Office of the Minister of Internal Affairs

Cabinet Economic Growth and Infrastructure Committee

Design of a new Class 4 gambling venue payments regime

Proposal

1. This paper seeks approval for a new class 4 gambling venue payments regime.

Executive summary

1. The current regime for paying venues for hosting class 4 gaming machines is complex and costly to administer for both the class 4 gambling sector and the regulator.
2. As a result of the changes introduced by the Gambling Amendment Act (No 2) 2015, the current regime will no longer be supported by law from 21 October 2016. Cabinet has agreed in principle to the development of a commission-based venue payment regime [EGI Min (14) 7/16].
3. I propose that the new class 4 gambling venue payments regime be based on commission, calculated at a weekly maximum of 1.28 per cent of turnover, and not exceeding 16 per cent of gross machine proceeds (GMP), excluding GST, on an annual basis per venue.[[1]](#footnote-1)
4. The proposed regime has been developed through a collaborative process with a working group of members of the class 4 gambling sector. The working group will champion the proposed regime to the wider sector, which will significantly assist with implementation.
5. The simplicity of the proposed regime means significantly lower compliance costs for the sector. The Department of Internal Affairs (the Department), as regulator of the gambling sector, will also have reduced monitoring and auditing costs.
6. The proposed regime will not reduce the amount of funding available for community grants.
7. I accord a high priority to the prevention and minimisation of gambling harm. A commission-based regime may create an incentive for venue staff not to intervene when problem gambling is suspected or occurring. This may be mitigated by increased resources for venues to adequately monitor gambling behaviour and better manage the gaming environment. The Department will monitor the new regime for unintended behaviours and consequences.
8. Data provided by the working group shows that 55 per cent of venues will be better off under the new regime. Those worse off may be able to recoup losses by savings achieved through reduced operating hours and staff costs, the decommissioning of redundant machines and reduced administration costs.
9. On 21 March 2016, Cabinet approved a review of the class 4 sector [EGI-16-Min-0031]. Through the review process, I will be talking to the sector about how to ensure sustainable funding to communities. This could include reviewing other ways to reduce venue costs. The review could therefore result in further changes in the sector.

Background

1. Gambling in New Zealand is regulated by the Gambling Act 2003 (Gambling Act). The purposes of the Gambling Act include:
	1. ensuring that money from gambling benefits the community;
	2. controlling the growth of gambling; and
	3. preventing and minimising harm caused by gambling.
2. There are six classes of gambling described in the Gambling Act. Class 4 gambling is gambling involving the operation of gaming machines in pubs, hotels and clubs, also known as ‘pokies’. It does not include gaming machines in casinos.
3. As at 31 December 2015, there were 966 commercial venues that had venue agreements with 38 not-for-profit corporate societies.

Current venue payment regime

1. Venues that host gaming machines receive a weekly payment to reimburse them for their ‘actual, reasonable and necessary’ costs, up to certain limits with an overall cap for each society of 16 per cent of GMP, excluding GST, across all its venues.[[2]](#footnote-2)
2. The rationale for the current payment model is that venues should only be paid for costs that are ‘actual, reasonable and necessary’ in order to support the purpose of the Gambling Act to ensure that gambling money benefits the community.
3. I am not aware of any other jurisdictions that have regulated venue payments for gaming machines in the context of needing to ensure that maximum amounts from those machines are returned to community purposes.
4. Societies and venues must generate a ‘venue cost schedule’ which details the costs associated with the operation of class 4 gambling within a particular venue. New venue cost schedules must be submitted to the Department at least every three years, whenever a venue enters an agreement with a different society, or if any of the costs on the schedule change.
5. The current regime is complex and costly to administer for both the Department and the sector because it takes considerable resources to generate, reconcile, monitor and audit the venue cost schedules required to claim costs.

