

GAMBLING ACT 2003

**CONSULTATION DOCUMENT ON
LIMITS ON VENUE EXPENSES**

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1. Executive Summary

- 1.1. The Gambling Act 2003 allows the Secretary of Internal Affairs to limit or exclude some costs of corporate societies operating gaming machines. This document looks particularly at limiting venue expenses – that is, the expenses gaming machine operators pay to venue operators (such as pubs) that host gaming machines.
- 1.2. We present two options for limiting venue operator costs. We would like your comments on these options prior to deciding on what option, if any, to implement.
- 1.3. The two proposed options are:
 - a fixed per machine per week (pmpw) limit of \$120
 - a fixed pmpw limit of \$100 and a fixed limit of maximum allowable dispensations for high usage costs or high regional rent costs of \$50 pmpw.
- 1.4. These limits would apply to every conceivable expense that a venue operator might incur in operating a gaming machine. It includes all wages, rents, customer service expenses, contracted services, profits, enhancements to venues and any other cost related to the operation of gaming machines that can be recovered by venue operators. These expenses, in total, may be best conceived of as a single service fee for the purposes of this discussion.
- 1.5. The key problems that the Department is attempting to address with this policy are:
 - the fact that a significantly increased share of the returns from gambling is being retained by venue operators as expenses and the likelihood that this trend will continue with current policy settings
 - the difficulty of reconciling the large variations in expenses with any definition of actual, reasonable and necessary costs even for highly patronised up-market venues in CBD locations
 - the Gambling Act requirement for the Department to be satisfied that expenses are being minimised, including the need to minimise the extent of incentive payments to attract and retain high value venues and limit the extent of profit that can be earned from operating gaming machine venues.
- 1.6. The Department would like feedback from stakeholders on the following key issues:

- whether a venue expense limit would address the problems
 - whether the proposed amounts are reasonable.
- 1.7. The Department has looked at similar issues under the Gaming and Lotteries Act (where these costs have been called “site payments”). We carried out significant consultation in 2003 on site payments. We obtained a good deal of useful information, and heard a wide range of views, on the issue. We have taken that information into account in developing this consultation document. However, it must be emphasised that any venue expense limitation regime must respond to the purpose and requirements of the Gambling Act.

2. How to contact us

2.1. We ask that you make submissions in response to this paper, in whatever form is most suitable to you, no later than **22 April 2004**. We will consider the submissions, conclude which option to implement, make any further adjustments that are warranted, and then send out the complete revised policy.

2.2. Submissions can be sent to:

Department of Internal Affairs
GCR Link Project Communications Coordinator
Level 14
PO Box 805
Wellington

2.3. If you have any queries about this paper or the consultation process, please phone Kate Reid on (04) 494 0674.

2.4. All submissions may be made publicly available, unless you say you don’t want that. Even if you do ask that your submission (or part of it) be kept confidential, we might have to release it at a later date if someone makes a request under the Official Information Act.

3. Introduction

Site payments

3.1. Gaming machine societies (referred to here as gaming machine operators) are the charitable organisations that run gaming machines. Their purpose is to provide money to the community, according to authorised purposes, specified in their Class 4 Operators Licence. These societies need venues¹ to run the machines. Clubs generally run machines on their own venues, and use club staff to operate the machines. For these clubs, the societies and the site or venue (the club premises) are one and the same organisation.

3.2. Non-clubs, in contrast, place their machines on one or more commercial venues (usually licensed premises such as pubs), and the staff of the venues carry out the

¹ The Gambling Act talks about “venues” to refer to the premises that can be used to host gaming machines; these have generally been called “sites” under the Gaming and Lotteries Act.

day-to-day operation of the machines. Non-club societies must be separate from the businesses that run the venues. Non-club societies generally make a regular payment to venues, in order to reimburse the venue for expenses incurred in running the gaming machines. Payments made to non-club societies are the subject of this paper.

4. The Gambling Act and payments to venues

4.1. The Gambling Act creates a new regulatory environment, with a number of significant changes from that of the Gaming and Lotteries Act. The most significant changes in relation to venue payments are:

- the purpose of the Act
- power to make regulations
- power to limit society expenses in general
- power to limit costs paid to venues.

