

Consultation: Facial Recognition Technology (FRT) in Hotels & Clubs

A draft Code of Practice for Facial Recognition in hotels and clubs (the Code) which sets minimum standards for the voluntary use of FRT is provided as an attachment to this consultation paper. Liquor & Gaming NSW (L&GNSW) seek feedback on the draft Code, as part of your submission.

Table A contains proposals in the Consultation and **Table B** contains the details in the FRT Code Paper

Table A: FRT in Hotels & Clubs Consultation Paper

Section / Theme	Proposal	ClubsNSW initial comment on	Impact on clubs
1. Draft FRT Code (Code)	A draft Code is attached for feedback	<ul style="list-style-type: none"> • The draft Code outlines minimum standards for FRT use, detailed in Table B • It is not clear how this Code will be enforced and under which powers • The draft Code raises concerns, including: <ul style="list-style-type: none"> ○ Privacy: Ensuring compliance with the Privacy Act and conducting Privacy Impact Assessments (PIAs) ○ Data Security including storage of data within Australia, encryption, and data breach response plans ○ Proper installation by licensed professionals, secure internet connection, and regular maintenance 	<p>Medium to High - Affects clubs using or planning to install FRT before legislation comes into effect</p>

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		<ul style="list-style-type: none"> ○ Clear and visible signage to inform patrons about the use of FRT ○ Controlled access to data, obtaining patron consent, and prohibiting the use of FRT for commercial purposes ○ Regular performance testing, monitoring, and ensuring system reliability ○ Training staff to handle positive matches and ensure timely and appropriate responses 	
2. Code - application	The Code will apply to hotels and clubs with FRT already installed, or that plan to install FRT before any future legislative changes	<ul style="list-style-type: none"> • Code application seems reasonable, ensure Code applies to only clubs operating FRT not extending to those who have installed but are non-operational 	Medium to High - Affects clubs using or planning to install FRT before legislation comes into effect
3. Privacy	The Privacy Act applies to organisations with an annual turnover of more than \$3 million	<ul style="list-style-type: none"> • The Government is reviewing the Privacy Act and considering whether to remove the small business exemption 	Medium to High- if small clubs must opt into the Privacy Act and Australian Privacy Principles (APPs) to use FRT, will have a significant operational impact

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4. Key issues – mandatory application	Mandate the use of FRT in all hotels and clubs with gaming machines, regardless of the machines held, specifically to support venues' harm minimisation and anti-money laundering obligations	<ul style="list-style-type: none"> • ClubsNSW does not support mandatory FRT due to the significant operational impact on small clubs and privacy and security concerns • Any proposed mandatory FRT needs to be considered with all other gaming reform. • Phased implementation should be considered. • If a club uses it for AML/CTF obligations, no matter their size, they will be subject to the Privacy Act and APPs. 	High – A mandatory proposal will impact all gaming clubs
5. Key issues - objective	Prohibited use for customer tracking and surveillance, personalised marketing or any other uses intended to support service delivery	<ul style="list-style-type: none"> • FRT should not be used for customer tracking, surveillance, or personalised marketing. FRT should be able to be used for address general exclusions for anti-social behaviour, not just gaming-related exclusions, as many venues use it to identify problematic individuals who are unlikely to consent. FRT is also effective for identifying individuals who may need intervention before exclusion, such as welfare checks or monitoring 	Low to High – Clubs will need to comply with FRT use requirements

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		<p>suspicious activity. Clubs should be able to use FRT for all its benefits, not just to meet government promises</p>	
<p>6. Customer consent - implied consent</p>	<p>Implied consent will primarily be obtained through signage at venues stating FRT is being used on the premises</p>	<ul style="list-style-type: none"> • OAIC has advised that signage or notice about the use of FRT, will not generally be sufficient to show consent to the use of FRT • Will consider this proposal further in line with OAIC guidance on FRT and privacy obligations 	<p>High – new sign or changes to sign-in terms and conditions or alert for all gaming clubs with FRT</p>
<p>7. Customer consent – express consent for new self-excluded customers</p>	<p>Express consent is given explicitly, either orally or in writing, or via an electronic medium and is generally required of customers on the exclusion register</p>	<ul style="list-style-type: none"> • The statewide exclusion register will include a provision for express consent • Will consider this proposal further in line with OAIC guidance on FRT and privacy obligations 	<p>Potentially Low Clubs may need to update exclusion processes to ensure explicit consent is obtained and recorded</p>
<p>8. Customer consent – for third-party or existing excluded customers</p>	<p>Feedback is sought on handling consent:</p> <ul style="list-style-type: none"> • customers excluded via a third-party process • already excluded prior to the introduction of FRT 	<ul style="list-style-type: none"> • Third-party and existing excluded individuals must be notified about FRT use for the statewide exclusion program by L&GNSW 	<p>Potentially Low Clubs may need to update processes to ensure proper notification and consent collection for these customers</p>

