Internal Affairs Briefing

Hon Chris Tremain  
Minister of Internal Affairs

Title: Policy Briefing: Paper 1 – Analysis of the Gambling (Gambling Harm Reduction) Amendment Bill  
Date: 12 October 2012

Key issues
- The Department outlines its reasons for not supporting the changes in the Gambling (Gambling Harm Reduction) Amendment Bill.  
- For some of the proposals in the Bill we suggest more appropriate alternative methods of achieving a similar purpose.

Action sought | Timeframe
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Agree not to support the Gambling (Gambling Harm Reduction) Amendment Bill in its current form, but to support a limited range of amendments. | Before your next meeting with Te Ururoa Flavell on 18 October 2012

Contact for telephone discussion (if required)

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Purpose of briefing

1. This briefing provides an analysis of the proposals in the Gambling (Gambling Harm Reduction) Amendment Bill (the Bill), including an indication of submitters’ and the Department’s views. You may wish to use this information to support your further discussions with Te Ururoa Flavell about the Bill.

Executive Summary

2. The Department does not support any of the changes contained in the Bill in its current form. The Bill would require a substantial re-write to fit coherently with the statutory framework of the Gambling Act 2003.

3. The Bill proposes that territorial authorities distribute Class 4 proceeds. This would be at odds with the Government’s Better Local Government reform programme. The change would require substantial investment and it is questionable whether the model would be more efficient. There would also be a conflict situation for territorial authorities, due to their Class 4 regulatory role and their potential to be grant applicants.

4. Under the Bill at least 80 per cent of net proceeds would be distributed in the same territorial authority district or the smallest ward, subdivision or board area where proceeds originated. While there is broad public support for gambling funds going back to where they were generated, this proposal would be impractical to implement. Alternatively, the Bill could introduce a new regulation-making power so that new regulations relating to local distribution could be developed.

5. The Bill would enable harm minimisation devices like pre-commitment and player tracking to be used on gaming machines. These technologies are potentially expensive and their effectiveness is still unknown. The Department considers that it would be prudent to await the outcome of the pre-commitment trial that is due to occur in Australia next year. Rather, the Bill could introduce a regulation-making power about harm minimisation devices. This could be utilised in the future if the trial in Australia indicates that the benefits outweigh the costs.

6. The Bill seeks to exclude racing from the definition of authorised purposes, which would remove all Class 4 gambling funding for racing. The Department proposes that the Bill could either prevent funds from being used for stake money, or restrict racing to accessing only proceeds generated on racing premises. These would both still allow funding for racing purposes but be more aligned with public perception about the appropriate use of this funding.

7. Changes to the criteria for the development and review of territorial authorities’ Class 4 venue policies are also included in the Bill. We do not believe that the additional criteria would add value to the existing requirement for territorial authorities to consider the “social impact of gambling” when reviewing their policies.

8. The Bill would extensively widen the regulatory impact of territorial authorities over Class 4 gambling in their districts. This proposal raises issues around conflicts of interest for territorial authorities, and creates an additional level of administration. The proposal has mixed support amongst territorial authorities and would significantly impact on the stability of the Class 4 sector. The
alternative could be for Department to undertake a policy review of the role of territorial authorities in Class 4 gambling.

9. The next steps in the process would be to discuss the Bill with Mr Flavell in light of this advice. Following that discussion, we would draft a Cabinet paper that seeks agreement to your preferred position on the Bill.

General comment on the Bill

10. The Commerce Committee is currently due to report back on the Bill by 9 November 2012. However, we understand that the Chair of the Committee is going to seek an extension to this report date.

11. The Bill would make significant changes to the Gambling Act 2003 and to Class 4 (non-casino) gambling by:

- changing the distribution model for Class 4 gambling proceeds;
- limiting the distribution of proceeds according to geographic location;
- allowing for the introduction of harm minimisation devices in gaming machines;
- preventing racing from receiving the proceeds of Class 4 gambling; and
- changing the criteria used by territorial authorities for adopting Class 4 venue policies, and expanding the impact of these policies on venues.

12. This briefing provides the Department’s views on these changes in the Bill.

13. We note that the Bill would need to be significantly rewritten in order for it to fit coherently with the current statutory framework of the Gambling Act 2003. The Bill has a number of gaps and errors (e.g. inconsistent use of defined terms in the Act).

