GOVERNMENT POSITION ON THE GAMBLING (GAMBLING HARM REDUCTION) AMENDMENT BILL

Proposal

1. The Commerce Committee is currently considering Te Ururoa Flavell’s Gambling (Gambling Harm Reduction) Amendment Bill (the Bill). This paper notes my priorities for improving the operation of Class 4 gambling, which align with some changes proposed by the Bill. The paper outlines two options for a Government position on the Bill and seeks Cabinet agreement to the preferred option.

Executive Summary

2. Under the Gambling Act 2003, Class 4 gambling (the use of gaming machines outside of casinos) is based on a community funding model. Corporate societies are licensed to operate gaming machines in clubs and pubs (venues) and distribute the proceeds to a non-commercial community purpose.

3. The National Party’s 2011 Pre-election Policy Statement foreshadowed a review of Class 4 gambling. The Government also agreed to support Te Ururoa Flavell’s Gambling (Gambling Harm Reduction) Amendment Bill (the Bill) to select committee stage. These factors have prompted me to identify my priorities for improving Class 4 gambling. These are to:

   - increase the proportion of proceeds that the community receives from Class 4 gambling;
   - simplify compliance for societies, venues and the Department of Internal Affairs (the Department) and reduce associated costs;
   - develop a way for gambling proceeds to be generally distributed in the region where they were generated; and
   - enhance protections for problem gamblers.

4. These priorities have provided the framework against which I have considered the proposals in the Bill, which would make significant changes to the Class 4 gambling sector. The Bill is currently being considered by the Commerce Committee, which received over 30,000 submissions on the Bill. The Committee is due to report back on the Bill by 29 March 2013.

5. Some of my priorities for Class 4 gambling align with the issues that the Bill seeks to address. I have therefore been working with the Māori Party to explore whether the Government could support any aspects of the Bill.

6. I seek agreement to a Government position on the Bill. One option is for the Government to not support the Bill. However, my preferred option is to continue to work with the Māori Party with a view to reaching mutually agreed changes to the proposals in the Bill. This would be within specific parameters set by Cabinet. Proposed parameters would be that:

   - the proposal to make territorial authorities, rather than gaming societies, responsible for distributing funds is not supported;
the proposals to extend the criteria for developing, and the effect of, territorial authorities’ Class 4 venue policies are not supported;

the principle of generally returning funds to the area where the gambling occurred is supported, but its current formulation would need to be refined to prevent unintended consequences and anomalies and provide for the continued support of regional and national community purposes; and

enabling harm minimisation technology to be introduced to gaming machines in the future is supported, provided the technology is cost effective and the enabling mechanism was consistent with the Act.

7. In addition, I seek Cabinet direction on the Bill’s proposal to remove racing from the definition of authorised purpose, so it is like any other community purpose. My preferred approach is to remove the specific reference to stake money in this definition. This would mean gaming machine proceeds could still be used for racing but not for racing stakes.

8. If agreement with the Māori Party was reached, the detail outlining the necessary amendments would be reflected in the Department’s report to the Committee on the Bill, which is expected to be delivered in early 2013. If no agreement was reached the Government would not support the Bill.

9. The paper also seeks Cabinet agreement that the Bill, if possible, introduces a new costs regime for societies to pay their venues, to reduce some of the compliance and regulatory burdens on the Department and the sector in this area.

10. It is also my intention to undertake further work in a range of areas to improve Class 4 gambling in order to progress my priorities and also in response to submitters’ views on the Bill. An additional issue relating to gambling and spot prizes in activities that have a community benefit, such as sports competitions, has also recently arisen that I wish to address. I will report back to Cabinet in due course on the outcome of this work.

Background

11. Under the Gambling Act 2003 (the Act) Class 4 (non-casino) gaming machines are operated by non-commercial corporate societies (societies), which are licensed by the Department.

12. These societies operate gaming machines in venues to raise money that is returned to the community. All gaming machine proceeds must be used for an “authorised purpose”, which is defined in the Act as a charitable or a non-commercial community purpose. This may include conducting racing activities.

13. Societies are broadly categorised as either club or non-club societies. Clubs (i.e. sports clubs, chartered clubs and Returned Services Associations) typically have machines in their own clubrooms and apply gambling proceeds to their own club purposes.

