Government position on the Gambling (Gambling Harm Reduction) Amendment Bill

Agency Disclosure Statement

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

Te Ururoa Flavell’s Gambling (Gambling Harm Reduction) Amendment Bill (the Bill) was introduced on 9 September 2010. The Bill is currently being considered by the Commerce Committee and the Committee is due to report back on 4 June 2013. The Bill would make significant changes to Class 4 gambling (non-casino gaming machines) through amendments to the Gambling Act 2003. A Government position on the Bill is required.

On 12 December 2012, the Cabinet Committee for Economic Growth and Infrastructure (EGI) considered a paper from the Minister of Internal Affairs that sought Cabinet agreement to the Government position on the Bill and also identified a number of discrete issues in Class 4 gambling that the Minister wishes to address. EGI invited the Minister of Internal Affairs to continue to work with the Māori Party on proposed changes to Class 4 gambling and the options for progressing legislation. EGI noted that the Minister would report back to EGI as soon as practicable on these issues [EGI Min (12) 29/17].

The Minister of Internal Affairs has reached some broad areas of agreement with the Māori Party on where changes to Class 4 gambling may be made. Government support would only be provided for the proposals in the Bill that align within the parameters set out in the previous Cabinet paper considered by EGI. The Regulatory Impact Statement associated with that Cabinet paper outlines the analysis of proposed amendments being made to the Bill.

This statement summarises the proposed amendments to the Bill that the Minister of Internal Affairs recommends be supported by the Government. It also provides an analysis of amendments in areas outside the scope of the Bill that would require a new amendment bill.

In reviewing the range of options, the Department has relied upon the observed effects of the current gambling legislation, internal consultation and public submissions on the Bill. Some assumptions about the likely behaviour by participants in the Class 4 sector have also been made. Due to a lack of data and uncertainty about the exact nature of the regulatory changes, no quantified analysis has been able to be undertaken of the costs and benefits of implementing recommended reforms.

The policy options are unlikely to: impose significant additional costs on business, impair private property rights, market competition or the incentives on businesses to innovate and invest; or to override fundamental common law principles. Depending on the form of final regulatory changes, compliance costs for Class 4 gambling societies may increase in some areas and decrease in others.

Paul James, Chair, Regulatory Impact Analysis Panel
Department of Internal Affairs

.................................  /  / 2013
**Status quo – Class 4 gambling framework**

1. All gambling in New Zealand is regulated by the Gambling Act 2003 (the Act). Class 4 gambling involves the operation of electronic gaming machines outside of casinos and is considered high risk because it is a cash-based activity with high turnover. There is also a higher likelihood that problem gambling will occur, because it is a continuous form of gambling that can be addictive to regular players. As a result, the sector is heavily regulated and monitored for compliance by the Department of Internal Affairs (the Department).

2. Non-commercial corporate societies (societies) are licensed by the Department to operate Class 4 gambling machines. Societies are broadly characterised as club societies (which typically have gaming machines in their own clubrooms) and non-club societies (which have their machines hosted in commercial venues like pubs and bars).

3. Most societies are clubs (310 out of 357 currently licensed societies). The 47 non-club societies own the vast majority of gaming machines (13,957 out of 17,670 gaming machines, or 79 per cent) and most of the proceeds are generated by these machines.\(^1\) Total expenditure for the Class 4 sector was $854 million in 2012.

**Gambling (Gambling Harm Reduction) Amendment Bill**

4. The National Party agreed to support Te Ururoa Flavell’s Gambling (Gambling Harm Reduction) Amendment Bill (the Bill) to select committee stage as a part of its confidence and supply agreement with the Māori Party. In December 2012, the Cabinet Committee for Economic Growth and Infrastructure (EGI) considered recommended responses to the proposals outlined in the Bill. EGI invited the Minister of Internal Affairs to continue to work with the Māori Party on the issues in the Bill and others raised in the Cabinet paper and noted that the Minister would report back as soon as practicable on these issues [EGI Min (12) 29/17].

5. This regulatory impact analysis examines two issues raised in the Bill where it is proposed that the Government support the Bill with amendments. Other issues that relate to the Minister’s priorities for Class 4 gambling are also analysed, with preferred options suggested for each.

**High level problem definition**

6. While the Class 4 gambling sector is heavily regulated, parts of the framework do not sufficiently prevent some societies from exhibiting dishonest behaviour or provide adequate transparency. The negative effects from gambling may also not be fully mitigated, and the distribution of gambling proceeds does not necessarily reflect the balance between community benefit and risk that the Act seeks to uphold. There are also areas where operations could be improved to minimise compliance costs for both the sector and the Department.