Changing the model for the distribution of Class 4 proceeds

Overview of the proposal

14. Class 4 societies distribute the net proceeds raised from non-casino gaming machines to authorised purposes. The Bill provides that corporate societies, which currently operate gaming machines as well as distribute gaming machine funds, be phased out from the distribution role. This responsibility would be given to territorial authorities. Territorial authorities would be required to use council or local board committees to distribute proceeds.

Issue that the Bill seeks to address

15. The explanatory note of the Bill states this change is in order to “provide an informed and democratically accountable distribution method, and to end the inefficiencies, lack of transparency, risks of unethical behaviour, and failure to appreciate and respond to the greatest needs of particular geographical and ethnic communities in the distribution of … funds from pokies.”

16. Currently the Gambling Act 2003 provides societies with wide decision-making autonomy for distributing proceeds. “Authorised purposes” is broadly defined, and societies choose their authorised purposes and make decisions on grants on the basis of their preferred criteria.
17. It is not evident how responsive societies are to changing community needs. There is no direct accountability between societies and the community for funding decisions. Although societies publish certain information about their grants, it is difficult to determine how effectively the money is being used. In general, societies do not set objectives and report against measures to determine the effective allocation of funding.

18. There are instances of grant capture schemes, where those connected with a host venue use their position to ensure that their preferred purpose receives grants from the society that operates the machines in the venue. In these cases, the Department has had difficulty in meeting evidence thresholds in order to prosecute for breaches of the Gambling Act 2003’s conflict of interest provisions.

Submitters’ views on the proposal

19. Over 2,000 substantive submissions and over 25,000 form submissions commented on this proposal. The vast majority of these submissions were in opposition, showing there is very little public support for this proposal.

20. Concerns were about inefficiencies and the potential conflict that councils would face (e.g. as a regulator of gaming machines and as distributor of gaming machine proceeds). Others believed the process would be open to local body politics and councils would use proceeds for their own projects or purposes.

21. Of the submissions from territorial authorities and council-related organisations, almost 40 per cent opposed the proposal, about 33 per cent showed support or qualified support for the proposal, while 25 per cent supported an alternative distribution model, such as the Lottery Grants Board model.

Department’s view on the proposal

22. The Department does not support the proposal for territorial authorities to distribute the proceeds from Class 4 gambling. Giving territorial authorities this function would appear to be at odds with the Government’s Better Local Government reform programme, which seeks to provide better clarity around the role of councils and improved efficiency.

23. Substantial investment would be needed to establish skilled committees to distribute the large amounts of funding involved. More than 80 local body distribution committees may not be more efficient than the current societies.¹ The Bill is also unclear about what would happen to societies, but some would likely cease operating if they were no longer responsible for distributing proceeds.

24. 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). Further, territorial authorities can apply for grant funding and having council committees distributing net proceeds would create a conflict situation if this was to occur.

Possible alternative solutions

25. Improving the current distribution system, including an analysis of how societies’ grants can better respond to local needs, is discussed in Policy Briefing:

¹ There would be more than 80 local body committees because there are currently 67 territorial authorities and the Bill requires Auckland Council to establish a committee for each of its 21 local boards.
Paper 2 – Response to your request for advice on various issues relating to Class 4 gambling.

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

Overview of the proposal

26. 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 the venue from which the proceeds originated was located. After societies are transitioned out of distribution and territorial authorities take over the role, only the Auckland Council would need to meet this requirement. There is also a proposed power for the Secretary for Internal Affairs to stipulate a licence condition that would impose the same distribution requirement on societies.

Issue that the Bill seeks to address

27. Class 4 societies can currently distribute their funds to authorised purposes in any area of New Zealand. The Bill’s explanatory note states that “only a small proportion of … losses are distributed in grants for community benefit back into the same communities that generated them.”

28. This statement cannot be readily substantiated or disproved. Three-quarters of societies recently surveyed by the Department (30 out of 40) have a policy to return funds to the community where the money was raised. However, data corroborating the policies by showing actual geographical allocation is not available.

Submitters’ views on the proposal

29. The majority of submitters that commented on this proposal stated that it was fair that the funds should go back to where they were generated. Most submitters in support of this expressed qualified support, because of concerns that specifying the smallest local council ward, subdivision or community board area was too exact. Submitters were also concerned about the impact the proposal may have on funding to national and regional organisations. Many suggested that the clause be amended so that distribution occurred at the regional level or that a certain amount be set aside for national and regional organisations.

