

# Gaming - A New Direction for New Zealand

Department of Internal Affairs Policy Proposals

*A paper prepared for the Review of Gaming*

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# Ministerial Foreword

In April 1995 the Government announced a major review of all forms of gaming.

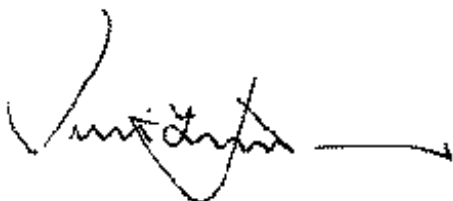
The first step in that process was the release of a Discussion Document inviting public submissions on the future shape of gaming in New Zealand.

Following consideration of the many submissions received, and comprehensive analysis of the social and economic impacts of gaming, and of the impacts of new technology on gaming, the Department of Internal Affairs has prepared a set of draft policy proposals as a basis for further consultation with the public.

I welcome the release of these draft policy proposals. The material contained in this document, and in the supporting volumes, represents a wealth of information about where gaming is headed and what the issues are that we need to consider if we are to develop the best possible policy approach to gaming in the future.

The proposals in this document do not represent any Government view of gaming policy in the future. They are a Departmental view, distilled from considering the broad issues involved against the background of the submissions received last year and the impact studies carried out over the past 12 months.

I would encourage you to read the draft policy proposals and to make your submission to the Department as part of the next step in developing a world class gaming policy for New Zealand.

A handwritten signature in black ink, appearing to read 'Peter Dunne', followed by a horizontal line.

Hon Peter Dunne  
Minister of Internal Affairs



# Introduction

by Roger Blakeley, Secretary for Internal Affairs

I am pleased that the Review of Gaming is now at the stage where a comprehensive set of policy proposals can be put forward for public consideration.

The policy proposals contained in this document are the culmination of a large amount of work carried out by the Department of Internal Affairs, with the assistance of officials from Treasury and the Department of Prime Minister and Cabinet, since the review was announced.

The wealth of information now available (listed below) provides a sound basis for the continuing Review and for development of proposals for a policy and regulatory framework for gaming.

- a *Gaming - A New Direction for New Zealand, Department of Internal Affairs Policy Proposals.*
- b Analysis of submissions on the Gaming Review Discussion Document. Seventy submissions were received and are summarised in a Synopsis of Submissions prepared by Connell Wagner Ltd.
- c A study of the social impact of gaming undertaken by the Department of Internal Affairs Te Tari Taiwhenua Policy Research Unit.
- d A study of the economic impact of gaming commissioned from Coopers & Lybrand.
- e A study of the impact of emerging information and communications technology on gaming, undertaken by the Department of Internal Affairs Te Tari Taiwhenua Policy Unit.

Each study has been subjected to an independent external review.

I would like to acknowledge the work done by Connell Wagner Limited and Coopers & Lybrand and the contributions made by Mel Smith, Professor John Tiffin, and Professor Gary Hawke in their role as external reviewers.

The Department also consulted specifically with major industry stakeholders including the Casino Control Authority, Compulsive Gambling Society, Gaming Industry of NZ Inc, NZ Lotteries Commission, NZ Racing Industry Board and the Totalisator Agency Board.

The Department is well on the way to achieving one of its Strategic Priority Areas:

*To develop world best practice policy and industry structure models that maximise the gaming, racing and entertainment industries ability to contribute to economic and social growth and quality of life, while at the same time limiting any social and economic costs*

Gaming clearly has significant impacts on our community, both social and economic. It can provide significant benefits while potentially imposing significant costs.

Emerging electronic and communications technology is posing new challenges to existing legislative and policy positions, making much of the present framework obsolete or anomalous. Following a period of rapid growth and innovation in the gaming sector, it is now timely to take stock of the total policy and regulatory framework and build a secure framework for the future.

*Gaming - A New Direction for New Zealand* has been prepared as a consultative tool. It is not a statement of government policy. The document puts forward policy proposals for public consideration. It seeks public comments which will assist the further development of a policy framework for gaming. Issues are discussed from a wide, conceptual and 'first principles' basis. This method was chosen as the best means of generating informed debate about issues on which there are a wide range of views both within the gaming industry and within the wider community.

Following completion of this further round of consultation, the Department will report to Government for further decisions on the policy framework.

You are invited to make submissions on the proposals put forward in this document. You should make your submission by 30 November 1996. The submissions will be summarised and published in a synopsis at a later date.

Submissions should be addressed to:

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Te Tari Taiwhenua  
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Roger Blakeley  
Secretary for Internal Affairs

The following publications are now available on completion of the order form at the end of this document.

- a Synopsis of Submissions to the 1995 Review of Gaming Discussion Document
- b The Social Impact of Gaming in New Zealand
- c The Economic Impact of Gaming in New Zealand
- d The Impact of Technology on New and Existing Forms of Gaming in New Zealand
- e People's Participation in and Attitudes Towards Gambling: Final Results of the 1995 Survey



# Summary of Policy Proposals

The following is a summary of the policy proposals contained in Part Two of this Document. Relevant paragraphs are cited in square brackets.

## Should There Be a Single Policy Framework [Paras 72 - 79]

- A There should be a single comprehensive policy and regulatory framework for all forms of gaming in New Zealand, based on a set of general principles.
- B The general principles should be able to accommodate the varying forms of gaming and their differing impacts.
- C The policy and regulatory framework should be developed and implemented in consultation with the gaming industry and the public.

## Proposed Principles of the Policy Framework [Paras 80 - 92]

- D The policy and regulatory framework should be governed by the following overarching principles:
  - i Comparability of treatment, and regulatory neutrality both within the industry (between operators and different forms of gaming) and with other similar industries.
  - ii Consistency and predictability of the policy and regulatory regime including adequate consultation with affected parties when changes to the regime are considered.
  - iii Transparency of operation and regulation including:
    - Criteria for decision making that are easily understood and complied with and that incorporate appropriate rights of redress both for operators with respect to regulatory decisions, and for participants with respect to operator behaviour.
    - Ensuring that conflicts of interest, particularly in relation to Government's role, are avoided or made plain.
    - Reasonable access to information for participants in gaming activities.
  - iv Least cost intervention; any regulatory regime or other government intervention should be justified on a least cost basis such that the net benefits to the community as a whole are maximised.
  - v Consistency with the Treaty of Waitangi; any proposed policy must comply with the principles of the Treaty of Waitangi.

## Reasons for Government Intervention [Paras 93 - 131]

- E There is a legitimate basis for Government intervention in gaming to:
- i Prevent crime and ensure fairness to participants including protection against fraud.
  - ii Mitigate the social costs of gaming, including problem gambling.
- F There is also a case to require proceeds from gaming activities to be distributed to community purposes in an appropriate and equitable manner having regard to:
- i The overall contribution of each gaming sector, through taxes and other contributions, to Government and to community purposes.
  - ii The extent to which different forms of gaming already contribute to the identified social costs of gaming.
  - iii The extent to which it is appropriate for defined community purposes to be funded from gaming proceeds as opposed to funding from other sources.
  - iv The impact of overseas competition on the ability of gaming operations to produce profits for community purposes.
- G Subject to any requirement for proceeds to be distributed to community purposes, all forms of gaming should be permitted to be operated for commercial gain. This would not preclude any community or charitable organisation operating gaming for fund-raising purposes under the same conditions as any other operator.

## What Mechanisms Should Be Used for any Profit Distribution to Community Purposes [Paras 132 - 136]

- H There should be an integrated national distribution regime designed in consultation with affected parties, based on the following criteria:
- i The need to ensure funds are available to the widest possible spectrum of community groups consistent with broad government and community objectives.
  - ii The need to ensure that the wider objectives of funding community purposes are not distorted by different distribution agencies acting in isolation.

- iii The need to ensure an appropriate balance between national and local community needs.
- iv The need to ensure separation of commercial gaming operators from the distribution of funds.

#### Who Should Be Able to Operate Gaming [Paras 137 - 146]

- I Entry to the gaming industry should be governed by some form of entry test (to be determined) designed to ensure the integrity of the operator, and to meet the Government's objectives including prevention of crime and fraud.
- J As a general rule, all forms of gaming should be open to all operators subject to meeting the test described in (I).
- K The entry test should be as consistent as possible across all sectors, and should be transparent, and least cost.

#### To What Extent Should Gaming Be Regulated [Paras 147 - 172]

- L A gaming regulatory regime should be developed based on the following objectives:
  - i To ensure fairness to participants.
  - ii To prevent crime and fraud.
  - iii To minimise social problems or where this is not practicable to require the operator to meet the costs involved.
  - iv To ensure operators meet any requirements for the distribution of profits to community purposes.
  - v To ensure operators meet the requirements of any entry test.
  - vi To ensure operators abide by any specific requirements imposed relating to the age of players, times and location of play, prize levels, use of credit, and the level of advertising.
- M Existing generic regulatory frameworks such as the Fair Trading Act 1986 should be used to the greatest extent possible.
- N Prescriptive regulation should be applied only where better options do not exist, and then be consistent, transparent, and aim at imposing least overall economic cost.

- O There should be appropriate comparability between the regulatory regime for gaming and other regulatory regimes.
- P There should be consistent rules as far as possible across all gaming sectors.
- Q The regulatory regime should be developed by further consultation with affected groups including industry and community representatives.

#### How Should any Regulation Be Applied [Paras 173 - 198]

- R The law on gaming should be limited to general principles capable of giving effect to the approved policy and regulatory framework.
- S Rule making, enforcement, and rights of redress or appeal should be clearly separated.
- T For each of the roles described in (S) there should be an integrated regime covering all forms of gaming.
- U The regulatory regime should be established in a way that allows flexibility and rapid responses to new developments in gaming.
- V Subject to appropriate and transparent costing and accountability mechanisms the gaming industry should be required to meet the reasonable enforcement and administrative costs of the regime.

#### What Taxation Regime Should Apply to Gaming [Paras 199 - 215]

- W Taxation applied to the gaming industry should as far as possible be on a comparable basis with other industries.
- X The taxation regime should be applied as consistently as possible across the industry, and be fully transparent.
- Y More work should be undertaken on the impact of (W) and (X) on the Government and on the industry, and on whether some form of gaming duty is justified to meet the reasonable tax contribution of the gaming industry having regard to:
  - i Any monopoly profits created by entry restrictions on gaming operators.
  - ii The different tax status of different gaming operators.

- iii The extent to which there are social costs of gaming not otherwise met by the industry.
- iv The impact of any government requirement to direct a portion of profits to community purposes.
- v The impact of gaming based overseas.

#### What Should Government's Role in Gaming Be [Paras 216 - 224]

- Z The Government has a clear role in gaming in:
  - i Determining the broad policy to govern gaming and the regulatory and taxation regime to apply to it.
  - ii Enforcing the regulatory regime.
  - iii Organising research into gaming, as a basis both for Government's ongoing policy review of the industry, and for more general public information on gaming.
- ZA The Government may also wish to operate gaming itself to raise funds for community purposes. If so, the operational vehicle should be organisationally separate from other Government gaming activity, and the distribution mechanism for proceeds separate again.
- ZB There should be clear separation between the Government's policy/research role, its regulatory/enforcement role, and its role, if any, as a gaming operator.