The purpose of the Act

4.2. The Gambling Act contains a detailed purpose clause, which guides all decision-making under the Act: making licensing or compliance decisions; developing regulations, rules, including standards, and deciding appeals or judicial reviews. The purposes most relevant to limiting expenses are to:

- ensure that money from gambling benefits the community.
- limit opportunities for crime and dishonesty associated with gambling
- prevent and minimise the harm caused by gambling
- control the growth of gambling.

Specific provisions relating to limiting society expenses

4.3. The Gambling Act provides the Department with a range of tools to control the proportions taken by authorised expenses, venue and gaming machine operator costs including:

- power to make regulations to require minimum returns to authorised purposes
- power to make *Gazette* notices to set limits on or exclude the costs that may be incurred by a class 4 society, including:
 - costs associated with the class 4 venue
 - costs associated with repairing and maintaining gambling equipment
 - costs of operating the corporate society.

4.4. The Gambling Act requires that money earned from gaming machines (whether directly or indirectly) other than the actual, reasonable and necessary expenses, be applied to authorised purposes. It also requires gaming machine operators to minimise costs and maximise authorised purpose contributions, and it includes an explicit prohibition on commission. The Gambling Act does not require the Department to attempt to maximise the amount of money made in class 4 gambling, as this maximisation may conflict with the goals to prevent and minimise the harm caused by gambling and to control the growth of gambling.

Note that there is a tension between the various requirements and purposes of the Gambling Act, and the Department's aim is to achieve a balance between these.

- 4.5. Limiting venue expenses therefore has several purposes:
- to help to ensure that costs that are incurred are actual, reasonable and necessary
 - to help to ensure that money from gambling benefits the community
 - to help to maximise the net proceeds from gambling
 - to help to enable the Secretary to be satisfied that costs are being minimised
 - to help to ensure that payments for venue expenses are not in the form of a commission.
- 4.6. Other objectives that will be used to choose an option and to measure the effectiveness of the policy include:
- administrative simplicity
 - practicality of enforcement
 - equity and fairness to operators
 - certainty in the investment environment for business
- 4.7. We will defer work on limiting other gaming machine operator costs (i.e. costs other than those paid to venues). While these are also significant costs, more research and policy development is required before appropriate limits can be set.
- 4.8. Different processes are setting some gaming machine operator costs. These include the following:
- the Department has the power to make regulations for fees – these have been the subject of public consultation, and the Department aims to have them gazetted by early June 2004 for implementation by 1 July
 - the Ministry of Health is leading consultations on setting a problem gambling levy
 - gaming duty is set at 20% of gaming profit in the Gaming Duties Act 1971 – the Gambling Act did not amend this figure.

5. History of site payments

The Gaming and Lotteries Act

5.1. The question of how much operators should pay to venues has long been a controversial one. The Gaming and Lotteries Act expressly forbids the payment of commission to venue operators and of remuneration (any payment in excess of strict reimbursement) for venue operators operating gaming machines (s8(2)). Apart from these prohibitions, the Gaming and Lotteries Act does not address venue payments, and the Department has regulated this area through licence conditions made under the Gaming and Lotteries Act.

5.2. In general terms there have been three different approaches over the years:

- fixed per machine per week (pmpw) fee of \$68

- “Market rules” – this was where gaming machine operators were left to pay what they considered actual, reasonable and necessary. It got out of hand and some payments were seen as excessive.
- cap with dispensations – the Department set a limit of \$150 pmpw (within which it was still theoretically necessary for gaming machine operators to pay only actual, reasonable and necessary expenses). However, it allowed for societies to apply for dispensation to make higher payments. The dispensation guidelines set out five steps relating gaming machine profit to maximum site payments. The dispensation model was held by the High Court in *Pub Charity v Attorney-General* to be effectively commission-related, and too rigidly applied by the Department, fettering our discretion.

5.3. This consultation document is part of the policy development for venue expenses under the Gambling Act. In the interim period, the status quo for site payments is being maintained.

