Internal Affairs Briefing

Hon Chris Tremain  
Minister of Internal Affairs

Title: Policy Briefing 3: Options for improving territorial authority gaming machine policies

Date: 28 March 2013

Key issues

- Non-casino gaming machines are concentrated in high deprivation deciles. Māori and Pacific people are disproportionately represented in high deprivation deciles and evidence suggests that they are also at greater risk of suffering from gambling related harm than other population groups.

- Different types of territorial authority Class 4 venue policies, such as sinking-lids, caps and no limits on venues and gaming machines, make little difference on gaming machine numbers and expenditure in territorial authority districts. This is due to the few venue consents processed under the current framework and the large number of gaming machines in venues that pre-date the Act that are not affected by these venue policies.

- We propose legislative change to allow territorial authorities to provide for venue consent transfers in their gambling policies. This could allow gaming machine venues to transfer to new locations that are deemed more desirable such as central business districts and commercial zones.

Action sought

| Agree to seek Cabinet agreement to legislative changes to allow territorial authorities to provide for venue consent transfers of gaming machine venues in their Class 4 gambling policies. | 4 April 2013 |

Contact for telephone discussion (if required)

<table>
<thead>
<tr>
<th>Name</th>
<th>Position</th>
<th>Telephone direct line</th>
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Return to:

DMS file reference: POL-3221-10-01
Ministerial database reference: IA201300158
Purpose of briefing

1. This briefing proposes that you seek Cabinet agreement to amend the Gambling Act 2003 (the Act) to allow the transfer of venue consents as one part of the proposed legislative changes to improve the regulation of Class 4 gambling. This will improve territorial authority gambling policies and give local communities an additional tool to control Class 4 gambling in their areas.

Executive summary

2. Territorial authorities currently have devolved responsibilities under the Act. Territorial authorities must consent to new venues or the expansion of existing venues in accordance with their Class 4 gambling policies. Territorial authorities must develop gambling policies in accordance with the Act and assess consent applications against their policies. Once consent is given it cannot be revoked.

3. Research undertaken by the Ministry of Health has shown that the majority of gaming machines are concentrated in high deprivation deciles. Research and analysis undertaken by the Department of Internal Affairs (the Department) indicates that differing territorial authority gambling policies have little impact on gaming machine numbers and expenditure between territorial authorities. This indicates that under the current framework communities have very little actual control over gambling.

4. Involving the Department in the review of venues and their consents to facilitate the movement or closure of venues on a five-yearly basis would help address some of these issues. However, this would be at a major administrative cost as there are over 1380 gaming machine venues in New Zealand. It would also transfer more decision-making responsibility over Class 4 gambling from local to central government.

5. The Department proposes legislative amendments to provide territorial authorities with the ability to allow the transfer of gaming machine venues to new locations through their Class 4 gambling policies. This would include venues with 18 or more gaming machines licensed before 17 October 2001, which currently do not fall under the jurisdiction of territorial authority venue policies. This would give territorial authorities, and thereby local communities, an additional tool in their “toolbox” for managing Class 4 venues. As a result, they will have more control over Class 4 gambling by allowing them to move gaming machine venues to locations that are more desirable to the community, such as central business districts (CBDs) and commercial zones.

6. Territorial authorities would be required to state in their gambling policies whether they allow venue transfers or not. The Department would work with territorial authorities to support implementation. However, it is expected that the benefits will only accrue over the longer term as territorial authorities would have to implement this proposal as part of their Class 4 gambling policies which are required to be reviewed every three years.

Current requirements of territorial authority gambling policies

Summary

7. Territorial authorities have a devolved role under the Act in relation to Class 4 gambling. Territorial authority consent is required for new venues before the Department will issue a venue licence, or if the society wishes to increase the
number of gaming machines at a venue. The intent of the Act is to give communities and local government some control over Class 4 gambling in their districts while maintaining a central licensing authority to ensure consistency in regulatory approach and delivery.

