

# **Reference Paper**

## **Guidelines on Venue Costs under the Gambling Act 2003**

## 1. Purpose of this document

This document provides guidelines for corporate societies and venue operators on the rules for paying venue expenses related to class 4 gambling (gaming machines outside casinos). These rules were published in the *New Zealand Gazette* on 2 September 2004 as the “Limits and Exclusions on Class 4 Venue Costs Notice”, and amended on 17 July 2008. You can find the *Gazette* Notice and other relevant documents on the Department of Internal Affairs (the Department) website: [www.dia.govt.nz](http://www.dia.govt.nz).

The aim of the document is to ensure that societies understand:

- what costs they can legitimately pay to venue operators
- the limits on these costs
- what costs are not allowed
- how to assess the costs associated with a particular venue
- how the Department will assess the costs
- how to structure venue agreements.

The rules set out in the *Gazette* Notice apply to all class 4 gaming machine operators and venues **except** clubs operating machines at their own club premises.

## 2. Overview of Gambling Act requirements

The Gambling Act 2003 (“the Act”) created a new regime with a number of important changes from the former legislation, including a new way of limiting costs.

Under section 116 of the Act, the Secretary for Internal Affairs (the Secretary) can limit or exclude the costs that a society conducting class 4 gambling may incur. These limits and exclusions must be published in a notice in the *New Zealand Gazette*. Venue costs are one type of cost that may be limited in this way.

The Act has a number of other requirements that relate to venue costs. These are:

- The Department cannot grant a class 4 operator’s licence unless it is satisfied that the society will maximise authorised purpose (charitable and community) distributions and minimise operating costs, including venue payments (section 52).
- Societies must apply or distribute all money earned from gaming machines to authorised purposes, except for the costs of operating the gambling and complying with the regulatory regime, and levies and taxes (section 106).
- The costs of operating gaming machines (including venue payments) must be “actual, reasonable and necessary costs” in conducting gambling and ensuring legal compliance (section 4 definition of “net proceeds”).

**Actual:** The society and venue operator must be able to show that the costs were actually incurred. For example, labour costs must be based on the actual pay scales in use at the venue, and the hours worked.

**Reasonable:** The costs must be in proportion to the size of the operation, and should take into account normal market values or prices for the goods and services provided.

**Necessary:** The costs must be necessary to the conduct of gambling and legal compliance. The Gambling Commission has held that “necessary” falls between “expedient or desirable on the one hand and essential on the other”.

- Class 4 societies cannot pay commission (section 115).
- Each venue agreement must include an itemised list of costs associated with the gambling operation at the venue (section 69).

### **3. The Venue Costs *Gazette* Notice**

On 2 September 2004 the Secretary published a *Gazette* Notice that:

- says what costs societies can incur in respect of venues (either directly to venue operators, or indirectly);
- places limits on those costs;
- prohibits societies from paying other costs in respect of venues.

The aim of the new rules is to ensure that societies:

- maximise the funds available for distribution to authorised purposes;
- minimise expenses;
- can pay venue operators a reasonable amount for the service they provide.

The *Gazette* Notice was republished on 17 July 2008 to clarify the position of GST.

#### **Costs not covered by the *Gazette* Notice**

The *Gazette* Notice limits the costs societies can incur in respect of *venues*. It does not limit the society’s other costs, such as administration costs or the costs of buying the machines. A society must provide certain items necessary to operate the gaming machines at a venue:

- gaming machines and bases
- the associated cabling
- gaming machine stools.

These costs are not limited or excluded by the *Gazette* Notice. They are “*society administration*” rather than “*venue*” costs.

### **4. Limits on venue costs**

#### **Limits A, B, and C (the maximum amount a society can pay per venue)**

The *Gazette* Notice specifies three types of venue cost and sets a separate limit for each type. The total of the three limits creates, in effect, the maximum that a society can pay per venue per week. This limit depends on the number of machines and the number of hours that the gaming machines operate each week. Limits A to C exclude GST.

The limits for the three types of cost are:

- Limit A - \$0.60 per gaming machine per hour of gaming machine operation for **hourly operating costs**
- Limit B - \$75 per gaming machine per week for **weekly operating costs**
- Limit C - \$800 per venue per week for **venue operating costs**

A breakdown of the costs that can be paid in the three categories is outlined in this Reference Paper.

The limits are the maximum amounts a society can pay.