14. Non-club societies (i.e. not-for-profit companies and trusts) typically operate machines in commercial venues (pubs and bars) and enter into agreements with venue owners to host their gaming machines. Venues are prohibited from profiting from this activity.

15. As at 30 September 2012, of 361 licensed societies, 312 were clubs and 49 were non-club societies. The non-club societies owned 79.1 per cent (14,108) of the 17,827 gaming machines. About $845 million, net of prizes, was spent on
Class 4 gaming machines to the year ending 30 September 2012 with 86.6 per cent ($732 million) being expended on machines in commercial venues. In total, societies return approximately $300 million to authorised purposes annually.

16. Non-club societies must allocate at least 37.12 per cent of their (GST exclusive) gross proceeds (gambling turnover plus other income, less prizes) to authorised purposes and most do so in the form of grants to community groups.

17. The Act seeks to balance the potential harm from gambling against the benefits of using gaming machines as a community fundraising mechanism. Regulation of Class 4 gambling is an important aspect of a public health approach to preventing and minimising gambling-related harm. Examples of harm prevention measures established by regulation include limiting stakes and prizes and interrupting gaming machine play.

18. Growth in Class 4 venue and gaming machine numbers is restricted, because a statutory limit on the number of machines in new venues applies (a maximum of nine), and also because of the consenting role of territorial authorities. Territorial authority consent is required when a society wishes to increase the number of machines operating at an existing venue, or to operate at a new venue. Territorial authorities must develop, in consultation with their communities, Class 4 venue policies for their districts. Councils then consider consent applications against their Class 4 venue policies.

19. In July 2012, 55 out of 73 territorial authorities had some form of restriction on venues in their districts (caps on new venues, prohibition on new venues, or ‘sinking lid’ policies on existing gaming machine numbers).

**Priorities for improving Class 4 gambling**

20. The National Party’s 2011 Pre-election Policy Statement referred to reviewing the Gambling Act 2003, particularly in regard to Class 4 gambling, and considering change if strong evidence emerges that the Act is not working as intended. The Government also agreed to support the Bill to select committee stage. As a result of these commitments I have been considering what improvements could be made to the operation of Class 4 gambling. My key priorities for Class 4 gambling are to:

- increase the proportion of proceeds that the community receives from Class 4 gambling;
- simplify compliance for societies, venues and the Department and reduce associated costs;
- develop a way for gambling proceeds to be generally distributed in the region where they were generated; and
- enhance protections for problem gamblers.

21. These priorities have provided the framework against which I have considered the proposals in the Bill. Some of these priorities align with the issues that the Bill seeks to address. This is reflected in the options outlined below for the Government position on the Bill. I seek Cabinet agreement to the preferred option.

22. I have also noted submitters’ views on the Bill that I believe have identified a number of discrete issues that need to be addressed. These and other priorities require further streams of work. Some of these work streams may conclude that
changes to current regulations, or alternatively, relatively minor legislative changes, are needed.

23. The Gambling Amendment Bill (No 2) is currently in the House, which introduces some enhancements to improve the operability of the Act. My officials will advise me if the additional policy work requires the Gambling Amendment Bill (No 2) to be withdrawn and amendments incorporated in a new amendment bill.

Gambling (Gambling Harm Reduction) Amendment Bill

24. The Bill was referred to the Commerce Committee on 9 May 2012. The Committee received a very large number of submissions on the Bill (5,005 substantive submissions and 28,357 form submissions). The Committee’s report back on the Bill has been extended to 29 March 2013.

25. The Bill would make significant changes to Class 4 gambling. These are summarised in the table below, together with submitters’ views and whether the substance of the proposal supports the key priorities for Class 4 gambling.