8. The Act requires territorial authorities to develop Class 4 venue policies for their districts, in consultation with their communities. These policies must set out whether the territorial authority permits Class 4 gambling in all or any part of its district. Territorial authorities can also set caps or sinking lids on the number of venues and machines in their districts. Territorial authorities need to consider, among other criteria, the “social impact of gambling” when developing their Class 4 venue policies and review their policies every three years.

9. Councils consider consent applications against their Class 4 venue policies. Territorial authority consent is required when a society wishes to increase the number of machines that may operate at an existing venue (up to the statutory maximum), or at a new venue.¹ Venue consents are similar to territorial authority building consents. Once consent is given it cannot be revoked by the territorial authority. However, provisions in the Gambling Amendment Bill (No 2), if enacted, would mean that territorial authority consent would expire if no venue licence application is submitted within six months of the consent being granted.

**Effectiveness of the gambling policies**

10. An analysis of the effect of various territorial authority gambling policies on non-casino gaming machine numbers and expenditure indicates that there is very little difference in effect between different gambling policies, i.e. caps, sinking lids and no limits.

11. Table 1 below shows the change in non-casino gaming machine numbers and venues as a percentage of their 2004 number in 2011 across territorial authorities. On average territorial authorities had 76 per cent of the number of venues and 82 per cent of gaming machines compared to 2004. Comparing territorial authorities with different types of policies shows that there is very little difference in the average reduction from 2004. Territorial authorities with sinking-lid policies had on average 74 per cent of the number of venues and 78 per cent of the number of gaming machines in their districts compared to 2004, while territorial authorities without caps or limits had 74 per cent of the number of venues compared to 2004 and 81 per cent of the number of gaming machines.

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¹ New venues include venues where a Class 4 venue licence has not been held by any society for the venue within the last six months.
### Table 1: Changes in the proportion of EGM venues and machines by TA policy

<table>
<thead>
<tr>
<th>TAs</th>
<th>Variation in range from 2004-2011</th>
<th>Average across TAs</th>
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<tbody>
<tr>
<td>All councils (n=73)</td>
<td>Venues between 42% and 107% of the 2004 level</td>
<td>76%</td>
</tr>
<tr>
<td></td>
<td>Machines between 58% and 134% of the 2004 level</td>
<td>82%</td>
</tr>
<tr>
<td>Sinking lids (n=19)</td>
<td>Venues between 56% and 100% of the 2004 level</td>
<td>74%</td>
</tr>
<tr>
<td></td>
<td>Machines between 58% and 97% of the 2004 level</td>
<td>78%</td>
</tr>
<tr>
<td>Caps² (n=37)</td>
<td>Venues between 42% and 107% of the 2004 level</td>
<td>79%</td>
</tr>
<tr>
<td></td>
<td>Machines between 64% and 134% of the 2004 level</td>
<td>85%</td>
</tr>
<tr>
<td>Councils without caps or sinking lids</td>
<td>Venues between 56% and 100% of the 2004 level</td>
<td>74%</td>
</tr>
<tr>
<td>(n=17)</td>
<td>Machines between 64% and 103% of the 2004 level</td>
<td>81%</td>
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12. Analysing the effect of gambling policies on expenditure on gaming machines over time also shows that these policies are not having a substantial or uniform impact on decreasing player losses. Figure 2 shows the effect of gaming machine and venue sinking lid policies on gaming machine profit (GMP) from June 2007 to December 2012 in Auckland, Christchurch and Manukau City (three of the largest territorial authorities by population with a large number of gaming machines). This graph shows that while these policies achieved some decrease in GMP, it is not uniform and not necessarily in line with the decrease in gaming machine numbers in each city.

² Of these, 20 limit the approval of new licences to a cap on the number of gaming machines (a new venue can open if the number of machines operated in the district falls under the district cap) and two have a limit on venues per population (if the population increases then approval could be given for a new venue to operate).

³ Expenditure rather than gaming machine numbers were used for this analysis as the Department records the number of gaming machines operating in each period but excludes gaming machines that are out of service, or suspended from operation that would otherwise be operating.
13. Nationally, there has been a steady decrease in gaming machine numbers and venues since 2007 as shown in Figure 3 and, as shown in Table 1 above, this decrease has been fairly uniform across territorial authorities.

