

Guidelines for assessing applications for an exemption from the ATM withdrawal limit

Preamble

The National Gambling Reform Act 2012

The *National Gambling Reform Act 2012* (the NGR Act), *National Gambling Reform (Related Matters) Act (No.1) 2012*, and *National Gambling Reform (Related Matters) Act (No.2) 2012* (the Acts) were enacted on 12 December 2012.

The NGR Act provides three key measures to reduce the harm caused by gaming machines. These include implementing a \$250 Automatic Teller Machine (ATM) withdrawal limit per card per 24 hour period (except for casinos), and introducing pre-commitment systems and dynamic warning messaging requirements in all gaming venues nationally.

The NGR Act staggers the introduction of these measures over approximately a ten year period. The first of these key measures, the introduction of a \$250 ATM withdrawal limit, commenced on 1 February 2014.

The NGR Act also establishes a National Gambling Regulator (the Regulator) to administer the Acts. The Regulator is responsible for monitoring, investigating and enforcing compliance with the ATM withdrawal limit and other measures.

Exemptions from the ATM withdrawal limit

Section 43 of the NGR Act enables the Regulator to exempt a gaming venue from the ATM withdrawal limit requirements where the requirement will cause unreasonable inconvenience to members of the community in which the venue is located. These guidelines set out the procedure for assessing applications for such an exemption.

Overview of the decision-making process

Ministerial Direction

The Minister for Social Services has issued a Ministerial Direction (Direction) on the administration of the ATM measure, by legislative instrument, under subsection 110(1) of the National Gambling Reform Act 2012 (NGR Act).

The Direction aims to give industry further certainty around the regulatory approach and priorities (including determining ATM exemption applications), and sets out processes for responding to potential non-compliance. This includes establishing mandatory requirements for responding to potential non-compliance through 'cooperative engagement', and a procedure to ensure genuine applications for exemption are settled before responding to potential non-compliance (whether on the part of the ATM provider or venue).

The Ministerial Direction can be viewed on the ComLaw website (www.comlaw.gov.au).

Requirements under the National Gambling Reform Act 2012

Under section 39 of the NGR Act, an ATM that is on a gaming machine premises must not allow a person to withdraw more than the cash limit.

A person withdraws more than the cash limit from an ATM if, after the person withdraws cash from the ATM, the person has withdrawn, using any one card, more than \$250 cash in total in a period of 24 hours from that or any other ATM that is on the premises.

Section 43 of the NGR Act sets out provisions relating to making an application to the Regulator to be exempt from the operation of section 39 (that is, seeking an exemption from the ATM withdrawal limit).

Subsection 43(3) states that the Regulator may exempt premises, in writing, from compliance if satisfied that 'compliance with the Part will cause unreasonable inconvenience to members of the community where the premises are located'. Under subsection 43(4), the Regulator may also specify conditions that must be satisfied in order for the exemption to apply.

The process for deciding exemptions is specified in section 44 as follows:

- (1) In deciding whether to grant an exemption under section 43, the Regulator must have regard to the following matters:
 - a) the object of the NGR Act (see below);
 - b) any other facilities (whether an ATM or otherwise) members of the community have for withdrawing cash; and
 - c) any other matters the Regulator considers appropriate.

Section 4 states the object of the NGR Act is to reduce the harm caused by gaming machines:

- to problem gamblers, and those at risk of experiencing that harm, and
- to the families and communities of problem gamblers, and of those at risk of experiencing that harm.

In relation to withdrawal limits, subsection 4(2) of the NGR Act states that ‘this object is to be achieved by allowing users of gaming machines to limit that harm by limiting the amount of cash users of gaming machines can access from automatic teller machines on premises containing gaming machines (other than casinos)’.

The Regulator has the option to consult with state or local government agencies, community groups, individuals or any other person or body (subsection 44(2)).

Working with applicants

In assessing all applications, the decision maker (the Regulator or a delegate of the Regulator) should avoid a technical or legalistic approach. Approaches to assessment should be flexible, and as much as possible should take into consideration the applicant’s circumstances and all of the information that has been made available to assist the decision maker.

If it may help to make a decision on the application, consult the applicant to clarify the information supplied or seek further evidence in support of their circumstances or claims. There is an expectation that applicants will respond to such requests within a reasonable timeframe.

Consultation

Consider whether there is a need for consultation with anyone in the community, or from a local or State government agency, regarding the requested exemption. For example, is the applicant claiming certain groups will be affected? Should the stated impact be confirmed with the relevant groups? Has any evidence in support of that claim been provided?

In line with subsection 44(2) of the NGR Act, a decision to consult rests with the Regulator, or a delegate of the Regulator for the purposes of deciding exemptions (this agreement to consult must be provided before consultation commences).

Where adverse information is going to be taken into account, the applicant should be given the opportunity to make a submission addressing that information before the decision is made.

Decision making

The final decision and reasons for the decision must be clearly communicated to the applicant. Decisions must be **reasonable**. Any conditions to be imposed must be reasonable and practical.

List the factors that were considered in reaching a decision, the evidence provided and details of any consultation undertaken. Also note any information or evidence not considered relevant, and the reasons why.

Timeframes

All applications should be dealt with in a reasonable timeframe. This will include:

- **acknowledgement of receipt** of an application; and
- **notification of the decision** on the application (noting that particularly complex applications or applications for which further information is sought may require additional time).

Applicants seeking internal review of a decision must apply for that review within **30 (calendar) days** after the day on which the decision first came to the applicant's notice, in line with subsection 198(4).