**Format of this regulatory impact analysis**

7. This regulatory impact analysis defines each problem within the Class 4 sector and then outlines the possible options to address the problem, including the status quo and the advantages and disadvantages of the options.

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\(^1\) Figures as at 31 December 2012.
Policy objectives

8. The objectives that we aim to achieve by addressing the issues in the Class 4 sector include:

   a. increasing the proportion of proceeds that the community receives from Class 4 gambling;
   b. increasing transparency around grant decisions and better addressing potential conflict of interest situations;
   c. simplifying compliance for societies, venues and the Department and reduce associated costs;
   d. developing a way for gambling proceeds to be generally distributed in the region where they were generated; and
   e. enhancing protections for problem gamblers.

9. Each problem and the potential options to resolve the problems have been assessed in light of the above policy objectives. In each case, the preferred option achieves one or more of the objectives.

Problem: Potential lack of balance in distribution of Class 4 proceeds

Summary

10. This problem was raised in the Bill with the suggestion that only a small proportion of gaming machine proceeds are distributed back to the communities where the proceeds were generated. There is a lack of evidence to substantiate this claim as not all societies provide information about the locations of their grant applicants. However, three-quarters of societies recently surveyed by the Department (30 out of 40), state that they have a policy to return funds to the community where the money was raised.² So while there is some evidence that the problem is likely to be small, the information to support this is incomplete.

Options to address the problem

Option One: Status quo

<table>
<thead>
<tr>
<th>Advantages</th>
<th>Disadvantages</th>
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</thead>
<tbody>
<tr>
<td>- Continues to allow societies autonomy in deciding where grants can be allocated.</td>
<td>- Potentially groups of people or areas that spend a large amount on gambling receive no subsequent community benefit from that expenditure.</td>
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<tr>
<td>- Local distribution of proceeds may be occurring anyway.</td>
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</table>

Option Two: Mandate at least 80 per cent of proceeds generated in a locality be distributed in the same locality (the Bill)

11. In principle, this option is consistent with the Act’s purpose of balancing the benefit that communities receive from gambling against the harm caused by gambling. The amendment states that the locality that proceeds are distributed in must be the smallest local council ward or board area where the proceeds originated from.

² Department of Internal Affairs, Desktop review of information available on non-club gaming society websites (2012).
12. However, a number of practical considerations highlight the poor workability of this option. As gaming machines are not necessarily evenly spread across electoral subdivisions, distribution of proceeds on this basis would be very narrow, and it would not account for gaming machines being used by people who reside outside of the area.

13. Further, a number of societies distribute grants that benefit multiple groups in many locations. Applying for these grants could be complex as organisations that provide regional or national benefits would possibly need to apply to multiple societies in order to comply with this provision. This results in a negative impact on nation-wide community groups and those in areas that do not have gaming machines.

<table>
<thead>
<tr>
<th>Advantages</th>
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</thead>
<tbody>
<tr>
<td>• Helps to achieve the Act’s objective of balancing the benefit that communities receive from gambling against the harm caused by gambling in a particular area.</td>
<td>• Is potentially unworkable for national or regional grant recipients.</td>
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<td></td>
<td>• Does not account for gamblers travelling to different areas to use gaming machines.</td>
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<td></td>
<td>• Many machines are in central business districts but the players are unlikely to live there.</td>
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<td></td>
<td>• The community group sector may construct itself to align with funding sources and localities, leading to fragmentation.</td>
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<td></td>
<td>• The overall regulatory impact is uncertain.</td>
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Option Three: Create a regulation-making power in the Act to allow for geographic distribution (preferred option)

14. A new regulation-making power could be introduced to allow for the geographic distribution of proceeds. This option would achieve the desired purpose sought by the Bill but provide greater flexibility than the proposal in the Bill. New regulations setting out how distribution should occur must be developed in consultation with those affected by the changes.

15. Using regulations would reduce the risk of creating unintentional anomalies and distortions in the grant-making process. There would be greater consideration of how exceptions to the general principle of local distribution should be accommodated, such as the needs of national or regional organisations. The regulations would also take into account the location of gaming machines across urban and rural areas.

16. The impact on societies and community organisations will depend on the model adopted. Development of regulations will enable these impacts to be properly identified through the consultation process. Some impact on societies will be minimised as information on revenue passing through gaming machines is already collected through the electronic monitoring system. However, there may be some significant impacts related to how societies actually distribute grants. For example, societies may make grants they would not otherwise approve due to meeting a particular goal of local distribution.

