

Gaming Machine (Facial Recognition Technology) and Other Legislation Amendment Regulation 2025

Explanatory notes for SL 2025 No. 162

Made under the

Gaming Machine Act 1991
Liquor Act 1992

General Outline

Short Title

Gaming Machine (Facial Recognition Technology) and Other Legislation Amendment Regulation 2025

Authorising law

Section 366 of the *Gaming Machine Act 1991*
Section 235 of the *Liquor Act 1992*

Policy objectives and the reasons for them

The policy objective of the *Gaming Machine (Facial Recognition Technology) and Other Legislation Amendment Regulation 2025* (Amendment Regulation) is to facilitate the voluntary use of facial recognition technology (FRT) at licensed premises for harm minimisation purposes.

Gaming and Liquor licensees must meet a range of obligations under the *Gaming Machine Act 1991* (Gaming Machine Act) and the *Liquor Act 1992* (Liquor Act) to help address gambling harm and keep venues safe.

Part 6 of the Gaming Machine Act contains the framework for exclusions. A person may request to be excluded from the venue and issued a self-exclusion order under section 261A. Alternatively, the licensee may issue a person with an exclusion direction under section 261C if they are at risk of experiencing gambling harm. Licensees are obligated to prohibit entry to excluded persons under section 261I.

Liquor Act licensees have a range of obligations in Part 6 of the Liquor Act, including the obligation to maintain a safe environment for patrons and staff in and around the premises in section 142ZZB. Preventing entry of banned people is a key aspect of upholding the safety of the venue.

FRT is used voluntarily by some liquor and gaming licensees for the purpose of identifying banned or excluded persons. The use of FRT by these venues is not currently regulated under Queensland liquor and gaming legislation, though venues must comply with the *Privacy Act 1988* (Cth) (Privacy Act) regarding their use of the technology. In particular, licensees with annual turnover above \$3 million are obligated to comply with the Australian Privacy Principles (APPs) at Schedule 1 of the Privacy Act.

APP 3.3 requires that the collection of sensitive information about a person, such as the biometric data used in FRT systems, must only be collected if it is reasonably necessary to an organisation's functions, and if the person has consented to collection of the data. APP 3.4 provides exemptions to these requirements, including an exemption if the collection of the data is authorised by an Australian law (including a law of a State or Territory).

Recent decisions of the Australian Privacy Commissioner have demonstrated that the consent required by APP 3.3 must be informed, voluntary, current and specific. Additionally, the Australian Privacy Commissioner has determined that convenience and cost-saving do not justify the use of FRT when alternatives, such as the engagement of additional security, remain available.

These developments are considered to expose licensees to significant regulatory uncertainty about the passive use of FRT in the detection of banned and excluded persons. To ensure that licensees are able to continue using FRT for valid liquor and gaming harm minimisation purposes in compliance with the Privacy Act, it is necessary to provide licensees with an authorisation under a law (as contemplated in APP 3.4) to negate the consent and reasonable necessity requirements of APP 3.3.

An authorisation of this nature is considered consistent with the Crisafulli Government's commitment to red tape reduction (in that it provides regulatory certainty to licensees about the use of FRT for specific purposes) and keeping Queenslanders safe (as it more freely enables the use of technology to assist with the detection of people who have been banned from licensed premises).

It is, however, acknowledged that an authorisation of this nature, and the associated removal of the consent and reasonable necessity requirement, may be argued to present specific privacy concerns for people entering licensed venues. To manage these concerns, the authorisation is to be appropriately limited in scope and accompanied by a number of specific privacy protections aimed at protecting individual rights.

Achievement of policy objectives

The authorisation for licensees under the Gaming Machine Act and Liquor Act is achieved by amendments to the *Gaming Machine Regulation 2002* (Gaming Machine Regulation) and *Liquor Regulation 2002* (Liquor Regulation).

