# Regulatory impact statement: Casino venue licence renewal fee regulations

# Agency disclosure statement

This Regulatory Impact Statement (RIS) has been prepared by the Department of Internal Affairs (the Department).

It provides an analysis of options for regulations to set a fee for casino venue licence renewal applications (renewal fee).

The analysis in this RIS has been undertaken in reliance on the expected costs to process a casino venue licence renewal application provided by the Gambling Commission.

***Assumptions***

The key assumptions in this RIS are:

* The level of complexity in processing a casino venue licence renewal application is not unusually high.
* The level of human resources required to process an application has been allocated on the basis of a standard level of complexity.
* Two public hearings will be conducted by the Gambling Commission as part of the application process. This is the statutory minimum and assumes that an application is not overly contentious.
* There is sufficient availability at the average seasonal cost of other resources, such as travel, accomodation and venue hire.

All figures contained in this document are GST inclusive, unless specified otherwise.

***Accuracy of costings***

The Gambling Commission expects that the cost of processing casino venue licence renewal applications will be the same for all applications. The Department has relied on this expectation in undertaking the analysis in this RIS.

Only one venue licence renewal application (Christchurch Casino) will initially be subject to the renewal fee in this RIS. The Department intends to review the renewal fee for accuracy as part of the next gambling fees review in 2018/19. This review will determine whether the renewal fee is accurate or needs to be amended based on the actual cost of processing Christchurch Casino’s renewal application.

***Time constraints***

On 16 May 2017, the Minister of Internal Affairs received a letter from the Gambling Commission informing the Minister that Christchurch Casino’s venue licence was due for renewal in November 2019, and that no fee for the renewal application had been set.

The Department began work on regulations to set a renewal fee immediately. However, the timeframe for getting regulations in place is very tight. The regulations need to be completed before the General Election on 23 September 2017 in order to provide for Christchurch Casino’s renewal application, which is anticipated to be made on, or close to, the earliest possible date of 4 November 2017.

Because of this, the options for setting the renewal fee have been developed using a streamlined process that departs somewhat from the standard regulation-making process. Key departures are:

* shorter, more targeted consultation periods, by the Department and the Gambling Commission;
* seeking Cabinet approval only twice, instead of the normal three Cabinet processes; and
* seeking an exemption to the 28-day rule.

***Targeted consultation***

A short, targeted period of consultation on the proposed regulations setting the renewal fee was undertaken by the Department. This was justified on the basis that consultation was solely on the discrete point of the amount and method of setting the renewal fee and would not affect the decision to grant a renewal by the Gambling Commission in any way.

Taking into account the assumptions and time constraints outlined, the Department considers that decision-makers can rely on the analysis in this RIS.

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/ / 2017

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# Executive summary

1. The Gambling Act 2003 (the Act) allows for the renewal of existing casino venue licences, issued under the Casino Control Act 1990 (repealed). The first application for a casino venue licence renewal under the Act may be made from 4 November 2017. The Act enables regulations to be set charging fees for the Gambling Commission’s costs of undertaking the application process.
2. The Gambling (Fees) Regulations 2015 do not contain a fee for the renewal of casino venue licences.
3. This Regulatory Impact Statement (RIS) sets out the details of the assessment by the Department of Internal Affairs (the Department) of options for making regulations to set the casino venue licence renewal fee (renewal fee).
4. The Department has undertaken its assessment with reference to the objectives of the renewal fee. These are to:
   1. fully meet the Commission’s reasonable and necessary costs in the processing of casino venue licence renewal applications;
   2. ensure that costs are accurately and transparently accounted for in the setting of the renewal fee; and
   3. ensure that the full cost is paid by the applicant and does not fall on the taxpayer.
5. Based on the analysis in this document we recommend that the renewal fee is set as follows:
   1. An initial fixed fee is $151,000[[1]](#footnote-1) that is set in regulations;
   2. The provision for an adjustment to the fee, if necessary, upon completion of the application process. The adjustment will allow for either:
   3. repayment of excess funds to the applicant where the fixed fee paid exceeds the actual costs incurred; or
   4. an additional payment by the applicant, capped at $49,000, if the actual costs incurred are greater than the fee already paid.
   5. A cap of $200,000 for the total fee.