- All hourly operating costs must be less than or equal to Limit A
- All weekly operating costs must be less than or equal to Limit B
- All venue operating costs must be less than or equal to Limit C
- The total venue payment must be less than or equal to Limit A + Limit B + Limit C

Any payment made above any of these limits is a clear breach of the *Gazette* Notice.

**Example:** A society operates at a venue that operates gaming machines for 120 hours a week and has 18 machines.

The society may pay up to a maximum of:

- $120 \times 18 \times \$0.60 = \$1,296$  per week in hourly operating costs, including any management fee\* (Limit A)

The same society may pay up to a maximum of:

- $18 \times \$75 = \$1,350$  per week in weekly operating costs, including any management fee\* (Limit B)

and may pay up to a maximum of:

- \$800 per week in venue operating costs, including any management fee\* (Limit C).

So in total, the society may pay no more than:

- $\$1,296 + \$1,350 + \$800 = \mathbf{\$3,446}$  per week for that venue.

\*Each limit includes an optional management fee of not more than 25% of the total cost of the goods and services provided. The total cost (goods/services + fee) must be within the limit.

**Example.** If labour costs within Limit A are \$950 a week, and gaming machine electricity costs are \$50 a week, making a total of \$1,000 a week, then the maximum fee that the society can pay the venue operator for providing those particular services is \$250 a week (25% of \$1,000). The total payment of \$1,250 (labour + electricity + fee) must be less than or equal to Limit A.

It is important to remember that venue operators will need to be able to prove the costs they claim, and societies must be able to justify the particular payments they make. The costs must have supporting documentation as required by regulation 5 of the Gambling (Class 4 Net Proceeds) Regulations 2004. Even payments that are within the limits must be:

- actual, reasonable and necessary; and
- minimised.

#### **Limit D (the maximum amount of a society's income that it can pay)**

There is a fourth limit (Limit D) – 16% of gaming machine profits (as defined in section 104 of the Gambling Act 2003, but excluding GST) in any twelve-month period.

Limit D took effect from 1 December 2005. It applies to all venue payments made in any 12-month period (e.g. 1 January 2010 to 31 December 2010, 1 February 2010 to 31 January 2011, and so on).

Any payment made above this limit will be a clear breach of the *Gazette* Notice.

**Example.** If a society had GST exclusive gambling turnover less prizes of \$10 million for the period 1 December 2005 to 30 November 2006, then the society could pay no more than \$10 million x 16% = \$1.6 million in GST exclusive venue costs to all its venues.

## **5. What venue costs are societies allowed to pay?**

The *Gazette* Notice lists the different categories of venue costs that may be incurred by a society operating gaming machines. If a cost does not fit under a category listed in the *Gazette* Notice, it cannot be paid.

The Secretary has issued a venue costs schedule for use by all societies. A standardised schedule ensures consistency between class 4 societies and venues. It also provides a basis for the Department to collect data from which the effectiveness of the *Gazette* Notice can be analysed.

### **Factors relevant to all Limits**

#### Wage Rates

At each venue there will be different venue staff who are responsible for different tasks associated with managing the gambling operation. Each of these staff may be paid at differing rates depending on seniority. The venue costs schedule has space for reflecting the wage rates of up to four staff members. If there are more than four wage rates at a particular venue, the rates of people with similar duties may be averaged. This should be explained in the “workspace” section of the venue costs schedule.

#### *Owner/Operator Wage Rates*

Some venues are run by owner operators who are not paid a standard wage. If the owner/operator is conducting tasks in relation to the gambling operation, a wage rate will need to be set for the purpose of the venue cost schedule. This rate can be affected by regional differences and should be set using external survey information. For example, in setting the rate a society may take into account benchmarks such as the HANZ salary survey or other external source such as the National Employers Wage and Salary Survey. The rate should not be set according to the drawings an owner takes from the business.

#### Additional Wage Costs

The cost to a venue operator of employing an individual is not only the wage paid but also includes additional costs as a result of employees’ legal rights. This includes costs employers incur from the provision of holiday pay, statutory holiday pay (for the days the venue is open), the ACC employer's levy, sick leave, bereavement leave and any Kiwisaver contributions. These costs represent a percentage increase in the cost of employment but will differ from venue to venue (e.g. not all employees will have Kiwisaver accounts). For this reason the Department has not set an expected percentage. Societies should explain the calculation used in the workspace section of the venue costs schedule.