6. Historical trends in venue expenses

- 6.1. Over the last several years there have been a number of trends in the amount that venues receive for the operation of gaming machines. In total the share that site expenses have taken of the gaming machine profit has grown strongly, from 15.2% to 19.7% of the total profit.
- 6.2. Anecdotal evidence suggests that some gaming machine operators have used high site payments as an inducement to venues to transfer to their society. The growth over four years in returns to the community and profit growth per machine is compared with site expenses (now called venue expenses under the Gambling Act) in the table below.

Non-club % Growth in 4 Years: 1999-2003

Return to A.P. per machine	84 %
Profit per machine	77 %
Site expenses per machine	129 %

- 6.3. This high level of growth in expenses is not fully explainable by looking at changes in inflation over the period, which has been in low single figures.
- 6.4. As an average per machine the growth in venue expenses has also been marked as the following table indicates:

Non-club site payment averages

Year	Average site payment per machine
1999	\$49
2000	\$55
2001	\$85
2002	\$86
2003	\$113

6.5. In summary the historical trends that have been experienced are:

- venue operators receiving a significantly increased share of the profits
- strong growth in the average amount of expenses per machine per week.

7. The nature of expenses

- 7.1. The Gambling Act does not specifically prohibit profit as an expense that may be recovered. However, it does require that any expenses minimized, actual, reasonable and necessary, specified in the venue agreement, and no element of commission is included. Submissions on previous discussion documents have suggested that a profit component does in fact exist within the industry. It is not likely that venue operators would operate, or continue to operate, gaming machines for no return.
- 7.2. The costs that venues face in relation to operating gaming machines can be divided between fixed and variable components. Fixed costs are those costs that do not vary when usage of gaming machines increases, for example, the rent. Variable costs are those costs that increase when usage increases, for example, some labour costs like cleaning or collecting cash. Previous consultation and policy development has established that most costs are of the fixed type.
- 7.3. The ability of the Department to be able to know the minimum possible level of costs for any particular venue operator at any given time is limited. Almost exclusively the venue operator holds the information regarding the minimum level of cost that is possible for a given service level. It is possible for the Department to know broad industry averages for given cost elements and to know circumstantial evidence around the level of average costs. This does not substitute for the knowledge of the business owner of possible efficiencies that could be utilised.
- 7.4. There is no real way to objectively verify the minimum level of costs that could be incurred. Furthermore the circumstantial evidence of industry averages is unstable in this area. The range of costs between different venue operators is extreme (\$0-\$390 pmpw in the most recent licensing year) and the changes in average levels are marked (129% in four years).
- 7.5. Consideration has been given to setting individual limits on a fixed set of components of total expenses. This would add up to a total amount in any case. On balance it is considered that the simpler approach is to express this as a single overall limit. This is the easiest approach to administer and gives the most flexibility to gaming machine operators and venue operators.
- 7.6. In determining the reasonable level of total allowable expenses consideration has been given to reasonable maximum levels of each conceivable individual expense. When the Department looks at what reasonable limits are, and notwithstanding that costs must be minimised, it is not reasonable to look for the lowest expense incurred in a given category and apply that to all venue operators. In many cases that could imply a limit of zero. Similarly it is not reasonable to look for the highest expense incurred in any given category and apply that as the

limit for each individual expenses. This would lead to unreasonably high limits. Furthermore, there is no objective way to determine a reasonable level of profit outside of a competitive market.

- 7.7. Past work by the Department has recognised that the main inputs into the expenses incurred are venue rental, administrative labour and miscellaneous expenses. Labour can be up to a maximum of 3-4 hours per week and may cost up to \$50-\$60 pmpw. The Department has previously considered that there may be a 10% increase for unusually high usage venues. Miscellaneous charges may total up to \$35 pmpw. Site rentals vary significantly. Logically, for venue operators to continue to provide the service, there must be some element of return within some payments. Averages, in the database held by the Department of recorded assessments, support this assessment of reasonable maximums. In the Department's view these costs are mostly fixed. Feedback is sought as to whether this is actually the case.
- 7.8. The arguments in this discussion document suggest that these figures do not provide an accurate assessment of what the minimum level of costs could be. They do provide us with an indicative range of the possible level of a fixed limit, taking into account the reasonable levels of costs experienced in the past.
- 7.9. This consultation process is intended to help the Department to come to a better view of what a reasonable limit on expenses is. Sections 8 and 9 provide two options for limiting venue expenses.

