

GM 2056360

**The Akarana Community
Trust Limited**

Audit Report

10 April 2014

**Audit Period 1 May 2012
to 31 July 2013¹**

DISCLAIMER

While our audit is carried out in accordance with Department of Internal Affairs' standards, it cannot, and should not, be relied upon to detect every instance of misstatement, fraud, irregularity or inefficiency.

The responsibility for public accountability and the implementation and monitoring of internal and management controls rests with the holder of the class 4 operator's licence.

¹ Some topics may extend beyond the audit period stated

TABLE OF CONTENTS

INTRODUCTION	3
EXECUTIVE SUMMARY	5
SOCIETY GOVERNANCE AND ADMINISTRATION	5
MINIMISING COSTS & MAXIMISING NET PROCEEDS	7
GRANT DISTRIBUTION PROCESS	11
BANKING PROCESS.....	11
VENUE COMPLIANCE	12

ABBREVIATIONS

Act:	Gambling Act 2003
BR:	Gambling (Class 4 Banking) Regulations 2006
DJTR:	Daily Jackpot Turnover Report
EMS:	Electronic Monitoring System
GAA:	Gambling Amendment Act 2005
GMA:	Gaming Machine Analysis
GMP:	Gaming Machine Profit
GR:	Class 4 Game Rules 2006
HMR:	Gambling (Harm Prevention & Minimisation) Regulations 2004
MS:	Minimum Standards
NPR:	Gambling (Class 4 Net Proceeds) Regulations 2004
WGMPR:	Weekly Gaming Machine Profit Report
WVAR	Weekly Venue Activity Report
WJSR:	Weekly Jackpot Summary Report

OFFICIAL INFORMATION RELEASED UNDER THE
ACCESS TO INFORMATION ACT

INTRODUCTION

Background

The Akarana Community Trust Limited (Akarana) was incorporated on 23 February 2011 under the Companies Act 1993. It was licensed as a class 4 gambling operator on 1 May 2012 under licence GM2056360. In addition to its operators' licence, the Society holds four venue licences for the Sports Bar Glenfield (licensed to Akarana on 1 May 2012), Sports Bar 185 (licensed to Akarana on 1 May 2012) Tui Clubrooms (licensed to Akarana on 10 July 2012) and Sports Bar Manurewa (licensed to Akarana on 16 July 2013).

The venue operator of all 4 venues is Dheils Limited.

Dheils Limited was incorporated under the Companies Act on 28th April 2008. The directors and shareholders of Dheils Limited from the date of incorporation up until 8 February 2011 were Harjit DHEIL and Hardesh DHEIL. On 8 February 2011, Harjit DHEIL was removed as a director and shareholder of Dheils Limited. He was replaced by Balbir KAUR. [REDACTED]

The venue manager when all 4 venues were first licensed to Akarana was Hardesh Singh Dheil. Hardesh Dheil remains the venue manager of three of the four venues.

Of particular interest to the Department was the relationship between various entities, in particular that conflicts or potential conflicts of interest did not breach legislative requirements and whether the Department was satisfied that Akarana could adequately govern independently of related parties².

This constitutes the Society's first compliance audit. It has no prior audit history.

Purpose of the audit

The purpose of this audit was to:

- Determine the Society's overall level of compliance with the requirements of the Act (including all applicable Game Rules & Regulations) in relation to its conduct of Class 4 gambling.
- Identify and document any matters of non-compliance for the purposes of remedy and/or imposition of appropriate sanctions.
- Outline any required remedial action in relation to areas of identified non-compliance (where such matters are able to be remedied).

² On 1 September 2011, the Department received an application for a new class 4 operator's licence for Akarana. The three trustees at the time were Harjit Dheil, Mary Hackshaw and Malcolm Gordon. On 19 Dec 2011, the Department proposed to refuse to grant Akarana a Class 4 operators licence on the grounds that the Secretary was not satisfied that Harjit Dheil was not also a key person in relation to the venue operator company Dheils Limited.

Subsequent to this proposal Harjit Dheil withdrew as a Director of Akarana and was replaced by Steven Singh. Further investigation was undertaken and it was determined there was significant concerns in respect to the relationship between Mr Singh and the directors of Dheils Limited. Ultimately Mr Singh resigned as a director of Akarana and was replaced by Pramjit Suchdev. Subsequent to this change the licence was granted on 1 May 2012. The Department noted that it would need to pay close attention to any signs of involvement by Harjit and/or Hardesh Dheil in its governance or operations if the licence was granted.

- Provide best practice recommendations in relation to Society policies and/or procedures where appropriate

Terms of Reference

The terms of reference were notified to the Society on 20 August 2013. The audit covers the period between 1 May 2012 until 31 July 2013. This period was selected because it was the society's first period of operation.