Table 1: Summary of the proposals in the Bill, submitters’ views and whether the substance of the proposal supports the Minister’s key priorities

<table>
<thead>
<tr>
<th>Proposal</th>
<th>Submitters’ views</th>
<th>Supports Minister’s key priorities?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Proposal 1: Territorial authorities take over the distribution role from societies</td>
<td>Vast majority of comments were in opposition</td>
<td>No</td>
</tr>
<tr>
<td>Proposal 2: Territorial authorities would have to take into account additional criteria when developing their Class 4 venue policies Territorial authorities could also develop policies that remove existing venues</td>
<td>Mixed response for/against the additional criteria The majority of submissions opposed the proposal to allow venue policies to remove venues</td>
<td>No</td>
</tr>
<tr>
<td>Proposal 3: At least 80 per cent of proceeds distributed in the territorial authority district or the smallest local council ward/board area where proceeds were generated</td>
<td>Majority support for idea that proceeds should be used where they were generated</td>
<td>Yes, in principle</td>
</tr>
<tr>
<td>Proposal 4: The Department could require harm minimisation technologies like pre-commitment cards to be used (licence condition)</td>
<td>Slightly more submitters supported proposal than opposed</td>
<td>Yes, in principle</td>
</tr>
<tr>
<td>Proposal 5: Exclusion of racing from the definition of authorised purpose in the Act</td>
<td>Majority support for the proposal</td>
<td>Partially</td>
</tr>
</tbody>
</table>

Proposal 1: Territorial authorities take over distribution of Class 4 gambling proceeds

Overview of the Bill’s proposal and submitters’ views

26. The Bill would require territorial authorities to take over the distribution role from societies. Territorial authorities would be required to use council or local board committees to carry out this function, which would result in more than 80 local body distribution committees.
27. Many submissions commented on this aspect of the Bill and the vast majority of these were in opposition.

General comments on Proposal 1

28. I propose that the Government not support this proposal. The change would be contrary to the intent of the Government’s Better Local Government reform programme, which aims to focus local authorities on operating more efficiently and effectively by concentrating on their core roles.

29. Establishing skilled committees to distribute the large amounts of funding involved would require substantial investment. These may not be more efficient than the current societies. There would also be a conflict for territorial authorities because of their regulatory role in Class 4 gambling (through venue policies and consents for new venues). Territorial authorities can also apply for grant funding and having council committees distributing this funding would potentially create a conflict of interest.

Proposal 2: Criteria for, and effect of, territorial authorities’ Class 4 venue policies extended

Overview of the Bill’s proposal and submitters’ views

30. Territorial authorities must currently have regard to the social impact of gambling and consult their communities when adopting their Class 4 venue policies. Each territorial authority must complete a review of its venue policy every three years.

31. Under the Bill, territorial authorities would have to also take into account public sentiment about the extent and location of venues and the evidence of harm from gambling, when developing their venue policies. Territorial authorities could also develop policies that remove existing venues. These policies would trigger the expiry of specific venue licences after one year. Territorial authority consents for venues would be required on an ongoing basis.

32. Some submitters supported the addition of further criteria in relation to venue policies. Those opposed often thought the additional criteria were already covered in the existing test, “public sentiment” was too vague, and “evidence of harm” was seen as potentially costly for councils to research.

33. The majority of submissions opposed the proposal to allow venue policies to have the effect of removing venues. The most common reason was the flow-on reduction in funding to community groups.

General comments on Proposal 2

34. I propose that the Government does not support these changes. The proposed new criterion would not add materially to the current requirement. Consideration of the social impact of gambling incorporates an assessment of the negative social effects of Class 4 gambling. “Public sentiment” is not a good fit with the usual concept of consultation and a clear definition would be required for this criterion to be effectively applied and managed by councils.

35. This proposal would also be contrary to the intent of the Government’s Better Local Government reform programme. The relicensing and consenting regime would be costly for territorial authorities to implement and considerably increase their Class 4 workload. The Department’s work in the annual relicensing of venues would also be increased due to additional checking of territorial authority consents.
36. Further, requiring a three year territorial authority consenting process would be costly and disruptive for societies and venue operators, creating uncertainty, particularly around investment decisions. Potential appeals or judicial reviews of councils’ decisions by societies and/or venue operators would add further cost burdens on the sector and territorial authorities.

Proposal 3: Requiring the distribution of proceeds to the smallest electoral area where the gambling occurred

Overview of the Bill’s proposal and submitters’ views

37. The Bill would require societies to distribute at least 80 per cent of net proceeds to purposes in the same territorial authority district or the smallest local council ward, subdivision or community board area where proceeds were generated.

38. The majority of submitters that commented on this proposal stated that proceeds should be used where they were generated. However, many submitters were concerned that the area specified for distribution was too exact, and that funding to national and regional organisations could be affected.

