



## **Response to Proposal to Extend the Current Prohibition on Gaming Machine Advertising**

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## Introduction

ClubsVIC welcomes the opportunity to make submissions regarding the government's proposed changes to the *Gambling Regulation Act 2003* to include a new section 3.5.33A which will prohibit any *gaming machine advertising*.

The proposed definition of *gaming machine advertising* includes any term, expression, symbol or any other thing *associated* with gaming machines. A thing is *associated* with gaming machines if a reasonable person with ordinary knowledge would consider it to be associated with gaming machines.

Effectively the proposed amendment prohibits the use in any advertising of the logo and wording "Tatts Pokies" and "T (Tabaret)", or any other word or symbol which is, or becomes, associated with gaming machines .

ClubsVIC has consulted widely with its member clubs on the issue of the proposed prohibition and, overwhelmingly our membership has indicated that the prohibition will have unintended, detrimental consequences, which impact more detrimentally on clubs vis a vis hotels and crown.

ClubsVIC suggests that there are other, less detrimental means to achieve the government's ends than the proposed legislative amendment, and further that the legislative amendments could be modified to allow for appropriate club-related exemptions.

In the event that the prohibition is to be implemented it is our strong submission that the wording should be changed to provide that the prohibition is limited to advertising that is ***predominately*** associated with gaming machines.



## Clubs are different

On the whole, clubs are peculiar in that they are located in out-of-the-way places. Whereas hotels have the prime corner locations, clubs are usually behind the sportsground, off the main streets.

Not all clubs welcome guests and not all clubs provide full hospitality services. Over the past 10 years the operators' logos have become, especially for clubs, an indication that authorised visitors are welcome (& legal), and that there is a quality and breadth of facilities available.

We note the suggestion that the "Crown" logo will probably be exempt from this prohibition. We understand that the basis of this probable exemption is that the Crown logo is associated with more than gaming machines. We believe that for clubs the use of the operators' logos is the same. It indicates a quality services and facilities including restaurants, cafes & bistros, function rooms, entertainment and the opportunity of **general** social gathering not limited to members that is not generally available in clubs without gaming machines.

Clubs have fewer funds available for advertising than hotels, and given the clubs' less prominent locations they rely more heavily on off-premises advertising.

Clubs need to attract patrons and new members if they are to continue to provide the sports and social infrastructure that keeps Victorians healthy and connected. Clubs rely on the income from the gaming machines to maintain their community-owned assets.

Clubs are, to a large extent, reliant on the group advertising by the relevant operator to ensure that the not-for-profit sector maintains its share of the hospitality market.

Hence, we consider any proposal which will render ineffective group advertising to be an anti-club initiative.

As the proposed amendment will outlive the current operator system, it will restrict any future group advertising by clubs which is designed to promote the "full leisure offering" of clubs and to overcome the disadvantages of clubs vis a vis hotels and hotel groups.



## **SUGGESTED ALTERNATIVES TO A LEGISLATED PROHIBITION**

### **Regulator to approve group advertising by the gaming operators**

ClubsVIC understands that the Government is concerned that current advertising by the gaming operators “has the potential to undermine the Government’s intention to ban gaming machine advertising”

ClubsVIC suggests that as an alternative to the proposed legislative prohibition, it would be preferable to amend the Act to provide the VCGR with the power/duty to approve in advance of publication any group advertising that uses the gaming operators’ logos.

### **Warning Messages**

ClubsVIC suggests that also as an alternative to the proposed changes that would prohibit the use of the gaming operators’ logos on any advertising, the Government should consider requiring any advertising that uses these logos “Tatts Pokies” and “T (Tabaret)” to include an appropriate warning message.

## **SUGGESTED MODIFICATION OF THE LEGISLATED PROHIBITION**

It is understood that the intention of the proposed changes is to restrict the gaming operators from group advertising using their logos in major media campaigns.

While we do not resile from the contentions above regarding the utility, especially for clubs, of using the operators’ logos, if the government intends to proceed with the prohibition we submit that the unintended consequences of such a prohibition may be reduced by modifying the prohibition in one or more of the following ways.

### **Exemptions**

ClubsVIC submits that given the peculiar nature of clubs that clubs should be permitted to use the gaming operator’s logo (and any future branding) on the following publications:

- Any direct mail to members of clubs.
- Flyers
- Brochures
- Club newsletters, journals and annual reports
- Local newspapers
- Club internet websites



## **Limitation of prohibition to advertising that is *predominately* associated with gaming machines**

The current wording is too broad. The concept of “associated with gaming machines” needs to be modified.

In its current form, the prohibition will extend to prohibiting the use of a club’s name if a reasonable person with ordinary knowledge [of the area] knows that the club has gaming machines.

We understand that this it is not the intention of the government to prohibit clubs from advertising their non-gaming activities. Further, we understand that the government does not intend to prohibit any future group of clubs (with and/or without gaming machines) from advertising their non-gaming activities. As an example we have been advised that it is expected that the prohibition will not extend to the use of a “ClubsVIC member” advertising campaign.

However, the current wording will have the unintended consequence of prohibiting any such campaign if a reasonable person would associate the clubs participating in the campaign with gaming machines. As the only clubs that can serve non-members or non-accompanied guests are clubs with gaming machines, then any reasonable person would associate such a campaign with gaming machines. Hence the ClubsVIC campaign would be prohibited even if it related to the non-gaming activities.

In order to avoid this unintended consequence, it is our very strong submission that the legislation should include the word “predominately associated with” and the section should provide as follows:



3.5.33A (6) In this section –

.....

***gaming machine advertising*** means any form of advertising that contains any term, expression, symbol or any other thing ***predominately*** associated with gaming machines but does not include - .....

3.5.33A (7) For the purposes of the definition ***gaming machine advertising*** in subsection (6), a term, expression, symbol or any other thing is taken to be ***predominately*** associated with gaming machine if a reasonable person with ordinary knowledge would consider it to be ***predominately*** associated with gaming machines.

It is submitted that this modification will achieve the government’s intention of prohibiting the use of the Tatts Pokies and “T” Tabaret logos as both these logos are predominately associated with gaming machines, even though when displayed at a venue they depict a level of facilities.