# PART ONE - BACKGROUND AND KEY ISSUES

## Current Gaming Industry and Legislation

*[Note: For fuller description readers are referred to the Overview of Gaming and Gambling Issues Present and Future 1995 (the Overview paper) published by the Department of Internal Affairs in July 1995. See the order form at the back of this document for details.]*

### Legislation

- 1 The Racing Act 1971 permits betting through the totalisator on galloping, harness and greyhound racing and on sporting events. The Act grants the Totalisator Agency Board (TAB) a monopoly on off-course race betting, fixed-odds betting and sports betting. The Act allows racing clubs to conduct on-course totalisator race betting. The TAB now also operates all on-course totalisator race betting as the agent of the clubs. TAB profit is returned to the racing industry, along with a variety of industry levies, through the Racing Industry Board. Sports betting (a recent addition under the Racing Act 1971) would also make a contribution to the sport concerned.
- 2 The Gaming and Lotteries Act 1977 permits non-commercial societies to conduct games of chance (for example, gaming machines and housie), instant games, prize competitions and lotteries, to raise funds for charitable, philanthropic, party political, and other community purposes. The Act prohibits bookmaking and largely prohibits gaming for commercial gain. However, the Act allows licensed promoters to promote instant games, prize competitions, and lotteries but not games of chance and not gaming machines. The promoters work on behalf of licensed societies, and may charge a fee not exceeding 10% of gross proceeds.
- 3 The Gaming and Lotteries Act 1977 also establishes the New Zealand Lotteries Commission, which conducts Lotto, Instant Kiwi and Daily Keno. The Commission operates as a business and pays its retailers 7% of gross proceeds. The New Zealand Lottery Grants Board distributes the Commission's profits to the community.
- 4 The most significant impact of the Casino Control Act 1990 has been to change the philosophy relating to gaming. Casinos are the first fully commercialised gaming for private gain. The Casino Control Act 1990 emphasises tourism, employment, and economic development, rather than fund-raising for community purposes.

### Size of Industry

- 5 Total gaming turnover in 1994/95 was approximately \$3 billion. At least \$190 million was made available for community distribution and Government received \$199 million in GST and various forms of duty. The contribution of different forms of gaming to these totals was as follows:

## 1994/95 Taxation and Community Purpose Share

Gaming Activities	Turnover	Prize Return	Gross Profit	Total Taxation*	Community Contribution
Casinos (est)**	214	197	17	3	0.2
Racing	954	746	208	76***	0****
Gaming Machines (est)	1,168	993	175	55	50
Lotteries Commission	623	348	275	65	126
Other Licensed Gaming (est)	65	Unknown	Unknown	Unknown	14.5
<b>TOTAL</b>	<b>3,024</b>	<b>2,284</b>	<b>675</b>	<b>199</b>	<b>190.7</b>

\* Includes duty, GST and income tax. Does not include licensing costs.

\*\* Estimated figures for the first eight months operation of the Christchurch casino.

\*\*\* On-course tax is estimated.

\*\*\*\* Assuming that the levies and race betting profit distributed to racing clubs are not regarded as community contribution.

6 An estimated 90% of the adult population participates in some form of gaming in any given year.

## Current and Emerging Issues

7 The following current and emerging issues are among those that need to be addressed:

- a **Problem Gambling:** The development of appropriate policies for the management of problem gambling including the funding of treatment services from within the gaming industry. The major gaming operators and representatives of problem gambling treatment agencies have recently developed a voluntary agreement for funding treatment services. At the request of gaming machine operators, legislation has been introduced to apply a levy to gaming machine operators to meet their share of the costs of the voluntary agreement. Further work needs to be done to minimise the risk of problem gambling.

- b Casinos: The expiry in 1996 of the time limit on the statutory monopoly of the existing casino in the South Island, and in 1998 of the statutory monopoly of the existing casino in the North Island. This opens the way for further casinos, as long as they are not within 100 km of either of the first two.
- c Difficulties with the existing Gaming and Lotteries Act 1977 including:
  - i Semi-commercial gaming machine operations being conducted within a non-commercial regulatory regime.
  - ii The decreasing competitiveness of minor charitable forms of gaming compared with the Lotteries Commission and gaming machines, because the charitable forms of gaming are required to operate non-commercially.
  - iii Increasing difficulty distinguishing between different forms of gaming, particularly when new telecommunications are involved, eg easy bet machines, 0900 telephone gaming, and multiplayer electronic gaming.
  - iv The difficulty of making enforceable determinations of what are legally permissible and appropriate community purposes.
- d The emergence of gaming on the Internet and the impact of other forms of new technology. This is fully addressed in the analysis of The Impact of Technology on New and Existing Forms of Gaming.

# Summary of Submissions on the 1995 Discussion Document

*[Note: For a fuller summary of the Submissions refer to the Synopsis of Submissions to the 1995 Review of Gaming Discussion Document, which is available on completion of the order form at the back of this document.]*

## General Approach to Gaming

- 8 The Discussion Document released in August 1995 put forward three models of gaming policy other than the status quo. These were:
  - a A conservative model characterised by:
    - i Substantial regulation of the gaming industry, and possibly (but not necessarily) Government involvement as an operator.
    - ii Some forms of gaming prohibited.
    - iii More extensive requirements for profits from gaming to be used for community purposes.
    - iv Additional tax in the form of a gaming duty continued.
  - b A liberal model characterised by:
    - i A general presumption that gaming was permitted within a policy and regulatory framework similar to that applying to other entertainment industries (ie, the Fair Trading Act 1986, the Commerce Act 1986).
    - ii The application of normal business taxation.
  - c An intermediate model characterised by:
    - i An approach mid-way between the conservative and liberal models.
    - ii Recognition of the economic and management benefits of a more open and less regulated regime.
    - iii The need for the gaming industry to contribute (via taxes or other means) to the government's outlay in dealing with social costs and problems ie, Government monitoring of the gaming industry and enforcing whatever regulation is required).
    - iv A broad legislative approach which applied evenly to all forms of gaming, including future unknown forms.

- 9 Only a few of the submissions to the Review commented on these models. None endorsed the status quo. It was commented that it had many faults. Very few favoured the more conservative model.
- 10 Four submitters supported the liberal model in which gaming would be permitted within a policy and regulatory framework similar to that applying to other entertainment industries ie; the Fair Trading Act 1986 and the Commerce Act 1986 would apply. Normal business taxation would also apply. Some argued that without liberalisation, the potential flow of money offshore from gaming activities with overseas operators, such as through the Internet, will lead to a decrease in funds available for community purposes.
- 11 Ten submitters (including the Gaming Industry of New Zealand and the Compulsive Gambling Society) indicated general support for the intermediate model. This model was identified as recognising both the economic and management benefits of a more open and less regulated regime and the need for the gaming industry to contribute (via taxes and other means) to meeting the costs of dealing with identified social costs and problems.
- 12 The Lotteries Commission developed what it calls the community benefit model that it believes provides a balanced framework which reaffirms that the profits from gaming should be primarily for community purposes. Operators would have reasonable freedom to run their businesses, but the system of licensing would be extended and tightened up in some cases. The Lotteries Commission would have the right to be involved in all gaming except casinos and race betting, and the Lotto product would have statutory protection.
- 13 A brief summary of the views of submissions on key issues follows.

#### Who Should Be Able to Operate Gaming

- 14 The Lotteries Commission believed it should be allowed to enter the gaming machine sector of the industry. It also believed that its Lotto monopoly should continue as competition could ultimately reduce profits to the community. Three submissions were concerned that community based fund-raising should not be open to entry by commercial operators. The Racing Industry Board/Totalisator Agency Board (RIB/TAB) accepted that the existing racing industry monopoly could be reviewed, provided this was done as part of an integrated package of gaming reform, and provided that the racing industry was then able to grow and participate in the wider gaming market.

## Should Profits Go to Community Purposes

- 15 A number of submitters supported the general principle that there should be a connection between gaming and community fund-raising, one stating that money from gaming should not be put into the Government's consolidated fund, but remain available for charity work. Another submitter stated that a free market approach would destroy the link between gaming and community contributions.
- 16 The Hillary Commission and Creative New Zealand called for the introduction of a community purposes dividend sourced from all forms of authorised commercial gaming. The dividend would represent the community share of gaming revenues, whether by way of direct grant or from such taxation as may apply to a particular form of gaming.
- 17 Other submitters expressed the view that there should be no connection between gaming and raising of funds for community purposes, one citing the precedent of casino operation. A racing club held the view that racing should not have to contribute funds for charitable purposes, as it employs a large sector of the population and creates an export industry. Two submitters stated that worthy causes should be funded as of right, through central or local body taxes or rates. Other submitters considered that the Government should continue to require contributions for charity to counteract the down side of the industry.

## How Funds for Community Purposes Should Be Distributed

- 18 Four submissions referred to the desirability of distributing community funds through a single agency. Five submissions expressed direct opposition to a central agency, one reasoning that no single organisation could recognise or respond to all the needs in the community, and another that any split of funds to a national body would jeopardise local community funding. Another commented that diversity in distribution is valuable and should be retained as it enables maximum opportunity to recognise and respond to community needs at all levels.
- 19 The independence of a distribution agency was seen as important. The Lottery Grants Board was seen as offering a suitable structure, having established expertise, strong community links, good management, flexibility, effectiveness, efficiencies and accountability.
- 20 Some submitters noted that administration could be through independent community bodies, or local authorities, and could be subject to normal community based procedures.
- 21 Four submitters noted an apparent lack of accountability in the distribution of proceeds from hotel gaming machines. Some felt that, in some instances, only those who drink in the pubs (eg, sports teams) appear to receive any money.

## Regulation of Gaming

- 22 Four submitters felt that Government intervention by regulation should be kept to a minimum, or that regulation/licensing should be developed as broad principles. Those in favour of a minimal or broad approach, including the Gaming Industry of New Zealand Inc, cited the diversity of gaming, the need to regard gaming as a business, the need to avoid bureaucratic regulation, and the need to limit regulation to rules deemed appropriate by society. The RIB/TAB noted that regulatory processes must be transparent, carefully designed on the basis of clear and comprehensive principles and limited to those situations where intervention is justified.
- 23 Four submitters, including the Casino Control Authority, stated that gaming in all its aspects should be regulated. Some called for regulation and monitoring to ensure fairness, and to allow a wide range of community organisations to participate in fund-raising through gaming. Another submitter stated that Government must develop regulation with public input on desirable outcomes, and that regulation should be Government controlled, open, accountable, and able to be processed through the Courts.
- 24 A group of submitters including the RIB/TAB and the New Zealand Lotteries Commission highlighted the need for regulation to be equitable across all forms of gaming.

## Gaming Legislation

- 25 Eight submissions dealt with the need for broad legislation. One believed that legislation should cover issues such as defining gaming, permitting operators, establishing rules of fairness, official and public disclosure, illegal gaming and penalties. Some submitters also called for delegated powers within the broad legislative overview. Submitters referred to the need to provide certainty for industry participants, and the ability to cope with change and to enable closer monitoring.
- 26 The Casino Control Authority expressed the opinion that any legislative framework for gaming should be developed in a way which allows regulators to respond to new gaming initiatives. They suggested that the model established by the Casino Control Act 1990 was a good one, in that it gives wide powers to a regulatory authority which can develop expertise in the area and enable it to respond to threats and opportunities as they arise.
- 27 The submission from the RIB/TAB summed up many views from other submissions by describing a proposed legislative framework. They envisioned that the legal framework must be robust, so as to avoid the need for regular amendments. Such a framework would require:
- a The flexibility to deal with changes from time to time and to adequately address issues likely to arise in relation to new and existing gaming products.

- b A pragmatic and reasonable division of regulation between primary legislation and subordinate legislation.
- c A sensible division of responsibilities between Parliament and any body delegated responsibilities which limits Parliament's role.
- d Legislation which is not too prescriptive.

### Taxation of Gaming

- 28 While some submitters held the view that all gaming should be treated equally for tax purposes, others argued that there were reasons for applying different tax treatments within the gaming industry. These reasons included:
- a Different forms of gaming might have different impacts on:
    - i Overall economic benefit, and final destination of funds.
    - ii Community costs (such as problem gambling).
    - iii Regulatory costs.
  - b Possible difficulties of applying taxation or duty to the same revenue base.
  - c The differences inherent in commercial gaming versus gaming run for club, charitable or community funding purposes.

### Role of Government

- 29 Fourteen submissions stated that Government should be responsible for the negative social impacts of gaming. Others felt that the responsibility for addressing the negative social impacts of gaming lay with all parties, the Government, industry and individuals.
- 30 It was suggested Government should fund research into the economic impacts of the casinos on Christchurch and Auckland businesses. Eight submissions identified the Government as having primary responsibility for taking the lead in monitoring, research and education as well as paying for at least some of the costs. Others saw a joint role for Government and industry.
- 31 Five submitters stated that Government has a role as the owner of state lotteries. Another submitter specifically called for the Government to end its participation in gaming. Four submitters noted existing or potential problems from a failure of the Government to distinguish between its regulatory and participatory roles in gaming. Submitters felt there should be a balance between the roles and responsibilities of the market, community and Government. Submitters saw this being achieved through increased Government control, and through improving the accountability of the industry.