8. Option 1: A fixed pmpw limit on venue expenses

- 8.1. This option considers placing a limit on the total amount of expenses per machine per week that a venue operator can receive from a gaming machine operator for operating a gaming machine.

Discussion

Objectives of the Act

- 8.2. The Department needs to be satisfied that costs are being minimised. One of the objectives of a fixed pmpw limit is to create incentives for behaviour in support of this objective. A system of dispensations has proven to lead to increasing costs. Operators that have high costs get paid more money so there is little incentive to attempt to reduce the costs. This may explain, in part, the rise in venue expenses over the period in which this type of policy was in operation.
- 8.3. Another way of stating this is that the regulatory environment has an impact on the level of costs that are claimed. If the return to venue operators is within each claimed expense, and there is no upper limit on those expenses, then there is a strong incentive to maximise expenses. In practice, for example, it may lead to behaviour such as positioning gaming machines in the most expensive rental area of the property, or using high wage labourers to perform menial duties. This is not the kind of behaviour that will lead to a minimisation of costs or a maximisation of returns to the community as required by the Act.

- 8.4. Because the Department has difficulty knowing the level of minimum costs, this has an impact on the objectives of ensuring that there are no commission payments for venue operators, and that payments are not used as an incentive to grow gambling. A fixed limit ensures that there is no element of commission, at least at levels above the limit.
- 8.5. The Department needs to set a limit that accounts for the costs that it views as actual, reasonable and necessary. In doing so it needs to account for the reasonable maximum level of service.

Administrative simplicity

- 8.6. Administrative simplicity of this approach is an important benefit. Previous policy approaches requiring the assessment of every cost incurred have proven to be administratively burdensome for all involved. Achieving objectives with a single limit will significantly lower these burdens for the Department and potentially for venue operators (subject to their agreement with gaming machine operators).
- 8.7. The Department would not need to be heavily involved in every cost decision or reimbursement if the objectives of the Act were achieved by the limitation of the overall total of costs pmpw that were incurred.

Certainty

- 8.8. One benefit of this option is to increase the certainty of the environment for venue operators. Businesses need certainty and long-term stability in the regulatory environment if they are to make efficient investment decisions. One objective with a single limit is to ensure venue operators have this certainty.
- 8.9. It does not mean that previous investment decisions have been made efficiently given the changes in the regulatory environment that have occurred with the introduction of the Gambling Act. (Venue operators who are receiving several hundred dollars a week per machine and have made investments expecting this to continue will be disadvantaged with this option.)

Fairness and equity

- 8.10. The figures show that there is a wide disparity between what venue operators earn in expenses. It is difficult to understand why expenses could vary between \$390 and \$0, for example, for operating the same or similar machines in an environment (under the Gaming and Lotteries Act) where profit is not being earned and commission is not being paid (this is the range of reported expenses in the Department's database).
- 8.11. Different societies may have different policies when reimbursing expenses. Different operators may have different methods of claiming expenses. A single maximum price is likely to be fairer between operators. It will serve to standardise earnings between venue operators. It will also ensure that there is always a limited benefit to changing gaming machine operators.

Disadvantages

- 8.12. One drawback with this approach is that it will reduce the flexibility that gaming machine operators have to determine their venue expense policy. There may be good reasons not to remove this flexibility. Views are sought in this document as to what they could be.
- 8.13. A single fixed limit may penalise venue operators with genuine and necessary costs. This may reduce returns to the community from gambling. It may leave some venue operators less willing to operate machines at all. It may have unforeseen consequences. In particular it may mean that some gaming machine operators change their venue operators in order to achieve a service level within the limit if some venue operators cannot provide the service for a fee that is within the limit.
- 8.14. This approach may lead to incentives to gain benefits in ways other than purely monetary reimbursements. It is possible that one result of a single limit pmpw could be that the amount or nature of services that operators perform reduces. If expenses did not fall, but services provided for the expense level did, this could undermine the effectiveness of a limit.