Figure 3: Venue and gaming machine numbers 2007 to 2012

14. However, Figure 4 shows that national GMP has not decreased in tandem with gaming machine numbers and has remained more constant.
15. The data indicates that there is no strong correlation between the content of local council Class 4 venue policies and the amount of money spent on Class 4 gambling in communities. It may be that some people increase their use of other venues close by, or travel further to a venue if required (because venues shut down or fewer machines are available). Another explanation is that people will gamble the same amount on fewer machines. Therefore, the number of venues/gaming machines is not an adequate predictor of the level of gambling that members of a community engage in.

16. Furthermore, the effects of territorial authority gambling policies are mitigated by several factors. For example, sinking lid policies only come into effect six months after a licence is cancelled or surrendered; often other societies will apply for a new licence within the six months. Also, territorial authority consent, once granted, cannot be revoked by the territorial authority. As a result, territorial authorities process very few venue consents each year. Only six territorial authority consents for new venues were submitted with applications for new licences in 2011, while there were ten in 2010.

**Concentration of gaming machines in high deprivation areas**

17. Ministry of Health studies in 2005 and 2012 have shown that the majority of non-casino gaming machines in New Zealand are located in the three highest deprivation deciles (see Figure 4 in Appendix I). The 2005 study found that approximately 53 per cent of gaming machines were located in these deciles while in the 2012 study it was 52.4 per cent (based on the number of gaming machines in December 2011).

18. These figures suggest that although the number of gaming machines is declining proportionately across deciles, they remain concentrated in more deprived areas.

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4 Problem Gambling Geography of New Zealand 2005 (Ministry of Health: 2006); and Summary of GIS Analysis: Non-casino gaming machine venues in New Zealand (Ministry of Health: 2012).
19. Māori and Pacific people are also over-represented in these very same high deprivation areas (see Figure 5 in Appendix I). Research has shown that concentration and proximity of gaming machine venues can increase the risks of gambling related harm amongst populations and that people of lower socio-economic backgrounds and Māori and Pacific peoples have higher incidences of problem gambling than the general population. The concentration of non-casino gaming machines in high deprivation areas could exacerbate the risks of problem gambling for Māori and Pacific people.

20. However, it should be noted that many non-casino gaming machine venues are already located in CBDs. As well as often possessing lower residential populations, these areas tend to be assessed as being more relatively deprived than surrounding residential areas. For example, Lambton Quay area in Wellington and Auckland central west and central east are classified as high deprivation areas in the 2006 census. This is because some of the indicators associated with deprivation are commonly found in CBDs, such as lack of access to a car or landline and non-owner occupier with high room occupancy (e.g. rental apartments with young professionals).

Concentration of gaming machines in large venues

21. The Ministry of Health 2012 report also found that 64.7 per cent of all non-casino gaming machines are found in venues with 18 or more machines and that the mean number of machines per venue is 13.\textsuperscript{5}

22. Current legislation specifies that new Class 4 venues can only have a maximum of nine machines and territorial authorities can specify further restrictions on the maximum number of gaming machines that may be operated in a new venue.\textsuperscript{6} However, section 92 of the Act ‘grandfathered’ the rights of venues licensed before 17 October 2001\textsuperscript{7} to keep operating up to 18 machines. This grandfathered right is tied to the specific address of these venues.

23. This means the majority of non-casino gaming machines are located in venues that were licensed before 17 October 2001 and are therefore not affected by territorial authority gambling policies. These venues have an enhanced market value, are highly valued by societies and rarely close down.

Problem definition

24. Currently, Class 4 gaming machine venue licences cannot be transferred as they are linked to a particular location. This is a factor that keeps many venues in high deprivation areas where the risk of gambling related harm is more prevalent, particularly for Māori and Pacific peoples. It is also not in the interest of venues and societies to close large gaming machine venues in order to establish new venues in other areas as closing these venues would extinguish the grandfathered right to operate more than nine gaming machines.

