

Types of applications this Guideline applies to

This Guideline sets out the position of the Independent Liquor & Gaming Authority (“**Authority**”) regarding applications involving late-night gaming.

It applies to any application that, if approved, would result in increased availability of electronic gaming machines (**EGMs**) after 12 midnight at *any* venue. For example:

- an application for a new extended trading authorisation (‘ETA’) for a venue that offers gaming machines
- an application to extend an existing ETA for a venue that offers gaming machines
- an application for a gaming machine threshold increase for a venue that is authorised to trade after midnight
- an application to reduce or change a venue’s gaming machine shutdown period

The Authority will continue to consider each application on its particular features with paramount consideration given to its obligation to act in the public interest and especially harm minimisation in that regard.

This Guideline is not intended to apply to applications to transfer or lease entitlements if the venue’s gaming machine threshold is already approved.

Reason for this Guideline

The May 2021 version of this Guideline outlined the Authority’s concern about the potential for individual and social harm from late night gaming¹.

This Guideline updates it in the light of more recent evidence² which reinforces and expands on those concerns, as well as a court decision³ which highlights the Authority’s responsibilities and powers under the relevant legislation.

Even though all applications are considered on a case-by-case basis, in the interests of fairness the

Authority is committed to maintaining a generally consistent approach in its decision making.

Greater certainty facilitates business planning and promotes the balanced development of the gaming industry, thereby addressing an important object of the legislation.

The Authority’s position

Considering the increasing body of evidence of the association between late night gaming and gaming related harm, the Authority is concerned about applications which would result in significantly increased access to late night gaming, particularly gaming after 2am. These applications are unlikely to be approved without conditions designed to mitigate the risk of gaming related harm.

This Guideline informs applicants of factors that the Authority may take into consideration when determining whether to grant applications involving late night gaming and what conditions may be appropriate.

This Guideline also puts applicants on notice that the Authority may impose harm minimisation conditions where applicants have not adequately mitigated the potential risk for harm. It should be noted that conditions restricting the hours of play apply to all machines at the venue.

How the Authority makes its decisions

The law

Section 3(2) of the *Gaming Machines Act 2001* (‘GM Act’) requires all parties exercising functions under the Act to have due regard to the need for gambling harm minimisation and the fostering of responsible conduct in relation to gambling.

The GM Act also aims ‘to facilitate the balanced development, in the public interest, of the gaming industry’ (s3(2)). When considering what is in the public interest, the Act requires that due regard be had to the need for gambling harm minimisation, in the context both of the individual and the community more generally.

‘Due regard is to be had to the need for gambling harm minimisation when

¹ Central Queensland University. (2019). NSW Gambling Survey, 2019. Commissioned by New South Wales Responsible Gambling Fund, Sydney.
Smith, C., Wolstenholme, A. & Duffy, C. (2019). Shutdown periods for electronic gaming machines. [Snapcracker Research + Strategy]. Commissioned by New South Wales Responsible Gambling Fund, Sydney.

² Stevens, M. & Roy Morgan Research. (2023). Impact of electronic gaming machine (EGM) late night play on EGM player behaviours. Commissioned by New South Wales Responsible Gambling Fund, Sydney.

³ *Independent Liquor and Gaming Authority v Whitebull and Ors* [2023] NSWCA 224.

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considering for the purposes of this Act what is or is not in the public interest.'

In relation to community harm, the NSW Court of Appeal recently held that

'...the Authority is required, when exercising its functions under the Liquor Act, to have due regard to the need to ensure that the operation of licensed hotels and clubs does not detract from the amenity of community life. Social harm from the operation of gaming machines could certainly detract from that amenity.' – *Independent Liquor and Gaming Authority v Whitebull and Ors*. [2023] NSWCA 224 at para 131

Public interest considerations also weigh heavily in any decision to impose conditions under s53 of the Liquor Act, including conditions relating to the conduct of gaming in a licensed venue.

Whilst conditions are commonly imposed as part of approving an application, licensees should be aware that conditions may be imposed under s53 at any time, irrespective of whether any particular application or matter relating to the licence is before the Authority.

Relevant data

Whilst not an exhaustive list, to the extent it is available, the following data may be relevant to the Authority's decision:

- a. Socio-demographic data for the local area associated with comparatively higher risks for problem gambling, such as youth; lower education and income; higher unemployment; above average single households; high percentage of people from a non-English speaking background; and the lack of local support networks.
- b. Crime statistics for the suburb and LGA.
- c. The venue's compliance history and any disciplinary history of current and previous licensee/s.
- d. Gambling participation and problem gambling prevalence data in the local area compared to the state average.
- e. Submissions or information from gambling-related support and treatment services, and relevant local agencies such as police, councils, health districts, indigenous community groups and members of the public.
- f. Indications of gaming intensity such as

gaming machine profitability for the venue and ranking data (by LGA) for hotels and clubs.

