

## Exclusion Orders – Guidelines

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### Exclusion orders – what they are.

Exclusion orders have a dual purpose, to provide gamblers and gambling providers with information about the risks of problem gambling as well as a practical means for managing problem gambling behaviour.

There are two types of exclusion order provided for under the Gambling Act 2003 (“the Act”).

**Self-exclusion orders** under section 310 of the Act provide **gamblers** who believe they may be experiencing gambling-related difficulties with the option to exclude themselves from the gambling area of a particular venue or a number of particular venues.

**Exclusion orders** under section 309 of the Act afford **gambling providers** the opportunity to exclude from the gambling area of the venue a person who they believe on reasonable grounds may be an actual or potential problem gambler.

Exclusion orders are one part of a broader set of initiatives under the Act designed to ensure that gambling environments are safe, harm arising from gambling is prevented or minimised and that gambling providers facilitate responsible gambling environments for patrons.

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### Exclusion orders – what they are not.

Exclusion orders are not a disciplinary tool to be used in a punitive manner.

Exclusion orders are not trespass orders and trespass orders should not be issued in lieu of an exclusion order. The practical effect of a trespass order is similar to an exclusion order in that it removes the person from the venue. However, issuing a trespass order instead of an exclusion order is not desirable for the following reasons –

- It gets rid of the person without addressing the person’s gambling behaviour
  - It does not provide the person with information about the risks or consequences of gambling including problem gambling
  - It may be seen as a punitive, disciplinary measure that discourages other players from requesting they be excluded from the gambling area of the venue
  - It is inconsistent with the Act that requires problem gambling to be dealt with by way of information and exclusions in the first instance, not trespass orders
  - It normally removes the person from the venue altogether (while an exclusion order, depending on the defined “gambling area” for a given venue, may allow the person to remain at the venue for purposes other than gambling).
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**Who can issue exclusion orders?**

Exclusion orders can be issued by any of the following –

- A class 4 venue manager
- The holder of a casino operator's licence
- A person acting on behalf of either of the above.

A person acting on behalf of either a venue manager or casino licence holder is most likely to be an employee at the venue, for example a Duty Manager, or Host Responsibility Advocate.

However, any person that can demonstrate authority to act on behalf of the venue manager or casino licence holder is entitled to issue an exclusion order. The Department is aware of at least one situation where a treatment provider has been appointed by a particular venue to act on its behalf and issue exclusion orders. In order for the exclusion order to be enforceable however, there should be clear evidence of the person's right to act on behalf of the particular venue. Evidence might consist of a letter from the venue to the nominated person, or an exclusion order that clearly notes the person's authority to act on behalf of the venue manager or casino licensee.

An important thing to remember about exclusion orders is that they must relate to a particular person and a particular venue or series of particular venues.

**Examples**

A venue manager (or person acting on their behalf) for a particular class 4 venue can issue an exclusion order for his/her venue.

A venue manager (or person acting on their behalf) cannot issue an exclusion order for a venue with which they are not formally associated or authorised to act.

A society or trust cannot (unless it has been authorised by each particular venue) issue an exclusion order to a person that covers all of its venues.

A casino licence holder (or person acting on their behalf) can issue an exclusion order for his/her venue. If a casino licence holder holds a licence for more than one casino, then it may issue an exclusion order for each of the casinos for which it holds a licence.

A person who is not an employee of a venue, but can prove that they are acting on behalf of a venue, can issue an exclusion order for each of the venues they have been authorised to act for.

A person acting on behalf of a problem gambler cannot request that an exclusion order be issued to a person other than him or herself.

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**Do people have to go to a venue in order to be excluded from it?**

A person can request that they be excluded from a particular venue in any of the following ways –

- By going to a venue, identifying themselves as a problem gambler, and requesting that they be excluded from that particular venue
- By writing to or telephoning a particular venue or series of venues, requesting that each venue issue the person with an exclusion order.

The venue manager, casino licensee or any person acting on their behalf **must**, upon request, issue the exclusion order to the person making the request. In all instances it is useful to obtain a photo of the person so that he or she can be identified if they attempt to enter the venue in breach of an exclusion order. Where a person makes the request in writing or over the telephone, it is reasonable to request that he or she provide you with two forms of ID to confirm their identity and address.