## Status quo and problem definition

## Background

1. Gambling regulatory functions undertaken by the Department of Internal Affairs (the Department) and the Gambling Commission (the Commission) are funded through fees paid by gambling operators. The Commission is responsible for considering all licensing decisions related to casinos and operates independently of the Department in performing its functions under the Gambling Act 2003 (the Act).
2. Under the Act, no new casino venue licences can be issued. However, existing licence holders retain their licences granted under the now repealed Casino Control Act 1990. A casino venue licence expires 25 years after the date the casino commenced operating and, at the expiry of this period, may be renewed under the Act for a further 15 years.[[2]](#footnote-2)
3. The Act sets out the requirements for the casino venue licence renewal application process. This requires:
   1. a casino impact report to be tabled, prepared by an approved person, independent of the applicant;[[3]](#footnote-3)
   2. that the casino impact report shows the expected social and economic effects locally, regionally, and on New Zealand generally of the continued operation of the casino;[[4]](#footnote-4) and
   3. community participation in the application process through submissions, public hearings and public realease of the casino impact report.[[5]](#footnote-5)
4. These provisions ensure that communities have a say in the licensing of casinos in their area and that social and economic impacts are considered.
5. There are six casinos in New Zealand that currently hold venue licences, four of which are operated by SKYCITY Entertainment Group Limited. The venue licence expiry dates for each casino are:

Christchurch Casino November 2019

Dunedin Casino October 2024

SKYCITY Wharf Casino Queenstown September 2024

SKYCITY Queenstown December 2025

SKYCITY Hamilton September 2027

SKYCITY Auckland June 2048

## Problem definition

1. The current Gambling (Fees) Regulations 2015 set out annual casino fees and fees for venue licence applications, but not for renewal of casino venue licences.
2. When a casino venue licence is nearing expiry, an application for renewal can be made to the Commission between 12 and 24 months prior to the date of expiry. The first casino venue licence able to be renewed under the Act is due for expiry in November 2019.
3. The earliest possible date for a renewal application to be made is 4 November 2017 (for Christchurch Casino), therefore there is a need for regulations setting the renewal fee, or the method of assessing the fee, to be in place before then.

## Statutory authority

1. The authority for the making of regulations to cover the costs of the Commission in performing its statutory functions comes from section 370 of the Act. This provides that regulations may be made prescribing fees or charges payable to enable the recovery of the direct or indirect costs of the Department, the Commission or the Police in:
2. publishing and informing people about the Act;
3. administering the Act;
4. enforcing and monitoring compliance with the Act; and
5. doing anything else authorised or required by the Act.
6. The object and intent of charging fees for a casino venue licence renewal application (renewal fee) is to recover the full costs of the Commission’s services in processing the renewal application. If an application is not successful, the renewal fee will not be refunded.