For gaming machine licensees, the Amendment Regulation inserts new section 28A in Part 5 of the Gaming Machine Regulation. New section 28A is made under section

366(2)(b) of the Gaming Machine Act as it relates to the activities of licence holders under the Act.

The authorisation applies only to licensees that are not already required to use FRT at the premises under a condition of the licence imposed under section 73 or 74 of the Gaming Machine Act. Nothing in the new provision is intended to prevent the Commissioner for Liquor and Gaming from conditioning a gaming licence to make FRT mandatory at particular licensed premises. Licensees subject to such conditions now or in the future are not captured by the new section 28A.

Under new section 28A, licensees who voluntarily take up FRT are authorised to do so for the purpose of identifying an excluded person and preventing that person from entering the premises (or a gaming machine area) in contravention of a self-exclusion order or exclusion direction.

To meet the objective of protecting privacy rights, the authorisation is contingent upon licensees meeting the prescribed requirements:

- the licensee must ensure it is treated as an organisation under the Privacy Act and that it complies with that Act in relation to the personal information held in the FRT system;
- the FRT system includes a function for the deletion of information recorded by the system that does not identify an excluded person;
- licensees must display a sign at each entrance to the licensed premises or gaming machine area of the premises stating FRT is in use in the licensed premises or gaming area (maximum penalty – 20 Penalty Units (PU));
- if the licence ends, the licensee or person who was the licensee, must not keep or disclose personal information held by the system (maximum penalty – 20 PU); and
- licensees must ensure personal information held by the system is not used to encourage or incentivise a person to gamble or in connection with a loyalty or reward program (maximum penalty – 20 PU).

New section 28A also contains definitions of *excluded person* and *facial recognition technology system*. An excluded person means a person subject to a self-exclusion order under section 261A of the Gaming Machine Act, or a person subject to an exclusion direction under section 261C of the Act. A facial recognition technology system is defined to mean a system that enables the facial images of people who enter the premises or a gaming area of the premises to be recognised, identified, and recorded, and compared to biometric information held in the system about relevant people.

For liquor licensees, the Amendment Regulation inserts new section 27B in Part 6 of the Liquor Regulation. The authorisation is prescribed under section 235(2)(b) of the Liquor Act as it is related to the obligations of licence holders. Under the new provision, liquor licensees are authorised to use FRT at the licensed premises for the purposes of identifying an excluded person to prevent them from entering the premises. The authorisation is subject to the same requirements and penalties as for gaming licensees, with the following variations:

- licensees that use ID scanners under Part 6AA of the Liquor Act must display a sign that FRT is in use near the ID scanner, to increase the likelihood a patron will see it and make an informed decision about entering the premises; and

- licensees must not use the personal information held by the system to promote the consumption of liquor (in addition to the requirement for information not to be used in connection with a customer loyalty or reward program).

For gaming machine licensees, who will also hold a liquor licence, the expectation is that signage about FRT would be displayed at every public entrance to the premises, at the entrance to any gaming area, and in proximity to an ID scanner, if one is in use at the premises.

As there are currently no liquor licences subject to a licence condition requiring the use of FRT, it is not necessary for the Amendment Regulation to carve such licensees out of the authorisation as is done for gaming machine licensees as outlined above. Any conditions of this nature that the Commissioner may choose to apply in the future can be worded for compatibility with section 27B.

The definition of *facial recognition technology system* is the same under both the Liquor Regulation and Gaming Machine Regulation with necessary contextual changes regarding the persons intended to be detected by the system.

The definition of *excluded person*, as it applies for new section 27B of the Liquor Regulation, means a person who is the subject of a banning order or a licensee ban. The terms banning order and licensee ban are defined in section 173EE of the Liquor Act.

Consistency with policy objectives of authorising law

The Amendment Regulation is consistent with the object of the Gaming Machine Act in section 1A(1) to ensure that, on balance, the State and the community as a whole benefit from gaming machine gambling. The balance is achieved in part by minimising the potential harm from gaming machine gambling (section 1A(2)(c)).