<table>
<thead>
<tr>
<th>Advantages</th>
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</thead>
<tbody>
<tr>
<td>• Balances the benefit that communities receive from gambling against the harm caused by gambling in a particular area while allowing for</td>
<td>• Potential compliance costs for the sector in operating a new geographical</td>
</tr>
</tbody>
</table>

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national considerations.
- Allows for further consultation with affected parties through the regulation-making process making the resulting requirements more suitable to community needs.
- Provides more flexibility to amend the requirements in the future if needs change.

### Problem: Lack of tools available to minimise harm from gambling

**Summary**

17. The Bill states that there is no obligation for venue operators to keep track of each gambler's overall losses and time spent gambling, and there is also no use of technology like pre-commit cards to help gamblers control their own behaviour.

18. A study published in January 2012 estimated that approximately 0.5 per cent of the New Zealand adult population were problem gamblers and approximately 3.5% were moderate-risk gamblers.\(^3\) However, over 40 per cent of people who use non-casino gaming machines regularly have been found to be moderate-risk or problem gamblers.\(^4\)

### Options to address the problem

**Option One: Status quo**

<table>
<thead>
<tr>
<th>Advantages</th>
<th>Disadvantages</th>
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</thead>
<tbody>
<tr>
<td>• Compliance costs for operators are unchanged as they are not required to install new technology.</td>
<td>• No opportunity to introduce proven and effective new technological solutions for problem gambling.</td>
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<td>• Further time is allowed for research into proven harm minimisation technology.</td>
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**Option Two: Enable the Secretary of Internal Affairs to make pre-commitment technology a condition of a Class 4 operating licence (the Bill)**

19. Pre-commitment involves technology that allows players to limit the amount of money or time spent gambling before they begin gambling. The Bill would give the Secretary for Internal Affairs the power to make this technology a condition of a Class 4 operating licence.

20. The introduction of the necessary technology is a policy decision with the potential for significant cost implications for the sector, which should be made by the Government. Using licence conditions in this way would be inconsistent with the rest of the Act, which uses regulation-making powers to introduce these kinds of measures. Decisions by the Secretary for Internal Affairs to add licence conditions can be appealed to the Gambling Commission, which would provide uncertainty to the development and introduction of new technology.

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\(^3\) Health Sponsorship Council, January 2012. *The prevalence of problem gambling in New Zealand as measured by the Problem Gambling Severity Index: adjusting prevalence estimates using meta-analysis.* The Problem Gambling Severity Index (PGSI) is a measure of problem gambling that is widely used internationally and was used in this survey.

\(^4\) Health Sponsorship Council, July 2011. *New Zealanders’ participation in Gambling – Results from the 2010 Health and Lifestyles Survey.* Because the number of problem gamblers is often very small and therefore statistically insignificant, moderate-risk and problem gambler numbers are often combined.
<table>
<thead>
<tr>
<th>Advantages</th>
<th>Disadvantages</th>
</tr>
</thead>
<tbody>
<tr>
<td>Would allow societies to appeal a decision to introduce new harm minimisation technology.</td>
<td>Would be a poor fit with existing regulation-making powers that can require specific technology to be used in gaming machines.</td>
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<td></td>
<td>Does not give the required level of scrutiny to assess the suitability of the requirement.</td>
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<td></td>
<td>Licence conditions can be legally challenged by societies.</td>
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</tbody>
</table>

Option Three: Introduce a regulation-making power to allow for pre-commitment devices or similar measure in the future (preferred option)

21. Regulations and minimum standards are subject to Parliamentary scrutiny, require consultation, and once developed and notified they cannot be legally challenged in the same way as a licence condition.

22. There have been some trials of mandatory pre-commitment systems (all players must use a smart card and either set limits on their spending or utilise mandated spending limits in order to play gaming machines) and voluntary pre-commitment systems (where players can choose whether or not to set limits on their play). In 2010, the Australian Committee on Gambling Reform concluded that in order to be the most effective, a pre-commitment system had to be mandatory. Very few studies into the effects of fully mandatory pre-commitment systems have been undertaken. It is considered premature to endorse and introduce a pre-commitment system to New Zealand before there is better information about the effectiveness of these technologies.

23. Again, the impact on societies and community organisations will depend on the measure adopted. Development of regulations will enable these impacts to be properly identified through the consultation process. Some impacts are likely related to an increased cost to societies to introduce the technology which may, in the short term, reduce the returns that societies make to the community. Societies may feel some uncertainty around the possibility of the introduction of these technologies which may result in them delaying asset upgrades. Further, the introduction of harm minimisation technology may discourage recreational gamblers from playing.