Whilst it is not unlawful, it is generally not acceptable or consistent with the Act to issue a person with a trespass notice when they have requested that they be excluded from the venue for reasons of problem gambling.

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**Third party requests for an exclusion order**

Third party notification is when a party other than the patron concerned notifies a gambling provider that a particular patron may be experiencing difficulties with gambling at the venue.

If a person other than a problem gambler requests that an exclusion order is issued to a problem gambler known to them, it is reasonable to do the following –

- Thank the person for the information
- Assure them that the information they provide will be treated in confidence
- Ask for the name and any available identification of the potential problem gambler
- Advise the person making the notification or request that the venue has a policy for identifying actual or potential problem gamblers
- Inform the person that the venue will assess the behaviour of the person against its policy, and approach the person if their behaviour indicates actual or potential harm arising from gambling. Alternatively, if staff know the gambler, you may wish to advise that the gambler will be approached and provided with problem gambling information.
- Provide the person with problem gambling information and details of how to obtain support for problem gambling.
- Provide the person making the notification or request with a copy of your policy.

It is not acceptable to do any of the following –

- Say there is nothing you can do
- Ignore the advice
- Discuss the personal details of the patron concerned unless the patron has given permission to do so.

If you tell the person you will keep an eye on the patron, you have an obligation in good faith to actually do so – you are required to do this anyway under the Act and a notification should make you more vigilant.

**One of the most common indicators of problem gambling is notification from a relation, friend or family member of the patron.**

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**Exclusion orders and information**

Section 309 of the Gambling Act requires that once a person has been identified on reasonable grounds to be an actual or potential problem gambler, the venue manager, casino licence holder or person acting on their behalf must firstly approach the person, then offer them information or advice about problem gambling.

Regulation 12 of the Gambling (Harm Prevention and Minimisation) Regulations 2004 requires trained staff to be able to provide the following –

- Information on the characteristics of problem gambling
- Information on the potential risks of problem gambling
- How to contact problem gambling treatment providers
- A reminder that a person can self-exclude, or be excluded from the venue on the initiative of the venue manager, casino licensee or person acting on their behalf.

When a person turns up at a venue and requests that they be excluded, the above information should be provided to the person.

When a person requests exclusion by some other means, it is good practice to also send the above information to them, perhaps in the way of pamphlets.

In all instances where a person requests that they be excluded, it is important to communicate respect and support for the person.

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**Exclusion orders and promotional material**

The Department strongly recommends that when a person is excluded from a particular venue, their details are removed from any mailing lists or databases used for the purpose of gambling promotions, advertising or events.

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**How long should an exclusion order be issued for?**

Exclusion orders can be issued for up to two years. The Act provides no other guidance on how long an exclusion order should be issued for. The Department has suggested that exclusion orders lasting only hours, days or

weeks may be impractical to monitor and of little real benefit to problem gamblers. However the gambling provider is in the best position to determine the length of the exclusion order and should do so as he or she deems appropriate.

Some policies reviewed by the Department provide for exclusion orders to be issued for the maximum period of two years, whilst others set minimum periods of 3, 6 or 12 months. It is important to be aware that for some people, very long, non-negotiable exclusion periods, whilst potentially very beneficial for the person, may deter the person from requesting self-exclusion because the length of the period feels unmanageable. Trained staff should consult with a self-identified problem gambler to determine the period of exclusion.

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**Revocation or cancellation of or exclusion orders**

Once an exclusion order has been issued for a particular length of time, it cannot **under any circumstances** be revoked, rescinded, cancelled, withdrawn or re-negotiated for a shorter period

Once issued, the duration of an exclusion order cannot be shortened by the meeting of certain conditions, or by an assertion or other evidence from the patron that they no longer have a problem with gambling.

Upon expiry of an exclusion order, the patron can request that another exclusion order be issued to them. It is always open to the venue manager, casino licensee or person acting on their behalf to initiate an exclusion order where they hold concerns for a person's behaviour and the person refuses to self-exclude.