## Objectives and criteria

1. The key objectives of the renewal fee are to:
   1. fully meet the Commission’s reasonable and necessary costs in the processing of casino venue licence renewal applications;
   2. ensure that costs are accurately and transparently accounted for in the setting of the renewal fee; and
   3. ensure that the full cost is paid by the applicant.
2. The objectives of the renewal fee stem from a number of sources. As noted above, section 370 of the Act provides the statutory authority for the renewal fee on a cost recovery basis. As per Treasury instructions,[[6]](#footnote-6) the Department operates a memorandum account to administer all cost recovered gambling fees. Section 228 of the Act requires the Department to service the Commission to perform its functions. As such, the Department’s memorandum account for administering gambling fees includes the costs of the Commission to consider casino venue licence renewal applications.
3. The Department’s under-recovery of costs to regulate the gambling sector generally is reflected by a deficit in the Department’s memorandum account. To prevent this deficit from growing significantly, full cost recovery of the application process is necessary.
4. It is also not appropriate for the burden of regulatory costs to fall on the taxpayer. The Treasury *Guidelines for Setting Charges* *in the Public Sector* (Treasury guidelines) note that those that give rise to costs should be responsible for covering them and that a key aim of fees is to reduce the reliance on funding from tax. [[7]](#footnote-7)
5. The Department has assessed each of the options identified for setting the renewal fee against criteria developed with reference to the principles set out in the Treasury guidelines[[8]](#footnote-8) and the Office of the Auditor-General Good Practice Guide[[9]](#footnote-9). The criteria are:
   1. **Effectiveness**: the option achieves the desired outcomes and addresses the problem identified;
   2. **Efficiency**: the option is practicable and provides certainty to the applicant and the Commission as to the amount and when and how the renewal fee is charged;
   3. **Equity**: the option fairly reflects the actual costs of the application process for a particular applicant; and
   4. **Transparency**: the option is based on detailed and reasonable data estimating the cost of processing casino venue licence renewal applications.
6. A summary of the Department’s analysis of the options against the above criteria is attached as **Appendix A**.
7. The Department considers that the renewal fee should be recovered on the actual costs of each application, rather than on an average or aggregate basis across applicants. The renewal fee only applies to a very small and specialised class of applicants. As such an average or aggregate fee is highly unlikely to have the same smoothing effect as a fee that applies to a large number of applicants.

## Options and impact analysis

1. The Department has developed two options for setting the renewal fee, as set out in **Table 1**.
2. All figures are GST inclusive, except where specified otherwise.

**Table 1: options for setting the casino venue licence renewal fee**

|  |  |  |
| --- | --- | --- |
| Option | Fee ($) | Description |
| 1. **Fixed fee** | 151,000 upon application | * One-off, fixed fee payable upon application. * Based upon the estimated costs for a set number of days to complete the application process. * The fixed fee will be set in regulations and will apply to all applications. |
| 1. **Two-tiered fee (fixed fee + capped variable adjustment) -** *preferred* | 151,000 upon application  and  adjustment after completion  \*The total fee will be capped at 200,000 | * Initial fixed fee payable upon application. This will be set at the same rate as in option 1 and is based upon the same estimates and cost data. * The fixed fee will be set in regulations and will apply to all applications. * An adjustment to the fee will be made, if necessary, upon completion of the application process. The adjustment will allow for either: * repayment of excess funds to the applicant where the fixed fee paid exceeds the actual costs incurred; or * an additional payment by the applicant, capped at $49,000, if the actual costs incurred are greater than the fee already paid\*. |

1. The primary difference between the two options is that option one is a preset fee, and option two is an actual cost recovery fee. The renewal fee in this RIS will only apply to one renewal application, as the renewal fee will be reviewed in the next gambling fees review in 2018/19. This will present an oportunity to review the renewal fee and reconsider the options based on the experience of applying the renewal fee to the first renewal application.
2. Both options are consistent with the statutory authority for charging fees in section 370 of the Act.
3. A detailed breakdown of the cost components by activity and the daily rates for each activity is attached as **Appendix B**.

## Option one: fixed fee

1. Option one proposes a fixed fee of $151,000, payable upon application. The fee is based on estimates by the Commission of the total cost of processing a renewal application.
2. A fixed fee is a recognised and common approach to setting a renewal fee. It is consistent with the approach taken elsewhere in the Gambling (Fees) Regulations 2015.
3. The benefit of option one is that it offers the greatest certainty to applicants as to the fee payable in advance of making an application. It is relatively simple to set and can be implemented effectively and efficiently. Because the renewal fee will only apply to a very small and specific pool of stakeholders, the risk of a disproportionate impact that can sometimes occur with a flat fee is limited.
4. There is a risk in setting a fixed fee in circumstances where the Commission has yet to consider a renewal application. The Department has based its detailed costings upon specific information provided by the Commission relating to the expected work involved in the application process. However, because there is no precedent for the Department to base its estimates on, there could be a discrepancy between the renewal fee paid and the actual costs of the Commission to complete the application process.
5. Based on the analysis above, this option is not preferred.