General comments on Proposal 3

39. Societies can currently distribute their funds to authorised purposes anywhere in New Zealand. However, many societies state a preference for returning funds to the area where the gambling occurred.¹

40. This approach is consistent with the concept of balancing community benefit against harm from gambling that underpins the Act’s Class 4 gambling model. Venues are more often located in poorer socio-economic areas. Recent analysis showed that 52.4 per cent of Class 4 gaming machines were located in areas with an average deprivation decile of 8 to 10 (the most deprived areas).²

41. I propose that the Government support the broad proposal to generally return proceeds to the area where they were raised. However, the Bill’s formulation to achieve the balance between community benefit and gambling harm is too narrow. There may be unintended consequences and anomalies. The Bill needs amendment and further policy work would be required to identify the appropriate balance between national, regional and local benefits.

Proposal 4: Power to require harm minimisation devices in gaming machines as a licence condition

Overview of the Bill’s proposal and submitters’ views

42. Under the Bill, the Secretary for Internal Affairs would be given the power to require technologies like player-tracking devices or pre-commitment cards to be used, as a part of a society’s operator’s licence.

43. Slightly more submitters supported than opposed this proposal. Those in support often believed these devices would help gamblers control their gambling. Some were concerned about the devices being costly and reducing community funding. A common suggestion was that the results of international trials of the technology should be considered before adopting the technology in New Zealand.

¹ A recent survey by the Department showed that three-quarters (30 out of the 40 surveyed) of non-club societies have a policy to return funds to the community where the money was raised - Department of Internal Affairs, Desktop review of information available on non-club gaming society websites (2012) (not yet published).

General comments on Proposal 4

44. Pre-commitment involves technology that allows players to limit the amount of money or time spent gambling before they begin gambling. No specific cost/benefit analysis of pre-commitment or player tracking for Class 4 gambling has been undertaken in New Zealand.

45. The Australian Productivity Commission conducted an extensive inquiry into gambling and in 2010 reported that pre-commitment is a strong, practicable and ultimately cost-effective option for harm minimisation. The Commission recommended a state trial of a full pre-commitment regime. This trial is currently being negotiated but is expected to take place in the Capital Territory in 2013/14. The Productivity Commission will review the results of the trial if it provides for mandatory pre-commitment.

46. I propose that the Government support enabling the introduction of pre-commitment devices or other similar measures in gaming machines. They could then be introduced at a later stage if the Australian trial and other relevant research indicated that they were cost effective for harm minimisation purposes. Developments in technology may also make measures like these easier and cheaper to introduce in the future in order to reduce gambling harm. However, a licence condition would not be the most effective way of enabling this to occur and the Bill would need amendment to reflect this.

Proposal 5: Remove racing as a specific authorised purpose that can receive Class 4 gambling proceeds

Overview of the Bill’s proposal and submitters’ views

47. ‘Authorised purposes’ currently includes promoting, controlling and conducting race meetings, including the payment of stakes. The Bill would exclude racing from the definition of authorised purpose in the Act, meaning Class 4 proceeds may not be able to be used for these purposes.

48. The majority of submissions were supportive of the proposal, many on the basis that the proceeds of one form of gambling should not be used to support another. Those opposed believed that the economic benefit of the racing industry was important.

General comments on Proposal 5

49. According to the New Zealand Racing Board (NZRB) submission on the Bill the racing sector received 5.9 per cent of grants in 2011, totalling $13.216 million. The NZRB also operates 341 gaming machines at 32 standalone TABs, with $3.782m in grants made from the proceeds generated at these venues (for the year ending 31 July 2012). Ninety-four per cent of these grants went to racing purposes. The Auckland Trotting Club also operates 18 gaming machines and in 2011 it applied $1.588m to stake money.

50. The proposal would mean that racing would be placed on the same footing as other community groups. Racing purposes would need to be considered to be a non-commercial purpose that is beneficial to the whole or a section of the community in order to receive grants. There would be uncertainty about whether racing would meet this test and the change could result in a reduction in funding for racing.