<table>
<thead>
<tr>
<th>Advantages</th>
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<tbody>
<tr>
<td>Allows for consultation with affected parties through the regulation-making process.</td>
<td>Potentially no regulations may be developed meaning that a system that could minimise gambling harm is not introduced.</td>
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<tr>
<td>Provides the flexibility to develop regulations in the future if the situation changes.</td>
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<td>Provides more certainty for the sector once regulations are in place.</td>
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**Problem: Venue costs payment system is inefficient and expensive**

**Summary**

24. Venue operators (typically pubs) that host gaming machines for non-club societies can claim costs, but are not supposed to generate profits from this activity. However, some elements of the sector engage in profit and rent-seeking behaviour which needs to be
mitigated. The Act prohibits commission being paid for conducting Class 4 gambling. A non-club society must provide copies of its Class 4 venue operator agreements when applying for a licence and these agreements must be approved by the Department.

25. This costs regime involves a high level of compliance activity by the Department, societies and venue operators. The Department’s resources are used to determine, on a venue-by-venue basis, whether costs claimed are actual, reasonable and necessary. This involves regular reviewing and auditing of venue cost schedules. Societies may take a different interpretation of what costs are covered and the Department must challenge any inappropriate costs claimed.

26. Another issue with the existing regime is the competition between societies for high revenue venues. Some societies make unwarranted payments and provide concessions in order to retain or persuade these venue operators to sign up venue agreements with them. Departmental auditing of venue costs during the 2009/10 period showed that payments had been made to venues that included unjustifiable venue enhancements (i.e. paying for renovations), overstatement of hours in order to increase venue payments and unnecessary equipment purchases and inducements. Examples included $56,000 on an individual venue enhancement and $400,000 in over-expenditure on venue costs by a society.

Options to address the problem

Option One: Status quo

<table>
<thead>
<tr>
<th>Advantages</th>
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</thead>
<tbody>
<tr>
<td>* Costs would continue to be closely scrutinised to make sure they were actual, reasonable and necessary.</td>
<td>* Retains an expensive and time consuming system that imposes compliance costs on societies, venue operators and the Department.</td>
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<tr>
<td>* Maintains doubt that returns to the community are maximised if competitive behaviour for profitable venues continues.</td>
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Option Two: Create a regulation-making power that would allow for a new payments system (preferred option)

27. A regulation-making power could be introduced that would be sufficiently broad to allow for a new venue costs payment system. There is the potential for the development of a commission-based venue payments system, a fixed rate per machine payment system that would cover all venue costs or a combination of the two. The regulation-making power would allow public and sector consultation on this issue in order to decide which system would best achieve the outcomes of the Act in relation to maximising returns to the community.

28. The impact on societies and community organisations will depend on the model adopted. Development of regulations will enable these to be properly identified through the consultation process. A potential new payments system based on commission may encourage venues to promote gambling to increase their overall turnover. There will also be initial administrative costs to societies to implement any new system but over the long term there are positive administrative impacts to societies, venues and the Department.
### Advantages
- Allows input from interested and affected parties into the best design of a new payment system.

### Disadvantages
- The costly status quo will continue until such time as a new payment system is in place.

**Problem: There is a lack of transparency in the information societies provide**

**Summary**

29. Societies have wide powers under the Act to distribute the net proceeds from Class 4 gambling as they choose. The Act and associated regulations place a number of publication requirements on societies to help ensure accountability.

30. The current publication requirements are described in broad language, allowing societies to publish the minimum required to fulfil these. There are gaps that mean that societies do not provide some information that is considered important for understanding where grant funding is going. Societies must also publish specific information about their grants in a newspaper that can be costly.

31. As a result, data that would better enable the community to assess society grant-making processes is not available. Information such as the purpose of grants, the type of applicant (e.g. individual or national organisation) and the location of the applicant is usually not made public.

**Options for addressing the problem**

**Option One: Status quo**

<table>
<thead>
<tr>
<th>Advantages</th>
<th>Disadvantages</th>
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<tbody>
<tr>
<td>- Current reporting requirements place a low compliance burden on societies.</td>
<td>- There is a lack of clarity around grant-making and associated information leading to questions over fairness, efficiency and effectiveness of societies’ decisions.</td>
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**Option Two: Improve transparency by expanding the information required from societies (preferred option)**

32. Section 114 of the Act allows regulations to be made prescribing that certain information be provided about the application or distribution of net proceeds from Class 4 gambling. Societies could be required to publish information about the geographic location of grant applicants; whether the applicant is a national, regional or local organisation; the amount of money sought; a brief description of the purpose of the application and whether it relates to a geographic area and/or group; the amount granted; any potential interests the members of a society’s net proceeds committee may have in any successful grant applicant’s organisation; and if the application was unsuccessful, the reason why.