Relevant Cabinet Decisions

1. In 2012, the Minister of Internal Affairs set priorities for the reform of the class 4 sector – including “simplifying compliance for societies, venues and the Department as well as reducing associated costs”. Simplifying compliance was considered important because reduced compliance costs would maximise the amount of money available to be returned to the community.
2. On 16 September 2013, Cabinet agreed to release a public consultation document with options for regulatory reform of the class 4 sector [CAB Min (13) 32/8]. This included options to reduce compliance costs arising from venue payments.
3. On 16 April 2014, Cabinet agreed in principle to the development of a commission-based venue payment scheme [EGI Min (14) 7/16].
4. Section 30(b) of the Act originally excluded a commission-based approach to venue payments. However, under the Gambling Amendment Act (No 2) 2015, this has been replaced with a section that allows for commission payments or other types of payments to venue operators, so long as those are specified in the new regulations.
5. This section, along with other enabling provisions for a new venue payments regime, comes into effect automatically on 21 October 2016, unless brought into force earlier by an Order in Council.
6. The current regime for venue payments would no longer be supported by law from 21 October 2016.

The class 4 sector is being reviewed

1. On 21 March 2016, Cabinet approved a review of the class 4 sector [EGI-16-Min-0031]. Through the review process, I will be talking to the sector about how to ensure sustainable funding to communities. This could include reviewing other ways to reduce venue costs. The review could therefore result in further changes in the sector.

Sector working group

1. From September 2015 to March 2016 the Department convened a sector working group to co-design the new venue payments regime. The working group included members from corporate societies, venue operators, and problem gambling service providers.

Comment

1. The Department and the working group considered the following:
	1. whether the new regime should be commission-based; and
	2. if the new regime is commission-based:
		1. how the commission should be calculated (using turnover or GMP); and
		2. if the commission should be set as a flat rate, tiered or capped.

Working group preference

1. The working group’s views were mixed. Industry members of the working group agreed that the new venue payments regime should be commission-based, calculated on a percentage of turnover, and based on a flat rate (not tiered or capped). They preferred a commission-based system calculated on turnover because they consider this to be the most simple and accurate way of compensating venues for having machines and undertaking the work required to meet the associated regulatory obligations.
2. The problem gambling service providers within the working group were strongly opposed to any commission-based payment scheme because they considered:
* it gives venues opportunities, should they wish, to maximise returns for their economic advantage, fundamentally changing the focus from raising money for community purposes and disincentivising good host responsibility; and
* host responsibility could become a ‘tick box’ exercise to meet minimum statutory requirements in an environment where the prevention and minimisation of gambling harm practices are already less than satisfactory (although practices do vary across the sector).
1. The working group considered what the percentage of turnover should be. Modelling of the previous five years of data shows that a percentage rate of 1.28 per cent is approximately equivalent to 16 per cent of GMP excluding GST – which is the current total funding pool available for venue costs.

Preferred option

1. My preferred option is for the new venue payments regime to be based on commission, calculated as no more than 1.28 per cent of turnover on a weekly basis, and not exceeding an annual limit of 16 per cent of GMP excluding GST, per venue.[[3]](#footnote-3)
2. The performance of venues is key to the effectiveness of the gambling system and enabling a fair and transparent model for paying venues for costs is of critical importance.
3. A commission-based system significantly reduces compliance costs. It moves the policy settings from input control to an outcomes focus and recognises that venue operators are in the best position to ensure their business and regulatory obligations are met.
4. The main effect of a commission-based system is distributional. Some venues will receive more than they did before and some will receive less than they currently do.
5. Data provided by the working group shows that for one large society, 55 per cent of their venues will be better off under a commission regime based on turnover, compared to the status quo (as shown in Table 1). Venues are categorised from A+ to E based on their annual GMP.

Table 1: Impact of new venue payments regime for one society (using 1.28 per cent of turnover)

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Category** | **Annual GMP** | **Total** | **Better** | **Worse** | **% Better Off** | **% Worse Off** |
| A+ | $2m plus | 4 | 4 | 0 | 100.0 % | 0.0 % |
| A | $1m-$2m | 29 | 28 | 1 | 96.6 % | 3.4 % |
| B | $500k-$1m | 27 | 15 | 12 | 55.6 % | 44.4 % |
| C | $200k-$500k | 37 | 16 | 21 | 43.2 % | 56.8 % |
| D | $100k-$200k | 19 | 8 | 11 | 42.1 % | 57.9 % |
| E | <$100k | 24 | 6 | 18 | 25.0 % | 75.0 % |
| **Total**  |  | **140** | **77** | **63** | **55.0 %** | **45.0 %** |

1. For those venues expected to be worse off, they may be able to offset lower weekly payments by rationalising their operating hours to maximise profitability, as described in the venue examples below. Both examples assume that hours could be reduced at non-peak times, typically the beginning or end of the day, with minimum impact on turnover and GMP.