# Summary of Social Impact Study

*[Note: The full report of The Social Impact of Gaming In New Zealand is available on completion of the order form at the back of this document.]*

- 32 The object of the study of the social impact of gaming was to compare the social costs and benefits of the various forms of current New Zealand gaming regulation under alternative regulatory regimes.
- 33 The study noted that discussion of the social impacts of the alternative regimes is extremely speculative. Although some evidence exists to support many of the conjectures, they cannot be tested and in most cases it is difficult to estimate the extent of social problems.
- 34 The social costs and benefits of the different forms of gaming were assessed by focusing on the following areas:
- a Participation.
  - b Public attitudes.
  - c Accessibility.
  - d Social benefits including supply of community resources.
  - e Pathological gambling and related gambling problems.
  - f Crime and other social problems.
- 35 The following paragraphs describe briefly the likely social impacts, as identified in the Social Impact Study, of the current policy and regulatory regime and of alternative more liberal and more restrictive regimes.

## Current Regime

- 36 The current regime tends to be characterised by:
- a Lack of consistency in the way various gaming markets are regulated (freedom of advertising, licensing and entry to gaming markets, and operating restraints such as restrictions on prize limits and hours of operation).
  - b Lack of consistency regarding gaming duty and tax.
  - c Lack of consistency regarding the allocation of gaming profits.

- 37 In terms of social impact, the current regime is marked by the following:
- a The rapid increase in gaming turnover is likely to continue, especially for gaming machines and casinos. Turnover from other activities may remain at a plateau. Expenditure on gaming machines may in time begin to level off as the market becomes saturated.
  - b The quality of information about where gaming machine profits go is not good. Most gaming machine operators undoubtedly fund worthwhile causes. However, a number of problems have been identified involving recipients which are not community groups or charities in the accepted sense (and sometimes involving outright fraud).
  - c Smaller community activities, eg housie, are struggling to survive against larger more commercialised activities, and sometimes operate illegally to compete.
  - d If interest in new technologies increases, but forms of gaming remain restricted, participants may prefer to use overseas operators (eg, through the Internet). This may result in a decrease in funds available for community purposes in New Zealand.
  - e The incidence of pathological gambling at any given time is at least 12,000 people in New Zealand.
  - f Problem gamblers tend to start gambling at a younger age, prefer continuous/high involvement forms, spend longer at the activity and gamble more frequently.
  - g There is widespread alleged (and some proven) gaming machine fraud (theft from machines and misappropriation of profits). This should decline if electronic monitoring of gaming machines (currently being trialled) is introduced.
  - h There is some crime committed in New Zealand to support problem gambling, including fraud, petty theft, and possibly robbery and violent crime. Anecdotal evidence suggests that a disproportionate number of the prison population may be excessive gamblers, although it is not known for how many prisoners their crimes are actually connected with a gambling habit.
  - i There are some family problems (eg, neglect of children) associated with problem gambling.

#### More Liberal Regime

- 38 The current regime was compared with a more liberal regime than at present, which would tend to be characterised by:

- a *All operators being entitled to the most advantageous operating regime (the right of entry to gaming markets, freedom to advertise, unlimited operating hours and so on).*
- b *The removal of most restrictions on times of operation, prize limits, location of sites, number of sites, number of machines, and so on.*
- c *High licensing thresholds or no thresholds at all.*
- d *A standard gaming duty across all or most forms of gaming (20% of gross profit, for example).*
- e *The allocation of a small percentage of gross proceeds to the community, the balance being available to meet expenses and as individual or corporate profit.*

39 The Social Impact Study found that a move to a more liberal regime is likely to result in the following:

- a *People continuing to spend more on gaming both in total (proportion of GDP), and as a proportion of personal income.*
- b *Levelling off or decrease in share of market by older forms.*
- c *New technology giving access to legal home gaming (eg interactive TV, Internet) would tend to increase participation especially among women and problem gamblers.*
- d *Increased availability means more frequent participation, especially by the young if gaming machines were to be allowed outside licensed premises; by gaming machine fans because there are more machines per venue; by women and children at home if access to 0900-type telephone games is unlimited.*
- e *Bigger prizes for particular activities (housie, gaming machines) may increase participation for these activities.*
- f *Decriminalisation of certain activities (eg, housie with larger prizes) means less conflict between regulators and minority groups such as Maori and Pacific Islands peoples.*
- g *If gaming proceeds are increasingly *not* used for community purposes, there may be some public concern.*
- h *Proceeds from currently existing Lotteries Commission games may decrease because of increased commercial competition in this range of activities; this may be offset by a rise in funds as the range of Lotteries Commission games broadens.*

- i Increase in community revenue from other activities, if a small percentage of profits from all forms of gaming goes to community purposes (as proposed in this scenario).
- j More opportunity for funds to be channelled from gaming machines to 'pseudo charities' if less rigorously policed. However, if operators are allowed to make a profit, misappropriation of funds intended for community purposes may decrease.
- k Some older forms (eg, race betting) struggle to survive and therefore object to any form of community levy.
- l Although it seems reasonable to predict a higher incidence of problem gambling under a more liberal scenario, no evidence directly addressing this issue was found by the researchers.
- m More children and youth gambling (eg, at home with 0900-type games, and if age/access restrictions are lowered) may lead to a future increase in problem gambling.
- n Reliance on gaming operators to make provision for treatment.
- o More crime by problem gamblers if numbers of problem gamblers increase.
- p Danger of sports/racing corruption, use of drugs, etc, if sports betting and/or competition to the TAB/ racing industry monopoly is introduced.

#### More Restrictive Regime

- 40 The current regime was also compared with a more restrictive regime than at present, which would tend to be characterised by:
  - a Restrictions on entry to gaming markets.
  - b Restrictions on advertising.
  - c Geographical quotas.
  - d Little or no opportunity for gaming operators to gain financially from their operations (ie, limited to recovering expenses and possibly a small surplus).
- 41 The Social Impact Study found that a move to a more restrictive regime was likely to result in the following:
  - a New forms may be introduced illegally and current forms restricted - gaming may go underground to some extent and this would affect the Department's ability to measure participation.

- b Less promotion would have the effect of decreasing participation, especially in activities which currently maintain a high advertising profile eg, Lotteries Commission games and race betting.
- c Frequent gambling may drop if problem gamblers are prevented from participating.
- d More participation in overseas gaming (eg Australian sports betting), as introduction of new products is prohibited.
- e Increasing conflict between regulators and substantial minorities who participate in or approve of illegal activities.
- f Decreased participation in existing Lotteries Commission activities, because of promotion restrictions, may adversely affect Lottery Grants Board funding.
- g The number of gaming machines may be restricted and consequently the takings donated to community purposes may decrease.
- h On the other hand, gaming machines may be run by a single, more heavily regulated body, which may direct the funds in a manner seen by Government as more appropriate.
- i If other forms of gaming are as restricted as house interest in house increases as it is no longer struggling to compete.
- j More gaming turnover goes overseas, (eg, Australia, if interest in sports betting continues to increase, and to various overseas operators through the Internet). This may mean that New Zealand loses gaming profits while continuing to have to pay the social costs, eg problem gambling.
- k Gaming being less accessible could mean fewer children gambling and may decrease future incidence of gambling problems.
- l Provision for treatment of problem gambling may be left to the Government.
- m Increase in illegal gaming as more/new activities become illegal and 'glamorous'.
- n Gaming machine fraud may decrease as stricter controls are introduced.
- o Higher risk of organised crime becoming involved in gaming because of increased volume of illegal activity and its increased profits.

# Summary of People's Participation in and Attitudes Towards Gambling - Final Results of the 1995 Survey

*[Note: The full report of People's Participation in and Attitudes Towards Gambling - Final Results of the 1995 Survey is available on completion of the order form at the back of this document.]*

- 42 Participation in and public attitudes towards a number of gambling issues were investigated in three surveys undertaken by the Department of Internal Affairs in 1985, 1990, and 1995.
- 43 The unpublished draft of the People's Participation in and Attitudes Towards Gambling - Final Results of the 1995 Survey contributed to the Social Impact Study. The study concentrated on the findings of the most recent survey and the 1985 and 1990 surveys were relied on for comparison purposes.
- 44 The following is a brief summary of the major results of the 1995 survey.

## Participation

- 45 A very large proportion of respondents in recent studies gambled at least occasionally - about 90% in any given year according to the last two surveys. Most people had taken part in between one and six different activities in a given year.

## Public Attitudes

- 46 There was considerable support for government involvement in the control and regulation of gaming activities.
- 47 Respondents in all three surveys were overwhelmingly in favour of gambling profits being used to raise funds for 'worthy causes'. However there was also majority support for profit sharing between a promoter and a worthy cause, and for sales promotions.
- 48 A third or less of the respondents were in favour of the legalisation of new activities. These were: sports betting; overseas lotteries; and betting with bookmakers.

# Summary of Economic Impact Analysis

*[Note: The full report of The Economic Impact of Gaming in New Zealand is available on completion of the order form at the back of this document.]*

- 49 The object of the study of the economic impact of gaming was to compare the economic costs and benefits of current New Zealand gaming regulation with various other regulatory regimes.
- 50 Four regulatory scenarios were modelled in the economic impact analysis to cover a range, from the more restrictive to the liberal. The starting point for the analysis was the status quo (modelled as scenario 2), which was specified to reflect the current regulatory environment for gaming. The status quo is based on 1993/1994 data but includes an estimated full year for both casinos.
- 51 The more regulated conditions modelled under scenario 1 include:
- a Restrictions on the level of advertising, age (limiting access to betting to those aged 20 and above), and prizes awarded by the Lotteries Commission.
  - b An increase in taxes to the level of the most heavily taxed form of gaming.
- 52 The less restrictive conditions modelled as scenario 3 include:
- a An increase in the number of gaming machines per site (from 12 to 40).
  - b Lowering of the age restrictions to extend access to those aged 18 and over.
  - c A reduction in taxes to the level of the least taxed form of gaming
  - d The introduction of sports betting.
- 53 A liberal regulatory environment is modelled as scenario 4 whereby:
- a Principles of tax neutrality apply, so that all forms of gaming are subject to corporate tax and GST only, like other business enterprises.
  - b Most gaming bodies, excluding the Lotteries Commission, are assumed to move to commercial structures.
  - c The requirement to distribute a specific amount of gross proceeds for community purposes is assumed to be revoked except for the Lotteries Commission.
  - d The TAB's surplus continues to go through racing clubs to the racing industry.

- 54 In view of the lack of comprehensive data on all aspects of gaming, and the short timeframe for the analysis, the study concentrated on developing a methodology which delivered not only an initial analysis of the economic impacts of the various regimes, but also a tool for further modelling work by the Department of Internal Affairs as consideration of the policy proposals continues.
- 55 The following table provides an overview of the key conclusions from the economic impact analysis. The analysis covers the first order economic effects and does not attempt to analyse social impacts. It is important to stress that the numbers reflect relative magnitudes and direction of change only, they are estimates and not exact. *[Note that some of the figures in the table reflect the effects of rounding.]*
- 56 As expected, a move from a restrictive to a more liberal gaming environment leads to an increase in the turnover from gaming and in the gaming industry's contribution to GDP. Not all other relationships follow this pattern, however, as the table indicates.

#### Key Conclusions from the Economic Impact Analysis

	Baseline Data* (1993/94)	Scenario 1 More Restrictive	Scenario 2 Status Quo	Scenario 3 Less Restrictive	Scenario 4 More Liberal
Turnover (Gross Revenue)	2,943	3,798	4,502	5,516	6,015
Prizes	2,293	3,152	3,728	4,647	5,118
Gross Win	650	645	774	869	897
Gross Win/Turnover %	22.1%	17.0%	17.2%	15.7%	14.9%
Contribution to GDP	426	458	548	615	651
Distribution to Community	219	140	219	272	179
Fiscal Contribution**	191	225	224	206	256
Fiscal and Community Distribution ***	410	365	443	478	435

\* Baseline data derived by Department of Internal Affairs Te Tari Taiwhenua, from 1993/94 published information. Excludes Auckland casino.