Possible level of the limit

- 8.15. It is proposed in this option that a limit on the total amount of expenses that a venue operator can incur be set at \$120 pmpw.
- 8.16. Within any limit the Act requires that expenses be actual, reasonable and necessary. The Act also requires that costs be listed in the venue agreement and that no element of commission is included in the payments.

Review process

- 8.17. With this option it is further proposed that a two-yearly review process be established. This would involve consultation with stakeholders and a process to set new venue expense limits, including any necessary inflationary considerations. It would also include any substantive new information that may be gathered by the Department and any policy changes that may occur. The review could also include assessing the effectiveness of the policy against the objectives of the Act, and the specific purposes of the limit.

9. Option 2: A pmpw limit with a fixed dispensation limit for high usage costs and regional variations

- 9.1. This option considers placing a limit on the total amount of expenses per machine per week that a venue operator can receive from a gaming machine operator for operating a gaming machine. It also allows societies to seek a limited amount of dispensations from the department to pay in excess of the limit. Dispensations would be approved within a second limit that fixed the total pmpw dispensation that could be approved.
- 9.2. Dispensations would be approved on the basis of high variable costs. If the fixed base limit were to account for the reasonably allowable fixed costs, then situations where costs were higher would be related to reasonably higher usage costs.
- 9.3. A method for assessing high variable costs, tying them to usage, would need to be developed. However, measures that were based directly or indirectly on a percentage of gaming machine turnover may breach the Act's prohibition on commission. Other measures may be available – for instance, many recent models of gaming machine record key presses, and this measure may provide a proxy for time spent by players on gaming machines.
- 9.4. A second reason for a dispensation may be regional variation in rental costs. A venue operator in a small rural town may not face the same rental costs as a busy city CBD location. A regional rent adjuster could be used to apply to dispensation limits as a mechanism to allow for these variations. Therefore a venue operating in a busy city location may automatically be entitled to a portion of the dispensation.

Discussion

- 9.5. Many of the features of this option are similar to the fixed limit option (Option 1). There are also important differences in terms of how well it will achieve the objectives. Some benefits and disadvantages of this approach compared with Option One are discussed below.

Advantages

- 9.6. Allowing dispensations will help to avoid some proportion of the uneven impact of a single fixed limit. This may be considered to be fairer. It may reduce the effect of a single fixed limit in terms of the degree to which venue operators cannot provide the service within the limit and decline to provide the service. Therefore it may reduce disruption in the industry as gaming machine operators seek venue operators who can provide the service within the limit.
- 9.7. Allowing dispensations may reduce the likelihood that returns to the community are reduced from those with high variable costs or high service levels. This option gives gaming machine operators more flexibility than a single fixed limit to determine venue expense policies.
- 9.8. This option allows the Department to keep compliance costs lower than they would be without a limit at all but not as low as a single fixed limit.

Disadvantages

- 9.9. The ability to exceed the limit will mean that there is again an incentive to be expensive. Those with high costs will have an incentive to seek a dispensation rather than to reduce their costs.
- 9.10. The system may be perceived as being unfair. Similar operators who manage their venue with lower cost will receive less money than those who have higher costs for a similar service. Some gaming machine operators may seek dispensations while others may be less inclined to do so.
- 9.11. The certainty that businesses have over their income stream would be reduced with this option. Changing gaming machine operators may have a significant impact on revenue.
- 9.12. The Department's ability to check the accuracy of the request for a dispensation is limited, as with any dispensation regime.
- 9.13. This option may lead to higher overall expenditure on venue expenses compared with Option 1 and may reduce returns to the community.
- 9.14. The legal concern over the payment of commission is also a factor with this approach. Previous legal judgement has ruled that a limit based on turnover represents a commission payment and is not allowed. For this reason a direct use of turnover as a measure of high usage costs would not be considered acceptable. Unless a simple alternative measure of usage can be found, venue payments will require careful scrutiny to ensure that costs were actual, reasonable and necessary. This need for scrutiny raises compliance costs. In the future it is foreseeable that better measures of usage will be available. Measures of keystrokes, for example, may provide an accurate measure of usage that is not related directly to turnover. This could allow a sliding scale within the usage-based limit depending on the usage measure. This would lower the need for scrutiny and compliance costs.
- 9.15. This option does not perform as well against the objective of ensuring that gambling growth is controlled. The incentive of a higher payment will create an incentive to raise usage, and usage costs, to achieve higher revenue. However, limiting the amount of dispensations that could be approved arguably places some controls on this. (The Gambling Act requires that growth of gambling be controlled, not that gambling is reduced.)