**Example A**

Under the new regime, venue A will receive $17,000 per annum less. Their operation is currently open seven days a week for 98 hours as per their venue cost schedule (some days open to 3am). This venue may be able to reduce hours (and therefore costs) to offset the loss in venue payment received assuming no change in their gaming turnover. Assuming an hourly cost of $32.60 (made up from labour costs of the person doing most of the gaming tasks on the venue cost schedule and electricity) this would require a reduction of approximately 10 hours a week to offset their loss in venue payments (saving $16,952 p.a).

**Example B**

Venue B is a very seasonal rural venue with 18 machines. Their current operating hours are 89.5 per week. Under the new regime they will lose $27,000 per annum. Options for this venue would be to reduce to 12 machines creating an electricity saving of $31 per week and, using the Duty Manager pay rate at $18.54/hr, a reduction of approximately 26 hours per week would see this venue save $26,678 p.a., thereby recouping losses.

1. The working group considers that the proposed regime will work well for smaller, provincial venues because, in addition to making decisions about opening hours and numbers of machines to suit their business, they will be paid in a fair and transparent manner. Currently smaller venues may be being paid less than they are entitled to because societies balance payments across their portfolio to keep within Limit D (16 per cent of GMP, excluding GST). Under the new regime, payments will be per venue, and not spread across a society’s portfolio of venues.
2. Societies will also make savings based on reductions in machine numbers (comprising servicing, monitoring, conversion, interest and depreciation costs) and reductions associated with the simplification of monitoring procedures, audit requirements and other compliance matters. The working group estimated these savings as $2.96 million and $675,000 respectively across the sector.

Prevention and minimisation of gambling harm

1. The main policy question with respect to the prevention and minimisation of gambling harm is whether the new regime introduces an incentive for class 4 venue operators to diminish or ignore their harm minimisation responsibilities.
2. I acknowledge that, under a commission-based regime, venues may be incentivised to maximise income relative to costs. This may lead to a risk of some venues being less likely to intervene when problem gambling is suspected or occurring.
3. Counter-balancing this is the assumption that, if venues are fairly and adequately paid, they will have sufficient resources to increase supervision and management of the gaming environment and therefore become more effective in preventing and minimising gambling harm. At the moment, venues are limited in the costs they can recover for problem gambling-related activities.
4. Either or both scenarios may occur with the introduction of the new regime; it is difficult to predict the behaviour of venue operators in advance.
5. I accord a high priority to the prevention and minimisation of gambling harm. Very clear harm prevention and minimisation obligations are placed on venues by the Gambling Act 2003 (ss 308-312A) and the Department is required to ensure that these obligations are met.

Future implications

1. In the future, if the reasonable costs of running a venue reduce, consideration may be given to whether the total funding pool available for venue payments could reduce.

Implementation

1. Payment amounts will be calculated on a weekly basis; however societies may make payments weekly, fortnightly, monthly or some other period as determined between the society and the venue. The Department provides weekly Electronic Monitoring System reports to societies which set outs the turnover for each venue.
2. A key feature of the new regime is ensuring that venue payments are kept within the 16 per cent GMP annual limit at each society’s financial year balance date (noting that these vary across societies). Processes will be in place to deal with part year payments, e.g. where a venue switches society part way through a financial year.
3. The Department, in conjunction with the working group, will prepare guidance materials for the sector on how to manage venue payments to avoid breaching the 16 per cent GMP annual limit, including those societies whose initial balance date falls before a full year’s payments have been made. These will be communicated to the sector prior to enactment.
4. The Department will audit societies at the end of their financial year. Any societies that have breached the limit at the end of their financial year for each of their venues, or part thereof (in the case of a venue switching between societies part way through the year, for example) will be subject to the Department’s current compliance and enforcement approach.
5. The working group will champion the proposed regime to the wider sector, which will significantly assist with implementation, e.g. the Hospitality Industry Association (who has been on the working group) will help member venues to transition to the new regime.