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9. Installation – approval of FRT systems	<p>Feedback is sought on whether FRT providers should require formal approval to install and operate FRT in NSW venues, by:</p> <ul style="list-style-type: none"> • L&GNSW • statewide exclusion register provider 	<ul style="list-style-type: none"> • L&GNSW should maintain a public list of approved FRT providers to remove risk for clubs. All existing FRT providers should immediately be reviewed for approval 	<p>Potentially High Clubs may need to switch FRT providers if current systems don't meet the criteria, leading to potential costs and operational impacts</p>
10. Installation – location of cameras	<p>Feedback is sought as to whether camera location (venue entrance or gaming area only) should continue to be at the discretion of the venue or mandated</p>	<ul style="list-style-type: none"> • Discretion is essential, especially for smaller venues with limited placement options or existing FRT setups. A mandate may create unnecessary costs and logistical challenges 	<p>Potentially Low to High - If camera location remains discretionary, no impact. If mandated, some clubs may need to relocate or install additional cameras, increasing costs and operational complexity</p>
11. Data security	<p>Data security measures:</p> <ul style="list-style-type: none"> • only collecting the minimal data necessary to identify and assist excluded customers • strong password protections, including Multi-Factor Authentication (MFA) • allowing only authorised people to access the system, including role-based permissions • firewall-protected webservers and end-to-end data encryption • storing data only on Australian-based servers • documented data deletion processes 	<ul style="list-style-type: none"> • Clubs will need guidance on compliance expectations, particularly regarding server storage and security protocols. Templates and support should be provided 	<p>Medium Compliance will require updates to security measures, including Australian-based storage and access controls. The impact could be higher for clubs needing significant infrastructure changes</p>

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	<ul style="list-style-type: none"> • data security audits and logging mechanisms 		
<p>12. Monitoring the system for accuracy and false positives</p>	<p>Feedback is sought on:</p> <ul style="list-style-type: none"> • how the accuracy of FRT in hotels and clubs is monitored • measures that could be implemented to ensure FRT does not discriminate against certain populations • Staff protocols for approaching customers when a positive match has been made to confirm the match 	<ul style="list-style-type: none"> • Clubs will need guidance on monitoring accuracy and avoiding discrimination risks. Staff training and procedural updates may be required 	<p>Potentially Low Clubs must update policies, staff protocols, and possibly system settings to comply with accuracy and fairness requirements</p>
<p>13. The role of venue staff and sign-in systems</p>	<p>Feedback is sought on the continued role and requirements of venue staff concerning those entering the venue, as well as the continued use of other backup measures to identify excluded customers, such as sign-in systems</p>	<ul style="list-style-type: none"> • Clear guidance is needed to ensure any new requirements are practical for venue staff and do not create unnecessary burdens 	<p>Potentially Low Clubs may need to update policies, staff procedures, or sign-in processes depending on final requirements</p>

Table B: Code of Practice on FRT in Hotels & Clubs

Section / Theme	Proposal	ClubsNSW initial comment	Impact on clubs (Likely)
Who does the Code apply to?	The Code applies to venues currently operating FRT or that choose to install FRT prior to its use being mandated. The Code will remain in effect until any future legislative change to FRT	<ul style="list-style-type: none"> Code application seems reasonable, ensure Code applies to only clubs operating FRT not extending to those who have installed but are non-operational It is not clear how L&GNSW this Code will be enforced and under which powers 	Medium to High - Affects clubs using or planning to install FRT before legislation comes into effect
FRT objective	The Code applies to the use of FRT in venues primarily concerning enforcing exclusion orders. The use of FRT for anti-money laundering (AML) purposes will be addressed in future reforms	<ul style="list-style-type: none"> Query this – AUSTRAC is the regulator that regulates AML/CTF. 	Low to High – Clubs will need to comply with FRT use requirements
FRT providers	<p>FRT providers will not require approval to install and operate FRT in venues under this Code</p> <p>Venues will require FRT providers to complete the attached checklist of technical and operational specifications</p> <p>Venues should also require their FRT provider to complete the attached statutory declaration that the technology installed in the venue meets the specifications</p>	<ul style="list-style-type: none"> It is impracticable for clubs to be expected to take immediate action to ensure their FRT is compliant with the Code or work with their FRT provider to complete the required documentation. A phased approach to implementation with reasonable transition times (i.e. a minimum of 6 months) to enable those clubs that already have FRT to meet any Code requirements including obtaining 	Medium to High - Affects clubs using or planning to install FRT before legislation comes into effect will require existing FRT providers to complete the checklist and declaration