- g. In cases also involving the transfers of gaming machine entitlements, other potentially mitigating factors such as the number of entitlements to be forfeited, and the risk profile of the venue and area from which the entitlements are sourced.
- h. Especially in regional areas, evidence of the social value of sporting clubs.
- i. The applicant's history and business objectives.
- j. Research literature including, but not limited to, the research identified at **Annexure A**.
- k. The robustness of harm minimisation measures in place at the applicant venue, including the strength of the proposed gaming plan of management (**GPOM**).

The application

Applications resulting in additional late night gaming should expect to discuss harm minimisation conditions of this kind as part of the application process.

In making its decision to approve an application in full or in part, with or without additional conditions, the Authority looks for evidence of harm minimisation in the applicant venue and may be influenced by submissions from the applicant.

Evidence that the potential for gaming related harm after midnight, and especially after 2am, has been acknowledged and will be effectively mitigated is particularly influential.

The Authority will continue to have regard to the matters referred to in *Guideline 6* and consider the Community Impact Statement (where applicable) and any other relevant factors. The Authority will also continue to consider applications on a case-by-case basis and on their individual merits.

Advice to applicants

Applicants are advised to turn their minds to the evidence and information noted in this Guideline when making submissions to the Authority.

Reference should be made to the Office of Responsible Gambling fact sheet titled '*Responsible conduct of gambling for venues*'

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(Annexure B). This fact sheet offers strategies that applicants can take to prevent and reduce gambling harm beyond the minimum legislated requirements having regard to the relevant risk factors. Generally, applicants should be able to demonstrate as a minimum they have all Foundational Level strategies in place. Applicants with higher risk applications (including, but not limited to, those for venues in any venue trading past midnight) should be able to demonstrate they have most Intermediate and at least some Advanced level strategies in place.

Review of this Guideline

The Authority will review and update this Guideline from time to time.

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Caroline Lamb
Chairperson

Annexure A

Research literature

Stevens, M. & Roy Morgan Research. (2023). Impact of electronic gaming machine (EGM) late night play on EGM player behaviours. Commissioned by New South Wales Responsible Gambling Fund, Sydney.

[Impact of electronic gaming machine \(EGM\) late night play on EGM player behaviours - May 2023 \(nsw.gov.au\)](https://www.nsw.gov.au/egm-late-night-play)

Late-night gaming machine play is strongly linked to problematic gambling behaviour.

The risk of playing gaming machines increases notably after midnight, with almost two thirds of people playing gaming machines between 2am and 8am experiencing significant negative consequences.

Whilst late-night EGM gamblers (those who gambled between 12am-8am) are in the minority, making up only 11.6% of all EGM gamblers, these gamblers are more intense gamblers and significantly more likely to be experiencing problem gambling.

The incidence of problem gambling increases the later the gambling occurs.

Problem gamblers (and those at moderate risk of problem gambling) are over- represented among EGM players between 12am and 4am, particularly after 2am.

There is a range of risks specific to late-night EGM play, including that gamblers are more likely to chase losses and take greater risks as the night wears on.

Those who have higher levels of problem gambling risk will benefit the most from earlier venue closures.

Late-night EGM players are often younger gamblers and more likely to display behaviours associated with problem gambling such as increased frequency of gambling on EGMs (particularly in pubs), membership of two or more loyalty schemes and the need to gamble with larger amounts of money to experience the same excitement.

In hotels, gaming machines operating after midnight are significantly more profitable after midnight by comparison with those machines which close at midnight⁴, correlating with increased gaming intensity and the propensity for associated harms amongst a smaller number of late-night patrons.

Hing, N., Russell, A. & Rawat, V. (2020). Responsible Conduct of Gambling. [Central Queensland University]. Commissioned by New South Wales Responsible Gambling Fund, Sydney.

NSW clubs and hotels use an informed choice approach to RCG.

Most employees reported that their venue implements regulated RCG practices but some were aware of illegal practices occurring.

Employees reported being responsive to patrons asking for help for their gambling, but monitoring of self-exclusion has numerous deficiencies.

Very few patrons directly ask for help for their gambling.

Employees report regularly observing patrons showing signs of problem gambling, but rarely approach those who do not ask for help or report them upwards.

Genuine management commitment to patron welfare can improve some RCG practices, but these venues were reported to be in the minority.

⁴ Liquor & Gaming NSW gaming machine data for FY2019-20 indicates that, in metropolitan NSW, hotels with extended trading hours earned approximately double the profits on gaming machines by comparison with hotels having standard trading hours.

The current approach to RCG is having little positive impact on harm prevention or reduction. Other jurisdictions are increasingly moving towards a harm minimisation approach.

Substantial changes to RCG practices and training in NSW are needed to meaningfully minimise gambling harm.

Smith, C., Wolstenholme, A. & Duffy, C. (2019). Shutdown periods for electronic gaming machines. [Snapcracker Research + Strategy]. Commissioned by New South Wales Responsible Gambling Fund, Sydney.

A late-night shutdown is most likely to impact problem gamblers than any other group. This is because problem gamblers are significantly more inclined to play EGMs after midnight and to play for longer periods of time overall.

Hypothetically, problem gamblers are significantly more likely to continue playing EGMs in a venue without alcohol than recreational gamblers and are more likely to attend a venue to play EGMs if alcohol were not available than recreational gamblers.