## Option two: two-tier fee structure: fixed fee + variable adjustment

1. Option two proposes an initial fixed fee of $151,000, with an additional variable adjustment based on the actual cost of the Commission to process a renewal application. The total fee would be capped at $200,000.
2. This option is the most equitable, both for applicants and the public generally. It recognises that the cost of processing applications could vary depending on the specific application and ensures that the full cost is paid by the applicant.
3. The purpose of full cost recovery is to recover only those costs incurred that are considered reasonable and necessary in order to meet the policy objective. While a fixed fee provides more certainty to the applicant, it does not necessarily protect against the over-recovery of costs or costs which may not be considered reasonable and necessary, for example in circumstances where an application is less complex to process than expected.
4. The provision for adjustment of the renewal fee where it differs from the initial fixed fee ensures against over or under-recovery of costs. The cap specifying the maximum amount over which the renewal fee must not exceed provides a degree of certainty to applicants as to the maximum amount they may be required to pay.
5. It is most likely that an adjustment would only apply to applications that are relatively more or less complex for the Commission to process. The level of complexity will directly affect the level of resources required. The full range of costs for the expected work involved to process applications that are of an unexpected complexity is from $151,000 to $200,000. This range has been based on detailed information provided to the Department by the Commission.
6. The Commission has advised that it considers the cost of most, if not all, applications will be at the lower end of the range. An application may incur costs at the top of the range, though this would be a rare case. The Department has relied on the Commission’s expertise and considers it reasonable to cap the adjustment for additional payment at $49,000, therefore setting the maximum possible renewal fee at $200,000.
7. This will enable more effective cost recovery and will be fully transparent as to actual costs incurred. However, because the total renewal fee is relatively uncertain until the application process is complete, this option could be less efficient than option one in terms of charging and collecting the total renewal fee.
8. How the adjustment will be assessed and the final fee communicated to applicants has not been determined at this stage. It is likely that this part of the process will incur additional costs for the Commission which will be passed on to applicants as part of the adjusted final fee. For this reason, the Department has proposed to set the initial fixed fee at $151,000 rather $150,295 as estimated by the Commission (**Appendix B**). It is expected that any additional costs related to determining and communicating any adjustment would be absorbed by the rounding up of the initial fixed fee.
9. The Department has assessed the disadvantages noted above and considers that they are trade-offs that are necessary in order to fulfill the statutory and policy intent of full cost recovery.
10. This is the preferred option.

## Consultation

1. Section 372 of the Act contains specific consultation requirements that must be met before regulations are made. These include:
   1. giving adequate and appropriate notice of intention to make the regulations;
   2. giving reasonable opportunity for interested persons to make submissions; and
   3. adequate and appropriate consideration of submissions.
2. The Department undertook consultation from 22-30 June 2017 on the proposed regulations in two ways: specific and targeted consultation with casino operators and other key stakeholders; and general public consultation through the Department’s website.
3. A truncated priod of consultation was undertaken for two reasons. First, consultation was on the discrete point of the amount and method of setting the renewal fee. It is of an administrative nature solely for the purpose of processing a renewal application and will not affect the decision of the Commission to grant a renewal in any way. Secondly, the proposed renewal fee does not require compliance on the part of the public and only affects a specific and limited group of stakeholders.
4. Based on these factors, the Department considered that a short, targeted consultation was justified and met the requirements under section 372 of the Act.

**Targeted consultation**

1. The Department consulted with the following casino operators that are affected by the proposed renewal fee and regulations:
   1. Christchurch Casinos Limited;
   2. Dunedin Casinos Limited; and
   3. SKYCITY Entertainment Group.[[10]](#footnote-10)
2. The Department also consulted with the Problem Gambling Foundation and the Salvation Army. Both are key stakeholders in terms of the impacts of harm from gambling.
3. Submissions were received from all of the targeted stakeholders. The majority agreed that option two presents the fairest possible option for setting the renewal fee. Submitters cited as reasons for their preference the certainty provided by specifying the maximum total renewal fee, and the provision for adjustment. In particular, Christchurch Casinos Limited noted that the provision for adjustment enables a level of scalability in the renewal fee to reflect the varying shapes and sizes of casinos in New Zealand.
4. Submitters agreed that the application process is costly and time consuming. They considered that the level of the renewal fee proposed under option two ($151,000, with a cap of $200,000) is reasonable, and that the Act provides for the recovery of this cost.
5. Dunedin Casinos Limited was the only submitter in favour of option one. It considered that the greater certainty and simplicity provided by option one was better suited for a casino of its relatively smaller size.
6. The Department understands Dunedin Casinos Limited’s position and has considered its comments. Overall however, the Department considers that option two is appropriate as it offers a more tailored approach that is flexible to the characteristics of all casinos and applications.