33. Incorporating these requirements would enable communities to more closely scrutinise grant decision-making. Societies might also be more incentivised to be more responsive to the demands of local communities, potentially lifting the quality of grant funding. The Department also proposes amending the Act to remove the requirement on societies to publish this data in a newspaper. Publication requirements for the different types of information would be set in regulation (e.g. which could require some of the information to only be published on the society’s website). This would reduce the compliance costs of publication for societies.
34. An amendment requiring societies to provide this expanded grant information electronically to the Department, in addition to publishing it, would add to the transparency in this area. It would likely result in only small additional administrative costs to societies.

35. There is public interest in this type of information and analysis. Currently some data is collected by the Problem Gambling Foundation, which analyses societies’ published information on grants. However, having the Department collect more extensive, consistent and comparable data directly from societies would be a significant improvement.

36. Although societies currently publish financial statements, because of variations in approach to this reporting, comparisons between societies is difficult. A new regulation-making power to prescribe how societies’ financial information and key indicators of operational efficiency should be published may mitigate this. It would allow comparisons of societies’ performance, and could encourage societies to better compare their operations to one another and identify efficiency gains.

37. The potential impacts of these changes include a short-term impact of societies having to provide more information than they do currently, with this being reflected both in the collection of data from their operations and grant-making practices and presenting it to the Department. As before, the impact on societies and community organisations will depend on the exact reporting requirements. Development of regulations will enable these impacts to be properly identified through the consultation process.

<table>
<thead>
<tr>
<th>Advantages</th>
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</table>
| • More comprehensive information will be available about where the proceeds from Class 4 gambling are distributed.  
• Various forms of analysis of grant-making could be undertaken such as trends in grant applications and the proportion and type of funding that was being made available in different regions.  
• Compliance costs associated with publication may be reduced. | • There will be initial compliance costs as societies move to the new reporting format that will need to be approved by the Department. |

**Problem: Too many gaming machines in high deprivation areas and minimal ability for community to have a say on the location of established venues**

**Summary**

38. Territorial authority consent is required for new venues or if a society wishes to increase the number of gaming machines at a venue (up to the statutory maximum of nine). Consents are issued according to a territorial authority’s Class 4 venue policy, which is developed in consultation with the community. Once consent is given it cannot be revoked by the territorial authority.

39. Analysis shows that the majority of Class 4 venues pre-date the Act, meaning that they have more than nine gaming machines and have not been subject to the territorial authority consent process. These venues are often also located in lower-socio economic areas with a high proportion of Māori and Pacific peoples. Studies have shown that Māori and Pacific people are more likely than other population groups to be problem gamblers or suffer from gambling-related harm.
40. Addressing the issue requires balancing the role of local government in reflecting community views and the legitimate business interests of venue operators.

**Options to address the problem**

**Option One: Status quo**

<table>
<thead>
<tr>
<th>Advantages</th>
<th>Disadvantages</th>
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<tbody>
<tr>
<td>● Allows for some local input into decisions on licensing new/expanding venues through venue consents.</td>
<td>● Different territorial authority Class 4 gambling policies all have limited effects on gaming machine numbers and player losses in their communities. ● Gaming machines remain concentrated in large venues in high deprivation areas.</td>
</tr>
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**Option Two: Enable territorial authorities to remove gaming machine venues in their districts and reassess consents for venues regularly (the Bill)**

41. The proposal set out in the Bill would give territorial authorities more control over Class 4 venues with the ability to adopt Class 4 gambling policies that prohibit or reduce existing Class 4 venues in their districts. Also, gaming machine operators may have to reapply to the territorial authorities for their venue licences and consents on a regular basis.

42. A large number of submitters on the Bill (631 in total) argued that local councils should not control the issuing of licences as that could result in councils controlling how much funding would be available to community groups. Many submitters also thought that allowing councils to close venues would create uncertainty in the industry about making investments in venues and ultimately leave societies and venues out-of-pocket.

43. There are potentially significant impacts on venues and societies and also to the subsequent funding available through grants to community organisations.

