

Draft Submission to the Local Impact Assessment Review Discussion Paper

June 2017

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Opening

Local Government NSW (LGNSW) is the peak body for local government in NSW, representing NSW general-purpose councils, associate members including special-purpose county councils and the NSW Aboriginal Land Council. LGNSW facilitates the development of an effective community based system of local government in the State.

LGNSW thanks Liquor and Gaming NSW (L&G NSW) for the opportunity to respond to the *Local Impact Assessment Review Discussion Paper*.

Local Government is a key stakeholder in the Local Impact Assessment (LIA) consultation process and is best placed to provide an understanding of the impact of increasing the number of gambling machines on communities. Local Government has a direct interest in the any proposed changes to the LIA process.

This submission is in draft form until it is endorsed by the LGNSW Board in August. Any revisions made by the Board at that time will be forwarded in the form of an updated submission.

Purpose

Some applications to increase a club or hotel Gaming Machine Threshold (GMT) require a Local Impact Assessment (LIA). The LIA process allows councils, police and communities to provide input into the GMT application.

L&G NSW is conducting a review of the LIA for Gaming Machine increases. The purpose of the review of the LIA process is to:

- evaluate the effectiveness of the LIA scheme in achieving harm minimisation
- evaluate the balanced development of the gaming industry
- evaluate the ongoing reduction in the number of gaming machines across NSW
- identify opportunities for improving the operation of the LIA scheme.

On the 22 May 2017 L&G NSW released a Discussion Paper with key questions for consideration. This Submission is in response to that Discussion Paper.

Comments

LGNSW Initial Comments

As requested by L&G NSW, LGNSW provided feedback on the review draft Terms of Reference in June 2016. LGNSW is concerned that the previous issues we raised with L&G NSW were not addressed or reflected in the 2017 Terms of Reference or the Discussion Paper. LGNSW expects that L&G NSW will give due consideration to local government concerns and address them in this round of consultations.

Since June 2016 LGNSW has contacted L&G NSW three times for information on the date for the release of the Discussion Paper and length of the consultation. In the last call to L&G NSW, LGNSW was advised that the consultation period would be two months.

LGNSW therefore contacted again L&G NSW following the release of the Discussion Paper, to express our extreme disappointment that the consultation period on the discussion paper is only four weeks. LGNSW advised L&G NSW that four weeks was inadequate for councils to form an endorsed position to the Discussion Paper and that it will restrict the number of submissions received from the local government sector.

LGNSW requested an extension of the consultation period to allow councils to provide input into the review and allow genuine consultation with local government. By rejecting this request LGNSW is concerned that L&G NSW is creating inherent bias in the stakeholder feedback it receives.

LGNSW recommends L&G NSW conducts meaningful consultation with NSW councils and provide councils adequate time to develop and endorse a position. Councils need a minimum 8 weeks to allow for submissions to be developed and endorsed at a council meeting.

Response to Discussion Paper Questions

1. Does measuring the risk of harm at the LGA level remain appropriate?

It is not appropriate for all LIAs to be solely conducted just at the LGA level. The boundary for an LIA needs to be scalable to account for:

- LGA variability across NSW
- the venue proximity to LGA boundaries, and
- the regional reach for visitation of large clubs

LGNSW suggests that there are multiple considerations for establishing an appropriate boundary for LIAs including:

- variation in the geographical and population size of LGAs across NSW, meaning there is no standard approach that is suitable for all LGAs and individual circumstances must be considered. Whilst LGA-level LIA could be suitable for metropolitan LGAs, it could also be unsuitable for large rural LGAs where towns and villages are far apart in the LGA - one area or a large rural city could skew the assessment for another town in the LGA
- the venue's proximity to other LGA boundaries where patrons may come from the neighbouring LGA, and
- encompass those that visit the club regularly but live outside of the LGA using the data clubs have on their patrons.

LGNSW recommends that the LIA should continue to be undertaken at the LGA level with additional considerations of the risk of harm in situations where there is:

- localised risk of harm in towns and villages in large rural LGAs
- regional risk of harm where clubs draw significant visitation beyond the LGA in which the machines are situated. Clubs have information of their visitors' residential locations and are able to map the broader reach of their patronage, and
- Neighbouring risk for LGAs where the applicant is near a LGA boundary.

The LIA needs to be scalable to account and allow for the application of a multi-level LIA (across multiple LGAs) when required.