Consultation

1. The Treasury, Ministries of Health, Business, Innovation and Employment, Ministries for Pacific Peoples, Women, and Culture and Heritage, Te Puni Kōkiri, and Sport New Zealand have been consulted on this paper. The Department of the Prime Minister and Cabinet has been informed.

Financial implications

1. There are no financial implications arising from this paper.

Legislative implications

1. If Cabinet agrees, drafting instructions for regulations will be issued to prescribe the payments regime under section 371(1)(dd) of the Gambling Act 2003.
2. I intend taking a paper to the Cabinet Legislation Committee in August 2016 with the new regulations coming into force on 3 October 2016 (to align with the majority of societies’ annual balance date). This will require an Order in Council to bring the remaining provisions in the Gambling Amendment Act (No 2) 2015 into effect prior to 21 October 2016.
3. I am also seeking authorisation to make any minor or technical changes to the regulations to support the policy intention.

Regulatory impact analysis

1. Regulatory impact analysis requirements apply to the proposal in this paper as new regulations are proposed. A Regulatory Impact Statement (RIS) has been prepared and is attached to this paper. The Department’s RIS panel has reviewed the RIS prepared by the Department and found that it meets the quality assurance criteria.

Human rights, disability perspective and gender implications

1. There are no human rights, disability or gender implications for this proposal.

Publicity

1. If Cabinet agrees, I intend to issue a media release to publicise the new venue payments regime.
2. I also intend to proactively publish this Cabinet paper and related Cabinet decisions online, subject to consideration of any deletions that would be justified if the information had been requested under the Official Information Act 1982.

Recommendations

1. The Minister of Internal Affairs recommends that the Committee:
2. **note** that, on 16 April 2014, Cabinet agreed in principle to the development of a commission-based venue payments regime [EGI Min (14) 7/16];
3. **note** that the current venue payments regime will no longer be supported by law from 21 October 2016, which is the date the remaining provisions of the Gambling Amendment Act (No 2) 2015 would come into force unless brought in earlier by Order in Council;
4. **agree** that the new class 4 gambling venue payments regime be:
	1. commission-based; and
	2. calculated as a percentage of up to 1.28 per cent of weekly turnover, not exceeding 16 per cent of GMP (excluding GST) on an annual basis, per venue;
5. **invite** the Minister of Internal Affairs to issue drafting instructions to the Parliamentary Counsel Office to give effect to the new class 4 gambling venue payments regime as stated in recommendation 3 above;
6. **agree** that the new regime will take effect on 3 October 2016;
7. **invite** the Minister of Internal Affairs to issue drafting instructions to the Parliamentary Counsel Office for a Commencement Order to bring the remaining provisions of the Gambling Amendment Act (No 2) 2015 into effect on 3 October 2016;
8. **agree** that an exposure draft of the regulations to be released for external consultation;
9. **authorise** the Minister of Internal Affairs to make minor and technical design changes to the regulations to support the policy intention;
10. **note** I intend to issue a media release to publicise the new class 4 gambling venue payments regime; and
11. **note** I intend to proactively publish this Cabinet paper and related Cabinet decisions online, subject to consideration of any deletions that would be justified if the information had been requested under the Official Information Act 1982.

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| Hon Peter Dunne |
| Minister of Internal Affairs |
|  | / |  | / | 2016 |  |

1. GMP is turnover minus total prizes paid. [↑](#footnote-ref-1)
2. The limits are: A (hourly operating costs; capped at $0.60 per gaming machine per hour); B (weekly operating costs; capped at $75 per machine per week); C (venue operating costs; capped at $800 per week); and D (overall venue costs for each society; capped at 16% of GMP in any 12-month period). [↑](#footnote-ref-2)
3. The regulation making powers requires a limit based on GMP to be set on venue payments. [↑](#footnote-ref-3)