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		<p>completed checklists and declarations</p> <ul style="list-style-type: none"> • A venue compliance checklist should be developed to assist clubs with implementing these new requirements 	
Commencement	<p>Venues that have FRT installed are expected to take immediate action to ensure their system is compliant with the Code. Where significant changes to existing hardware or software are needed to meet one or more requirements, venues will be expected to upgrade their systems within 6 months of the commencement of this Code</p>	<ul style="list-style-type: none"> • Not supported Clubs need reasonable time frames to ensure full compliance, complete statutory declarations, and obtain checklists from FRT providers • A phased approach to implementation with reasonable transition times (minimum 6 months) is necessary to meet the Code requirements 	<p>High– Clubs will need to comply with FRT commencement</p>
Privacy Act	<p>The Act and its APPs automatically apply to organisations with an annual turnover of more than \$3 million. Organisations with annual turnover of \$3 million or less may also opt-in to the Privacy Act which is a requirement under this Code (see requirements section below). Accordingly, all FRT providers and venues operating FRT are to be considered ‘APP Entities’ under the Act</p>	<ul style="list-style-type: none"> • The Privacy Act currently enables a small business to make a “choice” to be treated as an APP entity and what is proposed is inconsistent with the Privacy Act • Requiring small clubs to opt-in to the Privacy Act would impose significant costs and administrative burden and 	<p>High- If small clubs must opt into the Privacy Act and APPs to use FRT, this will have a significant operational impact</p>

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		<p>should not be a requirement of the Code</p> <ul style="list-style-type: none"> The Privacy Act is also currently being reviewed (including the small business exemption) 	
Privacy Act	The Australian Information and Privacy Commissioner may still exercise its regulatory power to investigate and take enforcement action concerning a venue or FRT provider’s compliance with the APPs	<ul style="list-style-type: none"> The Code does not indicate how and what powers will be excised by L&GNSW in addition to the powers of the Privacy Commissioner under the Privacy Act 	Low - Medium – Clubs need to know OAIC requirements
Requirements – high level	<ul style="list-style-type: none"> communicate securely with an exclusion register or a venue’s patron data store use exclusion data to compare with the images of persons entering a venue or gaming area send a notification to the venue when a suspected excluded person is identified to prevent unauthorised access, use and disclosure of any data collected 	<ul style="list-style-type: none"> Some of these requirements are too prescriptive and will not be operationally practical, such as the FRT system sending a notification to the venue when a suspected excluded person is identified Instead of mandating automatic notifications for every suspected excluded person, consider allowing flexibility for venues to determine the most effective notification method based on their operational needs. This approach would facilitate easier integration and 	Medium to High – Clubs will need to comply with FRT operational requirements

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		<p>compliance with the requirements</p>	
<p>1. Privacy impact assessment and data breach response plan</p>	<p>The venue should be treated as an “APP Entity” under the Privacy Act 1988. As such, it is strongly recommended that venues with an annual turnover of \$3 million or less ‘opt-in’ with the Office of the Australian Information Commissioner</p>	<ul style="list-style-type: none"> Clubs under the \$3 million threshold should not need to opt into becoming an APP entity 	<p>High- If small clubs must opt into the Privacy Act and APPs to use FRT, will have a significant operational impact</p>
<p>1. Privacy impact assessment and data breach response plan</p>	<p>1.2 The venue must collaborate with their FRT provider to complete a PIA on the use of the specific FRT product in the venue before the installation of any technology</p>	<ul style="list-style-type: none"> The Code must be consistent with the Privacy Act requirements and the recent guidance put out by the OAIC on FRT. An industry-wide PIA should be developed, to the extent that the privacy risks and controls are consistent across clubs in the Privacy Act Review Small clubs may that do not have the resources to complete a PIA unique to their venue (particularly, where the risks and controls may be consistent across other venues) 	<p>High- If clubs must complete PIAs to use FRT, will have a significant operational impact</p>
<p>1. Privacy impact assessment and data breach response plan</p>	<p>1.3 Once installed, venues must update their privacy policy as soon as practicable to reflect the use of FRT in the venue. Liquor & Gaming NSW will provide suggested wording for venues to adopt</p>	<ul style="list-style-type: none"> The Code must be consistent with the Privacy Act requirements 	<p>Medium to High- clubs must update their privacy policy</p>