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**Conditions of re-entry**

Under section 316(1)(e) of the Act, regulations can be made prescribing procedures that must be completed by a problem gambler as a condition of re-entry to the gambling area of a class 4 venue or casino venue. To date no such regulations have been made.

The Department is aware of some conditions of re-entry being imposed on patrons subject to exclusion orders. For example, it may be a condition of re-entry that the patron receives counselling or treatment from an approved problem gambling service provider. These conditions of re-entry are between the issuer of the exclusion order and the person that is being excluded. Whilst they are not enforceable under the Act, carefully considered conditions of re-entry agreed to by the patron may be of real benefit to the patron.

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**What should an exclusion order look like?**

The Act does not prescribe a particular form of exclusion order and neither has the Department approved or endorsed a particular exclusion form. In general, exclusion orders should be clear and simple and contain at a minimum the following –

- Date
- Venue name and address
- Name and position of the person issuing the exclusion order

- Name and address of the person being excluded
- The authorising provision under the Act, i.e. a self-exclusion order under section 310 of the Act, or a venue-initiated exclusion order under section 309 of the Act
- The expiry date or duration of the exclusion order
- A reminder that –
  - Entering the gambling area of the venue in breach of an exclusion order is an offence for which a person can be fined \$500; and
  - The NZ Police can be called to remove from the gambling area any person that has entered in breach of an exclusion order.

It is good practice for exclusion orders to note that requirements under the Privacy Act will be adhered to.

Ideally the person being excluded will provide the venue with a photo by which they can be identified. It is reasonable for venues to ask for a photo or to take a photo with the person’s consent. Where a person requests an exclusion order in writing or over the telephone, it is particularly important to confirm their identity and obtain some form of identification so that the person can reasonably be identified in the event they enter the gambling area in breach of an exclusion order.

Any information, including photos provided by patrons must be treated in accordance with the Privacy Act (e.g. not displayed in public view). If you are unsure of the requirements, please seek legal advice.

It is not legally possible for a venue to contract out of liability under the Act.

**Records,  
paperwork and  
staff  
communication**

When issuing an exclusion order it is important to give the patron a copy of the order. Whilst this is not mandatory, it is clearly a useful and common sense thing to do.

Both Class 4 venues and casino operators are required to keep records of persons they issue with exclusion orders.

Rule 104 of the Gambling Act (Class 4) Game Rules 2004 states –

“Every corporate society must keep and ensure that every venue manager at each of its class 4 venues keeps at that particular venue, a record of every person issue with an exclusion order for that venue issued under section 309 or 310 of the Act, including any conditions of re-entry as may be imposed by regulations under section 316(1)(e) of the Act.”

Section 6 of the Gambling Act 2003 Minimum Operating Standards: Records and Notifications (2004) places the same requirement on casino operators.

Maintaining records of when and whom exclusion orders are issued to is a

minimum requirement. In addition to this we recommend that venues consider implementing a host responsibility or responsible gambling incident report. The aim of such a register or report is to maintain a record of interactions and/or observations of patrons related to gambling, including problem gambling. Such a register might include the following –

- Patron details
- Staff member details
- Nature of the observation or approach
- Outline of assistance provided (pamphlets, information)
- Discussion about exclusion orders and outcome, including any breaches of exclusion orders
- Further actions

Finally, it is very good practice for venues to have some formal means of keeping staff updated about who exclusion orders have been issued to, when certain exclusion orders are due to expire, and any further actions or observations that need to be carried out in relation to specific patrons. There are a variety of ways in which this could be achieved. For example staff may routinely review, before commencing duties, any incident registers or exclusion registers maintained by the venue. At regular venue staff meetings, registers can be reviewed and staff can be reminded about who is currently excluded or who is currently being observed. These kind of review or updating processes can be incorporated into current work meetings and they need not be onerous.

These meetings may also be used to review those exclusion orders that are due to expire with a view to observing the behaviour of the patron in the event they return to the venue. Venues may do this to simply be aware of patrons that may be at risk if they return to the venue, or they may write to the person advising them of the imminent expiry, and offer to issue another exclusion order.

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