Department’s view on the proposal

30. The Department supports the principle of returning funds to the area where the gambling occurred, as long as some allowance was made for national or regional organisations or initiatives.

31. There are practical difficulties in the application of this part of the Bill. Gaming machines are not evenly spread across electoral subdivisions, and restricting distribution in this way would result in few or no funds being distributed in some areas. The Bill does not account for gaming machines in an area being used by people from outside the area (e.g. machines in a central business district of a city).

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2 Department of Internal Affairs, Desktop review of information available on non-club gaming society websites (2012) (not yet published).
32. There would be similar problems with interpreting the meaning of “purposes in the same district”. Groups applying for funds may have a purpose that would benefit people in a number of board areas or wards, across a region, or nationally. The grant application process would become complex for applicants (e.g. a purpose that had regional benefit would require a split of multiple smaller applications to a number of societies).

**Possible alternative solutions**

33. Returning funds to the community where the gambling occurred could be one way to introduce a more principled approach to distribution than the current system. Many societies state a preference for this approach, with wide support also shown by submitters.

34. An alternative way of introducing this system could be to amend the Gambling Act 2003 to introduce a new regulation-making power so that new regulations relating to local distribution would be specifically permitted.

35. A flexible approach would be needed in the regulations to prevent anomalies, because of the location of gaming machines, and because of national/regional purposes that provide benefits more widely to the community. The regulation making process would require consultation with the sector and others potentially affected by the change.

36. Clearly establishing this principle in the Gambling Act 2003 in this way would be preferable. This would be an important policy change within the scheme of the Gambling Act 2003 and affect the way in which gaming machine proceeds could be lawfully applied or distributed.

**Introducing harm minimisation devices**

**Overview of the proposal**

37. Under the Bill, the Secretary for Internal Affairs would be given the power to make player-tracking devices, pre-commitment cards, or other technologies that would help increase a player’s knowledge and control over their gambling, a requirement of a gaming machine operator’s licence.

**Issue that the Bill seeks to address**

38. The Bill explains that “if … gamblers were equipped with pre-commit cards … then they could restore control over their own behaviour …”

39. Pre-commitment involves technology that allows players to limit the amount of money or time spent gambling before they begin gambling. 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 to justify proceeding with implementation in all jurisdictions. This trial is due to take place in the Australian Capital Territory in 2013, with the Productivity Commission report on the results due in August 2014.

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Submitter's views on the proposal
40. Slightly more submitters supported than opposed this proposal. Many of these supported the proposal because they believed such devices would help gamblers control their gambling. There was a concern that the adoption of these devices would be costly and reduce community funding. Most submitters specifically stated that, because of this, they would support the introduction of such devices only if proven to be effective. These submitters suggested awaiting the results of international trials of pre-commitment technology before considering its adoption here.

Department's view on the proposal
41. No specific work on pre-commitment or player tracking for Class 4 gambling has yet been undertaken in New Zealand. The Department believes it would be premature to introduce such measures at this stage. While a mandatory pre-commitment system could be worthwhile, it would be prudent to await the results of the Australian trial.

Possible alternative solutions
42. The Gambling Act 2003 could be amended to provide a regulation-making power about pre-commitment devices or other similar measures, which could be utilised in the future if the Australian trial indicated that the benefits outweighed the costs.

43. Introducing harm minimisation technology through regulations or national gaming machine standards rather than through a licence condition would provide for a more robust policy approach. This is desirable because of the nature of these devices and the significant expenditure that could be required. It would also mean that casino gaming machines could be covered.

44. The development of regulations involves a consultation process with the sector and others affected by the change. It also requires a robust assessment of the regulatory impact. This process is consistent with the development of the regulations that made player information displays (pop-ups) compulsory on all gaming machines from July 2009.

Excluding racing from the definition of ‘authorised purpose’

Overview of the proposal
45. The proceeds of Class 4 gambling may only be applied or distributed to ‘authorised purposes’ and this 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 Gambling Act 2003.

Issue that the Bill seeks to address
46. The explanation in the Bill is that racing as an authorised purpose is “inconsistent with the community benefit tenor of the rest of the principal Act” and that “special consideration to this industry alone should not continue”.