The Holidays Act provides for up to three days bereavement leave for each bereavement. Due to the random nature of such events, it is considered reasonable to factor in one day per year in the calculation.

### Gambling Area Percentage

This percentage is used to calculate the proportion of many of the wider venue level costs which can be attributed to the gambling operation. For example, it is used for calculating the rental/lease contribution to venue costs or a proportion of premises insurance. This percentage is calculated on the proportion of the gambling area to the rest of the physical premises.

### **What goes in each category and what do these costs represent?**

**Limit A - Hourly Operating Costs:** These are costs that vary according to hours of gaming machine operation<sup>1</sup> and gaming machine numbers. The following three categories of costs can be included:

(i) **Labour costs**

- Hopper Refills
- Cancel Credit Payments
- Malfunctions/Equipment Fault
- Resolving Player Disputes
- Payment of Jackpot Prizes
- GM Customer Service
- Shift Changes
- Administering Harm Prevention and Minimisation Policies
- Supervision of the Gambling Area

(ii) **Electricity** for:

- operating gaming machines
- costs of heating and lighting of gambling space

(iii) **Management fees** (max 25% of (i) + (ii)).

### Labour Costs – General Comment

The time for completing various labour tasks will differ from venue to venue. The Department recognises that these costs also differ from week to week depending on the nature of the gambling operation. As such, the labour costs claimed will not always be accurate for any given week. However, the Department expects societies and venues to be able to estimate the timeframes as an average.

The Department does not expect societies and venues to undertake time and motion studies to establish these figures. To do so would be costly and impractical. However, the Department expects societies and venues to be able to use their experience to estimate these timeframes. In addition, the results of a Colmar Brunton survey and a Departmental survey on labour task timeframes are available on the Department's website as a resource for estimating and establishing claims.

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<sup>1</sup> The Gazette Notice refers to the hours of gaming machine operation. These are the hours the gaming machines are operating; not the hours the venue is open. It can include up to 2 hours per day outside of the hours the gambling area is open, if the gaming machines are operating (i.e. as part of the start-up/close-down process)

The Department will question timeframes that appear excessive.

#### Hopper Refills

This category includes the time staff spend completing a “Cancel Credit, Short Pays and Refills Report”. The number of hopper refills that occur at a particular venue will depend on the intensity and nature of gaming machine play. While many hopper refills may occur during the Start-up/Close-down process, this is included as a standalone category under Limit A. The Department can access event data through EMS for each hopper refill.

#### Cancel Credit Payments

This category includes the time staff spend completing a “Cancel Credit, Short Pays and Refills Report”. The number of cancel credits that occur at a particular venue will depend on the intensity and nature of gaming machine play. The Department can access event data through EMS for each cancel credit.

#### Malfunctions/Equipment Fault

There are various types of malfunctions/equipment faults that are fixed at the venue level. These include coin jams, hopper jams, note acceptor jams and note acceptor faults. All of these faults ‘lock up’ the gaming machine and require attendant action. These faults, as minor events, generally do not require the completion of an equipment fault report but take staff time to initially diagnose and then remedy. The requirement to complete equipment fault reports where necessary is included under this category. The Department can access event data through EMS for all faults.

Other faults requiring gaming machine technicians are not included under this heading. The costs of service providers to fix/investigate faults are society administration costs and the time taken at the venue level to organise a ‘fix’ for such faults is met under the “Liaison” category.

#### Resolving Player Disputes

From time to time there will be a player dispute with respect to class 4 gambling. This category includes the time staff spend completing a “Player Dispute” form if the dispute cannot be easily resolved.

#### Payment of Jackpot Prizes

This category only applies to non-downloadable jackpot wins as staff action is required to pay the prize. This category includes the time staff spend completing “Daily Jackpot Cancel Credit Report”. The Department can access event data through EMS for all jackpot wins.

#### GM Customer Service

This category covers bar based activities such as EFTPOS transactions, coin changes, note changes and inter-float transactions that result from gaming machine customer interaction.

Coin changes are the result of a patron bringing coins to the bar either at the end of a session or during the session of play. The coins are then converted into notes. This category includes the bagging and weighing of coins collected.

EFTPOS transactions relate to cash withdrawals for gaming machine play while note changes are the provision of change for \$50 and \$100 notes into denominations suitable for gaming machine play.

Inter-float transactions take place when a float runs short of either notes or coins as EFTPOS transactions and note and coin changes take place during the day. This may require staff to

obtain notes and/or coins from other floats. These inter-float transactions need to be recorded for the purposes of cash balancing.