2. Should the LIA scheme continue to classify areas into Bands 1, 2, or 3?

The Discussion Paper states: *Section 33 of the Act requires the Authority to classify each LGA in NSW into one of three 'bands' – Band 1, Band 2, or Band 3. These bands are settled as part of a ranking process, with all LGAs ranked according to per capita gaming machine expenditure, gaming machine density and the Socio-Economic Indexes for Areas (SEIFA) score. Ranks for each of these measures are then combined to give a final score. LGAs are then divided into country or metropolitan regions with the top 25% by region classed as Band 3, the next 25% as Band 2 and the remainder as Band 1.*

In NSW, 50% of LGAs are classified as a Band 1 and are therefore exempt from LIA requirements unless:

- the gaming machine application is for more than 20 machines in a 12 month period
- the additional machines would result in the venue increasing its total number of machines to over 450
- clubs are seeking to transfer fewer than 150 gaming machines but are re-establishing in or adjacent to new development areas, or
- the applicant is a de-amalgamated club in certain circumstances detailed in *Section 37C of the Gaming Machines Act 2001*.

LGNSW considers that the grouping of LGAs into the 3 bands is too simplistic and does not allow for a robust assessment of the risk of harm to the community. Too great a portion of NSW (50%) is currently exempt from the LIA process. The cumulative effect of annual increases in gaming machines needs to be monitored.

An increase of gaming machines in any community can have negative impacts and no exemptions should be provided. The system needs to provide better protections for vulnerable communities and at-risk problem gamblers.

The Victorian model is preferred where there is no classification of high or low risk areas and where a Social and Economic Impact Assessment is required for all applications to increase gaming machines. There are also caps in place for areas with a high concentration of gaming machines.

3. Do the criteria used to determine levels of risk remain valid?

It is not possible to answer this question as there is no information available in the Act, Regulation, or Discussion Paper about how L&G NSW currently determines risk in LIAs.

This lack of transparency is in itself inadequate and needs to be addressed to allow stakeholders to take an informed view.

See also LGNSW's response to question 1.

4. Should the existing community consultation process be amended?

Yes.

LGNSW strongly believes that the community consultation process must be more rigorous. The application process and the LIA do not deliver a true and balanced assessment of the positive and negative social and economic impacts on the community.

The LIA scheme ensures that an application to increase a venue's GMT is accompanied by an assessment of how the increase will affect the local community. Depending on the Band of the affected LGA, and the proposed increase in the number of gaming machines, an LIA may be required. There are two classes of situations where LIAs are required. LGNSW does not consider either situation adequate.

The current requirements for Class 1 LIAs require the applicant to demonstrate that the increase in the number of gaming machines will result in a positive contribution to the community, completely lacking any consideration of any negative impacts.

Class 2 LIAs require the applicant to demonstrate that the increase will provide **an overall net positive impact** to the community, thus disguising any negative impacts.

The notification requirements for an LIA are inadequate and lack transparency. Merely notifying required recipients of an application as per *section 41 of the Gaming Machines Regulation* without providing a pathway and support to make a submission to L&G NSW is inadequate. Furthermore, some councils and organisations have advised of instances of them not being notified, as required, of the applications and LIAs in their area. There are no checks in place to ensure the notification process is working effectively.

LGNSW notes that the ACT, Northern Territory, Queensland, South Australia and Victoria all require community and/or stakeholder consultations in their equivalent LIAs and include negative impacts and/or problem gambling in assessments.

LGNSW recommends that all LIAs:

- include comprehensive consideration of the positive and negative social and economic impacts on a community
- provide evidence of community notification and that submissions were invited on any proposed gaming machine increase
- include an official transcript of the community consultations sessions thus preventing the applicant from modifying or summarising the consultation report.

LGNSW recommends that L&G NSW includes details of the submissions received on the LIA register website and provide information on how the issues raised in those submissions have been considered in its assessment process.

5. Should what constitutes a “positive contribution” be more clearly defined?

Yes.

Most LIAs only identify positive contributions to the community as donations to local community groups and organisations. These donations are well received by local community groups, which usually write a letter of support for the application, in return for the donation.

This process could be viewed as a pseudo payment for gaming machine approval, especially where the contribution is also a tax deduction for the applicant.

Furthermore, there is no rationale as to how the contribution amounts to the community are determined and whether the amounts reflect the number of machines, estimated profit for the life of the machine, or level of harm to the community.

Contributions should be distributed in a manner that matches the community needs and should not fund facilities or services attached to the club making the contribution.

6. Should the exemptions from the LIA process remain?

No, as stated in our response in question 1, LGNSW considers an LIA should be applicable to all gaming machine increase applications.