The Amendment Regulation is also consistent with the main purposes of the Liquor Act in section 3, which include minimising harm, and the potential harm, from alcohol abuse and misuse and associated violence (subsection (a)) and providing a flexible system of regulation with minimal formality, technicality or intervention that is consistent with the proper administration of the Act (subsection (d)).

Inconsistency with policy objectives of other legislation

The Amendment Regulation will provide regulatory certainty about the use of FRT for specific harm minimisation and patron safety purposes. The Amendment Regulation is not considered to be inconsistent with the objectives of the Privacy Act and the APPs. The APPs expressly provide for an exception to APP 3.3 to apply where the collection of sensitive information is required or authorised by an Australian law. The authorisation introduced by the Amendment Regulation is therefore consistent with the Commonwealth privacy legislation framework. The Amendment Regulation relies on this framework to deliver privacy protections arising from the use of FRT at licensed premises, including by ensuring all licensees who avail themselves of the authorisation are captured by the Privacy Act (regardless of whether they meet the \$3 million turnover threshold).

Alternative ways of achieving policy objectives

Licensed premises may be required to use FRT at the premises by a condition of the licence imposed under the general conditioning powers in section 73 or 74 of the Gaming Machine Act and section 107C of the Liquor Act.

However, the policy objective is to authorise, rather than mandate, the use of FRT at licensed venues. A licence condition generally represents a requirement that the licensee must meet or risk having to show cause as to why the licence should not be cancelled. It is therefore generally not in the nature of a licence condition to authorise something rather than mandate it. As licence conditions are not readily made public, applying the authorisation via licence condition in this particular case would also lack transparency around the privacy implications of the objective and how they were dealt with.

Benefits and costs of implementation

Many licensees may be satisfied they are meeting their legislative obligations related to excluded and banned people without investing in additional compliance tools such as FRT.

As FRT will not be mandatory under the authorisation, licensees may determine whether the cost of implementation justifies the benefits of FRT to their business (noting that FRT is only authorised for certain purposes). The use of FRT to monitor the premises for excluded or banned persons may be more cost-effective than alternatives such as hiring extra security staff to monitor entrances or CCTV footage.

The benefits of the Amendment Regulation may include increased compliance with legislative obligations to prevent entry to excluded persons, or an increased ability to identify people that have been banned from the venue. This may have a positive impact on the reduction of gambling-related harm and alcohol-related violence.

While there may be some investigation costs to Government associated with new offences pertaining to the specific liquor and gaming privacy risks, as addressed in the proposal, these are likely to be complaint-based, rare, and addressed using existing compliance resources.

Consistency with fundamental legislative principles

Privacy impacts

Legislation must have sufficient regard to the rights and liberties of individuals under section 4(2)(a) of the *Legislative Standards Act 1992* (LSA). The Amendment Regulation is consistent with this principle as the impact on the right to privacy is appropriately justified.

FRT impacts an individual's right to privacy in multiple ways as it requires the collection of facial images and biometric information that can be cross-checked against a database of excluded or banned persons to identify matches.

In some cases, a person may agree to be enrolled in a database of excluded persons and to have their sensitive information collected; for example, where the person has requested a self-exclusion order for a venue. These instances where consent can be obtained reduce the overall impact on individual rights.

However, some records in a venue's database and the facial images and biometric information of persons entering the premises will be collected without consent, regardless of prominent signage at a venue, which infringes on privacy. Nevertheless, the infringement is considered justifiable given the serious risk of harm that FRT can help address, including helping to reduce gambling harm and preventing violent offenders from gaining entry to locations where liquor is sold in contravention of a banning order.

The objects of the Gaming Machine Act and the Liquor Act have a strong focus on harm minimisation. The obligations on licensees to prevent people at risk of gambling harm from being on the premises or maintaining a safe environment for staff and patrons are in line with those objects. The seriousness of those obligations is underscored by existing provisions of the legislation that permit infringements on individual rights, such as ID scanning requirements under Part 6AA of the Liquor Act and the ability for licensees to use reasonable force to remove an excluded person from the premises under section 262 of the Gaming Machine Act. The authorisation ensures licensees can use innovative technology in pursuit of those objects.