The number of customer service interactions that occur at a particular venue will depend on the intensity and nature of gaming machine play. Under this category, the society and venue need to estimate the total timeframes for these tasks.

#### Shift Changes

At some venues, when shift changes occur between one duty manager and another, a short cash reconciliation is completed with the floats being signed off. This relates to the cash for both the main business and the gaming machine operation but can only be claimed for the gaming machine operation.

Some venues with experienced staff will not have this activity as part of the usual business operation. If it does not occur, it cannot be claimed.

#### Supervision of the Gambling Area

This type of supervision is a staff presence in the gambling room for the primary purpose of monitoring the patrons for the purpose of harm prevention and minimisation.

It is a common factor of many class 4 venue harm minimisation policies that staff are required to do a “sweep” of the gambling area every 15 minutes. This enables staff to maintain an awareness of who is in the gambling area (including any excluded patrons) and, consequentially, how long someone has been in the gambling area.

#### Administering Harm Prevention and Minimisation Policies

This category is distinct from supervision. Venue staff have obligations under the Gambling Act to apply its policy for identifying problem gamblers, provide information to people reasonably considered to have a gambling problem, process exclusions and self-exclusion requests, and deal with excluded patrons.

In discharging these responsibilities, venues maintain exclusion registers and also often have incident registers whereby information is kept on the gambling behaviour of patrons (e.g. session length and expenditure of regulars). This category covers the costs associated with maintaining records and interacting with patrons.

#### Electricity

This category includes the electricity costs associated with operating gaming machines including jackpots, site controllers, any venue management systems, lighting etc. It is acceptable to claim this amount as a percentage of the overall venue bill based on the percentage of the gambling area to the rest of the venue. Alternatively, it is acceptable for societies to calculate the cost on the basis of the actual power usage of the gaming machines and associated equipment.

**Limit B - Weekly Operating Costs:** These are costs that vary according to gaming machine numbers but are not affected by hours of gaming machine operation. Only the following five categories of costs can be included:

#### (iv) **Labour costs**

- Start-up/Close-down of Gambling Operation
- Completing the Gaming Machine Analysis Report
- Liaison with Third Parties

- (v) **Rent or lease**
- (vi) **Insurance**
- (vii) **Interest on Float**
- (viii) **Management fees** for (iv)-(vii) (max 25% of (iv) + (v) + (vi) + (vii) + (viii)).

#### Start-up/Close-down of Gambling Operation

This is a daily activity at venues which requires a series of tasks to be undertaken. As this series of tasks occur together and can occur before or after a gaming day, they are reflected on the venue costs schedule as one single amount. The start-up and close-down processes involve the following actions:

- Securing cash in the safe
- Clear cashboxes
- Completing cash clearance details reports
- Accessing cash from the safe
- Printing reports from EMS and any venue management software (i.e. jackpot turnover reports, cash clearance reports, meter readings etc)
- Checking recorded transactions from the previous day, including cancelled credits, hopper refills, jackpots and EFTPOS receipts
- Counting cash
- Reconciling the cash float (required once a week under the game rules)
- Recording float transactions (often on spreadsheets)
- Ensuring float contains sufficient mix of coins and notes
- Preparing cash for banking
- Completing the Daily Jackpot Turnover Report for those venues with non-downloadable jackpots
- Investigating any discrepancies
- Processing any adjustments
- Turning on machines and clearing errors
- Printing and filing reports
- Sending reports to the society

#### Gaming Machine Analysis

Game rules require venues to conduct a GMA for every gaming machine at least 12 times per annum. This process requires comprehensive meter readings on all the venue's gaming machines. While this process is typically conducted on a monthly basis, it should be reflected in the venue costs schedule as an averaged weekly cost.

#### Liaison

This category recognises that venue staff will often need to liaise with a variety of people as part of the management of the gambling operation. Staff will need, from time to time, to have contact with different organisations such as societies, Intralot New Zealand (EMS Help Desk), gaming machine service providers and the Department.

This category is designed to capture those interactions that occur from time to time. The level of interaction will not be the same every week but this category should be reflected as an average weekly amount.

#### Rent/Lease Payments for Hosting Gaming Machines

This payment covers the lease/rental and rates costs associated with the provision of the gambling area. This cost is calculated on the proportion of the gambling area to the rest of the physical premises.