3 Productivity Commission, Gambling, Vol. 1, Commonwealth of Australia, Canberra, 2010, 10.44.
51. Racing is not strictly comparable to other community purposes supported by Class 4 gambling. Some aspects of racing provide some community benefits, for example, in the use of club facilities. Other racing industry activities, particularly the payment of prize stakes, are not considered to offer genuine community benefit because these funds essentially pay for professional services (from owners, trainers or jockeys). On balance, I consider that using Class 4 proceeds for stake money does not provide a community benefit and should not continue. There is a strong public perception that these proceeds would be better used for other purposes.

Options for the Government in its approach towards the Bill

52. The Government agreed to support the Bill to select committee stage as a part of the National Party’s confidence and supply agreement with the Māori Party. Since the Bill has been before the Commerce Committee, I have been working with the Māori Party to explore whether the Government could support any aspects of the Bill. This has included discussing the possibility of amendments that would assist with advancing the priorities for Class 4 gambling identified above.

53. There are two options on the Government position on the Bill and how I might proceed. I seek Cabinet agreement on the preferred option.

Option 1 – withdraw support for the Bill

54. One option is for the Government to not support the Bill in its current form. The Bill’s proposals have not had wide support from the public. Submitters were broadly divided into two main positions on the Bill, those who opposed the Bill because of the risks to the funding they received currently, and those who supported the Bill because of a general objection to gaming machines.

55. Of the 5,005 substantive submissions, 41.8 per cent were generally supportive of the Bill and slightly more (42.6 per cent) were opposed. The vast majority of form submissions (76.7 per cent) opposed the Bill and 98.8 per cent of all submissions opposed the proposal for territorial authorities to distribute proceeds.

56. The Bill does not fit coherently with the statutory framework of the Act and there are many gaps and omissions in the content. Although the Bill’s primary objective is to reduce gambling-related harm, the major proposals in the Bill are not focused on this aspect. Rather, these proposals focus on changing how gaming machine proceeds are distributed and on increasing the powers of territorial authorities.

Option 2 – Continue to negotiate with the Māori Party about the content of the Bill, using agreed parameters (preferred option)

57. I prefer the option of continuing to discuss the proposals in the Bill with the Māori Party to try to reach an agreement on making changes to the Bill. This would be within specific parameters, which I seek Cabinet agreement to. I propose that these parameters would be as follows:

- the proposal to make local authorities, rather than gaming societies, responsible for distributing funds is not supported;
- the proposals to extend the criteria for developing, and the effect of, territorial authorities’ Class 4 venue policies are not supported;
• the principle of generally returning funds to the area where the gambling occurred is supported, but its current formulation would need to be refined to prevent unintended consequences and anomalies, and provide for the continued support of regional and national community purposes; and

• enabling harm minimisation technology to be introduced to gaming machines in the future is supported, provided the technology is cost-effective, and the enabling mechanism was consistent with the Act.

58. In addition, the proposal to remove racing from the definition of authorised purpose is aimed at ensuring that racing does not receive preferential treatment. There is uncertainty about whether this would mean that, for example, proceeds that would be used for racing meetings would be able to meet the definition of authorised purpose that applies to all other grant applicants.

59. The Government may decide that the approach in the Bill is appropriate. Because of public perceptions on this issue, my preferred approach is for the specific reference to stake money in the definition of authorised purpose to be removed. I seek Cabinet agreement to my preferred approach.

60. If agreement could be reached with the Māori Party on the Bill within these parameters, further detail would be needed on the specific mechanisms in the Act to achieve the agreed desired outcomes. The Departmental report, which is expected to be provided to the Committee early next year, would provide the necessary detail. If agreement cannot be reached by the time the report is due to the Committee, then the Government would not support the Bill.

Other priority work for Class 4 gambling and addressing other issues raised by submitters on the Bill

61. Irrespective of which option is preferred by Cabinet, there are a number of discrete areas where I intend to progress work on Class 4 gambling in order to achieve my priorities for this area. There are also a number of specific issues raised by submitters that I believe need a response.

62. All of these areas of work could result in regulatory and legislative amendments. I would report back to Cabinet in due course with the outcomes of this work.

Reducing compliance costs through a commission-based payment system for venue operators

63. The Act is based on a community funding model that generally does not permit anyone to profit from gambling. Consistent with this, societies may only incur “actual, reasonable and necessary” costs in conducting their gambling activity, including payments to venues for their hosting of gaming machines.