**Public consultation**

1. The Department made the proposal available for public consultation and invited submissions on its website.
2. No public submissions were received by the Department.

## Conclusions and recommendations

1. The Department has developed two options for the making of regulations setting the casino venue licence renewal fee.
2. Option one is a fixed fee of $151,000 that is set by regulation. The total fee will be due and payable when a renewal application is made.
3. Option two is a two-tiered fee, made up of an initial fixed fee of the same amount and nature as in option one. There will also be provision for an adjustment where the initial fixed fee does not meet, or exceeds, the actual costs of processing the application. The adjustment will be payable by the applicant, or refunded by the Commission, upon completion of the application process. Any adjustment upwards will be at a maximum of $49,000 and the total fee payable will be capped at $200,000.
4. Based on the analysis in this document, the Department recommends that regulations are made setting the renewal fee under **option two**.

## Implementation plan

1. If Ministers agree to the preferred policy option, this would be given effect by amendment to the Gambling (Fees) Regulations 2015. The regulations would subsequently be introduced to enable recovery of the Commission’s costs in processing casino venue licence renewal applications.

## Monitoring, evaluation, and review

1. The Department will monitor the effect of the renewal fee following its implementation. The Department’s intention is to review the renewal fee as part of its regular review of gambling fees. The next review is scheduled for 2018/19 and will include the renewal fee using the experience of applying the fee to the first renewal as a basis for review. This means that the renewal fee may change before other casino venue licences are due to expire.

1. Summary of analysis of options for regulations setting the casino venue licence renewal fee

**Table 2: analysis of options for setting the casino venue licence renewal fee**

| Options | Effective: the option achieves the desired outcomes and addresses the problem identified | Efficient: the option is practicable and provides certainty to the applicant and the Commission as to the amount and when and how the renewal fee is charged | Equitable: the option fairly reflects the actual costs of the application process for a particular applicant | Transparent: the option is based on detailed and reasonable data estimating the cost of processing casino venue licence renewal applications | Recommendation |
| --- | --- | --- | --- | --- | --- |
| 1. **Fixed Fee** | **✓** Meets the Commission’s costs to fulfil its statutory functions  **🗶**May not achieve full cost recovery – it is impossible to estimate in advance the exact cost  **🗶**If the fee is too low the additional cost will fall on the taxpayer | **✓**Simple to set and charge: full payment will accompany an application  **✓**Applicants know the exact amount to be paid when they make an application  **✓**The Commission only has to collect and account for the fee once | **🗶**Does not take into account differences between specific applicants and applications  **🗶**The same fee will be charged to all applicants regardless of whether some applications cost more to process than others | **✓**Fee is based on specific costing data and information to estimate the work and costs involved to process applications  **🗶**No application for renewal has been made under the Act before – there could be a discrepancy between the expected and actual work involved to process applications | Not preferred |
| 1. **Two-tiered fee (fixed fee + variable adjustment)** | **✓**Achieves full cost recovery and provides for safeguards against over or under recovery  **✓**Full cost is borne by the applicant  **🗶**Applicants may dispute the variable adjustment if the fee is adjusted upwards | **✓**Amount payable upon application is certain  **🗶**Whether applicants will be required to pay an additional fee is not known until completion  **🗶**Whether the Commission is required to refund an applicant is not known until completion | **✓**Recognises differences between specific applicants and applications  **✓**Each applicant only pays what their application costs | **✓**Fee is based on specific costing data and information to estimate the work and costs involved to process applications | **Preferred option** |