Recommended approach

- 9.16. If this option were chosen, the Department recommends a limit of \$100 pmpw for fixed costs and a limit of \$50 pmpw for high usage or regional costs. It is possible that an accreditation system could be set up with this option, so that external agents could assess venue costs. The Department, in meeting the objectives of the Act, may consider that this is a more cost effective or accurate way to determine these costs.

Review process

- 9.17. With this option it is further proposed that a two-yearly review process be established. This would involve consultation with stakeholders and a process to set new expense limits, including any necessary inflationary considerations. It would also include any substantive new information that may be gathered by the Department and any other policy changes that may occur and cause costs to increase. The review could also include assessing the effectiveness of the policy against the objectives of the Act, and the specific purposes of the limit.

10. Conclusion: Questions for Discussion

This document is intended to generate discussion. All views are encouraged, and the Department is seeking your feedback on the following questions:

- a) *Which option do you think is the best and why?*
- b) *Is there a better alternative in your view that achieves the purposes of the Gambling Act? If so, how would it operate and how would it achieve the purposes of the Act?*
- c) *How do the options perform against the objectives of the Gambling Act and why?*
- d) *What is the likely impact of the proposed venue expense limits on; venue operators, gaming machine operators and returns to the community?*
- e) *What effect do you think the proposed limits would have on the range of service levels?*
- f) *How would venue operators and gaming machine operators respond to this proposed policy over time?*
- g) *What unforeseen consequences might the various options have?*
- h) *How do you explain the trends in venue operator expenses over the last few years?*
- i) *How fair do you think the policy proposals are for venue operators, gaming machine operators and the community?*
- j) *What effect do you think these proposals will have on certainty for venue operators and gaming machine operators?*
- k) *How do you think the proposals will affect the amount of money that goes to the community?*
- l) *How do you think the proposals will affect the growth of gambling?*
- m) *Are the limits the right amount? If not, what should be the amounts and why?*
- n) *Are there any other important issues that should be addressed?*

11. APPENDIX 1: The Impact of Fixed Limits

What is the Impact of a fixed pmpw limit?

- 11.1. The first issue to address in determining the impact of a limit is to consider how much of the venue expense reimbursements that currently occur are above any prospective limit. The following table shows information from the database held by the Department. It shows the amount of expenses that are currently being incurred by societies above each payment level pmpw. So, for example, if a limit of \$120 pmpw were imposed and a venue operator currently charged \$130, then \$10 is included in the column showing payments above the current limit.

Hypothetical level of a limit on site operator expenses (pmpw)	Current total amount of payments above the prospective limit	Percentage of total payments that this represents	Number of sites that are affected by the limit (Total = 1476)	Percentage of sites that this represents
\$1	\$134,168,190	100%	1278	87%
\$80	\$67,790,398	51%	1154	78%
\$90	\$59,880,968	45%	1137	77%
\$100	\$52,020,024	39%	1077	73%
\$110	\$44,487,022	33%	1056	72%
\$120	\$37,083,342	28%	1005	68%
\$130	\$29,925,176	22%	964	65%
\$140	\$23,019,497	17%	930	63%
\$150	\$16,300,967	12%	345	23%
\$160	\$14,263,868	11%	225	15%
\$170	\$12,360,296	9%	218	15%
\$180	\$10,497,240	8%	208	14%
\$190	\$8,717,800	7%	206	14%
\$200	\$6,960,824	5%	121	8%
\$390	\$0	0%	0	0%

- 11.2. The above table shows all current venue expenses for gaming machines represented on the database held by the Department. Therefore it is accurate only to the extent that the database is accurate. The current average level of payments is \$113 pmpw (between \$110 and \$120 pmpw on the table above). Approximately 30% of payments are above this level. 70% of sites receive a higher payment than this pmpw.
- 11.3. Care is needed when interpreting the potential impacts as represented in the table above. For example, if everybody received the average then the total reduction in payments would be zero. If everybody received a limit above the current average, total payments would rise even though the table is showing that a large amount of payments are above the limit currently. Limits on expenses pmpw may set in motion a number of complex distributional shifts.