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1. Privacy impact assessment and data breach response plan	1.4 The venue must collaborate with their FRT provider to complete a data breach response plan that sets out procedures and clear lines of authority in the event of a suspected or confirmed data breach	<ul style="list-style-type: none"> • If the club already has a data breach response plan for its overall business, a separate plan should not be necessary. • There needs to be sufficient flexibility to enable clubs to update/integrate the processes for responding to FRT-related data breaches into the club's existing plan 	Medium to High – clubs without a data breach response plan for FRT will need to develop one
2. Installation and controls	2.2 The venue must have a secure, high-speed, and reliable internet connection	<ul style="list-style-type: none"> • Not supported: This may not be possible for venues, particularly in regional or remote locations, regardless of the size of the venue. The stability and speed of internet connections are outside the venue's control and must not be mandated. 	Potentially Low to High – May require upgrades to the club's internet
2. Installation and controls	2.3 In consultation with the FRT provider, the venue must determine the appropriate number and positioning of cameras to provide the best opportunity to capture the front facial profile of all patrons entering the venue or gaming areas (see Attachment A for technical considerations)	<ul style="list-style-type: none"> • Varying club layouts, operational scales, resources, and CCTV locations will vary depending on these factors. This needs to be taken into consideration 	Potentially Low to High – The consultation proposes keeping the camera location discretionary, with no impact. If mandated, some clubs may need to relocate or install additional cameras,

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			increasing costs and operational complexity
2. Installation and controls	2.5 The venue’s internal control procedures should include measures to ensure such devices cannot be inadvertently picked up, accessed, or viewed by unauthorised persons. This includes ensuring that authorised staff always keep handheld devices on person while on duty, fixed monitors are located where authorised staff are consistently present, and consideration of the physical security of devices, including during non-trading hours	<ul style="list-style-type: none"> • Some FRT systems may be accessed on club-owned devices by authorised senior staff this is not the case for all clubs • Some clubs, particularly those run by volunteers or with limited resources, may not have sophisticated system setups or devices 	Potentially Low to High – This may require updating internal policies and system permissions
2. Installation and controls	2.6 Current onsite service and hardware replacement agreements must be in place to facilitate a rapid response in the event of hardware failure. A technician should be always available during venue trading hours and be able to provide same-day response and repair services	<ul style="list-style-type: none"> • Not supported - This requirement is out of the club’s control and is an FRT provider obligation. Venues located in regional and remote areas would find complying difficult due to technicians not being readily available or willing to service remote locations • Technicians are more likely to be employed by a third party, which would make compliance with the same-day response and repair services difficult, particularly in regional and remote locations 	Low – This is not within the club’s control

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		<ul style="list-style-type: none"> • While FRT providers may be able to resolve system bugs remotely some repair timing can also be dependent on the issue and the availability of parts if required • ClubsNSW is aware that other gaming connectivity requirements, such as MAXgaming’s QuickChange, determined 3 days as a reasonable period for technicians to respond and facilitate repairs for metropolitan areas and longer times for regional and remote areas (if they service that area at all) • It may be practicable that in the case of unplanned system outages or disruptions, the venue can have other internal procedures or measures to identify excluded patrons 	
4. Data storage	4.1 Data storage linked to the FRT system must remain exclusively in Australia and cannot be exported off-shore, regardless of whether the venue uses an on-premises or cloud-based solution	<ul style="list-style-type: none"> • Many cloud providers may use offshore facilities there is the possibility that clubs may be unaware data stored in the cloud is in an offshore location 	Potentially Low to High – This may require a club to change cloud providers