As discussed above, the authorisation will also be contingent upon licensees complying with protective measures to address privacy concerns, such as a requirement for biometric information held by the system to be deleted immediately if there is no match.

It may also be noted, there are currently no restrictions on the use of FRT under liquor and gaming legislation. The authorisation will therefore increase the overall level of protection for individuals by requiring licensees to opt in to the Privacy Act, for example.

New offences

Sufficient regard for the rights and liberties of individuals requires the consequences imposed by legislation to be proportionate and relevant to the acts or omissions to which they apply.

The Amendment Regulation introduces new offences under the Gaming Machine Regulation and Liquor Regulation for non-compliance with the requirements to:

- display signage at the premises;
- not use personal information to incentivise gambling, promote liquor consumption, or in connection with a loyalty or reward program;
- not to keep or disclose personal information held by a FRT system operated in the premises after the licensee's licence ends.

The introduction of new offences is considered proportionate and relevant. The intent is to ensure compliance with requirements intended to promote privacy. Compliance is considered particularly important as the consent requirement that would ordinarily apply under the APPs will be negated by the authorisation.

The maximum penalty that can apply to each of the new offences is 20 penalty units. This amount is appropriate given the potential impacts on individual privacy. A higher penalty would not be appropriate for a penalty imposed via subordinate legislation.

Matters appropriate for subordinate legislation

It is a fundamental legislative principle in section 4(5) of the LSA that subordinate legislation should have sufficient regard to the institution of Parliament. This involves consideration of whether the subordinate legislation is consistent with the policy objectives of the authorising law, and ensuring subordinate legislation only contains matters appropriate for the level of legislation.

While FRT is a new technology not expressly contemplated by either the Gaming Machine Act or the Liquor Act, the authorisations introduced by the Amendment Regulation are consistent with the harm-minimisation objects of those Acts. This is highlighted by the authorisation being limited to the detection of excluded or banned persons. Effectively managing who enters the premises helps can help reduce instances of gambling-related harm and alcohol-related violence. Full adherence to the APPs (including requiring consent from patrons) will be required if licensees use FRT for any other purpose.

The authorisation is also considered to be an appropriate matter for subordinate legislation for several reasons. Firstly, the authorisation does not impose a mandatory requirement on licensees. Secondly, the authorisation is comfortably within the regulation making powers of both Acts, which allow subordinate legislation to address matters relevant to the obligations of licensees. Finally, the Commonwealth privacy framework expressly provides for exceptions to the APPs to be applied via subordinate legislation and other instruments made under an Australian law.

Consultation

The Queensland Privacy Commissioner was consulted about the FRT authorisation. The Queensland Privacy Commissioner recommended that a privacy-by-design approach be adopted and that a risk assessment, such as a Privacy Impact Assessment (PIA) be undertaken.

A PIA was undertaken and it was determined that further impact assessment is not warranted given FRT is already in use at licensed venues and the Amendment Regulation (in addition to authorising the use of FRT for compliance with the Privacy Act for limited and justifiable harm minimisation purposes) introduces specific privacy protections that do not currently apply at licensed venues. These include guarantees that all venues using the authorisation will be subject to the full suite of obligations under the Privacy Act regardless of their annual turnover; specific prohibitions on the use of information for potentially harmful purposes; and dedicated signage requirements.

The impacts on privacy are also considered to be adequately dealt with and justified in the Summary Impact Analysis Statement (IAS) and Human Rights Certificate, as well as in these Explanatory Notes. The IAS concludes that authorising FRT to achieve harm minimisation aims, with appropriate protections for individual privacy as provided by the Amendment Regulation, has some, but not significant impacts, and is a net benefit to the community.