47. The New Zealand Racing Board (NZRB) submission on the Bill indicated the racing sector received 5.9 per cent of grants in 2011, totalling $13.216 million.
48. Whether racing is like any other community purpose supported by Class 4 gambling is debatable. Some racing industry activities, particularly the payment of prize stakes, are perceived to lack community benefit.

**Submitters’ views on the proposal**

49. 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. Some submitters expressed support but also suggested that the racing industry continue to receive funds from TAB-operated gaming machines.

50. Some submitters believed that racing clubs provide community benefits to rural communities through facilities and events. Those opposed to the proposal believed that the economic benefit of the racing industry was important. Racing club facilities were available for use at low or no cost to a variety of community groups. Others commented that it was unfair to single out racing from other sports.

**Department’s view on the proposal**

51. The Department considers that racing provides some community benefits, particularly in the use of club facilities. However, the use of grants for stake money has little connection to community benefit as it pays owners, trainers or jockeys for their services.

52. The removal of all grant funding would be a major blow for some well-established racing clubs that rely on this funding. Because of this the Department does not support removing racing completely from the definition of authorised purpose.

**Possible alternative solutions**

53. The Gambling Act 2003 could be amended so that the payment of stake money was no longer an authorised purpose. Grant funding would still be available to support the promotion, control or conducting of race meetings. This would support the continued use of race club facilities by communities. The NZRB could use its own funds to contribute stake money to races.

54. A further alternative is to restrict racing clubs to only those gaming proceeds generated on racing premises (i.e. gaming machines operated at standalone TABs and racing clubs).

**Changes to territorial authorities’ Class 4 venue policies**

**Overview of the proposal**

55. Territorial authority consent is required when a society wishes to, increase the number of machines operating at a venue, or operate at a new venue. Territorial authorities consider consent applications against their Class 4 venue policies.

56. These policies specify whether or not new Class 4 venues may be established in the district, where they may be located and any restrictions on the number of gaming machines in each venue, up to the statutory maximum of nine. When adopting their venue policies territorial authorities must have regard to the social impact of gambling and consult their communities. Each territorial authority must complete a review of its venue policy every three years.

57. Under the Bill territorial authorities would have to take into account public sentiment about the extent and location of venues, and the evidence of harm
from gambling, when developing their Class 4 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.

Issue that the Bill seeks to address

58. The Bill’s explanatory note states that this proposal responds to public sentiment and evidence that “there are already too many pokies and venues in some locations and districts.” The location of gaming machines in relation to the relatively deprived, Māori and Pacific populations are noted as a particular concern.

59. It is difficult to objectively determine whether there are “too many” venues and gaming machines in some areas. 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).

60. The ten areas with the highest numbers of gaming machines in New Zealand are all central business district (CBD) areas in North Island cities and towns. CBDs tend to be more relatively deprived than surrounding residential areas and have lower residential populations.

61. Māori and Pacific populations are more affected by harm from gambling. Data from 2011 shows that Māori were over six times and Pacific peoples three times as likely to be moderate-risk/problem gamblers as European/othe r ethnicities.

62. Electronic gaming machines are the form of gambling most strongly linked to problem gambling. However, despite a steady decrease in Class 4 gaming machines, venues and licence holders the prevalence of problem gambling has not significantly changed.

63. One of the purposes of the Gambling Act 2003 is to facilitate community involvement in decisions about the provision of gambling. This is achieved through Class 4 venue policies. However, venue policies only control new venues and increases in the number of gaming machines at existing venues. The Department’s figures show that the majority (61 per cent) of Class 4 venues are in locations that pre-date the Gambling Act 2003. Territorial authority class 4 venue policies have not impacted on these venues, and no community consultation about the gambling in those locations would have occurred.