<table>
<thead>
<tr>
<th>Advantages</th>
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</thead>
<tbody>
<tr>
<td>● Territorial authorities and local communities would have far greater control over Class 4 gambling. ● Public sentiment seeking to reduce Class 4 gambling in communities would be better reflected in the new gambling policies. ● Could be used to reduce the concentration of gaming machines in high deprivation areas.</td>
<td>● No clear indication on what basis territorial authorities would decide which gaming machine venues to close in a district. ● Creates uncertainty for venue operators about the status of their venues. ● Community funding could be reduced. ● Proposal is controversial and is opposed by industry. ● This option essentially involves the taking of an economic property right with no subsequent compensation.</td>
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**Option Three: Allow territorial authorities to transfer gaming machine venues (preferred option)**

44. Territorial authorities would be required to consult their communities about whether existing venues could shift to other areas within the district, and reflect this in their Class 4 venue policies. This could occur at the time of the next scheduled revision of their policies (which occurs every three years). Subsequently if a venue policy provided for relocation, the consent of the territorial authority to the relocation could be
sought. The society, venue operator and territorial authority would need to agree to the relocation. This would include 18-machine venues that pre-date the Act.

45. The advantage of this option is that it would help facilitate the movement of venues from high deprivation deciles to other areas (such as commercial areas or central business districts). This could address the issue of gaming machines being concentrated in high deprivation deciles and help reduce gambling related harm in these areas.

46. This option may adversely impact building owners when gaming machine venues relocate as it may be more difficult to lease a venue without gaming machines. A positive impact should be felt by the community that wants to have the venue relocated.

<table>
<thead>
<tr>
<th>Advantages</th>
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</thead>
<tbody>
<tr>
<td>● Could help move gaming machine venues from high deprivation areas and reduce gambling related harm in these areas.</td>
<td>● Large gaming machine venues would be preserved.</td>
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<tr>
<td>● Would help facilitate greater community say and control over the provision of gambling in their communities.</td>
<td>● Relies on territorial authorities adopting effective gambling policies that allow the transfer of these venues.</td>
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<td></td>
<td>● Benefits would only accrue over the longer term as new gambling policies are adopted and if these allow for transfers.</td>
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**Problem: There is a lack of transparency around conflicts of interest**

**Summary**

47. Illegal or unethical grant-making decisions can occur. One common example involves “grant-capture” schemes, where potential grant recipients invest in venues that host a society’s gaming machines. They would then look to influence the grant-making process. The Department has also identified examples of “kick-backs” where a society agrees to provide an applicant with a grant in exchange for either direct or indirect benefits. In order to prosecute these types of offences it must be proven that the making of a grant was conditional on the receipt of a benefit (section 118 of the Act). Proving this is extremely difficult.

48. Another conflict of interest situation occurs when societies confer benefits on their venues in exchange for the venue agreeing to remain with the society. The Department has identified significant expenditures incurred by venues relating to “business development” and “customer liaison activities”.

49. It is unclear how widespread conflicts of interest are in relation to grant funding practices. However, there is sufficient evidence, supported by past and current investigations, to confirm that issues other than community funding priorities can still drive some society decision-making.

50. The current conflict of interest provisions in the Act are not broad enough to cover all conflict situations. Prosecutions under these sections of the Act are rare and only half have resulted in convictions. The definition of a venue key person also makes it difficult to prosecute society key persons for knowingly allowing somebody to contravene section 113 of the Act. The wording “any other person whom the Secretary of Internal Affairs reasonably believes to have a significant interest” creates this difficulty.

51. In 2001, the North Shore District Court issued a preliminary ruling on the case of *Department of Internal Affairs v Dempsey*. The ruling indicated that in order for a society key person to be guilty of contravening section 113, he or she must have
known that the Secretary believed somebody to be a venue key person. This would require the Department to have formally notified a society that it considered a person to be a venue key person before the section 113 violation took place. This effectively makes this section unworkable.

Options to address the problem

Option One: Status quo

52. As outlined above the status quo does not reduce the possibility for conflicts of interest to influence the grant-making process. Therefore the status quo needs to be changed.

Option Two: Amend the definition of venue key person and introduce new provisions in section 118 to prohibit the receipt of influential gifts (preferred option)

53. The definition of venue key person would be amended to cover indirect relationships, like the arrangements discussed above, so that where a community group has an interest in a venue, that group could be considered to be a venue key person.

54. Further, the words “whom the Secretary reasonably believes” would be removed from the definition of venue key person. A set of criteria such as whether a person had a significant interest in the operation of the venue would be added to simplify the test for determining if a person not explicitly specified in the Act as a key person has an interest in a venue such that he or she is in essence a key person.5

55. Under section 118, an amendment would remove the requirement that a condition be attached to the offer or receipt of a benefit, where the exchange is between society key persons and venue key persons. However, the need to prove the existence of a condition where a benefit is offered between key persons and a grant recipient would remain. Additionally, a new provision would be included that prohibits society key persons and venue key persons from receiving any benefits that a reasonable person believes could influence the grant-making process.