\*\* ie, Income tax, GST and gaming duty.

\*\*\* Distribution to community includes racing industry profit distribution.

Source: Coopers & Lybrand, November 1995

- 57 The key conclusion arising from the economic impact analysis is that the rate of duty imposed on gaming is an extremely powerful tool for influencing the level of gaming activity, but is a less powerful influence on the level of fiscal contribution. This reflects the researcher's assumptions regarding the level of consumer price elasticity (ie, the sensitivity of demand to change in price), and was based on anticipated changes in duty across the scenarios.
- 58 Another conclusion of note is that there is a trade-off between the level of fiscal contribution and the magnitude and nature of the distribution for community purposes. The liberal scenario (scenario 4) modelled a corporate tax rate and calculated that this would lead to a larger fiscal contribution, but a lower distribution for community purposes. The fiscal contribution is estimated to rise to \$256 million under scenario 4 (from \$224 million estimated for the status quo) while the distribution for community purposes is estimated to fall to \$179 million under the liberal conditions (compared with \$219 million for the status quo). The combined fiscal and community distribution was \$435 million in scenario 4. This combined distribution is lower than both the status quo (\$443 million) and the less restrictive scenario 3 (\$478 million).
- 59 In scenario 3:
- a The reduction in duty reduced the fiscal contribution from \$224 million to \$206 million.
  - b This fiscal reduction was more than offset by the increase in distribution to the community from \$219 million to \$272 million.
  - c The increase in distribution to the community was the result of a \$6 million reduction from the Lotteries Commission, a \$25 million increase from gaming machines and an increase of almost \$30 million in the amount distributed to racing clubs.
- 60 A comparison of the four scenarios shows that instituting changes in duties and other aspects of the regulatory environment can significantly change the proportion of GDP contributed by the gaming industry. Factors which have a significant positive impact on GDP include a lower level of duty, an increase in the number of gaming machines allowed per site and changes in age restrictions.

# Summary of New Technology Analysis

*[Note: The full report of The Impact of Technology on New and Existing Forms of Gaming in New Zealand is available on completion of the order form at the back of this document.]*

- 61 The object of the study of the impact of technology was to outline the impacts of technology, particularly information technology, on gaming. The report addresses the current use of computer and information technology for gaming, including the adequacy of the present legislation in handling this technology, and discusses the implications of technology on three possible regulatory regimes.
- 62 The study was based on the best information available. However, it should be noted that technological developments may have occurred, or could occur in the near future, which were not considered in the study. It is important to continue monitoring developments in this area.

## Current Regime

- 63 The report notes that the increasing use of new technology has raised significant issues for current policy approaches and legislation. In particular, use of new technology has:
- a Blurred the distinctions between different forms of gaming, and therefore introduced ambiguities in the ways these gaming activities should be regulated.
  - b Allowed different forms of gaming activities which were not considered when the legislation was enacted.
  - c Introduced highly technical equipment to gaming activities, while the inspection and monitoring for such equipment is not necessarily provided for in the Gaming and Lotteries Act 1977.
  - d Required technical expertise to be deployed in order to conduct gaming activities, while the Act does not allow payment to people to provide the technical expertise.
  - e Introduced ambiguities into aspects of gaming regulation - such as what can be defined as a payment to play, and what can be defined as a communication cost, for 0900 telephone games.
- 64 The report estimates a minimum of \$850 million could be spent on gaming undertaken through electronic information networks. This money could potentially be spent entirely on overseas gaming activities. This would reflect a loss of:
- a \$47 million in duties.
  - b \$32 million in GST.
  - c \$115 million from distribution to community purposes.

- 65 High estimates indicate that, given growth in the industry, these figures could multiply by a factor of four.

#### More Conservative Regime

- 66 On considering how new technology might impact on a more conservative regulatory regime, the report notes that New Zealand will increasingly find itself in a competitive gaming environment as a result of globalisation due to information networks. This means that the overall effect of increasing the restrictions which apply to the domestic market would be to put New Zealand gaming activities at a disadvantage, both in terms of the New Zealand gaming market, and any potential overseas market available to New Zealand gaming schemes. Furthermore, it is clear that a conservative regime is going to become increasingly more difficult to implement, with control to a large extent being outside the ambit of New Zealand regulations.

#### More Liberal Regime

- 67 In considering how new technology might impact on a more liberal regime the report notes that loosening restrictions in domestic markets would allow gaming activities to be run in a competitive way. This would mean that they would be more likely to be accessed by New Zealanders. A more liberal model reduces the amount of direct control exercised by the Government. However, it may ensure that gaming operators are retained within New Zealand, where some control can be exercised over the fundamental aspects of the activities (for example fairness to players).

#### A Possible Approach

- 68 The new technology analysis concluded that, in order to take account of the effects of technology on the regulatory regime, an approach to gaming regulation could be to:
- a Ensure a regulatory environment within which New Zealand gaming activities can be competitive with those overseas.
  - b Support the creation and continued existence of international agreements where possible, including agreements on the types of gaming activities allowed, and the allocation of money.
  - c Update legislation to take account of the gaming activities made possible by technology.

## Key Issues

69 Based on the foregoing, the following are the key issues to be addressed in compiling policy proposals for gaming.

Should there be a single policy framework for all forms of gaming?

If so, what general principles should apply to a gaming policy framework?

What are the reasons for government intervention in gaming?

What mechanism should be used for any profit distribution to community purposes?

Who should be able to operate gaming?

To what extent should gaming be regulated?

How should any regulation be administered?

What taxation should apply to gaming?

What should government's role in gaming be?

Part Two covers each of these issues in turn and develops policy proposals to address them.

## PART TWO - POLICY PROPOSALS

### Introduction

- 70 The issues discussed in this part of the document cover the whole gamut of why the Government should, and how the Government could, approach gaming. Gaming is a major area of economic and social activity that impinges on the lives of all New Zealanders and has significant social, economic and other effects. It is also an area that is affected by a range of moral, social, economic, and technological impacts.
- 71 The policy proposals are of necessity very general in their conclusions. Rather than attempting detailed solutions to all the issues involved they focus on:
- a Proposing the key reasons why the Government might intervene in gaming.
  - b Proposing a set of general principles to underpin that intervention.
  - c Identifying the criteria that should be applied to the more detailed issues discussed.
  - d Proposing areas for further work and areas of further consultation with affected parties.

## Should there be a Single Policy Framework

- 72 The existing legislative framework reflects the application of different policies to different forms of gaming, over time or as particular issues have arisen. Increasingly, however, difficulties with the present framework and new means of offering gaming opportunities, have highlighted the disadvantages of this ad hoc approach.
- 73 In particular, the introduction of new forms of gaming has brought choice to consumers and highlighted the range of different forms of gaming. In addition, the application of new technology to gaming makes it increasingly difficult to distinguish between lotteries, race betting, gaming machines and other forms of gaming. At the same time, the increasing size of the gaming market and the increasingly global nature of the entertainment market are also raising issues for policy direction.
- 74 As discussed in paragraph 63, the new technology analysis found that the application of technology to gaming activities in New Zealand has raised the following difficulties in relation to the current gaming legislation:
- a It has blurred the distinctions between different forms of gaming.
  - b It has allowed different forms of gaming activities which were not considered when the legislation was enacted.
  - c It has introduced highly technical gaming equipment, the inspection and monitoring of which is not always mandated by existing legislation.
  - d It has introduced ambiguities into aspects of gaming regulation.
- 75 An overall policy framework applicable to all forms of gaming appears essential to address these issues satisfactorily. On the other hand, different forms of gaming vary widely in their method of operation, in their appeal to individuals, and in their impact on society. In terms of policies aimed at achieving the sorts of government objectives discussed later, these differences may in some circumstances justify varying policy treatment. However, a single policy framework, based on a set of general principles, capable of covering varying forms of gaming, should be able to accommodate any such justifiable differences in policy approach.
- 76 Any move to a single policy framework for all forms of gaming would mean significant change for at least some sectors of the gaming industry, and for many other groups affected directly or indirectly by it. There is a requirement for continued consultation with the industry and the public as the policy proposals are considered, and as implementation details for any approved policy framework are worked through.

## Policy Proposals

- 77 There should be a single comprehensive policy and regulatory framework for all forms of gaming in New Zealand, based on a set of general principles.
- 78 The general principles should be able to accommodate the varying forms of gaming and their differing impacts.
- 79 The policy and regulatory framework should be developed and implemented in consultation with the gaming industry and the public.

## Proposed Principles of the Policy Framework

80 The following general principles are proposed. They are intended to enable the current and emerging issues in gaming to be addressed in a coherent and effective manner, while having regard to any justifiable differences between forms of gaming. The principles would also enable future developments, such as the rapid encroachment of communications technology on gaming, to be addressed from a consistent and well thought out basis.

81 Proposed principles are:

- a Comparability of treatment and regulatory neutrality.
- b Consistency and predictability of the policy and regulatory regime.
- c Transparency of operation and regulation.
- d Least cost intervention.
- e Consistency with the Treaty of Waitangi.

The following paragraphs discuss each in turn.

### Comparability of Treatment and Regulatory Neutrality

82 As discussed, different forms of gaming exhibit different characteristics. For example, some depend on a degree of skill, others are purely chance. Different forms of gaming often attract quite different market segments. Similarly, gaming as a whole differs in some ways from other economic or social activity.

83 However, many of the present differences between and within sectors reflect historical factors rather than current reality and it is clear there is a degree of substitutability emerging between many forms of gaming. This is likely to increase as new technology develops sophisticated ways of bringing gaming into the home.

84 It is proposed that, other than where application of the principles to the circumstances requires different treatment, comparability of treatment and regulatory neutrality apply:

- a Between gaming and other similar industries.
- b Between different gaming sectors, eg racing, casinos, lotteries and gaming machines.
- c Between different firms or operators in each gaming sector.

## Consistency and Predictability of the Policy and Regulatory Regime

- 85 Consistent with the Government's approach in other business areas, operators, investors, players, and other participants must know that the rules are not going to change at whim or without adequate warning. This includes consultation with the affected parts of the industry when policy changes are being considered. (Consultation when changes are being considered is also consistent with the principle that the way gaming is operated and regulated must be transparent.)
- 86 Uncertainty and unpredictability increases both economic and compliance costs. Government has a policy of minimising compliance costs. Reducing compliance costs by consistency and predictability of the policy and regulatory regime also reflects the principle of least cost intervention.

## Transparency of Operation and Regulation

- 87 The way gaming is operated and regulated must be transparent to all involved, and adequate information must be provided. For new forms of gaming and changes to existing forms in particular, it is important that full knowledge of the regulatory regime and possible impacts is available.
- 88 Particular aspects are:
- a Criteria for decision making, eg issuing of licences must be easily understood and complied with, and there should be rights of redress, for example for operators with respect to regulatory decisions, and for participants with respect to operator behaviour.
  - b Conflicts of interest, particularly in relation to the Government's role in the industry, should be avoided or made plain.
  - c Participants must have reasonable access to information about the rules of each game.

## Least Cost Intervention

- 89 Any regulatory regime or other government intervention must be justified on a least cost basis. The mechanism used for any intervention, be it direct regulation, taxation or some other intervention, should be the one that imposes the lowest overall economic cost on the community as a whole. This needs to recognise that in some cases the cost of the intervention may exceed the certainty of benefit.
- 90 A regulatory regime also needs to take into account the compliance costs to the industry, and the administrative costs to the Government. Solutions should be implemented which have the greatest net benefits or the lowest net costs to the community as a whole.

## Consistency with the Treaty of Waitangi

- 91 Any proposed policy must comply with the principles of the Treaty of Waitangi. Maori groups have particular involvement in certain types of gaming and any changes in broad gaming policy would have significant impact. Appropriate consultation, especially on those forms of gaming in which Maori are particularly involved, is important.