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		<ul style="list-style-type: none"> If clubs are required to move data currently located off-store sufficient time should be allowed to enable this to occur (a minimum of 6 months). 	
4. Data storage	4.4 Information about a previously excluded patron must be deleted from the venue's data store as soon as practicable following expiry or revocation of the self-exclusion. Automated notification or deletion mechanisms should be established to support this requirement	<ul style="list-style-type: none"> ClubsNSW does not support mandating an automated process. Clubs currently do this manually by an authorised user once notified by the exclusion register. Given the future statewide exclusion register will have the functionality to update exclusion registers – requiring an automated process will introduce unnecessary costs that will be redundant in the future. 	Medium to High – Clubs will need to manage until the single statewide exclusion register is in effect
5. Data access and use	5.2 If the FRT requires the venue to transfer information from an existing exclusion register to their own data store, this must only be completed by an authorised user and on the same day that they are notified of the patron's exclusion	<ul style="list-style-type: none"> Same-day response is not practical and if required then more staff will need to have access as an authorised user and greater system permissions will be necessary, which may create a greater security risk Reasonable flexibility is necessary- authorised users 	Low to High – Clubs will need to comply with FRT operational requirements

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		<p>at a venue might not be available to synchronise the venue’s data store with the club’s existing exclusion registers, for example, on weekends.</p>	
<p>5. Data access and use</p>	<p>5.3 For patron consent - Amendments to the current self-exclusion agreement terms are required to ensure patrons’ express consent is obtained at sign-up. Where practicable, notification must also be sent to patrons already on an exclusion register informing them of these amendments and to provide them with an opportunity to contact the venue or self-exclusion register with any concerns. To avoid duplication, notifications will need to be facilitated by the BetSafe and ClubSafe register operators for member venues, while non-member venues must be responsible for sending their own notifications. Liquor & Gaming NSW will provide support in relation to these amendments, including suggested wording for changes to the self-exclusion agreement terms and notification templates for currently excluded patrons</p>	<ul style="list-style-type: none"> • While the current exclusion deed can be updated to reflect this further detail is required to enable how this will work in practice. • OAIC have issued guidance on the use of FRT – L&G to confirm that this will meet the OAIC’s requirements. 	<p>Low – will be overseen by the exclusion registry provider</p>
<p>6. System performance and integrity</p>	<p>6.2 The responsible person at the venue must review FRT system usage reports at least weekly, noting information on the number of excluded patrons identified against the total number of faces scanned, time of identification, False Negative Identification Rates (FNIR) and False</p>	<ul style="list-style-type: none"> • Not supported – this requirement is onerous. • Most clubs regularly conduct and review system performance and integrity checks but smaller clubs have fewer triggers. 	<p>Potentially Medium Clubs to update reporting processes to produce this reporting.</p>

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	Positive Identification Rates (FPIR), and incidents of system disruption or downtime	<p>Therefore, system performance reports are available less frequently</p> <ul style="list-style-type: none"> • Checks and settings adjustments may be necessary following system triggers and FPIRs. If adjusted too much the system could result in FNIRs which may have unintended consequences 	
6. System performance and integrity	6.4 FRT must be operating during all hours that the venue is trading. In case of any unplanned system outages or disruptions, the venue's internal control procedures must include measures to mitigate any reduced capacity to identify excluded patrons. For example, additional staff monitoring of the gaming area.	<ul style="list-style-type: none"> • Given the Code is limited to gaming any requirements should be limited to gaming trading hours. • Clubs located in regional and remote areas where there are often connectivity or power issues will find this difficult • The Code needs to allow for flexibility in response times for system outages. While same-day response should be encouraged, the Code should accommodate reasonable timing based on the venue's specific circumstances and internal outage management processes 	Low to High – Clubs will need to comply with FRT operational requirements

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6. System performance and integrity	6.5 The venue must ensure that scheduled maintenance of FRT is planned and conducted outside of trading hours or when gaming machines are not in use	<ul style="list-style-type: none"> • This obligation is out of the venue’s control • It may be unavoidable to restrict major work or maintenance outside of trading hours, particularly when system testing is necessary 	Low – This is not within the club’s control
6. System performance and integrity	6.6 The venue must implement a complaint mechanism for patrons or the public to report concerns about the use of FRT in the venue	<ul style="list-style-type: none"> • There is no need for this requirement given the Privacy Act requires APP entities to have a privacy complaint process in place 	Low – Clubs already do under the Privacy Act and APPs
7. Venue staff response to positive matches	7.2 Following an alert, the person responsible in the venue (an RGO, venue supervisor or manager) must immediately approach the identified patron.	<ul style="list-style-type: none"> • It may be the case that the responsible person cannot attend immediately as they are completing other duties required as part of their role the requirement should be to do so as soon as reasonably possible. 	Potentially Low Clubs must update policies, staff protocols, and possibly system settings to comply with accuracy and fairness requirements