64. This costs regime involves a high level of compliance activity by the Department, societies and venue operators. Costs must be closely scrutinised. Societies may take a different interpretation of what costs are covered and the Department must challenge any inappropriate costs that are claimed. Simplifying the costs regime would both enable the Department to prioritise more serious compliance issues and enable societies to direct any cost savings to community purposes.

65. The current system also allows societies to differentiate between venues in their payments for costs. There is evidence that this creates unintended distortions in the market for venues, because some in the market can obtain higher prices from societies.
66. Another way of achieving the purpose of the Act would be to introduce a commission-based payment system for venues, which would remove much of this complexity and reduce some of the compliance and regulatory burdens on the Department and the sector. The system would seek to prescribe “actual, reasonable and necessary” costs rather than introduce a profit element to Class 4 gambling.

67. The system would involve societies paying venues on a basis that took into account both fixed and variable costs (for example, one variable basis could be percentage of the gaming machine proceeds that was generated by the venue’s gaming machines, up to a cap).

68. Calculating costs based partially on gaming machine proceeds could give an incentive for operators to encourage gambling in their premises. It would therefore be important for the Department to ensure that venue operators and societies focused on fulfilling their harm minimisation obligations.

69. The scheme is supported by the non-club societies and venue operators. Seventy-three submitters on the Bill suggested that there should be a commission-based venue payment system. Almost 40 per cent of these comments were from venue operators, about 20 per cent were from non-club societies, and 16 per cent were from individuals.

70. The change would be consistent with the Government’s statement on Better Regulation, Less Regulation. Reducing some of the burden of regulation in this area also assists in increasing the benefits to the community from Class 4 gambling.

71. The Committee is currently awaiting advice about whether amendments relating to societies’ costs are within scope of the Bill. If Cabinet supports Option 2 as the way to proceed, I propose that Cabinet agree that a commission-based system be progressed in the Bill if this is within scope.

72. Such a change would involve removing the current prohibition on paying commission in the Act and some other technical amendments. If included in the Bill, it is likely that the Departmental report would recommend that a regulation-making power be used. This would enable the payment system to be established through regulation and the sector and others would be consulted in the process of developing the new regulations. This would include consultation with those affected by the change and also groups that have expertise in harm minimisation.

**Delivering increased proportional benefits to communities by increasing the rate of return to authorised purposes**

73. The current minimum rate of return to authorised purposes required by non-club societies is 37.12 per cent, set in regulations. I believe that this rate could be increased as figures available in March 2012 showed returns at rates ranging from 30.59 per cent to 62.90 per cent, with the current average rate of return to authorised purposes at 40.35 per cent.\(^4\) A change to the rate would require Cabinet approval of the release of a discussion document (and eventually changes to the regulations). I anticipate that Cabinet approval for this release would be sought in mid-2013.

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\(^4\) These figures are self-reported, therefore indicative only and are subject to validation by the Department.
74. The ability to effectively sanction societies that fail to meet their obligations in this area is very important. I intend to review the current penalties available to assess their effectiveness.

*Improving the current distribution model by requiring societies to be more transparent*

75. While the public does not support territorial authorities taking over the distribution of Class 4 proceeds, some submitters indicated that societies are not necessarily seen as responsive towards community needs.

76. Increasing the transparency surrounding grant decision-making would help combat this perception, and I intend to consider ways in which to do this. One option may be to impose additional publication requirements on societies so that more detailed grant information is available. The rules for appointment to each society’s net distribution committee, which decide how its gaming machine profits are used, could also be reviewed. If changes to the regulations were needed, these issues would likely be included in the discussion document referred to in paragraph 73 above.

*Review of the regulatory role of territorial authorities in Class 4 gambling*

77. The Local Government New Zealand submission on the Bill described the Class 4 venue policy as a weak regulatory tool. Some territorial authorities submitted that they thought councils’ powers should be increased (so that they have more control on matters such as operating hours, or venue layout and/or design). Others believe that their role should be removed completely.

78. One of the purposes of the Act is to facilitate community involvement in decisions about the provision of gambling. Class 4 venue policies are essentially the way in which this purpose is meant to be achieved. However, this was intended to be limited and not apply to venues that were already established when the Act was enacted.