56. An impact of these changes will be that expanding the definition of key person would increase the Department’s licensing role, as key persons need to be assessed for their suitability.

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<tr>
<td>• Potentially prohibits the offering of kick-backs by community groups (such as branding).</td>
<td>• It is unclear how the courts would interpret a “reasonable person” test in this context.</td>
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<td>• Brings the conflict of interest provisions closer to the original policy intent.</td>
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<tr>
<td>• Removes the possibility of venue operators receiving anything other than their lawful venue expenses.</td>
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</table>

5 Currently a venue key person may be “any other person whom the Secretary for Internal Affairs reasonably believes to have a significant interest in the management, ownership or operation of a venue operator…”.
Problem: There is a lack of transparency around the use of management companies

Summary

57. Entities known as management companies provide a range of services to a number of societies. Such services include providing administrative and financial services; processing grant applications; servicing gaming machines; and ensuring venues comply with the Act. There are currently 11 management companies providing services to 18 societies. Concerns have been expressed that management companies can inflate the costs that they charge to societies because they are not subject to audit by the Department.

58. Under the Act, the Department can investigate and audit the holders of Class 4 gaming machine operator licences and venue licences, but not management companies. The key issue for the Department is not whether a society uses the services of a management company but whether the society is minimising its costs and maximising its returns to authorised purposes. In doing so, the society must ensure that its costs (including its costs of engaging service providers) are “actual, reasonable and necessary”.

59. Further concerns exist regarding the potential for the directors or trustees of societies to gain personal benefit by engaging management companies in which they, or their close associates, are principals. In turn, the society may pay excessive costs to the management company.

Options to address the problem

Option One: Status quo

<table>
<thead>
<tr>
<th>Advantages</th>
<th>Disadvantages</th>
</tr>
</thead>
<tbody>
<tr>
<td>- There is little evidence that points to a serious issue with the costs associated with management companies.</td>
<td>- No absolute certainty that the costs associated with management companies are actual, reasonable and necessary.</td>
</tr>
<tr>
<td>- Societies must have itemised contracts for services with management companies, and the Department could use its auditing power over societies more effectively.</td>
<td>- The need to audit management companies could become more apparent (i.e. if their costs increase).</td>
</tr>
<tr>
<td>- Societies’ directors/trustees may obtain personal benefit from arrangements with management companies.</td>
<td>- Societies’ directors/trustees may obtain personal benefit from arrangements with management companies.</td>
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</table>

Option Two: Prohibit management companies

<table>
<thead>
<tr>
<th>Advantages</th>
<th>Disadvantages</th>
</tr>
</thead>
<tbody>
<tr>
<td>- Prohibition of management companies would ensure that all societies will be responsible and accountable for all aspects of their gambling operation.</td>
<td>- Prohibition would raise the operating costs for some small and mid-sized societies because using management companies provides them with a cost-effective method of managing their operations. An increase in costs could reduce societies’ returns to authorised purposes.</td>
</tr>
</tbody>
</table>
Option Three: Regulate management companies through audit and key person provisions (preferred option)

60. A statutory power for the Department to audit management companies would be a helpful regulatory tool. This would enable the Department to determine whether the costs associated with engaging a management company are actual, reasonable and necessary.

61. An additional provision that would further ensure transparency would be to cover the principals of management companies by the ‘key person’ requirements of the Act. A key person is defined as someone that has a significant interest in the gambling operation. Under the Act, the Department must determine whether the applicant for a Class 4 operator's licence and the associated key persons are eligible and suitable before the applicant can be granted the licence.

62. The impact of bringing management companies into the Act may discourage management companies from operating within the sector. There are also expected to be some costs on management companies and societies associated with audit requirements.

<table>
<thead>
<tr>
<th>Advantages</th>
<th>Disadvantages</th>
</tr>
</thead>
<tbody>
<tr>
<td>● Bringing management companies within the regulatory framework (audit and key person provisions) would enhance transparency and accountability within the Class 4 gambling sector.</td>
<td>● May increase the costs of regulation and compliance.</td>
</tr>
</tbody>
</table>

Problem: limited tools to incentivise compliance

Summary

63. Currently, societies and venue operators may only be licensed by the Department for a maximum period of 18 months. This time period limits the potential for low-risk, compliant societies to be rewarded for their behaviour and have their costs reduced.