- 11.4. Factors that will influence how individual operators and societies fare include regional location, the current level of service, current society policies on venue expenses, current venue expense levels and so on. Views are sought in this document on what these effects might be for different stakeholders. In particular how many venue operators may decline to host machines and force gaming machine operators to seek alternative suppliers who can provide the service within the limit.
- 11.5. Costs will vary between different operators. For example, some venue operators will be more efficient than others. Some locations might be more expensive than others. Some venues may have high turnover related costs.
- 11.6. The Department is aware that an overall limit is likely to create negative incentives for venues that have such high turnover that their costs exceed the limit. This is unavoidable with the application of a single pmpw limit. This may mean that some venues seek to reduce their expenses to ensure that it is affordable within the limit. This may be achieved by reducing turnover. In extreme cases some venues may, for example, limit operating hours to achieve this. Gaming machine operators may choose to manage this through their agreements with venue operators, or, they may choose to change their venue operator.
- 11.7. Gaming machine operators may seek to shift machines to lower cost venue operators if some venue operators refuse to provide the service within the limit.
- 11.8. Overall the intent is to ensure that money from gambling benefits the community, and to meet the other purposes specified in the Act. It is not to penalise those venue operators whose turnover (and associated costs) happens to be high. But, if the Department were to set a limit at the highest level of current expense payments it would likely fail to achieve these objectives. If the Department does not set a limit, costs will rise, as behaviour changes to reflect the regulatory environment.
- 11.9. It should be noted that a sliding or stepped limit, based on turnover, has previously been considered to be too close to a commission payment structure and therefore not allowed under the Act. This means that the alternative of a single limit will have uneven impacts across venue operators.

12. APPENDIX 2: Stakeholder Interests

Community

12.1. The community has a range of interests in:

- accessing funding from gaming machine profits
- having gaming machines controlled due to their harmful effects
- being satisfied that the system operates with integrity, and
- being able to access gaming machines as a source of entertainment.

12.2. Feedback from the community in respect to site payments indicates the community considers that venue operators should be fairly reimbursed for their effort in running gaming machines as part of their business. Many community groups have expressed concern at the levels of site payments paid in the past.

Venues

12.3. While many venue operators will be intent on supporting returns to the community from gaming machine proceeds, some are likely to be seeking to maximise the return they can get from running gaming machines, either through attracting increased patronage, positioning themselves (incorrectly) as the grant makers or maximising their venue expenses. Venue operators have much better knowledge of their actual costs, but little incentive to provide that information to gaming machines operators or the regulator. Many may be in a position where having gambling machines is critical to the survival of their business because of the level of site payments (or other benefits associated with running gaming machines) historically received.

Gaming machine operators

12.4. Gaming machine operators want to have their machines on venues that provide for the best turnover/returns. They have little incentive to minimise site payments (other than the minimum return to the community) because of the fear that poorly paid site operators will take their business elsewhere. Operators also point to the fear that if site payments are too low, venues will not look after machines or be interested in this aspect of their business and machine turnovers may fall, thus reducing the amount of money available to the community through grants processes.

12.5. Gaming machine operators have incentives to comply with the Gambling Act's requirements. Most do, but some operators are willing to take risks with non-compliant practices on the assumption that they are unlikely to be audited or face significant sanctions. The Department's risk-based approach to auditing is one way of dealing with this possibility

The Regulator

- 12.6. Our interest is in ensuring that there is a system in place that meets the requirements of the Gambling Act, and is fair to the community, gaming machine operators and venue operators. The system also needs to be capable of being effectively enforced. This is difficult primarily because it is extremely hard to assess and collate the potential level of minimum costs, the number of venues concerned and the mixed incentives that operate in respect to those required to comply with the law.