79. Many Class 4 venues (61 per cent) are in locations that pre-date the Act. This tends to indicate that the territorial authority consent process has controlled the growth of new venues and the number of gaming machines at existing venues, but the predominance of pre-Act venues could become more of a concern. Community apprehension about the location of these venues often relates to this fact that they are in highly deprived areas.

80. Submitters have raised some fundamental questions about the nature of the function of councils in this area. I consider it appropriate that the Department conduct a policy review of territorial authorities’ role in Class 4 gambling. This would include revisiting the purpose and effectiveness of the current community consultation mechanism and the placement of regulatory functions between councils and the Department.

*Other issues identified in the Bill and in submissions*

81. Related to the issue of the lack of transparency around distribution decisions, the explanatory note in the Bill referred to rorts around Class 4 proceeds. Some submitters believed that funds may be being used dishonestly to support the favoured cause of venue operators, or to unfairly benefit society members and their associates.

82. Another issue raised was the practice of some societies to pay management companies to carry out some of their Class 4 activities. There was concern that
some of these costs were high and the Department had a limited ability to examine or challenge these.

83. I intend to assess whether the Act’s provisions adequately enable conflict of interest behaviour around grant money to be sanctioned, and whether the Department has sufficient powers to examine funds being used to pay for services like those provided for by management companies.

Recent issue relating to gambling and spot prizes

84. Spot prizes are considered gambling under the Act where an entry fee is paid for an event, participants are entered in a prize draw and the potential to win is based wholly or partly on chance. Currently, commercial organisers are not able to operate these activities when prizes are worth more than $500.

85. I believe that the regulatory requirements under the Act may be overly burdensome when spot prize draws are secondary to other events that have a community benefit, such as fishing competitions. I intend to investigate the potential to use an existing regulation-making power in the Act to exempt some spot prize draws from being subject to these requirements.

Consultation

86. This paper was prepared by the Department of Internal Affairs. The Treasury, Ministry of Health, Te Puni Kōkiri, Ministry of Pacific Island Affairs, Ministry of Women’s Affairs, Ministry for Culture and Heritage, Sport New Zealand and the Officials’ Committee for the Cabinet Economic Growth and Infrastructure Committee were consulted on the paper. The Department of the Prime Minister and Cabinet was informed.

Financial implications

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

Human rights, gender implications and disability perspective

88. There are no human rights, gender implications or disability perspectives associated with this paper.

Legislative implications

89. The Commerce Committee may recommend amendments to the Bill in its report to the House, due by 29 March 2013. If the Bill has sufficient support in the House it could be passed by mid-2013.

90. I may propose legislative changes when I report back to Cabinet on the various issues discussed above, which could result in the Gambling Amendment Bill (No 2) being withdrawn and amendments incorporated in a new amendment bill. Changes to existing regulations are likely to be required.

Regulatory Impact Analysis

Regulatory Impact Analysis requirements

91. Regulatory impact analysis requirements apply to the proposals in this paper as there are potential regulatory implications. A Regulatory Impact Statement has been prepared and is attached to the Cabinet paper.

Quality of the Impact Analysis

92. The Regulatory Impact Analysis Panel of the Department has reviewed the Regulatory Impact Statement (RIS) prepared by the Department and associated
supporting material, and the Panel considers that the information and analysis summarised in the RIS meets the quality assurance criteria.

**Consistency with Government Statement on Regulation**

93. I have considered the analysis and advice of my officials, as summarised in the attached Regulatory Impact Statement and I am satisfied that, aside from the risks, uncertainties and caveats already noted in this Cabinet paper, the regulatory proposals recommended in this paper:

- are required in the public interest;
- will deliver the highest net benefits of the practical options available; and
- are consistent with our commitments in the Government statement *Better Regulation, Less Regulation*.

**Publicity**

94. As indicated by the number of submissions received on the Bill, there is significant interest in the Bill and in the Government’s response to its proposals. Decisions about publicity around the Bill will be made as it approaches its next Parliamentary stage, after the Commerce Committee has reported on the Bill (due by 29 March 2013).