## Policy Proposals

- 92 The policy and regulatory framework should be governed by the following overarching principles:
- a Comparability of treatment and regulatory neutrality both within the industry (between operators and different forms of gaming) and with other similar industries.
  - b Consistency and predictability of the policy and regulatory regime including adequate consultation with affected parties when changes to the regime are considered.
  - c Transparency of operation and regulation including:
    - i Criteria for decision making that are easily understood and complied with, and that incorporate appropriate rights of redress for operators with respect to regulatory decisions, and for participants with respect to operator behaviour.
    - ii Ensuring that conflicts of interest, particularly in relation to the Government's role, are avoided or made plain.
    - iii Reasonable access to information for participants in gaming activities.
  - d Least cost intervention; any regulatory regime or other government intervention should be justified on a least cost basis such that the net benefits to the community as a whole are maximised.
  - e Consistency with the Treaty of Waitangi; any proposed policy must comply with the principles of the Treaty of Waitangi.

## Reasons for Government Intervention

- 93 Based on the desirability of a single policy framework for all forms of gaming, and the principles advanced above, this section discusses possible reasons for specific government intervention in gaming.
- 94 Historically, many forms of gaming have been looked on as socially undesirable. This view tended to underlie much early gaming legislation in New Zealand, with its emphasis on government intervention to prohibit or restrict gaming or at least to require its profits to be allocated to worthy causes. Recent surveys of public views on gaming disclose a shift to broad acceptance of, and participation in, many forms of gaming.
- 95 There is continuing support for government intervention to ensure operator integrity, to prevent crime and fraud, to minimise social costs, and to fund community and worthy causes and at the same time, the legislation allowing casinos reflects a view that casinos can bring a range of economic benefits to New Zealand.
- 96 In considering the general basis of government intervention in the future in gaming, it is worth noting the Government's overall strategy - which is focused on promoting economic growth and maintaining social cohesion. The approach in recent years to government intervention to achieve these or similar objectives has broadly been based on:
- a Not picking winners in economic activity.
  - b Providing a level playing field for participants.
  - c Minimum government interest in activity which can be satisfactorily pursued by individuals, groups or firms.
  - d Clear identification of the costs of social and economic activity, and least cost ways of minimising these.
  - e Requirements for social or economic costs which cannot be avoided to be borne by the sector which gives rise to them.
- 97 The following paragraphs discuss the merits of four common reasons advanced for Government to intervene in gaming. These are:
- a To prevent crime and ensure fairness to participants.
  - b To minimise the social problems associated with gaming.

- c To promote economic development.
- d To raise funds for community or charitable purposes.

### To Prevent Crime and Ensure Fairness to Participants

- 98 Gaming is a largely cash based activity with, in some cases, no audit trail. These characteristics are seen as increasing the potential for crime and money laundering. Much of the present regulatory regime surrounding gaming of all types is aimed at controlling crime and fraud. Many forms of gaming have in the past been associated with crime and fraud and while this may be less obvious now than in the past, it is important to both the public and the industry that gaming operates in an environment where these problems are clearly seen to be avoided.
- 99 Likewise, much of the present regulatory regime is aimed at ensuring fairness to participants and the integrity of the gaming industry generally. Participants need to know that their chances of winning are fair, that they have as much chance as anyone else, that the prize will be paid out, and that it is worth what it is said to be worth.
- 100 A substantial body of generic legislation exists to deal with similar problems in other sectors, eg the Fair Trading Act 1986. The issue is whether this generic legislation is adequate to deal with the gaming sector.
- 101 One view is that the inherent nature of gaming, particularly the element of chance, means that participants are at an information disadvantage relative to the gaming operator. This information disadvantage may not be similar to those found in other commercial transactions. Some intervention may be justified to address this concern.
- 102 Ensuring fairness to participants appears a legitimate reason for government intervention in gaming. To the extent that it was shown that general legislation was not adequate to address specific concerns in the gaming industry, some gaming industry specific interventions to ensure fairness to participants should be considered. These are addressed later in the policy proposals.

### To Minimise the Social Problems Associated with Gambling

- 103 There are also concerns that gaming can lead to social problems such as problem gambling, excessive spending on gaming, gambling by minors and family problems. There are varying perspectives on this issue ranging from a view that the Government should actively address these problems (either through restrictions on gaming, or expenditure on the problems) to a view that any problems are largely for individuals to address themselves, within a general legislative framework.

- 104 Some of these problems may well be able to be addressed by general legislative and other interventions. However, to the extent gaming gives rise to social problems that cannot be dealt with through general interventions, addressing these problems is considered a valid reason for intervention in gaming.

#### To Promote Economic Development

- 105 The Casino Control Act 1990 states specifically that one of the purposes of the Act is the promotion of employment, tourism and economic development. The Racing Act 1971 provides that all profits from race betting are returned to the racing industry. This explicit linkage between gaming and economic development is not made in the case of other forms of gaming.
- 106 There is little doubt that the Christchurch and Auckland casinos have brought jobs and other economic benefits to Christchurch and Auckland. While some may be at the expense of other economic activity, a number of commentators have suggested a net addition to economic activity. Equally, the racing industry contributes significantly to overseas earnings through its promotion of the bloodstock industry.
- 107 The issue is whether the Government should intervene in or promote gaming activity specifically for this purpose.
- 108 One view is that the Government is poorly placed to gather and assess all the information that would be required to accurately pick “winning” sectors of the gaming industry, which would be necessary if intervening to actively promote economic development was to be effective. According to this approach economic benefits can best be sustained by policies which treat all gaming activity in ways which are fair in relation to other comparable economic activity. This would be consistent with Government’s economic strategy and its treatment of other sectors of the economy.
- 109 It is considered that the promotion of economic development, and related objectives such as tourism and employment are not appropriate reasons for government intervention in the gaming industry.

#### To Raise Funds for Charitable or Community Purposes

- 110 Historically, most forms of gaming have been permitted only as a means of raising funds for authorised community or charitable purposes. Some would argue that the racing model also represents fund-raising for community purposes. More recently, casinos have been permitted to operate for commercial gain, although they also make a relatively small contribution to community trusts. The draft Gaming Machine Bill would have permitted commercial gain, but also required a minimum allocation (20%) to community purposes.

111 Two inter-related issues are involved here:

- a Should gaming be permitted for commercial gain.
- b Should there continue to be a requirement for some proceeds to be directed to community purposes.

### Present Situation

112 The Social Impact Study found, using 1994/95 data, that over \$190 million is currently distributed to the community from gaming activities authorised under the Gaming and Lotteries Act 1977 as follows:

Lotteries Commission	\$129.64m	to New Zealand Lottery Grants Board
		\$76.10 lottery distribution committees
		\$53.54 to Hillary Commission, Creative NZ and Film Commission
Gaming Machines	\$50m	to authorised community and charitable purposes
Housie	\$9.5m	to authorised community and charitable purposes
Misc (raffles etc)	\$5m	to authorised community and charitable purposes

Increasing turnover of these forms of gaming means that the amount available for community purposes increases accordingly.

113 In the 1994/95 financial year, the Lottery Grants Board distributed \$27.64 million from the proceeds of gaming to the Hillary Commission for Sport, Fitness and Leisure, which funds thousands of community groups and individuals involved in physical leisure in New Zealand. In addition, other forms of gaming also contribute to these groups.

114 So far as funding of cultural activities is concerned, payment from the Lottery Grants Board to Creative New Zealand, the New Zealand Film Commission, and the New Zealand Film Archive amounts to 86% of the total public funding for these organisations - \$31 million in 1995/96 compared with less than \$5 million from Consolidated Revenue. This does not include funding distributed by the Lottery Grants Board to other cultural purposes.

- 115 The Casino Control Authority presently requires each of the two casinos to establish and fund a charitable trust to distribute funds to the communities in which the casinos are located. The trusts will make available monies for organisations which deal with education and counselling of problem gambling and will also support a wide variety of community groups. Sky City Casino pays at least \$500,000 into its trust each year, while the Christchurch Casino contributes at least \$200,000 to its trust annually.
- 116 As mentioned in paragraph 110 it could also be argued that the requirement for racing industry profits to be applied to the racing industry, rather than to private gain, is a form of distribution to the community.

### Arguments for Community Distribution

- 117 The community distribution reason for government intervention is a long standing historical tradition in New Zealand and also has parallels with gaming policies in many overseas jurisdictions. Community groups provide the infrastructure necessary to enable Government to work in partnership with local communities in areas such as crime prevention. In this sense funding for these groups can be seen as an instrument contributing to the major government objective of promoting social cohesion and building stronger communities.
- 118 Any policy which removed these requirements would have the following implications:
- a It would reduce funding from gaming for community organisations.
  - b It would force community groups to look elsewhere for funding, and this is likely to increase pressure on Government for such funding particularly in relation to the Hillary Commission, Creative New Zealand and New Zealand Film Commission.
  - c The demand for funds for community purposes is greater than the grant money available from gaming. Funding from other sources is generally considered to be insufficient to meet the demand and there is no assurance that, if the requirement for particular gaming activities to divert proceeds to community purposes was removed, the reduction in community funding would be replaced by voluntary funding from gaming proceeds.
- 119 Contribution to community purposes is also widely supported as a reason for government intervention by the public. For many, it is seen as a means of compensating for the social costs of gambling. Ninety-four percent of respondents to the 1995 Department of Internal Affairs Survey of Public Participation in and Attitudes Towards Gambling, conducted by the National Research Bureau, thought it was important or very important that Government specially regulated gaming to make sure profits fund worthy causes.

## Arguments Against Mandatory Community Distribution

- 120 Arguments against mandatory community distribution include:
- a Not all gaming activity in New Zealand is required to return profits to community purposes, and other similar activities which are seen as contributing to social costs, eg the alcohol and tobacco industries, do not do so.
  - b It could be argued that mandatory requirements act as a disincentive to voluntary contributions.
  - c The increasingly global market for gaming products means that any mandatory community distribution requirement could disadvantage forms of gaming which are effectively operating in a global market. Communications technology suggests that this would drive much gaming into informal channels where both community distribution and normal taxation would be lost.
  - d It could be argued that government support for sport, culture and community purposes should be directly and transparently set from taxation revenue rather than indirectly via gaming industry contributions. This treatment would enhance neutrality and comparability of treatment both within the gaming industry and between gaming and other entertainment industries.

## Other Factors

- 121 The New Technology Analysis suggests that unless New Zealand-based operations are free to compete with overseas based gaming, on a commercial basis where necessary, New Zealand-based operations could find it increasingly difficult to compete.
- 122 On the other hand, a regime that permitted all forms of gaming to be operated for profit would also have significant impacts. In particular these would include the impact on funding for community purposes, and the indirect impact on government revenue, should such groups seek more secure funding direct from Government. While there could be more revenue raised from normal taxation which could offset the loss of revenue from community distribution, this may not be tagged for specific community purposes. More work would be needed to assess these impacts.
- 123 Relying on one or two forms of gaming alone, eg the Lotteries Commission and gaming machines, to produce the funds sought for community purposes is another option but there are difficulties with this approach:

- a Consumer choice changes over time and Lotto, Daily Keno and Instant Kiwi may not always be as popular as they are now.
- b Overseas gaming of a comparable type may over time draw funds away from these forms of gaming.
- c It is increasingly difficult to differentiate between forms of gaming. For example, electronic developments in gaming are increasingly blurring the distinction between gaming machines, lotteries and race betting.

124 Retention of existing requirements for only some forms of gaming to apply profits to community purposes may eventually lead to a decline in the available profits, as emerging technology and wider choice leads punters to forms of gaming that do not contribute to community purposes. A number of submissions noted this point and argued that any Government requirement to produce funds for community purposes should apply to all forms of gaming. Clearly this has implications for gaming that is not presently directly subject to such requirements, for example casinos.