7. Does the current LIA scheme achieve the objectives of the Act? If not, how could it?

The current LIA process is not effective and is not meeting the objectives of the Act and Regulation. A 2012 Study on the Prevalence of Gambling in NSW (Kerry Sproston, Nerilee Hing & Chrissy Palankay) found that the proportion of the NSW population who are low risk and moderate risk gamblers is larger than previously thought and that it is important to recognise that low and moderate risk gamblers also have difficulties controlling their gambling and experience subsequent harm. The LIA needs to provide for the impacts on these people to be rigorously monitored and allow for a balanced response.

The Objectives of the Act include:

- to minimise harm associated with the misuse and abuse of gambling activities, and
- to facilitate the balanced development, in the public interest, of the gambling industry.

These objectives are not reflected in the Regulation, particularly in relation to LIAs where:

- around 50% of LGAs do not have an LIA conducted, and
- of LIAs approved between 2009 and 2016, 96.8 % have been Class1 meaning the applicants are only required to include '*details of the benefits that the venue will provide to the local community if the threshold increase application is approved*', a process completely devoid of any 'balanced' considerations of harm and risks to the community.

8. Should the requirement that a Class 2 LIA must demonstrate an overall positive impact on the local community be maintained? If not, how should it be modified?

See response to question 9.

9. Are there any other relevant matters that should be considered as part of this review?

Public Contribution and Positive Impact

LGNSW seeks clarification on how L&G NSW determines the public interest in relation to the Act and Regulation requirements. It is not clear how donations made by club owners to community services or facilities are measured in terms of their public contribution and positive impact. Similarly what weight is given to these contributions in the L&G NSW approval assessment process? Nor is it clear how the public detriment effects of the proposed increase in the GMT are weighted in the LIA process.

Remove the two classes for LIAs

The LIA process should remove the two Classes of LIAs and require a comprehensive assessment of the positive and negative impacts on a community for all applications. L&G NSW should provide clear guidance on what needs to be included in the LIA. The current focus on the net positive benefits does not allow for the dis-benefits to be appropriately identified and measured. The cumulative effect of annual increases in the GMT should also be closely monitored.

Gaming Data

Data on the total number of gaming machines and their turnover by LGA should be readily available and free to access. Victoria and Queensland provide gaming machine data free of charge. Furthermore, L&G NSW should not obstruct access to the data. For example, despite agreeing to pay for the data it took one council several months and multiple attempts at contact to receive gaming machine data.

Harm minimisation activities in LIAs

The LIA harm minimisation activities are usually only what are legislatively required.

Some applicants choose to also voluntarily participate in the self-exclusion scheme where persons can enter an agreement with the licensee to exclude themselves from the venue. This agreement can be terminated at any time.

An evaluation of these harm minimisation activities should be conducted to assess their effectiveness.

Gaming Machines Act 2001 and Gaming Machines Regulation 2010

Most of the requirements for LIAs are prescribed in the Gaming Machines Regulation 2010. The review of the LIA needs to take into account the Act and Regulation, not just the Act.

Conclusion

LGNSW is pleased to have the opportunity to provide input to the review of the Local Impact Assessment scheme under the Gaming Machines Act 2001. Local Government is best placed to provide an understanding of the impact of increasing the number of gambling machines on communities and encourages closer engagement between L&G NSW and councils in the assessment of impacts on the community.

LGNSW recommends that:

- L&G NSW conducts meaningful consultation with councils and provide councils adequate time to develop an endorsed position. Councils should be provided a minimum 8 weeks to allow for submissions to be developed and endorsed at a council meeting.
- The boundaries for an LIA needs to be at the LGA and scalable to account for:
 - LGA variability across NSW
 - the venue proximity to LGA boundaries, and
 - encompass those that visit the club regularly but live outside of the LGA using the data clubs have on their patrons
- An LIA be required for all applications to increase gaming machines.
- Caps on gaming machine numbers be put in place for areas with a high concentration of gaming machines and in vulnerable communities.

- All LIAs include:
 - comprehensive consideration of the positive and negative social and economic impacts on a community
 - evidence of community notification and that submission were invited on any proposed gaming machine increase
 - an independent official transcript of the community consultations sessions to prevent applicants from modifying or summarising consultation reports.
- L&G NSW include details of the submissions received on the LIA register website and provide information on how the issues raised in those submissions have been considered in its assessment process.
- L&G NSW provide a rationale for how community contribution amounts are determined.
- Community contributions be distributed in a manner that matches community needs.
- L&G NSW provide clarification on how it determines public interest when assessing applications to increase gaming machines.
- The two classes for LIAs be removed.
- All LIAs assess the positive and negative impacts on communities.
- Gaming machine data is readily and freely available.
- Research evaluation is undertaken on the effectiveness of current harm minimisation activities.
- Clear and transparent articulation of risk criteria used by L&G NSW to be placed on L&G NSW website.