In addition, a portion of the building insurance and body corporate fees can also be included to the extent that these costs are demonstrated in the relevant leasing/rental documentation as long

as there is no double dipping. This means that if the rent, as set in the lease agreement, already includes rates, building insurance or body corporate costs, such items cannot be counted again as an additional item in the rental paid by a society.

If a venue leases car parking spaces separate to the main lease of the premises, a proportion of that cost can be paid. This portion is calculated on the same percentage basis that is applied to the gambling area.

If a venue is held freehold, a society can still pay the venue operator an equivalent rent based on the portion of the premises that relates to class 4 gambling. This amount needs to be justified. To determine this amount, the society can choose to obtain an independent market valuation of the rental value of the square footage of the venue. The cost of the market valuation would be considered a society administration cost.

If there is not a dedicated gambling area for the hosting of gaming machines (e.g. the gaming machines are hosted in a general bar area), a proportion of the rental/lease costs can still be paid. The Department considers it reasonable to apportion 2.5 square meters per gaming machine to cover the situation where gaming machines are operated in a general public area.

The use of other parts of a venue by gaming machine patrons cannot be claimed as a rental/lease cost. Class 4 gambling is ancillary to the main use or primary purpose of any venue. Many class 4 patrons also enjoy the use of wider venue facilities as part of that venue's primary activity.

#### Insurance

A class 4 venue holds the proceeds from gaming machines on trust for the licence holder. While the proceeds are in the control of the venue, the venue operator is liable for any loss. The venue operator has the same responsibility for safeguarding the property of a society (e.g. gaming machines) which it holds and operates on its behalf.

Any insurance taken out by the venue to cover any potential loss of gaming machine proceeds can be claimed. If gambling equipment is covered by a general contents policy, a portion of that policy as it relates to the value of the gambling equipment can be claimed. A portion of the insurance on the premises may also be claimed.

When a society holds insurance for its gambling equipment, that cost cannot be claimed twice. The cost incurred directly by a society for insurance is covered by the *Gazette* Notice and must be reflected. However, that amount cannot form part of the actual payment to a venue.

The Department understands that many class 4 venues are covered by a HANZ hotel insurance package delivered by Crombie & Lockwood. While the extent of the coverage may be beyond the scope of the above, due to the inability to accurately split out the policy contents, the Department will accept this package in its totality.

#### Interest on Float

All venues are required to provide a suitable float for the efficient management of the gambling operation. The interest cost on that float is a venue cost.

The interest claimed on the float will differ if the venue has debt. If the venue has debt, in lieu of repaying some of that debt, the interest rate charged for that debt may be substituted. If the venue has no debt, a reasonable long term deposit rate may be claimed.

**Limit C - Venue Operating Costs:** These are costs that are caused only by the presence of gaming machines at the venue. The number of gaming machines and the hours of operation at the venue do not influence these particular costs. Only the following four categories of costs can be included:

(ix) **Labour costs**

- Banking Gaming Machine Proceeds
- Cleaning
- Staff Training Time

(x) **Security Costs**

(xi) **Enhancements, Developments and Maintenance**

(xii) **Management fees** for (ix)-(xi) (max 25% of (ix) + (x) + (xi)).

Banking

Banking practices differ between venues. A venue may have contractors that come and collect the gaming machine proceeds, or venue staff who bank it directly. Gaming machine proceeds may be banked daily or weekly depending on the venue's practice. All methods of banking involve labour tasks. The costs associated with those labour tasks or contractors can be reflected in the venue costs schedule.

Preparation of banking is part of the start up process where cash representing the gaming machine proceeds for the previous day's operation is identified and separated from float cash. This cost cannot be claimed again. Where security firms are banking both gambling and non-gambling proceeds, only a portion of the cost should be claimed.

Cleaning

This category is for the costs associated with cleaning the gambling area outside of opening hours. This may include a portion of the costs associated with venue staff or third party contractors cleaning the venue. There is provision for both, as appropriate, in the venue costs schedule.

During the day there is cleaning of the gambling area that occurs in the form of collecting bottles, glasses, cups, and other rubbish. This occurs during those times where staff are supervising the gambling area or conducting other gambling related tasks. These activities are not included under this category as the labour cost cannot be claimed twice. In addition, this form of cleaning relates to customers enjoying the primary activity of the venue so is not related to the provision of the gambling operation.