Submitters’ views on the proposal

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5 Ibid, pp. 68 – 69, being census area units in Palmerston North, Rotorua, Wellington, Hastings, Gisborne, Auckland, Tauranga, New Plymouth, Hamilton and Whanganui (in order of highest machine numbers). Christchurch has fallen out of the list, most likely due to the closure of venues because of the earthquakes.
8 As of 30 June 2012 there were 17,943 non-casino gaming machines and 1,400 club and non-club venues in New Zealand, down from a peak of over 25,000 gaming machines in June 2003 and 2,007 venues in March 2004.
9 In 2006/07 the rate was 0.4 per cent of the adult population and 2011/12 it was 0.3 per cent. Ministry of Health (2012). Problem Gambling in New Zealand: Preliminary findings from the New Zealand Health Survey (July 2011 to March 2012). Wellington: Ministry of Health, p. 6. Low-risk and moderate-risk gamblers decreased quite significantly over this period (4.8 per cent down to 2.8 per cent) which might be, at least in part, due to the reduction in venue and machine numbers.
64. There was some support for changing the criteria that territorial authorities took into account when reviewing their venue policies. Some saw this mechanism as a way for local communities to have a greater say over gambling policies in their areas. Others qualified their support by emphasising the importance of councils’ considering the effect on community organisations when developing their policies.

65. Of those opposed, main reasons were because the term “public sentiment” was too vague and that the Gambling Act 2003 already covered the additional criteria by requiring councils to consider the social impact of gambling. “Evidence of harm” could be costly for councils to research, at a time when the Government is seeking to reduce territorial authorities’ expenditure.

66. The majority of submissions opposed the proposal to allow venue policies to have the effect of removing venues. The most common reason provided was that reducing the number of venues would result in reduced funding to community groups. Others believed that the power of territorial authorities to reduce the number of gaming machines in their districts through sinking-lid policies was sufficient. The affect on the property rights of venue owners was also noted.

67. Although some councils submitted concerns about the costs and practicality of the Bill’s provisions, there was also some support for these proposals. The Local Government New Zealand submission identified that the Class 4 venue policy is a weak regulatory tool. Some territorial authorities believe that their 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.

**Department’s view on the proposal**

68. The Department does not consider the proposed new criterion would add materially to the current requirement. Territorial authorities need to consider the “social impact of gambling” when developing their Class 4 venue policies. This incorporates an assessment of the negative social effects of Class 4 gambling, which seems to be the essence of the “evidence of harm” test. In addition, “public sentiment” is not a good fit with the usual concept of consultation and could be difficult for territorial authorities to measure objectively.

69. The new 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 relicensing of venues would also be increased due to additional checking of territorial authority consents.

70. There would be a profound effect on societies and venue operators. Requiring a three year consenting process would be costly and disruptive, creating uncertainty for societies and venue operators, particularly around investment decisions.

71. It would also be difficult for councils to apply a policy that sought to remove venues. While “public sentiment” may indicate that there should be fewer machines in an area, the council would need to decide on a principled basis which venues should be removed. However, there may be little evidence on which to develop this basis and determine at a practical level which venues should cease to operate. This could result in legal action being taken against the council by any affected venues or societies.
Possible alternative solutions

72. The weakness of Class 4 venue policies to impact on pre-Gambling Act 2003 venues is an issue. The Department considers that the purpose and effectiveness of the community consultation mechanism could be reassessed. A first step would be a policy review of territorial authorities’ role in Class 4 gambling.

Next steps

73. If you agree, once you have considered the suite of Class 4 briefings and had a further discussion with Mr Flavell on 18 October 2012, we will draft a Cabinet paper reflecting the position you wish to take forward. The Cabinet paper would seek Cabinet’s agreement to the Government’s position on the Bill.

74. Your agreement to this process is sought in the Policy Briefing: Overview of suite of briefings about Class 4 gambling and the Gambling (Gambling Harm Reduction) Amendment Bill.

Recommendations

75. The recommendations are that you:

a) agree not to support the Gambling (Gambling Harm Reduction) Amendment Bill (the Bill) in its current form as the Bill would need a significant re-write to fit coherently with the scheme of the Gambling Act 2003; Yes/No

b) agree not to support the proposal in the Bill for territorial authorities to distribute Class 4 proceeds; Yes/No

c) agree to the development of a new regulation-making power in the Bill providing for the local distribution of proceeds; Yes/No

d) agree to the development of a regulation-making power in the Bill providing for the introduction of pre-commitment devices on gaming machines; Yes/No

e) agree to an amendment to the Bill that either:
   i. prevents gaming machine proceeds from being used for racing stake money; or Yes/No
   or
   ii. restricts racing to receiving gaming machine proceeds from racing venues only (i.e. TABs and racecourses); and Yes/No

f) agree that the Department undertake a policy review of the role of territorial authorities in Class 4 gambling. Yes/No

Director Policy Group

Hon Chris Tremain
Minister of Internal Affairs

/  /2012