\textsuperscript{5} Summary of GIS Analysis: Non-casino gaming machine venues in New Zealand (Ministry of Health: 2012).

\textsuperscript{6} However, section 96 of the Act gives the Minister of Internal Affairs the discretion to permit up to 18 gaming machines in certain clubs as long as it does not exceed the number specified in the territorial authority consent.

\textsuperscript{7} This was the day before the then Minister of Internal Affairs announced the main changes that resulted from the Gaming Review, which led to various new requirements and restrictions in the Gambling Act 2003.
25. In order to address this issue and minimise the harm from gambling for vulnerable people the roles of local communities and central government have to be balanced and complimentary to ensure a fair and consistent approach to consenting and licensing processes. There is also the trade-off between implementing the community’s views on the provision of gambling and respecting the legitimate business rights of venues with gaming machines and recognising the business value and investment attached to venue consent and licences.

Framework for analysis: Minimising gambling related harm and facilitating community involvement in decisions about gambling

26. The Act’s objectives of minimising the harm caused by gambling and facilitating community involvement in decisions about the provision of gambling provide the criteria for the analysis of the options. In addition, we have also considered your priorities for the Class 4 gambling sector 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; and
- enhance protections for problem gamblers.

Proposal: Allowing the transfer of gaming machine venues

27. Under this option, the Act would be amended to allow territorial authorities to approve the transfer of gaming machine venues under their gambling policies following an application from a gaming machine society.\(^8\) This option would continue to facilitate community involvement in decisions about gambling. Further, protections for problem gamblers would be enhanced as it would help facilitate the movement of venues from less desirable areas to areas which communities define as more desirable. This could help address the issue of gaming machines being concentrated in communities with high proportions of Māori and Pacific people and reduce their exposure to gambling, subject to this being an issue territorial authorities want to address.

28. This option would also allow territorial authorities to “future proof” their Class 4 gambling policies. Areas that were once deemed desirable as locations for gaming machines may change over time, for example because of changes in zoning or demographics, or because of urban growth. Territorial authorities would be able to use their policies to facilitate the movement of Class 4 venues in response to changes in their communities. This would give territorial authorities, and thereby their communities, an additional tool in their policy “toolbox”.

29. Some territorial authorities already allow “venue transfers” in their gambling policies. However, the Act currently does not allow the transfer of venue licences or consents. These territorial authorities work around this by allowing for new venue consents to be considered when an old venue closes and no new operator will re-establish the old Class 4 venue. In effect, a new venue consent is issued rather than transferred and the Department issues a new

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\(^8\) Under section 80 of the Act Class 4 venue licences are not transferable.
venue licence. For example, the Hamilton City Council allows for societies to apply for new venue consents provided the society closes an existing venue and the new venue is located in specified areas of Hamilton, such as the CBD. However, there have been only two applications to “transfer” in the past three years. The majority of venues have remained in place, most likely due to the fact that societies prefer to maintain the grandfathered right of venues with 18 or more gaming machines.

30. This option would improve the effectiveness of territorial authority gambling policies by giving territorial authorities and communities greater control over venues licensed prior to 17 October 2001.

Current statutory limit of nine gaming machines in new venues

31. The main drawback with this option is that it would undermine the statutory limit of nine gaming machines for new venues in the Act by facilitating the continued existence of large gaming machine venues that were licensed prior to 17 October 2001.

32. This issue could be addressed by removing the statutory grandfathered right to operate more than nine gaming machines and require all venues to operate nine gaming machines or less. However, such a proposal would be very controversial and would be strongly resisted by industry, particularly clubs that operate more than nine gaming machines.

33. Alternatively, the statutory limit could be increased to allow all venues to operate 18 gaming machines. However, again, this would be controversial, as from a gambling harm minimisation viewpoint it could likely lead to the increase in the number of gaming machines across the board.

Implementation issues

34. We propose working closely with territorial authorities to encourage adoption of this proposal and would discuss with Local Government New Zealand the best way to achieve this.