Training

This category allows venues to claim the costs associated with staff participation in formal training. Throughout the year, venue staff will receive harm prevention and minimisation training, ideally refresher harm minimisation training and, if new staff, training in how to complete tasks in a class 4 gambling operation.

The direct costs of training provided by a third party are a "society administration cost". However, there is a cost to the venue operator in terms of the time staff spend receiving that training. A society needs to calculate the time staff will spend throughout a year in receiving training. This figure can then be expressed as an average weekly cost.

Security costs

A proportion of any general security associated with a venue can be claimed under this Limit. For example, if a venue has a monitored alarm, the portion which relates to the gambling area may be claimed.

Some venues also have security staff in the venue or on the external door at differing times of the week or security in the evenings after closing. If the security presence is not a direct result of class 4 gambling, only a portion of this cost can be claimed.

It is noted that security on a door as a means to negate an access licence condition is not a reasonable and necessary cost.

### Developments, Enhancements and Maintenance

Prior to the *Gazette* Notice, capital costs had not been part of the limits on venue payments. They are now included in the limits so that the rules apply equally to all societies and venues.

Limit C provides for “developments and/or enhancements and/or maintenance” of the venue. The premise is that improvements to the “gambling space” can occur at a venue (to the extent any cost is actual, reasonable and necessary) and be paid for by the society as a legitimate venue cost. That is, a society can agree with a venue that a particular environment (i.e. a clean, comfortable and safe environment) is necessary for a gambling operation and can provide for enhancements to the “gambling space”.

However, note that the test under the Act as to the whether these costs are necessary has a high threshold. The Gambling Commission has stated that these costs are possible if “the state of the venue were such that the need for remedial work compromised the conduct of class 4 gambling”. In the Commission’s view, this expenditure “is likely to be rare indeed”.

**NOTE:** For convenience, the term “**gambling space**” is used in this document to mean;

- a room in a venue solely occupied by gaming machines (i.e. a gaming room), or
- that part of a venue that is occupied by gaming machines, and the area immediately adjacent to the gaming machines.

It is *not* necessarily the same as the “gambling area” defined in the Gambling Act.

Developments, enhancements and maintenance include any item that is part of the chattels, decoration or fitting of the gambling space that is related to the conduct of gambling.

### **Examples:**

- Paint for the gambling space
- Carpet for the gambling space
- Lighting in the gambling space
- Ventilation systems for a gaming room only

The rationale under Limit C is that these improvements would not have been necessary but for the gambling operation. As such, it is appropriate that these costs not be borne by the venue operator by being reflected under Limit C.

These costs are distinct from equipment for the conduct of class 4 gambling. Such equipment is not part of developing, enhancing or maintaining a venue; it is part of setting up the fundamental infrastructure for class 4 gambling to occur. For example, venue management systems, coin scales, EMS cabling, computers for accessing EMS reports (if the venue did not already have a computer) are directly related and fundamental to the conduct of gambling but are not “developments or enhancements”. These chattels are society administration costs. They do not improve the gambling space, but allow gambling to occur in the first instance.

CCTV has in the past been categorised as an enhancement to the venue. However, CCTV is now seen as a universal part of gambling operations and can be categorised as a society administration cost and is not subject to limit C. However, only the cost of CCTV as it relates to the gambling operation can be incurred.

Air conditioners are considered to be an enhancement to the gambling space. The need for an air conditioner will differ from venue to venue and are therefore not fundamental to all gambling operations.

The *Gazette* Notice places limits on costs associated with the gambling operation at the venue. It is silent on who owns a chattel or who pays for it; the *Gazette* Notice simply states what a venue cost is and what limits are associated with those costs. If a society pays for a cost upfront, it does not mean that that cost is not, or should not be, subject to the limits. It does not mean it is a “society administration cost” to the exclusion of the *Gazette* Notice. If it falls under the notion of a development or enhancement of the venue, it is a “venue cost”.

The Gambling Commission has stated that if a society elects to incur development and enhancement expenditure directly, “it is expected to be able to make a convincing case...for the society rather than the venue owner to incur the cost in each case”. The Commission went on to say that as “a general principle, using net proceeds which should be promptly distributed for authorised purposes to funds improvements to the property of others will not be easy to justify or reconcile with the statutory obligations of societies to the community”. As such, the Department expects that venue operators will, in the main, incur these costs in the first instance.