**Recommendations**

95. It is recommended that the Committee:

1. **note** that Class 4 gambling is regulated under the Gambling Act 2003, and involves societies that are licensed to operate Class 4 gaming machines in pubs and clubs and distribute proceeds to authorised purposes as grants;

2. **note** that the National Party’s 2011 Pre-election Policy Statement referred to reviewing the Gambling Act 2003, particularly in regard to Class 4 gambling and considering change if strong evidence emerges that the Act is not working as intended;

3. **note** that the National Party agreed to support Gambling (Gambling Harm Reduction) Amendment Bill (the Bill), a Member’s bill in the name of Te Ururoa Flavell, to select committee as part of the confidence and supply agreement with the Māori Party;

4. **note** that the Bill proposes significant changes to Class 4 gambling, and has attracted over 30,000 submissions;

5. **note** that the Minister of Internal Affairs’ key priorities for Class 4 gambling are to:
   5.1 increase the proportion of proceeds that the community receives from Class 4 gambling;
   5.2 simplify compliance for societies, venues and the Department of Internal Affairs and reduce associated costs;
   5.3 develop a way for gambling proceeds to be generally distributed in the region where they were generated; and
   5.4 enhance protections for problem gamblers;
6. **note** that these priorities have provided the framework against which the proposals in the Bill have been considered and there is some alignment between these and the issues that the Bill seeks to address;

7. **note** that the Minister of Internal Affairs has been working with the Māori Party to explore whether the Government could support aspects of the Bill;

**Government position on the Bill**

8. **EITHER**
   
   8.1 **agree** that the Government not support the Bill in its current form, as it does not have broad public support and its amendments would not fit coherently with the statutory framework of the Gambling Act 2003;

   **OR [preferred option]**
   
   8.2 **agree** that the Minister of Internal Affairs continue to work with the Māori Party on the proposals in the Bill, with a view to reaching agreement on making changes to the Bill, but that these agreed changes would be confined by:
   
   8.2.1 the proposal to make territorial authorities, rather than gaming societies, responsible for distributing funds is not supported;
   
   8.2.2 the proposals to extend the criteria for developing, and the effect of, territorial authorities’ Class 4 venue policies are not supported;
   
   8.2.3 the principle of generally returning funds to the area where the gambling occurred is supported, but its current formulation would need to be refined to prevent unintended consequences and anomalies, and provide for the continued support of regional and national community purposes;
   
   8.2.4 enabling harm minimisation technology to be introduced to gaming machines in the future is supported, provided the technology is cost effective and the enabling mechanism was consistent with the Act; and

   **EITHER**
   
   8.2.5 **agree** that racing is removed from the definition of authorised purpose so that it must meet the same test of community purpose as other grant applicants;

   **OR [preferred option]**
   
   8.2.6 **agree** that the reference to stake money is removed from the definition of authorised purpose, which would be more consistent with public perception on this issue;

   8.3 **note** that if an agreed position was reached within these parameters, further detail on the specific mechanisms and amendments that would need to be made to the Bill to support these changes would be included in the Department of Internal Affairs.
Affairs report to the Commerce Committee, which is expected to be provided to Committee early in 2013; and

8.4 agree that if no agreement can be reached with the Māori Party before the Department of Internal Affairs reports to the Commerce Committee, the Government would not support the Bill;

Reducing compliance costs through a commission-based payment system for venue operators

9. note the current costs regime for societies involves a high level of compliance activity by the Department of Internal Affairs, societies and venue operators, and that a commission-based payment system for venues would remove much of this complexity and help reduce some of the compliance and regulatory burdens on the Department and the sector;

10. agree that a commission-based payment system for Class 4 venue operators be permitted and that provision for this be included in the Bill if considered within scope;

Addressing other issues raised by submitters on the Bill

11. note the Minister of Internal Affairs intends to undertake further work to improve Class 4 gambling, including:

11.1 considering an increase in the minimum rate of return to authorised purposes;

11.2 making the current distribution model more transparent and responsive to community needs;

11.3 reviewing the regulatory role of territorial authorities; and

11.4 assessing the adequacy of conflict of interest provisions and the power of the Department of Internal Affairs to audit those who have received Class 4 gambling proceeds for services;

12. note that the Minister of Internal Affairs will report back to Cabinet in due course on these issues, and may seek approval of a discussion document on changes to regulations as an outcome of this work; and

13. note that the Minister of Internal Affairs has recently become aware that the regulatory requirements relating to spot prizes may be overly burdensome and that investigation will be undertaken in this area.

Hon Chris Tremain
Minister of Internal Affairs

/       / 2012