Options to address the problem

Option One: Status quo

<table>
<thead>
<tr>
<th>Advantages</th>
<th>Disadvantages</th>
</tr>
</thead>
<tbody>
<tr>
<td>● Societies and the Department are familiar with the way the current process works.</td>
<td>● Licence renewals are a time consuming and sometimes costly process for the Department and for applicants.</td>
</tr>
</tbody>
</table>

Option Two: Amend the Act to allow a longer licence period (preferred option)

64. The Act could be amended to allow for up to a three-year licence period. This period would be at the discretion of the Secretary.

65. This option will have a positive impact on societies that comply with the Act as their costs will be minimised for licence renewals and the Department will be required to assess fewer applications.

<table>
<thead>
<tr>
<th>Advantages</th>
<th>Disadvantages</th>
</tr>
</thead>
<tbody>
<tr>
<td>● Some societies will be able to reduce application costs as they will be granted a longer licence period.</td>
<td>● It will be necessary to set clear criteria when considering licence renewals to ensure compliance.</td>
</tr>
</tbody>
</table>
longer licence period.  
- The Department’s costs may reduce due to fewer licence renewals.  
- The possibility of a longer licence period may incentivise societies to be more compliant.

<table>
<thead>
<tr>
<th>Advantages</th>
<th>Disadvantages</th>
</tr>
</thead>
<tbody>
<tr>
<td>It would restore the Department’s power to sanction non-compliant societies.</td>
<td>Further potential litigation as societies look to test the new boundaries of the suspension power.</td>
</tr>
<tr>
<td>It would incentivise societies to comply with the Act to avoid one-off breaches and thus suspension.</td>
<td></td>
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</tbody>
</table>

**Problem:** Limited sanctions available to the Department to deter non-compliance

**Summary**

66. The existing deterrent mechanisms in the Act have been shown to be limited. A recent High Court judgment\(^6\) has interpreted the Act in a way that means that the Department has very limited options to ensure compliance with the Act. The judgment prevents the Department from using suspension in one-off cases, such as where a society exceeds limits on venue cost reimbursements, or fails to meet its minimum returns to authorised purposes.

67. Such suspensions have been the Department’s main tool for encouraging compliance with the Act. The only option now available to the Department to sanction one-off breaches of the Act is licence cancellation. This would likely be seen as a disproportionate response to a one-off breach of licence conditions in most cases.

**Options to address the problem**

**Option One: Status quo**

68. As outlined above the status quo undermines the regulatory framework of the Act, as an effective licensing regime typically requires appropriate sanctions to be available where obligations are breached. Therefore the status quo needs to be changed.

**Option Two: Amend the Act to clarify that suspensions can be used for one-off breaches (preferred option)**

69. The impact of this option will have the effect of restoring the previous status quo, in that the Department could suspend for one-off breaches of the Act. Societies will lose the benefit of the interpretation of the High Court, meaning they could be suspended in the future for non-compliance with the requirements of the Act.

**Consultation**

70. The public submission process undertaken by the Commerce Committee on the Bill has informed the analysis of the Bill’s proposals outlined above and the Department’s

\(^6\) Pub Charity v The Gambling Commission and Secretary of Internal Affairs [2012] NZHC 3530.
recommendations. Further public consultation will be undertaken as potential regulatory and legislative changes are proposed.

Conclusions and recommendations

71. The problems and options to address them outlined in this paper focus on some real and present issues within the Class 4 gambling sector. The solutions proposed deal with both issues raised in the Gambling (Gambling Harm Reduction) Bill and with the priorities of the Minister to:

a. increase the level of community returns from the proceeds of Class 4 gambling;

b. increase transparency around grant decisions and better address conflict of interest situations;

c. develop a way to ensure that most gambling proceeds are distributed in the area where they were generated;

d. simplify compliance and reduce compliance costs to societies and the Department; and

e. enhance protections for problem gamblers.

72. The Department supports the proposals as outlined above including the alternatives for addressing issues raised in the Bill. These recommendations include:

a. creating a regulation-making power in the Act to allow for geographic distribution of gaming machine proceeds;

b. introducing a regulation-making power to allow for pre-commitment devices or similar measure in the future;

c. creating a regulation-making power that would allow for a new venue payments system;

d. removing the requirement for newspaper publication of certain grant information and shifting publication requirements to regulations;

e. providing for the transfer of gaming machine venues if allowed by the relevant territorial authority;

f. amending the definition of venue key person and introducing new provisions to prohibit the receipt of influential gifts;

g. regulating management companies through audit and key person provisions;

h. incentivising compliance by increasing the potential length of the licence period; and

i. amending the Act to clarify that suspensions can be used for one-off breaches.

Implementation, monitoring, evaluation and review

73. Implementation, monitoring, evaluation and review will be discussed in more detail as the individual proposals in this paper are progressed (subject to agreement).