

CONSULTATION ON GAMBLING (CLASS 4 NET PROCEEDS) REGULATIONS 2004

Who is this consultation document for?

This consultation document is for:

- Gaming machine societies.
- Potential applicants for grants from non-casino gaming machine proceeds.
- Other groups with an interest in the gaming machine sector.

What is this consultation document about?

This document invites your comments about:

- A proposal to change the Gambling (Class 4 Net Proceeds) Regulations 2004 so that non-casino gaming machine societies can make multi-year grants. Currently, the Regulations prohibit this.
- A proposal to make a few additional regulations, as safeguards to ensure that allowing multi-year grants does not undermine the current accessibility, transparency and accountability objectives of the Gambling Act 2003, and does not lead to gaming machine societies inadvertently breaching the statutory provisions.
- A small amendment to close a loophole that appears to permit societies simply to accumulate money in certain circumstances.
- Any other changes to the Regulations you think might be needed.

Sending us submissions

Please send your submission by 17 December 2010.

Please note that all submissions may be made publicly available. Even if you request confidentiality, we might have to release your submission at a later date if someone makes a request under the Official Information Act 1982.

Your submission can be sent in the following ways:

E-mail: alister.chang@dia.govt.nz

Post:	Department of Internal Affairs P O Box 805 WELLINGTON (Attn: Gambling Policy)	Delivery:	Department of Internal Affairs (Reception) 46 Waring Taylor Street WELLINGTON (Attn: Gambling Policy)
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If you have any questions, feel free to contact Alister Chang or Alan Collins on 0800 257 887 (and press 6) or e-mail alan.collins@dia.govt.nz.

Current situation

Two objectives of the **Gambling Act 2003** are to limit the opportunities for crime and dishonesty associated with gambling, and to ensure that money from gambling benefits the community.

Under the Act, societies that operate non-casino gaming machines (pokies) typically either distribute their profits by way of grants (in the case of most societies that operate machines in commercial venues like pubs), or apply their profits to their own purposes (in the case of societies that are clubs operating machines in their own clubrooms). A few societies do both.

In all cases, profits must be spent on authorised (i.e. community) purposes.

The Act includes provisions to ensure that the community knows what money is available, how to apply, who makes the decisions, and who received grants and why.

The **Gambling (Class 4 Net Proceeds) Regulations 2004**, which were made under the Act, support these objectives.

Regulation 10 requires those societies that mainly distribute their profits by way of grants to distribute a minimum amount (at least 37.12% of GST-exclusive gross proceeds) each financial year.

Regulation 11 requires them to distribute most of this amount quarterly, and the remainder within 3 months after the end of the financial year in which it was earned. However, if a society both distributes most of its profits by way of grants and spends some of its profits on its own community purposes, there is no time limit for it to spend that residual amount on its own community purposes.

Regulation 16(g) prohibits them from promising to make grants out of money that they do not yet have available (i.e. making multi-year grants is prohibited).

Nature and size of the problem

Some societies and potential grant applicants consider that the prohibition on multi-year grants impedes their ability to plan long-term. They suggest that it is difficult to fund or undertake long-term, strategic projects that confer significant community benefit (such as building sports facilities, and running periodic sports events and arts festivals), because there is no certainty of grant funding after the first year.

The purpose of this consultation document is to find out about the size and nature of the problem, how effective you think it would be to repeal the regulation prohibiting multi-year grants, and any alternative ways to deal with the problem.

The other problem is a loophole in the current law. A society that both distributes most of its profits by way of grants and spends some of its profits on its own community purposes can simply accumulate the money intended for its own community purposes in its bank account, aggravating the risk of misappropriation.

Policy objectives

The policy objective of the proposal is to allow gaming machine societies a little more flexibility to fund long-term strategic projects that confer significant community benefit.

The aim is to achieve this without undermining the accessibility, transparency and accountability objectives of the Gambling Act, and without societies inadvertently breaching other provisions of the Act.

The other policy objective is to close a loophole that appears to permit societies simply to accumulate money in certain circumstances.

Approaches, and associated costs, benefits and risks

The status quo (an approach that requires no change to the regulations)

Under the status quo, there would be no change to the regulations. The Department of Internal Affairs would continue to provide societies with advice on how they can support long-term projects within the existing regulations.

Although multi-year grants are currently formally prohibited, a society could already make a large grant for a long-term project on the basis of a single application as long as it had the money to do so in a single quarter (and several large societies do). It would also need to put in place accountability measures to ensure that the recipient spends the grant as intended over the entire life of the project.

Alternatively, a society could decide, in the course of the annual review of its grant-making policies required by the Act, to give preference to some types of applications over others. For example, it could adopt a policy that the first 10% of its available funds in each quarter will be made available to qualifying grant applications relating to the 2012 Olympics. This can be done without formally promising to make a grant, which would be in breach of regulation 16(g).

The Department of Internal Affairs has previously advised societies that these two approaches are open to them. If the status quo were maintained, the Department would simply continue advising societies that these two approaches are legally permissible. This approach involves almost no cost and could be implemented immediately. However, some societies and potential grant recipients do not consider that this approach goes far enough. We want to know what you think.