## Conclusion

- 125 There are arguments both for and against the Government intervening in gaming to require distribution of profits to community purposes. There are also significant implications for the Government and the gaming industry in any major change to the present policy, whether to a more community oriented regime or to a more commercial regime. Equally, because of the effects of new technology there are long-term risks to Lottery Grants Board funding if the present policy is left unchanged.
- 126 On balance it is considered that, while there are arguments against requiring gaming to contribute to community purposes, for the following reasons it can be justified as a reason for government intervention in gaming:
- a The funding presently made available to community purposes from gaming undoubtedly contributes in many ways to the Government's strategic goals of building stronger communities and social cohesion.
  - b Such contributions are a comparatively cost-effective and widely accepted means of providing funding for these purposes.
  - c There is also an argument that, to the extent that the social costs of gaming cannot be completely identified and paid for by gaming operators, then a community contribution provides some general compensation for these social costs.

127 However, having regard to the principles underlying the policy proposals, particularly the principle of comparability and neutrality, and to the implications of policy change, it is considered such intervention should be on the following basis:

- a All forms of gaming should be permitted to be operated for commercial gain. This would not preclude any community or charitable organisation operating gaming for fund-raising purposes under the same conditions as any other operator.
- b There should be a requirement for all forms of gaming to contribute to community purposes in an appropriate and equitable manner, having regard to:
  - i The overall contribution of each gaming sector through taxes and other contributions, to Government and to community purposes.
  - ii The extent to which different forms of gaming already contribute to the identified social costs of gaming.
  - iii The extent to which it is appropriate for defined community and charitable purposes to be funded from gaming proceeds as opposed to funding from other sources.
  - iv The impact of overseas competition on the ability of gaming operations to produce profits for community purposes.

128 It is also considered that, in view of the significant impact of any policy change on different gaming sectors, the appropriate contribution to community purposes should be addressed in consultation with the gaming industry and other affected parties.

## Policy Proposals

129 There is a legitimate basis for Government to intervene in gaming to:

- a Prevent crime and ensure fairness to participants including protection against fraud.
- b Mitigate the social costs of gaming, including problem gambling.

130 There is also a case to require proceeds from gaming activities to be distributed to community purposes in an appropriate and equitable manner having regard to:

- a The overall contribution of each gaming sector, through taxes and other contributions, to Government and to community purposes.

- b The extent to which different forms of gaming already contribute to the identified social costs of gaming.
  - c The extent to which it is appropriate for defined community purposes to be funded from gaming proceeds as opposed to funding from other sources.
  - d The impact of overseas competition on the ability of gaming operations to produce profits for community purposes.
- 131 Subject to any requirement for proceeds to be distributed to community purposes, all forms of gaming should be permitted to be operated for commercial gain. This would not preclude any community or charitable organisation operating gaming for fund-raising purposes under the same conditions as any other operator.

# What Mechanisms Should be Used for any Profit Distribution to Community Purposes

- 132 Any requirement to allocate profits to community or charitable purposes raises the issue of the mechanism for distribution. Present mechanisms are:
- a The Lottery Grants Board distributes funds raised by the Lotteries Commission. The Board is comprised of the Minister of Internal Affairs (Chair), the Prime Minister and the Leader of the Opposition (or their nominees) and three members appointed by the Governor-General. Funds are distributed through a series of committees and through three Government Agencies which are largely funded by the Board and which distribute money to the community in accordance with their own Acts.
  - b The proceeds of gaming machines outside casinos are distributed by hotel-based trusts (including several major national trusts, eg Pub Charity and Lion Foundation), and by the clubs and societies which operate the machines, eg Chartered Clubs, RSA.
  - c Other licensed charitable gaming, eg housie, raffles, distribute proceeds directly to designated community purposes.
  - d The Casino Control Authority presently requires each of the two casinos to establish and fund a charitable trust to distribute funds to the communities in which the casinos are located.

## Discussion

- 133 Consideration of an appropriate mechanism for distribution should have regard to the following factors:
- a The need to ensure funds are available to the widest possible spectrum of community groups consistent with broad government and community objectives.
  - b The need to ensure that the wider objectives of funding community purposes are not distorted by different distribution agencies acting in isolation. This suggests either a single gaming distribution agency or a set of national guidelines applicable to distribution agencies for different gaming sectors.
  - c An appropriate balance between national and local community needs.
  - d The need to ensure separation of commercial gaming operators from the distribution of funds. The present gaming machine sector is an example of much actual and alleged misappropriation of funds because this separation does not exist.

- 134 If a contribution to community purposes is seen as a means of meeting social costs, there could also be an argument for a single body responsible both for distributing funds to community purposes and for distributing other funds, eg for treatment of problem gambling.
- 135 An integrated national distribution regime, with provision for local representation, is most likely to meet these criteria. This would not necessarily mean a single body, but a set of principles and criteria to which distribution bodies would have to conform. This regime should be designed in consultation with affected parties, on the basis of the factors listed above.

### Policy Proposals

- 136 There should be an integrated national distribution regime designed in consultation with affected parties, based on the following criteria:
- a The need to ensure funds are available to the widest possible spectrum of community groups consistent with broad government and community objectives.
  - b The need to ensure that the wider objectives of funding community purposes are not distorted by different distribution agencies acting in isolation.
  - c The need to ensure an appropriate balance between national and local community needs.
  - d The need to ensure separation of commercial gaming operators from the distribution of funds.

## Who Should be Able to Operate Gaming

- 137 Historically, a variety of different rules have evolved for different forms of gaming and for similar forms of gaming operated in different circumstances:
- a The Totalisator Agency Board has a statutory monopoly on most sports betting and off-course race betting, and fixed-odds betting, and an effective monopoly on on-course race betting.
  - b The Lotteries Commission has a competitive advantage over other operators of lotteries, prize competitions and instant games by virtue of its right to pay its ticket sellers.
  - c Neither the Lotteries Commission nor licensed promoters are currently permitted to be involved in games of chance other than instant games.
  - d Gaming machines are permitted only in casinos, or outside casinos on sites that do not allow unrestricted access to children and only if operated by non-commercial societies to raise money for community purposes.
  - e Table games (roulette, etc) are permitted only in casinos, or outside casinos only if involving play money and a blind auction and if operated by non-commercial societies to raise money for community purposes.
  - f In the short term, casinos (which may operate both gaming machines and table games) are restricted geographically and by number, and the two current licences were issued only after a protracted and detailed competitive hearing process.
  - g Only societies established for non commercial purposes are able to conduct housie, and they must do so to raise money for authorised community and charitable purposes and only after being licensed to do so by the Department of Internal Affairs.
  - h Except for limited prize competition games which might be operated either by the Lotteries Commission or by non-commercial societies to raise money for community purposes, only the Totalisator Agency Board is allowed to run either fixed-odds or pools type sports betting.
- 138 These differences reflect, in part, the ad hoc approaches to gaming policy over the years. In part they also reflect evolving views on who owns the right to undertake gaming operations. One view is that, historically, and throughout most democratic societies, legitimate gaming has only been allowed to occur where it has been specifically permitted to by the State. In other words it is Governments which create the right to operate gaming and confer it on the operator for the time being. This differs from many other forms of the entertainment industry where Government intervenes only to ensure that existing or potential operators meet required standards.

- 139 In considering possible reasons for imposing some restrictions on persons or organisations seeking to offer gaming opportunities, regard should be had to the proposed principles and to the approved reasons for government intervention discussed above.
- 140 The objectives of ensuring fairness to participants and preventing crime and fraud suggest entry to the gaming sector should be governed by some form of testing regime. It might address issues like the integrity of the operator and the operator's ability to pay out on the prizes offered. The extent to which specific restrictions on entry are necessary to address these points might depend on other aspects of the regulatory regime (discussed later).
- 141 The principle of comparability of treatment suggests that the market should be open to any one who can meet reasonable acceptance criteria and that these criteria should be as even as possible across all forms of gaming. At the same time major differences between numerous forms of gaming may justify varying approaches to entry to meet these differences. The policy proposals advanced in this paper should apply to consideration of this issue.
- 142 The principle of least cost intervention suggests that the regime by which operators are assessed and permitted to operate should be one that imposes the least cost consistent with effective achievement of the Government's objectives. An entry test would carry cost and could act as a disincentive to potential new entrants. This could in turn limit competition and the benefits it brings.
- 143 More detailed consideration would need to be given to the most appropriate regime for all forms of gaming. Whether such a regime was based simply on existing law (eg, Fair Trading Act 1986) or extended to a full licensing regime is a matter for more detailed consideration. It may also involve assessment of permitted operators on an ongoing basis. Particular attention would also need to be given to the practical issues involved in assessing overseas-based operators.

## Policy Proposals

- 144 Entry to the gaming industry should be governed by some form of entry test (to be determined) designed to ensure the integrity of the operator, and to meet the Government's objectives including prevention of crime and fraud.
- 145 As a general rule, all forms of gaming should be open to all operators subject to meeting the test described above.
- 146 The entry test should be as consistent as possible across all sectors, and should be transparent, and least cost.

# To What Extent Should Gaming be Regulated

## Present Situation

- 147 Most government interventions in gaming at present are met by regulation or taxation. (Tax is discussed later in the paper.) The regulatory regime is designed mainly to ensure fairness to participants and to minimise perceived social costs, particularly crime. However, it is marked by differences between sectors together with reliance on legislative or other restrictions in preference to other forms of intervention. This suggests that a full review of the regulatory regime, against the principles proposed in this paper, would produce overall benefit.
- 148 In terms of ensuring fairness to participants, the main features of the present regulatory regime are:
- a Licensing of gaming operators. Conditions attached to licences to conduct gaming activities such as housie, lotteries and instant games usually require a set or minimum prize return, advertising of odds, full disclosure of prizes, etc. Lottery licence conditions also require that lotteries are drawn under Police or Department of Internal Affairs supervision.
  - b The Gaming and Lotteries Act 1977 also requires that the Department and a person appointed by the Audit Office exercise scrutiny over equipment used in connection with the drawing or allocation and accuracy of the announced results of Lotto, Daily Keno and Instant Kiwi.
  - c Gaming machines must be tested and approved by the Department before use.
- 149 In terms of minimising social costs, present regulation is focused principally on limiting access to gaming, whether by age, hour of play, or geographical limits, and some limits on the level of prizes that can be offered. Examples of these restrictions include:
- a *The age of players.* This varies between 16 years for Instant Kiwi, 18 years for race betting, and 20 years for entry to a casino.
  - b *Times of play.* Housie is severely restricted, each society being limited to one three-hour session per week, between 10am and 11pm, not permitted on Sunday, Christmas Day, Good Friday or before 1pm on ANZAC Day. Casinos may operate 24 hours a day except for Christmas Day, Good Friday, or at any time after 3am and before 1pm on ANZAC Day.
  - c *Location.* Gaming machines are generally restricted to premises licensed under the Sale of Liquor Act 1989.

- d *Prizes.* Non-casino gaming machines have a prize limit of \$500 (or \$1000 for a jackpot) from 1 August 1996. Gaming machines in casinos have no limit. There is no limit on the amount of prize that can be offered for Lotto, although the very large prizes recently offered by the new National Lottery in the UK have attracted criticism. There are some limitations on the type of prizes that may be offered, eg firearms and alcohol may not be offered as prizes.
- e *Credit.* Current law is uneven in the powers it gives to operators to extend credit facilities. It is illegal for the TAB to knowingly extend credit to bettors. The Casino Control Act 1990 states that a casino operator may not accept credit wagers other than with the approval of the Casino Control Authority.
- f *Advertising/promotion.* No restrictions currently apply to the advertising of race betting. The Casino Control Authority has attached a condition of licence to the casino operators' licences allowing the Authority to require the tone of advertising to be changed if it is considered in bad taste. No restrictions are currently applied to the advertising and promotion of New Zealand Lotteries Commission, products, however the annual budget of the Commission must be approved by the Minister. Advertising the availability of gaming machines would not be considered a legitimate expense of the operation of gaming machines.

