The majority of hotels in the metropolitan area currently close within 1 or 2 hours of each other.

I also refer to my earlier submission of 18 July 2003 on this issue, in particular my comments that proposed mandatory closing may be beyond the powers of the Authority given the Commissioner's statutory discretion under section 27(7) and my analysis showing that the proposal would in effect extend the shut down periods of the majority of venues to between 10 and 17 hours.



2.6 Inducements and loyalty programs

I support the Authority's proposal for the prohibition of loyalty schemes. I suggest that given the interpretation issues that have arisen from the first stage codes of practice, inducements and loyalty programs need to be clearly and concisely defined. The Authority has suggested that inducements not be allowed which are based on the level of gambling activity or where benefits are referable to the recording of gambling activity. I suggest that this is too narrow.

Many promotions currently being operated, provide for entry being dependent on coin exchange, just being in the gaming room, on achieving a particular symbol or playing a particular game etc. These are not necessarily linked to the level of gambling activity. I suggest that all promotions and inducements with any link to the gaming activities of a venue be prohibited.

2.7 Reporting of potential problem gamblers

I support the Authority's proposal. I suggest that this should form part of the Responsible Gambling Document which is currently required under the stage 1 code of practice.

2.8 Age for sale of gambling products

I support a uniform age of 18 years for the sale of any gambling product.

2.9 Automated coin dispensing machines, automatic teller machines and cheque cashing facilities

The Authority proposes that coin should only be available from the cashier or a coin dispensing machine located outside of the gaming area but located so as to enable a person who may be experiencing problem gambling behaviours to be detected.

It is my view that having a cash dispensing machine located outside the gaming area is counterproductive. The staff that are in the best position to monitor player behaviour and spending patterns are those staff working in the gaming area. Gaming room staff are also the staff who are required to undertake training in responsible gambling. This training (in accordance with clause 10 of the Stage 1 Code of Practice) must include information on the recognition and identification of problem gambling traits and ensure the processes for approach, intervention, referral and follow-up are clear.

If the dispensing machine is located outside the gaming room, it is likely that the area would be staffed by non-gaming personnel who have not had required training. Clearly bar staff or other non-gaming room staff would not know how long the person has been in the gaming room or whether he or she has already been to the cashier for coin on a number of occasions before using the cash dispensing machine.

It should also be noted that if the Authority proceeds with the proposal to screen sights and sounds of the gaming room from other areas of the premises, it would not be possible to position the coin dispensing machine outside the gaming area where it could still be viewed by a staff member in the gaming room.

If the concern with a cash dispensing machine is the lack of contact with staff, I suggest that dispensing machines simply be prohibited.



2.10 *Linking the service of alcohol and gambling*

In response to a complaint about a venue requiring a patron to play machines to consume alcohol within the gaming room, I imposed a condition on all gaming machine licences on 18 June 2004 prohibiting such practices.

3. GAME APPROVAL GUIDELINES

The guidelines issued by the Independent Gambling Authority (IGA) in respect of sections 40(2) of the *Gaming Machines Act 1992* and 37A(1) of the *Casino Act 1997* provide that :-

2. *Game characteristics tending to an exacerbation*

- (1) *If a proposed game has one or more of the characteristics listed in sub-clause (2), approval of the game will be likely to lead to an exacerbation of problem gambling unless there is evidence to the contrary.*
- (2) *The characteristics referred to in sub-clause (1) are -*

3.1 *Clause 2.(2)(a) [non-linear]*

- (a) *[non-linear] that the statistical return to player for the game changes depending on the amount bet;*

In my letter to the Authority dated 5 July 2005, I indicated that this clause requires refinement to achieve what I believe to be the Authority's intention.

I said that I believe the intention is to describe a characteristic which promotes and/or provides relatively higher returns for larger bets. This may be seen by some to encourage players to place larger bets and therefore is a characteristic which may exacerbate problem gambling. I maintain this view.

One problem with the current wording is that it describes a characteristic of a game, its RTP, which may not be the result of such a feature, eg a non-linear payscale. A game which provides no such feature may have a small non-linearity in its RTP due to other design factors. In such a case and under the current guidelines, the game would be considered likely to exacerbate problem gambling on this ground, when in fact it is probably unlikely.

While recognising that some non-linear games may contribute to problem gambling, I consider that the wording of clause 2.(2)(a) unfairly prohibits games which do not have a non-linear pay scale, non-linear frequency of prizes and generally do not encourage players to place larger bets.

Another problem with the current wording is that it does not discriminate between increasing and decreasing RTP. It is, in all probability, of concern where a game provides an increasing RTP as the player's bet increases. However, I do not believe that a decrease in RTP as the player's bet increases is likely to lead to problem gambling. I am unaware of any research which shows this to be true.