Central Queensland University. (2019). NSW Gambling Survey, 2019. Commissioned by New South Wales Responsible Gambling Fund, Sydney.

Of the adult population in NSW, 16% play EGMs. Compared to the NSW population as a whole's problem gambling rate (1%) and the NSW population of gamblers (1.9%), EGM players have a significantly higher prevalence of problem gambling (5.4%), moderate risk gambling (11%) and low risk gambling (20%) a total of 36% indicating some harm from their gambling. In comparison gamblers that do not play EGMs have a 0.4% prevalence of problem gambling. EGM players are therefore at substantial risk of harm compared to other gamblers and the NSW population.

Tuffin, A., & Parr, V. (2008). Evaluation of the 6-hour shutdown of electronic gaming machines in NSW. Report prepared for the NSW Office of Liquor, Gaming and Racing by Bluemoon Research.

With increasing severity of at-risk gambling, there is an increasing tendency for EGM play after midnight. This is particularly evident in the Shutdown Evaluation 2008 data in which participants identified all the times they use EGMs (rather than 'usual time'). Problem gamblers were over-represented between 12 midnight and 4 am, with 45% reporting that they play at that time. 60% of problem gamblers do, or would, go home should EGMs close down at the venue of current EGM play.

Annexure B

Office of Responsible Gambling fact sheet (February 2024). Responsible conduct of gambling for venues.

Responsible conduct of gambling for venues

This fact sheet offers suggestions for strategies that pubs and clubs in NSW can take to prevent and reduce gambling harm – beyond the minimum legislative requirements. It's important that you have multiple and different strategies in place, that are appropriate for your venue and your local community.

These practical examples are a good starting place for your venue to reduce gambling harm and demonstrate your commitment to the wellbeing of your patrons and your communities.

- Foundational
- Intermediate
- Advanced

Make the most of your plan of management

- consult with your staff and do your research when you develop or update your Gaming Plan of Management. Make sure that it builds on your experiences implementing your Responsible Conduct of Gambling (RCG) obligations

Provide staff with additional training and resources

- regular in-house training and refreshers on your policies and procedures

- training or resources on the signs of risky and problematic gambling behaviour
- Advanced RCG training for all staff who might benefit, not just Responsible Gambling Officers

Support staff to identify and assist patrons who need help

- provide feedback on the action taken by managers when an issue is reported
- have structured systems for staff to do welfare checks, encourage breaks in play and suggest alternatives to gambling available in the venue or beyond
- increase welfare checks and patron interactions after midnight to encourage breaks in play

Create a strong culture of gambling harm minimisation

- make it clear to staff that patron welfare is of the utmost importance
- discuss harm minimisation at all staff meetings and handovers
- recognise staff who demonstrate a commitment to harm minimisation
- appoint a Responsible Gambling Officer even if you are not required to

Encourage breaks in play through venue and service design

- don't provide complementary food and snacks at gaming machines

- place ATMs as far from the gaming room as possible
- don't provide food or drink service at gaming machines
- reduce the amount of cash that can be withdrawn from the ATMs in your venue
- remove ATMs from your venue and limit cash withdrawals to non-gaming bars

Promote local support services

- display information about local support services in strategic locations, like the bathroom and on digital displays
- promote local support services in direct marketing to patrons and members
- host on-site visits and stalls from gambling counsellors

Break down the stigma associated with gambling problems

- promote gambling awareness campaigns in your venue and your marketing
- promote and hold events during relevant awareness weeks
- share stories of lived experience from GambleAware on your social and digital channels

Make sure self-exclusion is understood, available and enforced

- initiate self-exclusion when requested, regardless of the day or time
- have strong systems for staff to familiarise themselves with photos of people who have self-excluded
- regularly train staff to be confident to initiate and uphold self-exclusions
- proactively talk to patrons about self-exclusion during welfare checks
- consider technology solutions to prevent breaches, such as facial recognition technology through your CCTV or through your sign-in systems

Promote responsible gambling

- include safer gambling messages on your website, and in newsletters and loyalty program marketing
- share safer gambling messages over the public address system and on digital displays

Enable and respond to customer complaints

- provide information on how to make a complaint about RCG
- have a robust customer complaint policy in place with specific arrangements for RCG-related complaints
- make staff and patrons aware of how to report a breach in legislative and regulatory requirements to Liquor and Gaming NSW

For more information and support

- Liquor and Gaming NSW – visit www.liquorandgaming.nsw.gov.au or email contact.us@liquorandgaming.nsw.gov.au
- The Office of Responsible Gambling – visit www.gambleaware.nsw.gov.au/about-us or email info@responsiblegambling.nsw.gov.au
- Industry associations – like Clubs NSW or the Australian Hotels Association
- Local Gambling Help service: www.gamblinghelp.nsw.gov.au/find-support-near-you/
- The Gambling Impact Society – to find out more about their consumer voices program: <https://ginsw.org.au/consumer-voice/>
- Local council – for information about other relevant local services and activities, and your local community

This fact sheet is intended as an educational guide and does not replace or add to current legislative or regulatory requirements.

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