35. The Act would have to be amended to require territorial authorities to state whether they allow venue transfers in their gambling policies. However, even if territorial authorities were to allow venue transfers in their gambling policies there would be delays before many of these policies would be implemented. This is because each territorial authority would only consider this option the next time the three-yearly review of its gambling policy was due.

Other options considered

Status quo – territorial authorities continue to have only a consenting role for new venues

36. The main benefit of the status quo is that it facilitates some community involvement in decisions about gambling with the requirement for territorial authority consent for new venues. It also simplifies compliance as the Department maintains a centralised and consistent approach to Class 4 licensing decisions. This ensures certainty and transparency for gaming machine operators and venue operators.

37. However, territorial authority gambling policies have very little effect on gaming machines, venues and expenditure and thereby on minimising the harm from
The Department of Internal Affairs
Te Tari Taiwhenua

gambling. The community involvement in decisions about gambling is also minimal as once consent is granted it cannot be revoked.

**The Department reviews venue consents every five years**

38. Under this option the Department would review the consents for non-casino gaming machine venues on a regular five-yearly basis. This would allow the Department to compare venues against territorial authority gambling policies. In cases where venues did not meet the criteria of the policy, the Department could liaise with the territorial authority, gaming machine society, venue operator and venue owner and facilitate the transfer of the venue consent or closure of the gaming machine operation.

39. This proposal would dramatically increase administrative costs for the Department. As of 31 December 2012, there were 1,381 non-casino gaming machine venues in New Zealand. The Department would have to assess these against the 73 territorial authority policies (67 after the amalgamation of the various Auckland city council policies). Identifying and assessing each venue would be time consuming and costly. It would also increase compliance costs and uncertainty for societies and venues as they would be unsure whether their venues would lose their right to host gaming machines every five years.

40. Furthermore, while this proposal may help address the location of gambling in certain areas, it would transfer more control over local gambling issues and decisions to the Department. Rather than facilitating community involvement in gambling decisions in their communities, this proposal would at least appear to be concentrating more control with central government.

**Proposal in the Gambling (Gambling Harm Reduction) Amendment Bill**

41. As set out in our briefing of 12 October 2012, we do not support the proposal in the Bill that would amend the Act to allow territorial authorities to adopt gambling policies that reduce the number of Class 4 venues in their districts and require them to review consents at least every three years.

42. The proposal would be costly for territorial authorities to implement and administer. It would also be disruptive for societies and venue operators and create uncertainty around their ability to operate gaming machines as they may lose their venue consents during each review period. Losing the ability to host gaming machines, without any compensation, could impact on the financial viability of the venues. Even if the Bill was amended to provide for compensation, questions arise as to who would pay, how much would be paid, and over what period the amount would be paid.

43. At your meeting with Te Ururoa Flavell on 14 February 2013 you discussed the issue of improving the effectiveness of territorial authority Class 4 gambling policies. You agreed that the Department would consider this issue. In light of this, you may wish to provide Mr Flavell with a copy of this briefing with the Department’s recommendation.

**Conclusion**

44. Our analysis indicates that there would be some benefit in allowing the transfer of gaming machine venues through territorial authority gambling policies. This proposal would help address the concentration of gaming machines in high deprivation areas by moving gaming machine venues to potentially more suitable locations.
Recommendations

The recommendations are that you:

a) **note** that non-casino gaming machines are concentrated in high deprivation deciles and that territorial authority Class 4 gambling policies have little impact on the number and location of gaming machines;

b) **agree** to seek Cabinet agreement to legislative changes to allow territorial authorities to transfer gaming machine venues under their Class 4 gambling policies; and

c) **provide** a copy of this briefing to Te Ururoa Flavell for his information.

Director Policy

Hon Chris Tremain
Minister of Internal Affairs

/ /2013
Appendix I: Concentration of gaming machines in high deprivation deciles

**Figure 5: Non-casino gaming machines by decile as at December 2011**

![Bar chart showing the concentration of non-casino gaming machines by deprivation decile as at December 2011.](image)

**Figure 6: Distribution of Māori by decile 2007**

![Bar chart showing the distribution of Māori by decile 2007.](image)

Source: Salmond et al 2007