1. Detailed cost components

**Table 3: Estimated costs by activity and duration**

|  |  |  |  |
| --- | --- | --- | --- |
| Activity | Estimated duration (days) | Cost for total duration | Total estimated cost |
| **Pre-application** | | |  |
| Commissioners’ fees (Chief Gambling Commissioner and 4 Commissioners) | 1 |  | $2,650.00 |
| Legal expenses and advice |  |  | $3,750.00 |
| Chief Gambling Commissioner and Executive Director travel to meet local Council: | 1 |  |  |
| * Fees |  | $750.00 |  |
| * Travel related expenses |  | $1,400.00 | $2,150.00 |
|  | 2 |  | $8,550.00 |
| **Application** | | |  |
| External expert advisor on casino impact report (CIR) and renewal process | 12 |  | $18,000.00 |
|  | 12 |  | $18,000.00 |
| **Public consultation** | | |  |
| Advertising |  |  | $3,000.00 |
| Commissioners’ travel (Chief Gambling Commissioner and 4 Commissioners) | 6 |  |  |
| * Fees |  | $15,900.00 |  |
| * Travel related expenses |  | $13,775.00 | $29,675.00 |
| Legal Advisor in attendance | 3 |  |  |
| * Fees |  | $9,360.00 |  |
| * Travel related expenses |  | $1,790.00 | $11,150.00 |
| 1 Secretariat in attendance | 6 |  |  |
| * Fees |  | $3,000.00 |  |
| * Travel related expenses |  | $5,710.00 | $8,710.00 |
| Venue hire | 2 | $4,000.00 | $4,000.00 |
| Transcriptionist | 2 | $5,000.00 | $5,000.00 |
|  | 19 |  | $61,535.00 |
| **Decision and other** | | | |
| Additional legal advice | 8 |  | $24,960.00 |
| Commissioners’ decision (Chief Gambling Commissioner and 4 Commissioners) | 5 |  | $13,250.00 |
| Secretariat support fees (2 people) | 24 |  | $24,000.00 |
|  | 37 |  | $62,210.00 |
| **TOTAL** | **70** |  | **$150,295.00** |

**Table 4: Rate assumptions for estimated costs**

|  |  |
| --- | --- |
| Activity | Rate |
| Chief Gambling Commissioner fees (includes time processing application, meetings, etc) | $750.00 per day |
| Gambling Commissioners’ fees | $475.00 per day |
| Secretariat fees (time/overheads) | $500.00 per day |
| Legal fees | $3,120.00 per day |
| External expert fees | $1,500.00 per day |
| Transcriptionist | $2,500.00 per day (includes hours used, set up and down, finalisation of records) |
| Advertising | $3,000 total (average assumed) |
| Flights (return) | $500.00 per person (average assumed) |
| Travel related costs | $355.00 per day per person |
| Venue hire | $2,000.00 per day |

1. All amounts related to proposed fees in this RIS are GST inclusive. [↑](#footnote-ref-1)
2. This does not apply to SKYCITY Auckland Casino which has had its casino venue licence extended to 2048 under the New Zealand International Convention Centre Act 2013. [↑](#footnote-ref-2)
3. Gambling Act 2003, s 134(3) [↑](#footnote-ref-3)
4. Gambling Act 2003, s 134(3)(a) [↑](#footnote-ref-4)
5. Gambling Act 2003, s 135 [↑](#footnote-ref-5)
6. Treasury Instructions 2013. [↑](#footnote-ref-6)
7. *Guidelines for Setting Charges in the Public Sector*, The Treasury, April 2017. [↑](#footnote-ref-7)
8. Ibid. [↑](#footnote-ref-8)
9. *Charging Fees for Public Sector Goods and Services. Good Practice Guide*, Office of the Auditor-General, June 2008. [↑](#footnote-ref-9)
10. SKYCITY Entertainment Group operates four of the six casinos in New Zealand. [↑](#footnote-ref-10)