The review applicant then has **28 (calendar) days** in which to apply to the Administrative Appeals Tribunal (AAT) for review of an internal review decision made by the Regulator.

Internal and AAT reviews of decisions

Broadly, a decision on granting or refusing an exemption (including any conditions specified) is a reviewable decision. A definition of reviewable decisions is in section 5 of the NGR Act.

Under subsection 198(1), when notifying an applicant of a decision, the applicant must be made aware of their right to have the decision reviewed internally or by the AAT.

The following information should be reflected in **every reviewable decision and internal review decision**, as applicable.

Internal review

Under subsection 198(3) of the *National Gambling Reform Act 2012*, a person whose interests are affected by a reviewable decision made by a person (other than the Regulator personally) may apply in writing to the Regulator for internal review of the decision.

An application for internal review must be made within 30 days after the day on which the decision first came to the notice of the applicant.

Administrative Appeals Tribunal review

If an applicant is not satisfied with an internal review decision or a decision made by the National Gambling Regulator personally, they may apply under subsection 199(3) of the *National Gambling Reform Act 2012* to have the decision reviewed by the Administrative Appeals Tribunal (AAT). The AAT provides independent merits review of administrative decisions and has the power to set aside, vary, or affirm an internal review decision made by the Regulator under subsection 198(6) or by the Regulator personally.

An application to the AAT must be made within 28 days of the day on which the applicant is given the review decision (ss 29(2) of the *Administrative Appeals Tribunal Act 1975*). An application fee may be payable when lodging an application for review to the AAT. The fee may be reduced or may not apply in certain circumstances. Further information is available on the AAT's website (www.aat.gov.au) or by telephoning 1300 366 700.

Complaints

The Department welcomes feedback relating to handling of enquiries made to the Regulator, as well as in relation to non-compliance of any regulated entities.

Complaints may be lodged through the National Gambling Regulator Hotline (1800 105 563), to the mailbox (info@nationalgamblingregulator.gov.au) or by post to GPO Box 7576, Canberra Mail Centre ACT 2610.

It is preferred that complaints are submitted openly, that is, along with a name and contact details of the complainant; however complaints can be taken anonymously or confidentially. Complainants that do not provide contact details will not be provided feedback.

Step by step guide to assessing applications

Step 1: Determine the validity of application.

An Application is valid where:

- It is made by a person¹ who occupies gaming machine premises; and
- It is made in the approved form, or in substantially the same form as the approved form. (Minor departures from the approved form may be acceptable).

Contact the applicant if either of these criteria have not been met, explain why their application is not valid and, if possible, assist them to submit a valid application.

Step 2: Matters to consider in assisting the Regulator to decide whether to grant an exemption.

Consistent with subsection 44(1) of the NGR Act, the Regulator must have regard to the following considerations:

- a) The circumstances of the venue as it relates to the object of the Act (in line with section 4 of the NGR Act)?
- b) Has the applicant provided evidence about the accessibility of alternative cash withdrawal facilities in the community either within or outside the applicant venue (cash-withdrawal EFTPOS facilities, ATMs)?
 - i) **Within venue**
 - *For example*, does the venue provide cash-withdrawal EFTPOS facilities and if so, are there restrictions on those facilities (amount of cash and/or a requirement to make a purchase etc.)?
 - ii) **Outside venue (examples listed below as a guide only)**
 - How many and what type of cash withdrawal facilities are available outside the venue but in the community?
 - How far from the venue are these facilities (consider people with disabilities, the elderly, people without a car or drivers licence, availability of public transport etc.)?
 - Are there restrictions on these facilities (hours of operation, limits on size of cash withdrawals, a requirement to make a purchase before withdrawing cash etc.)?
 - Are those facilities easily accessible by those with a disability (eg up a flight of stairs with no lift or ramp available)?
 - Are there safety and/or security concerns related to the use of those facilities (high crime rate in the area etc.)?

¹ A person may be an individual or a business.

- b) Has the applicant provided evidence that there would be unreasonable inconvenience to the community if compliance with the ATM withdrawal limit is required? Evidence must show or support that compliance with the ATM withdrawal limit would cause unreasonable inconvenience to the community and could include, *for example*:
- submissions from members of the community
 - letters from government (local/State/Federal)
 - submissions from local businesses
- c) Has the applicant provided any other evidence to support their argument that the application of a cash withdrawal limit to the venue’s ATMs would cause “unreasonable inconvenience to the community”?
- *For example*, does the venue provide high cost non-gaming activities (sport, recreation, entertainment, dining etc.) that might exceed \$250 for an individual or family?
 - *For example*, are non-venue cash-withdrawal facilities known to be unreliable (regularly run out of cash, subject to malfunction etc.)

Where there is not enough information provided in the exemption application, the applicant may be contacted to supply this. We expect responses to these requests for additional information within a reasonable timeframe.

Step 3: Consultation

- Do you need more information to assist the decision maker in making a decision?
 - Identify exactly what information is required and the best means for obtaining that information (in some cases information may be publicly available).
 - Consider who you need to consult with to gather this information, is it the applicant, or a third party?
- Do you need to consult with a community group, local or state government agency or an individual within the community to ascertain their views or confirm evidence supplied by the applicant?

Step 4: Decision

- Provide all the evidence to the decision maker to assist in reaching a decision.
- Based on all the evidence provided, the decision maker must decide whether or not granting an exemption is warranted, and if yes, whether conditions should be applied. Conditions might include a requirement to immediately inform the Regulator of changes of circumstances (number/type of ATMs in venue, new ATMs in community etc.).
- Notify applicant of the decision and the internal and AAT review processes available to them.