Regulatory approach

Under the regulatory approach, regulation 16(g) would be repealed, and additional safeguards introduced by regulation to support the objectives of the Act.

If multi-year grants were to be permitted by repealing regulation 16(g), we think it would be desirable to make several other regulations at the same time. Most of these additional regulations are proposed as safeguards to support the Act's accessibility, transparency and accountability objectives, and to ensure that societies do not fall foul of section 53 or section 109 of the Act.

Section 53 provides that a gaming machine society's licence is to be limited to a maximum term of 18 months (and in practice, licences are issued for terms of one

year). Therefore, a society cannot be certain that it will have a licence when the next instalment of a multi-year grant is to be paid. Trustees and directors of gaming machine societies need to ensure that societies do not enter into fully-binding commitments that they may not be able to meet.

In addition, section 109 requires a society that mainly distributes its profits by way of grants to, at least annually, review the criteria, methods, systems and policies it uses to consider applications. A society could not comply with this requirement if fully-binding multi-year grants it had made meant that it could not change its policies as a result of its annual review.

For these reasons, the following additional regulations are proposed as safeguards if regulation 16(g) is repealed:

- a requirement that future instalments of a multi-year grant be conditional on the gaming machine society still having a licence, funds being available, and the grant still being lawful
- a requirement that each instalment of a multi-year grant be re-confirmed before payment, allowing gaming machine societies to withdraw if, for example, their trustees or grant-making policies change
- a requirement that grant applicants provide evidence that previous instalments were spent for the purposes for which they were provided
- a limit on the total amount that may be promised in multi-year grants (for example, to 10% of any gaming machine society's available proceeds, which, for a large gaming machine society could be around \$4 million annually, and for a smaller society could be around \$100,000), and on the amount that may be promised to any one applicant by way of a multi-year grant (for example, to \$3 million annually)
- a limit on the term of any multi-year grant (for example, to a maximum of 4 years to fit in with the typical cycle for large sports events)
- a requirement that gaming machine societies disclose multi-year grants in their publicity about available funds and grants made, and in the annual reports required by the Act
- a requirement that gaming machine societies that mainly distribute their profits by way of grants publish their annual reports on the websites that they are already required to maintain.

One additional regulation is proposed to close a loophole. It is proposed that regulation 11 be amended so that if a society both distributes most of its profits by way of grants and spends some of its profits on its own community purposes, it will be required to put all of that money to community purposes in the timeframe that is currently specified for distribution by way of grants. Currently, there is no timeframe for the application of any residual proceeds. Therefore, these residual proceeds can accumulate in a society's bank account over long periods, aggravating the risk of misappropriation.

We think that the proposed changes to the regulations should achieve more certainty of funding over several years for some grant applicants and more flexibility for gaming machine societies. Repealing regulation 16(g) might, however, also make it a little more difficult for the Department of Internal Affairs to perform its compliance functions, because recipients of multi-year grants will have an incentive to lobby for non-compliant societies to retain their licences at least for the term of those grants. We anticipate that compliance costs for gaming machine societies will be unchanged.

Implementation

The status quo

Under the status quo, the Department would simply continue advising societies that they can already make large grants from a single quarter's funds if they wish to do so, and that there are already mechanisms within the regulatory regime that permit societies to indicate a preference for some types of grant application over others.

Regulatory approach

The regulatory approach would take several months. If this approach is pursued, it is anticipated that the changes to the Regulations would come into effect on 1 July 2011.

We would like to know what you think about, and any information you can tell us about:

- Whether you think the two existing alternative approaches work, and if not, why not.
(The two existing alternatives are that: (a) a gaming machine society makes a large grant for a long-term project from the funds it has available in a single quarter and puts in place accountability measures to ensure that the recipient spends the grant as intended over the entire life of the project; or (b) a gaming machine society decides in the course of its annual review of its grant-making policies, to give preference to some types of grant applications over others, and publicises its policy.)
- The costs and benefits of the proposal to repeal regulation 16(g) so that gaming machine societies may make multi-year grants, and whether you support the proposal.
- Any advantages and/or disadvantages for your organisation if the proposal goes ahead.
- Whether the proposed changes would allow your organisation to do anything that it cannot do under existing arrangements. For example, as a large sports organisation, would you be able to more effectively plan for an international competition in a few years time? Or, as a large gaming machine society, would you be able to more effectively fund the various projects that fall within your authorised purposes?
- The costs and benefits of each of the recommended additional safeguards if the proposal goes ahead, and whether you support any or all of those recommended safeguards.
- Whether you think there are any other safeguards that should be included, and the costs and benefits of those safeguards.
- The costs and benefits of an amendment to regulation 11 to set a time limit for societies to spend any residual profits that they intend applying to their own authorised purposes, and whether you support the proposal.
(The proposal is that a society that both distributes most of its profits by way of grants and spends its residual profits on its own community purposes, be required to spend most of those residual profits on a quarterly basis, and the remainder within 3 months of the end of the financial year in which they were earned.)
- Whether you think that any or all of the proposals in this document will impose any additional compliance costs.

- Whether you think any other changes to the Gambling (Class 4 Net Proceeds) Regulations 2004 are desirable and if so, why.
- Any other issues raised by this proposal.