Whether a society or a venue pays directly for capital costs under Limit C, these costs must be appropriately reflected in the venue cost schedule. If a society pays directly for such costs (i.e. enhancements, developments and maintenance), it must ensure the venue is not being paid for those enhancements (i.e. double dipping). The cost of these enhancements, while already paid upfront, will be reflected in the venue costs schedule in nominal terms.

For example, if a society decides that capital enhancements of \$5000 are required for a venue, then the following two options are available:

- If the venue were to pay for this enhancement, the society would reimburse the venue over a series of weeks (e.g. at \$50 per week); or
- The society decides to pay for this enhancement; the society would add a nominal entry to the venue costs schedule (e.g. \$50 per week). That is, if the Limit C costs without the enhancements were to total \$450 per week, the venue costs schedule would reflect a \$500 cost per week while only \$450 could actually be paid.

If a development of enhancement cost paid directly by a society were to take the Limit C calculation over the \$800 limit, the amount actually paid to the venue operator must be \$800 less the weekly amount reflecting the cost already incurred by the society. Because the cost has already been incurred, it must be the first amount reflected under a Limit C calculation. Any other method would result in a breach of Limit C. As above, the *Gazette* Notice places limits on costs associated with the gambling operation irrespective of who incurs the cost in the first instance. It is not simply a mechanism to recoup the costs incurred directly by venue operators.

The venue cost schedule makes provision for reflecting costs incurred directly by the class 4 society (i.e. not incurred by the venue operator in the first instance). Any costs that have been directly incurred by a class 4 society are subtracted from the total costs incurred in order to

calculate the maximum that can be paid to a venue operator. Costs incurred directly by a class 4 society form part of the limit D calculation.

In the case of capital costs being paid upfront by the society, the payments must be structured over the period remaining on the venue agreement (on a new venue agreement this would be a maximum of 3 years) or within time frames specified for that asset in the IRD ‘depreciation schedules’.

Subject to considerations of who owns the chattel, if a venue were to change societies while there was an outstanding enhancement cost not fully accounted for, this liability must be transferred to the incoming society as appropriate. If a venue ceases a gambling operation, the liability must otherwise be settled with any outstanding amounts reimbursed. The venue costs schedule includes provision for the date the cost was incurred. This will help societies assess any outstanding liability if a venue were to transfer.

Capital improvements to the **whole venue** cannot be funded by a separate capital reimbursement under limit C. If the rent on the property increases as a result of improvements such as air conditioning, this will be reflected in an adjustment to the “rental” portion of venue payments under limit B, not a capital reimbursement under limit C. For example, if air conditioning is installed throughout the whole venue, the venue operator cannot claim all or part of the air conditioning system as a separate reimbursement in the venue payment. The cost of air conditioning in the gambling space is already covered by the rental on property.

Limit C also provides for the maintenance of the gambling space. This category includes the costs associated with maintaining any developments or enhancements (e.g. air conditioners) and the gambling space itself (e.g. fixing a faulty door).

Capital improvements to areas other than the gambling space cannot be funded by venue payments. For example, societies cannot pay venues for the maintenance of toilets.

If a capital cost is not captured by the *Gazette* Notice and reflected in the venue costs schedule, or is not part of the “fundamental infrastructure” for a gambling operation and therefore a “society administration cost”, it is not a necessary cost and cannot be incurred.

## 6. What is excluded from venue costs?

There are also a number of costs that societies *cannot* legitimately pay as venue expenses. These exclusions include:

- A society can only pay **hourly operating costs**, **weekly operating costs**, and **venue operating costs**. No other costs can be paid. For instance, for Limit A (hourly operating costs) the only costs that can be paid are:
  - (i) labour costs for the performance of tasks required for the hourly operation of machines;
  - (ii) electricity costs;
  - (ii) fees for managing the provision of the above goods and services (no more than 25% of hourly labour costs + gaming machine electricity costs).

The society cannot include any cost under a particular category that is not listed under that category. For example, a society cannot pay a venue operator for labour or electricity costs that are not related to the operation of the machines.

- A society cannot pay any costs associated with the operation of the venue unless they are specified in the itemised list of costs in the venue costs schedule.
- A society cannot pay two different parties for provision of the same good or service. For example, if a third party contractor performs meter readings for a venue, the society can only pay the contractor for that service. It cannot pay the venue operator for meter readings as well.

Please check Frequently Asked Questions for further information on venue costs. The FAQ document can be found at: [www.dia.govt.nz](http://www.dia.govt.nz)