- 150 In addition there is a substantial degree of regulation designed to prevent or detect crime in gaming. This is particularly true of the casino industry where there has been a history of criminal involvement in some countries where regulation was lacking. The Casino Control Act 1990 provides for an extensive regime of vetting and licensing casino owners, casino operators, and casino employees. (This general approach was also proposed in the draft Gaming Machine Bill.) Casinos are now among the most heavily regulated industries anywhere and there is little evidence of criminal activity where this level of regulation applies.
- 151 Regulation is not the only intervention that can address the social cost of gaming. Recently, attention has turned to identifying the extent of problem or pathological gambling, and, while the statistical evidence is variable and not universally accepted, there is general acknowledgement that at least 12,000 New Zealanders suffer from some form of gambling addiction. Options for addressing this problem include limiting the amount of gaming through proactive prevention, eg education programmes, and host responsibility programmes, research, and counselling and treatment of problem gamblers.
- 152 The Government has facilitated contributions from the major gaming industry sectors to fund the treatment and prevention of problem gambling. The Committee on Problem Gambling Management which includes representatives of the gaming industry and treatment providers will agree annually on an amount to be paid by the gaming industry. The Committee has agreed to fund \$2 million for the 1996/97 year, and similar payments are expected in the future.

## The Objectives of Regulating Gaming

- 153 Any regulatory or other intervention by Government in gaming should be based on the proposed principles and on the reasons for government intervention. This suggests that intervention should be focused on the following objectives:
- a To ensure fairness to participants.
  - b To prevent crime and fraud.
  - c To minimise social problems or where this is not practicable require the operator to meet the costs involved.
  - d To ensure operators meet any requirements for the distribution of profits to community purposes.
  - e To ensure operators meet the requirements of any entry test.
  - f To ensure operators abide by any specific requirements imposed relating to the age of players, times and location of play, prize levels, use of credit, and the level of advertising.
- 154 All these issues need further consideration in consultation with affected parties and may vary between forms of gaming.

## Mechanisms for Regulation

- 155 A number of mechanisms are available to the Government to achieve its regulatory objectives for the gaming industry. The principles set out in paragraph 81 provide some guidance on the choice of form of intervention. However, other factors will also need to be taken into account to decide the best mechanism to achieve a specific goal.
- 156 In particular, there may be a trade-off between the certainty of a mechanism's effect and the economic cost imposed by that instrument. As an extreme example, the social costs associated with gaming could be eliminated by banning gaming and very strictly enforcing such a ban. However, this would be likely to result in high economic cost arising from misallocation of resources, wastage from people attempting to evade the ban, and from enforcement costs.
- 157 Direct regulation may be warranted to ensure, for example, that persons below a certain age do not participate in gaming activities. The use of a tax instrument, on the other hand, is likely to be more suited to ensuring that the gaming industry faces costs that reflect the social costs that it imposes.

- 158 The objective of minimising social costs also suggests that the regulatory regime should have some regard to the degree to which the extent of permitted gaming, the nature of the gaming and the attributes of the operator may contribute to social costs. For example, there could be a requirement for independent studies of the social and economic impact of new forms of gaming to be required before permission was granted to offer them in New Zealand.
- 159 The objective of requiring any appropriate proportion of proceeds from gaming activities to be distributed to community/charitable purposes would require that potential gaming operators can meet these requirements and be held accountable for them.
- 160 The comparability of treatment principle suggests that whatever regulatory regime is applied to ensuring fairness to participants and mitigating social costs, it should be as comparable as possible across different forms of gaming. This raises the issue of the extent to which different forms of gaming give rise to the need for different interventions. Gaming machines, for example, are said to give rise to more problem gambling than lotteries. Similarly, gaming in a casino, which is presently subject to extensive regulation and on-site inspection activity, may well carry fewer risks of unfairness to participants than casually run club raffles.
- 161 The comparability of treatment principle also implies regulatory neutrality with other comparable industries. This raises the issue of the extent to which a regulatory regime for gaming would go beyond the general legislation aimed at protecting consumers and others affected by any industry, for example the Fair Trading Act 1986.
- 162 The consistency, predictability and transparency principles suggest that any intervention should be well understood, not subject to arbitrary change, and transparent in its application.
- 163 The least cost principle would require consideration of the range of interventions available. Broadly, these are
- a Legal or other restrictions.
  - b Taxation or other pricing mechanisms, eg to increase the price of gaming to discourage consumption.
  - c Direct contribution to meeting the costs, eg of problem gambling.
  - d Voluntary restraint or activity by the industry, eg provision of easy access to information about the rules of the game, host responsibility programmes.
  - e Information and education programmes about gaming.

- 164 The least cost principle means finding the best form of intervention to achieve objectives and would require any regulatory regime to deliver more benefits than costs. Over-regulation is likely to produce additional cost. There may be alternatives to regulation that achieve desired goals in more cost effective ways. For example, voluntary agreements or industry codes of practice can sometimes deliver more effective results than regulation, although they may still need an appropriate regulatory environment to succeed.
- 165 In considering the appropriate mix of intervention the following factors also need to be considered:
- a Any differences between gaming and other forms of entertainment. For example it can be argued that the nature of gaming, where the return to the player is dependent on chance, is inherently different from any other form of entertainment where the buyer can know in advance what he or she is getting for their money.
  - b The anonymous nature of most gaming, and the lack of a clear audit trail in many instances, mean it is more vulnerable to penetration by criminals and to fraud than many other forms of activity.
  - c The widespread public acceptance of the need for additional regulation of the gaming industries to meet these concerns.
  - d The extent to which new entrants to gaming can be bound by voluntary agreements entered into by existing participants, for example the emerging voluntary agreement on funding of problem gambling treatment services.

## Conclusion

- 166 More work is needed on an appropriate regulatory regime based on the broad objectives in paragraph 153 and the appropriate mechanisms for regulation discussed in paragraphs 155 - 165.

## Policy Proposals

- 167 A gaming regulatory regime should be developed based on the following objectives:
- a To ensure fairness to participants.
  - b To prevent crime and fraud.
  - c To minimise social problems or where this is not practicable to require the operator to meet the costs involved.

- d To ensure operators meet any requirements for the distribution of profits to community purposes.
  - e To ensure operators meet the requirements of any entry test.
  - f To ensure operators abide by any specific requirements relating to the age of players, times and location of play, prize levels, use of credit, and the level of advertising.
- 168 Existing generic regulatory frameworks such as the Fair Trading Act 1986 should be used to the greatest extent possible.
- 169 Prescriptive regulation should be applied only where better options do not exist, and then should be consistent, transparent, and aim at imposing least overall economic cost.
- 170 There should be appropriate comparability between the regulatory regime for gaming and other regulatory regimes.
- 171 There should be consistent rules as far as possible across all gaming sectors.
- 172 The regulatory regime should be developed by further consultation with affected groups including industry and community representatives.

# How Should any Regulation be Applied

## Present Situation

- 173 Gaming regulation at present varies between the differing forms of gaming for mainly historical reasons. As a result there is no consistency in issues like:
- a Whether rule making is at statutory or lower level.
  - b Who is responsible for assessing or licensing entrants and operators.
  - c Who enforces the law.
  - d What are the rights of redress, ie how are complaints by players against gaming operators, and operators against regulators dealt with and determined.
  - e Who pays for the regulatory regime.

Each of these issues is briefly surveyed.

- 174 *Rule making.* The rules governing most forms of gaming derive ultimately from Act of Parliament. These are:
- a The Gaming and Lotteries Act 1977 deals with lotteries, prize competitions, instant games, and games of chance (such as housie and gaming machines). Under this Act, the Lotteries Commission may make rules for certain games, while the Minister of Internal Affairs regulates other forms of gaming covered by the Act, via licensing powers, including the power to license subject to conditions.
  - b The Racing Act 1971 deals with horse and dog racing and, recently, sports betting. The Racing Industry Board has wide powers to administer these forms of gaming. However any move beyond them requires an amendment to the Act. The rules of racing, harness racing and greyhound racing are determined by the New Zealand Racing Conference, Harness Racing New Zealand, and the New Zealand Greyhound Racing Association respectively. The Racing Industry Board is empowered to create, alter and rescind rules if it considers it necessary.
  - c The Casino Control Act 1990 establishes the Casino Control Authority and empowers it to make rules prescribing games that may be conducted or played in a casino.

175 *Entry and licensing*

- a Casino owners and operators are licensed by the Casino Control Authority. Casino employees are also licensed by the Department of Internal Affairs after extensive checking by the Police into the background of applicants.
- b The Racing Act 1971 provides that the Racing Industry Board determines the racing calendar after issuing a draft allocation of licences to clubs and seeking submissions. Clubs must be registered with the relevant Conferences.
- c Licensed promoters are approved by the Courts after lodging a bond of \$50,000 and providing a declaration in support of their application. The Courts may not issue a licence unless a District Court Judge is satisfied that the applicant is a proper person to hold a licensed promoters licence. Licensed promoters may not promote any gaming activity unless the society conducting it has been licensed to do so by the Department of Internal Affairs under delegated authority from the Minister.
- d Societies may not operate gaming activities above certain thresholds unless they have been licensed to do so by the Department of Internal Affairs under delegated authority.

176 *Enforcement*

- a The Department of Internal Affairs employs the casino inspectorate. The inspectors are required to work to the supervision and inspection policy laid down by the Casino Control Authority and to report to the Authority on the operation of the casinos.
- b The Department enforces the licence conditions and other requirements of the Gaming and Lotteries Act 1977.

177 *Appeals/rights of redress*

- a In the case of licensed promoters, the Department may make a complaint to the Court against any licensee. Courts have the power to suspend a licence, hear and determine a complaint. Provision also exists for appeals to the High Court.
- b Where the Secretary for Internal Affairs is proposing to refuse to grant an application for a certificate of approval for a casino employee licence the Secretary is required to notify the applicant and invite the applicant to make submissions on the matter. Where the certificate is refused, the applicant has the right of appeal to the Casino Control Authority.

- c In the case of societies seeking a licence under the Gaming and Lotteries Act 1977 or whose licence has been cancelled, appeal rights lie within the Department initially, to the Minister of Internal Affairs, and then by judicial review.
- d If a player has concerns about operators then their options are:
  - i To take action through the Fair Trading Act 1986. If the concern is about misleading or deceptive conduct as covered under the Act, then the player can raise the issue with the Commerce Commission and/or take their own action through the Courts.
  - ii To make a complaint to the regulator of the activity such as the Casino Control Authority or the Department of Internal Affairs.

## Discussion

- 178 The following paragraphs discuss how the proposed principles could apply to these issues.
- 179 Fairness to participants requires that any regulatory regime recognises the particular interest of participants in an activity where information available to them is usually not sufficient to give them parity in disputes with operators. In particular, it calls for clear rights of appeal and redress.
- 180 Comparability of treatment suggests a regulatory mechanism that is equitable as to different parts of the gaming industry and that is fair to the gaming industry as a whole, vis a vis other comparable industries. It also requires flexibility to enable new forms of gaming, and new rules for existing forms of gaming, to be quickly considered and delivered.
- 181 Consistency and predictability require a regulatory regime that applies over time and is not subject to constant change. The rate of change in the new technology now impacting on gaming makes this a challenging task but all the more important to address.
- 182 There may also be difficulties applying regulation to new entrants particularly in an environment of high turnover of operators. The least cost principle would suggest a regulatory regime capable of responding in a flexible and timely manner to a rapidly changing environment.
- 183 Transparency requires the regulatory regime to be open and clear to all, with adequate rights of redress. It also requires clear separation of the regulatory role from any other role in gaming. Avoidance of conflicts of interest is a key principle involved. The following differing regulatory roles can be identified and should be kept separate as far as possible, consistent with the principles (eg least cost regulation):

- a Determining what forms of gaming are allowed and what the rules of each should be.
- b Enforcement including any regime for testing of entrants.
- c Redress and rights of appeal, ie determination of complaints against operators or regulators.

184 As discussed above, these differing roles are dispersed through various bodies at present with the Department of Internal Affairs having a range of rule making, licensing and enforcement powers, and the Casino Control Authority having a mix of licensing and quasi-judicial powers. As well, the Lotteries Commission exercises rule making powers which might be seen to be in conflict with its role as an operator.

185 The least cost principle suggests that Government would need to assess the relative costs and benefits of complete separation of all these roles. As a minimum, however, separation of redress and rights of appeal functions from the others is important.