I also indicated in my letter of July 2005 that the Gaming Machine National Standard deals with an acceptable tolerance for the non-linearity of RTP. I suggest that the Authority's review of this clause includes maintaining consistency with this established, national game design requirement.

RTP Tolerance

3.9.16a *Within a single game variation or configuration, a change to the betting options selected must not cause a change to the resultant theoretical player return (RTP) of more than 0.20%. Where one version of game software contains identifiably different games (such as an ante-bet game), the requirement on RTP tolerance will apply to each game separately.*

In summary, I recommend that the Authority consider rewording clause 2.(2)(a) to specifically address the designs which may exacerbate problem gambling and not just the impact on RTP. For example :-

(a) **[non-linear]** that the game includes any element of design that :-

- i) *provides a non-linear pay scale or game features which are relatively more favourable to the player at a higher bet, or*
- ii) *causes a change to the resultant theoretical player return (RTP) of more than 0.20% due to a change to the betting options selected.*

3.2 Clause 2.(2)(b) [illusion of control]

The illusion of control is already prohibited by the national technical standards on the issue of player fairness. This should be removed from the guidelines.

3.3 Clause 2.(2)(c) [win truncation]

Win truncation is already prohibited by the national technical standards on the issue of player fairness. This should be removed from the guidelines.

3.4 Clause 2.(2)(d) [feature entry bet]

I support the retention of this clause.

3.5 Clause 2.(2)(e) [paid-for feature game]

(e) **[paid for feature game]** - *that the game has a special feature which will only commence if a further bet or bets are made.*

Such a feature should be acceptable if the event which triggers it provides prizes which are sufficient to cover the cost of the resulting feature games. Therefore it is suggest that this clause be reworded to apply only to games in which the triggering game does not award prizes that are sufficient to cover the cost of the feature games.

3.6 Clause 2.(2)(f) [metamorphic]

I support the retention of this clause.



3.7 **Clause 2.(2)(g) [free spins]**

(g) [free spins] that the game has a special feature which includes more than 25 automated free reel spins or bets;

In June 2004, I issued a clarification to this clause which stated :-

"For the purpose of assessing a game against clause 2.(2)(g) of the Independent Gambling Authority's guidelines, a game will be determined to have the characteristics of 2.(2)(g) if that game;

- a) offers more than 25 free reel spins, games or bets; or*
- b) can provide more than 25 free reel spins, games or bets, on average, more than once in one hundred times that the feature is triggered."*

In simple terms, the clarification allows games to provide free game features which will not award more than 25 free games in 99% of all feature sequences. This interpretation of the IGA's wording also allows ATFs to test the mathematical design of a game and provide a clear indication of compliance or otherwise with the guidelines.

The clarification was required as the Authority's current wording of clause 2.(2)(g) does not address those games which do not offer a finite number of free games, eg. "Win 20 free games" vs "Free games continue until symbol [X] appears."

My underlying position on this is that 2(2)(g) should be removed as I am not aware of any credible research which shows the number of free games as a factor in exacerbating problem gambling. Having said this, if the Authority is of the opposing view, I suggest that the clause be reworded to cater for free game features that do not offer a finite number of free games.

3.8 **Clause 2.(2)(h) [rate of play]**

(h) [rate of play] that the reel spin interval of the game is less than 3.5 seconds or, in the case of a game which does not display reels, a bet can be placed more than 17 times per minute.

I have previously advised the Authority that this clause was challenged by SkyCity Adelaide in its successful application for approval of IGT's game "Super Double Pay 2".

In support of its argument, SkyCity referred to the research conducted by the University of Sydney Gambling Research Unit (the Blaszczynski report), a review of that research by the University of Auckland and the NSW IPART report.

Blaszczynski found that slowing the rate of play was not an effective harm minimisation strategy and, further, there may be some negative impacts on problem gamblers by causing them to spend more time playing gaming machines.

The review of the Blaszczynski report by the University of Auckland generally supported Blaszczynski's finding that "The reel spin modification does not appear, at this stage, to be an effective harm minimisation strategy."

I am not aware of any other research or evidence that shows that slowing the rate of play is an effective harm minimisation strategy. On this basis I suggest that the clause be removed.



3.9 Clause 2.(2)(i) - [game screen meters]

I support the retention of this clause.

4. GAMING MACHINE LICENSING GUIDELINES

I refer the Authority to the copy of the Crown Solicitor's advice on the guidelines which I have previously provided.

5. DRAFTING CONCERNS

The codes of practice and guidelines are effectively regulation and therefore should be drafted by Parliamentary Counsel. Much of the problems associated with interpretational issues and inconsistent terms are inherent due to the drafting language and would be alleviated by having the documents drafted by Parliamentary Counsel.

W.A. Pryor
LIQUOR AND GAMBLING COMMISSIONER