

7 February 2020

Community Gaming Regulation consultation
Better Regulation Division, Regulatory Policy
Department of Customer Service

(submitted by email: cgr@customerservice.nsw.gov.au)

Submission on proposed Community Gaming Regulation 2020 (NSW)

Justice Connect welcomes the opportunity to respond to proposed Community Gaming Regulation 2020 (NSW) (**proposed Regulations**).

Justice Connect is a registered charity providing legal services to bridge the justice gap. We connect people and community groups with the lawyers and the legal help they need. We identify where laws and systems are unjust and we advocate for system change.

Our expertise – our Not-for-profit Law service

This submission draws on the experience of our specialist Not-for-profit Law service. This service provides free and low cost legal assistance to not-for-profit (**NFP**) community organisations and social enterprises. In 2019, we assisted with 1,783 NFPs with 38% of these being NSW-based organisations.

We help those involved in running NFPs to navigate the full range of legal issues that arise during the lifecycle of their organisation, including raising funds such as by community gaming activities.

We advocate for an improved legal and regulatory framework for the NFP and social enterprise sector, and to ensure law reform considers the impacts of regulation especially on small to medium sized organisations. Effective and appropriate regulation supports efficient and well run NFPs and social enterprises; a thriving sector benefits all Australians.

The proposed Regulation

1. Civil penalty regime

Justice Connect supports the introduction of a civil penalty regime for breaches of the *Community Gaming Act 2018* (**the Act**). In particular, Justice Connect supports the introduction of penalty infringement notices as a 'light touch' enforcement tool.

Recommendation 1:

We recommend that the Office of Fair Trading be resourced to provide free education and training for the regulated community to improve awareness and understanding of, and compliance with, the new regime. The resources and training should be provided in multiple languages and co-designed with sector peak and intermediary bodies.

2. Gaming Authority regime

Justice Connect supports the proposed introduction of a principles-based regulatory approach, underpinned by the principles of fairness, integrity, and transparency of process and outcomes.

We are pleased that there will be a free, publically searchable, online register of authorities. Also that authorities can be granted for a 5 year term thereby reducing the regulatory burden for those with a demonstrated track record of compliance, for example.

3. Auditing

We note the introduction of a requirement that all gaming activities with annual gross proceeds exceeding \$250,000 be audited, which replaces the existing audit requirements that apply only to art unions. This obligation is consistent with the *Charitable Fundraising Act 1991* (NSW) requirement that a charity must be audited if the funds raised in a financial year exceed \$250,000.

This expanded audit requirement will impose a new regulatory obligation (burden) on those organisations undertaking community gaming activities that are registered as ‘small’ charities with the Australian Charities and Not-for-profits Commission (**ACNC**). The ACNC’s requirements provide that those with annual revenue of less than \$250,000 are not required to have financial reports audited, while ‘medium’ charities with annual revenue of more than \$250,000 but less than \$1 million have the *option* of financial reports being reviewed or audited.

Despite the additional burden, we accept that there is a sufficient policy reason for imposing this new audit requirement. We agree, that on balance, public interest in transparency – with the extra level of probity that an audit provides – is appropriate where significant gaming activities are involved. The annual revenue level of \$250,000 seems reasonable.

We are, however, concerned about the number of times the same information has to be reported to multiple regulators. This is red tape and can be avoided by centralising reporting for charities with the ACNC. The ACNC has a proven mechanism for securely sharing data with state regulators.

Recommendation 2:

We recommend that charities that submit on time, audited accounts and annual reports to the ACNC should be deemed to satisfy the requirements in the proposed Regulations for annual audited accounts and updated information, without having to submit audited accounts or other organisational updates to Liquor & Gaming NSW.

4. Regulation of online community gaming activities

We note that the Act and proposed Regulations are silent on the possibility of community gaming activities being conducted using online, borderless platforms, for example, by way of a mobile phone app. They only envisage community gaming activities taking place in one physical location within NSW, and do not address the possibility of online technology being used by people located outside NSW (even though the activities are conducted/hosted by a NSW-based organisation).

In 2020 this seems a major regulatory limitation.

Recommendation 3:

We recommend that the Act and proposed Regulations cover how community gaming activities conducted using online technology will be regulated.

5. The need to support national consistency: definitions and reporting

Currently, NFPs that conduct community gaming activities must deal with eight different sets of laws, eight different regulators, and multiple and different definitions of ‘charity’ and ‘charitable purposes’. There is no single definition of NFP.

There is an opportunity for the proposed Regulations to support definitional harmonisation without compromising the ambit of the Regulations.

For example, the definition of ‘charitable organisation’ could be based on the *Charities Act (2013) Cth*. To the extent that this definition does not cover groups that the NSW legislature wishes to cover under the Regulations, additional categories could be added: for example, ‘charities as defined by the *Charities Act (2013) Cth* and any incorporated or unincorporated body formed for, or to benefit, XYZ purpose’.

Recommendation 4:

We recommended that the definition of ‘charitable organisation’ in clause 3 of the proposed Regulations be amended to adopt the definition of ‘charity’ contained in section 5 of the [Charities Act 2013 \(Cth\)](#). Any additional categories of bodies that the NSW legislature may wish to cover under the proposed Regulations can be covered by additional wording.

In our view, the definition of ‘non-profit organisation’ in clause 3 of the proposed Regulations could cause confusion. The use of ‘not formed or conducted for private gain’ as the sole indicator of non-profit status is unhelpful (is a member benefit a private gain, for example). A clearer, and more widely understood and accepted definition, is one that uses non-distribution of income or assets to members as the key indicator of non-profit status. For example, clause 8.1 of the [ACNC template constitution for a charitable purpose company limited by guarantee](#) characterises a ‘not-for-profit company’ as one that does ‘*not distribute any income or assets directly or indirectly to its members*’.

We note that there is work being undertaken by the Australian Accounting Standards Board on this definition, as well as at the Federal level for taxation law purposes. Consistency of core definitions will aid understanding and, therefore, help drive compliance.

Recommendation 5:

We recommended that the definition of ‘non-profit organisation’ in clause 3 of the proposed Regulations be aligned with the accepted understanding of not-for-profit organisations as bodies that are prohibited from distributing income or assets to members.

6. Red tape reduction – report once use often

For those organisations conducting community gaming activities that are registered charities, there is a proven, secure online portal for facilitating a ‘report once use often’ regime – the ACNC register and filing portal. The NSW Government are already working with the ACNC to facilitate this red tape reduction for reporting by incorporated associations and charitable fundraisers and, to avoid duplicative reporting obligations for gaming activities, the proposed Regulations should adopt this same approach. We have covered this point with our Recommendation 2 above.

Reporting obligations aside, continuing to require eight different registrations for organisations operating nationally and/or with online community gaming activities, is a burden both for the organisations and for regulators. We urge consideration of a mutual recognition scheme.

Recommendation 6:

We recommended that if an NFP holds a current authority/permit or licence to conduct community gaming activities in another Australian jurisdiction, Liquor & Gaming NSW should recognise and accept that authority without requiring the NFP to apply for a separate authority under the proposed Regulations.

We would be happy to discuss or expand on any of our recommendations. We agree to this submission being made public (with signatures redacted).

Yours sincerely,



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