186 The results of the new technology analysis suggest that for each regulatory role, an integrated regulatory regime would best meet the emerging crossover between forms of gaming.

187 The actual institutional arrangements to give effect to these principles would need further work. However, the need for flexibility of response to change suggests that legislation governing gaming should be limited to general principles giving effect to the approved policy and regulatory framework.

### Costs of Regulation

188 Whatever regulatory regime is required raises the question of who should meet its costs, as well as any remaining social costs that cannot be avoided. At present licence fees currently substantially meet the costs of the licensing regime while casinos are required to meet the full costs of administration of the casino regulatory regime including the full costs of the Casino Control Authority.

189 A requirement that gaming operators meet the reasonable costs of regulatory activity related to their industry can be justified on the basis that it is one way the costs of gaming can be met by those whose actions give rise to the costs.

190 If operators are to meet the costs of the regulatory system, there need to be adequate mechanisms to ensure costs are reasonable having regard to the above arguments, and that expenditure is transparently accounted for.

- 191 However it is unreasonable to expect legitimate licensed operators to meet the costs of inspecting, investigating and prosecuting operators who choose to operate illegally. It is appropriate that these costs be met by the Crown. The proportion of enforcement costs to be met by the Crown would have to be assessed to ensure that legitimate operators meet only reasonable costs associated with enforcement of licensed activity.
- 192 Similarly it may not be cost effective for minor charitable gaming, eg raffles, to meet all costs associated with administration of the regulatory regime.
- 193 A voluntary agreement between major gaming industry sectors to provide funds for the treatment of problem gamblers is also being developed. While some legislative mechanisms are likely to be needed to fully facilitate such a voluntary agreement, the process so far being developed provides a basis for a long-term approach which could provide a cost effective means of addressing this issue.

#### Policy Proposals

- 194 The law on gaming should be limited to general principles capable of giving effect to the approved policy and regulatory framework.
- 195 Rule making, enforcement, and rights of redress or appeal should be clearly separated.
- 196 For each of the roles described in para 195 there should be an integrated regime covering all forms of gaming.
- 197 The regulatory regime should be established in a way that allows flexibility and rapid responses to new developments in gaming.
- 198 Subject to appropriate and transparent costing and accountability mechanisms the gaming industry should be required to meet the reasonable enforcement and administrative costs of the regime.

# What Taxation Should Apply to Gaming

## Present Situation

- 199 Like other aspects of the present regime applying to gaming, the taxation regime reflects a range of historical and other factors. All forms of gaming attract GST. The larger forms of gaming pay sector specific gaming duties (at varying rates), but racing and lotteries, and most gaming machine operations outside casinos, do not pay income tax. Generally speaking, only casinos pay income tax. Gaming duty is based on gross profit for some and on turnover for others.
- 200 This situation is summarised in the following chart:

### Taxation of Gaming Activities

Gaming Activity	Income Tax	GST*	Gaming Duty
Casinos	yes	yes	4% (Gross Profit)
Gaming Machines	no**	yes	20% (Gross Profit)
Racing	no	yes	20% (Gross Profit)***
Lotteries	no	yes	5.5% (Turnover)

\* Provided the operator is registered for GST (annual revenue over \$30,000).

\*\* Provided the operator is exempt from income tax.

\*\*\* The gaming duty on race betting was 5.5% of turnover before 1 January 1996.

Gaming duty, like all taxation, goes direct to the Consolidated Fund.

## Discussion

- 201 Taxation serves a range of purposes including to mitigate social costs, to raise revenue, and to redistribute wealth. At its most generalised level gaming is simply another form of activity that Governments can tax. As a mechanism to achieve Government's objectives in gaming, however, it can be relatively crude. Fairness to participants, for example, may be more likely to be achieved by regulation or requirements on operators to disclose relevant information.

- 202 So far as mitigating social costs is concerned, since taxation can influence the prices faced by consumers, taxation can also influence the level of consumer demand. Consequently, where there are social costs associated with the consumption of a good or service, taxes can be used to ensure that consumers make their consumption decisions based on the full cost. By this means, resources can be allocated between competing uses (some with social cost and some without) in a socially optimal manner.
- 203 Another option is to identify more closely the actual costs involved and provide for direct industry contribution to them. This could reduce the justification for further taxation on gaming over and above normal taxation.
- 204 If all social costs of gaming could be identified, and if the industry was required to meet the identified social costs, then it could be argued that it should be subject to no different taxation regime than any other economic activity. This might suggest application of income tax and GST, in place of gaming duty and GST where it applies at present. This view could strengthen if the Government decided that a set percentage of profit from gaming operations was to be allocated to community or charitable purposes.
- 205 Comparability of treatment in the area of taxation would mean taxing the gaming industry so that it is not advantaged or disadvantaged relative to other industries. This is consistent with a tax on gaming to reflect social costs. Without such a tax the industry would in effect be subsidised by the rest of society. Within the gaming industry, this principle is likely to mean applying the tax regime as far as possible across the gaming industry at the same rate and on the same basis in each sector.
- 206 The following specific issues would need to be addressed:
- a The income tax status of entities that provide gaming activities, in that many are exempt from income tax. Gaming duty is one way of imposing a neutral tax on different operators, regardless of whether they are subject to income tax.
  - b Gaming duty is based on gross profit for some forms of gaming, and on turnover for others.
  - c Some gaming operators also have other sources of income which are income tax exempt, eg Chartered Clubs. Cross-allocation of expenses could be an issue if some income of gaming operators is subject to taxation and some is not.
  - d Comparison of tax rates between gaming operators in New Zealand and those overseas, especially casinos, would be relevant to some parts of the industry.

- 207 The principle of using least cost interventions indicates that there could be a case for using taxation to ensure that the price of gambling reflects the social costs. The use of a special tax (ie, a gaming duty) to adjust consumer demand would depend on an estimate of the marginal social costs involved. Clearly, these would have to outweigh the costs of administering and complying with a special tax if the benefits of such an intervention are to outweigh the costs.
- 208 Traditionally, gaming duty has been justified on the basis that it is one way that the price of gaming can reflect the social costs of gaming, it extracts a tax contribution from gaming operators not otherwise liable to income tax (eg, charitable operators) and it represents some return from the monopoly profits created when the Government restricts the numbers of operators in any given geographical area or form of gaming.
- 209 A regulatory regime as proposed in this paper which opened entry to the market to a wider range of operators, which approached regulation from a more transparent and least cost perspective, which applied a degree of comparability with other industries, and which explicitly required the industry to meet identified social costs, could lessen the force of these traditional arguments. It might suggest that the appropriate taxation regime on gaming is one that required only payment of income tax and GST, in addition to identified social costs, and any Government requirement to distribute a percentage of proceeds to community purposes, if approved.
- 210 On the other hand some form of gaming duty might still be justified for the following reasons:
- a It would be a means of gathering tax from operators not liable to income tax.
  - b There may still remain in the regime applied to entrants into the gaming markets an element of monopoly profits.
  - c There may be residual social costs not easily able to be defined and for which a general tax may be the most appropriate form of ensuring these costs are met by the industry.
- 211 Changes along these lines would have significant impacts on both the Government and the industry. More work is required to identify those impacts and to determine the most appropriate levels of tax and whether there should remain some form of gaming duty to meet reasonable taxation needs not otherwise met from normal tax.

- 212 The New Technology Analysis indicates it would be difficult to tax cross border gaming activities based overseas. One method for the Government to retain taxation revenue in New Zealand that would otherwise move overseas, is to allow expansion and competition so a range of activities is available in New Zealand. Punters wishing to invest in these types of gaming activities would be able to do so in New Zealand where the proceeds are subject to New Zealand's taxation regime. Alternatively, the New Zealand Government could seek international agreements with other jurisdictions to ensure a percentage of the money spent on overseas operations by New Zealanders is retained in New Zealand.

### Policy Proposals

- 213 Taxation applied to the gaming industry should as far as possible be on a comparable basis to other industries.
- 214 The taxation regime should be applied as consistently as possible across the industry and be fully transparent.
- 215 More work should be undertaken on the impact of the above on the Government and on the industry, and on whether some form of gaming duty is justified to meet the reasonable tax contribution of the gaming industry having regard to:
- a Any monopoly profits created by entry restrictions on gaming operators.
  - b The different tax status of different gaming operators.
  - c The extent to which there are social costs of gaming not otherwise met by the industry.
  - d The impact of any government requirement to direct a portion of profits to community purposes.
  - e The impact of gaming based overseas.

## What Should Government's Role in Gaming be?

- 216 The Government is presently involved in gaming in a variety of ways. For example:
- a It develops policy and administers the law.
  - b All gaming statutes (but not the gaming taxation statutes) are administered in the Department of Internal Affairs, which also researches and monitors gaming activities, provides policy advice to Government across all areas of gaming, although it does not have an explicit statutory mandate to do so, enforces the law (with assistance from the Police), and carries out most licensing.
  - c The Casino Control Authority, a Crown Entity with the status of a Commission of Inquiry, licenses casino operators, makes casino rules, and advises the Minister on matters relating to the Act and Regulations.
  - d The New Zealand Lotteries Commission is a Crown Entity which operates some forms of gaming and has a role advising the Minister on matters relating to New Zealand lotteries.
  - e The New Zealand Lottery Grants Board is a Crown Entity which distributes funds received from the New Zealand Lotteries Commission.
  - f The Secretary for Internal Affairs is a member of the New Zealand Lotteries Commission and the Department of Internal Affairs also services the New Zealand Lottery Grants Board.
  - g The Minister for Racing appoints members of the Totalisator Agency Board, and members of the Racing Industry Board which has a role advising the Minister on matters relating to the three racing codes.
- 217 The foregoing sections of this paper have significant implications for the role of Government in gaming. While the proposed reasons for intervention require some Government role, they do not necessarily require the Government to have an ownership or operational role in gaming.
- 218 The main relevant principle is transparency, particularly the avoiding of conflicts of interest within the Government's roles. Key issues are:
- a The need for clear separation between the respective roles of Government as policy maker, regulator, and operator. Where the Government wished to operate in the gaming area, for example by continuing to run major lotteries, the vehicle for doing so must continue to be transparently separate from the Government's other roles. The New Zealand Lotteries Commission is already operationally separate from the Government, with separate funding, management and reporting arrangements.

- b The relationship between the Government, the Department of Internal Affairs, the New Zealand Lotteries Commission (or any future operator of Government lotteries) and the Lottery Grants Board or any future distributor of the proceeds of Government lotteries. If the Government wishes to run major lotteries via an agency such as the Lotteries Commission with the purpose of raising funds for community purposes, it is important for the distribution mechanism to continue to be clearly separate from other potentially conflicting interests.
  - c The Government's role as policy maker and its role as regulator. At present the Department of Internal Affairs is by convention the key provider of policy advice to Government, and is also the licensing and enforcement agency for most forms of gaming. These roles have recently been clearly separated organisationally.
- 219 The principles also suggest that additional information about the industry could assist policy development and decision making and make for a more informed public. This is a role for Government, although there is no reason the gaming industry should not also take some responsibility.
- 220 So far as cross border gaming is concerned, while it will not be easy to regulate gaming operated from overseas, there are options that may be able to be applied. These could include control through information networks and intergovernmental agreements. More work is needed on the best means of applying Government's preferred policy and regulatory framework to overseas based gaming.

## Policy Proposals

- 221 Government has a clear role in:
- a Determining the broad policy to govern gaming and the regulatory and taxation regime to apply to it.
  - b Enforcing the regulatory regime.
  - c Organising research into gaming, as a basis both for Government's ongoing policy review of the industry, and for more general public information on the industry.
- 222 Government may also wish to operate gaming itself to raise funds for community purposes. If so, the operational vehicle should be organisationally separate from other government gaming activity, and the distribution mechanism for funds separate again.
- 223 There should be clear separation between the Government's policy/research role, its regulatory/enforcement role, and its role, if any, as a gaming operator.
- 224 More work needs to be done to determine the best means of applying the Government's preferred policy and regulatory framework to overseas based gaming.



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