The scope of the audit covers the following key process areas of the Society's class 4 gambling operations.

- Authorised purpose distribution process and procedures,
- Society costs (i.e. society internal operating costs, venue payments, service provider costs)
- Recordkeeping
- Banking of GMP
- Venue compliance
- Governance and management

Venue Inspections

We have undertaken venue inspections at venues licensed to your society. Where there has been non-compliance the reports resulting from those inspections have been sent separately and a summary of the overall venue compliance is commented on in the 'Venue Compliance' section of the report. Where immediate action was required we will already have given you the appropriate venue audit report.

OFFICIAL INFORMATION ACT
RELEASED UNDER THE
OFFICIAL INFORMATION ACT

EXECUTIVE SUMMARY

The Society has only relatively recently been licensed to conduct class 4 gambling. It has no prior history of community or charitable activities. It does not conduct activities other than to conduct class 4 gambling and distribute the proceeds. This is the first compliance audit of the Society. During most of the audit period, the Society operated at only three venues: Sports Bar Glenfield, Sports Bar 185, and Tui Clubrooms. All these venues are operated by the same venue operator, Dheils Limited. Concerns remain regarding the ability for the society to remain independent of the influence of the venue operator at these venues particularly when all the venues are with the same venue operator. An additional venue was added to the society's licence on 17 July 2013 and on 4 November 2013 an application was received for The Alamo, the venue operator for these venues is also Dheils Limited. The Department considers that such circumstances allows the venue operator to potentially exert undue influence (whether overt or covert) on Akarana.

The audit report was first issued to Akarana on 22 January 2014 (report dated 7 January 2014). Akarana's comments in respect to that report have been considered and taken into account in completing this report.

SOCIETY GOVERNANCE AND ADMINISTRATION

Introduction

The then chairperson of Akarana, Mary Hackshaw, was first contacted in respect of the impending audit in August 2013. She advised that at that time she was leaving for Australia, and that everything should go through the General Manager. Indications were that this would only be for a short period and that it was her intention to return to New Zealand. There were concerns in respect of interaction via the General Manager given he was an employee (albeit more recently a director) and there were questions that needed to be raised in respect to his employment.

Subsequently, the Department was informed that Mary Hackshaw would not be returning to New Zealand but would continue on as Chairperson and Director of Akarana. Having the Chairperson and Director of a gaming machine society not residing in New Zealand is an extraordinary situation. The Department was concerned with regards to the oversight of Akarana by her.

This also presented limitations on interaction between Akarana and the Department during the audit process. The situation led to questions and answers³ via email as opposed to face to face discussions. This was less than ideal. Subsequent to this being raised with the then Chairperson (Ms Hackshaw) in October 2013, the Department was informed that Malcolm Gordon would assume the role of Chair but that Ms Hackshaw would remain on as a director.

Immediately prior to granting a class 4 operator's licence to Akarana, the Department noted it would need to pay close attention to any signs of involvement or influence by Harjit and/or Hardesh Dheil in its governance or operations, if the licence was granted. The Department continues to have concerns in relation to the closeness of the relationship between the society and the venue operator.

Subsequent to the approval of a society licence in 2012, it was noted that Director Pramjit Suchdev ceased as a director on 1 August 2013 and was replaced by Janu Partep Singh, the General Manager of Akarana. Pramjit Suchdev was considered an independent director hence why the licence was eventually granted.

³ Email request Department to Mary Hackshaw on 1 October 2013, response from Ms Hackshaw on 21 October 2013.

Currently the Directors are:

- Malcolm Gordon (Director since Akarana was established)
- Mary Hackshaw (Director since Akarana was established)
- Janu Singh (Director since 30 July 2013)

The current shareholders are:

- Malcolm Gordon (50%)
- Mary Hackshaw (50%)

Employment of General Manager

Janu Singh was appointed general manager of Akarana commencing as from 30 April 2012. This was as per an employment contract signed by Janu Singh and Mary Hackshaw (on behalf of Akarana) on 1 May 2012, being the date that Akarana's society licence was approved.

The general manager position was not advertised and no other people (except for Janu Singh) were interviewed for the position.

It was explained by the Chairperson⁴ that the criteria for the position was for someone who could communicate effectively with Indian grant recipients (ie: multi lingual), had a tertiary qualification, and had held a position of trust and confidence in a prior position.

Mary Hackshaw explained that the position had not been advertised due to the limited number of suitable applicants and that Janu Singh fitted the role perfectly and no additional recruiting or shortlisted was required.

The chair explained that Mr Singh approached her and that she was aware that Mr Singh was, at the time of the recruitment, working for the Dheil brothers' company, Post Kiwi Limited, at Kiwibank.

Chairperson's oversight

In the email of 1 October 2013, the Department raised concerns with regards to the Chairperson's ability to perform the duties of her position given that she was permanently based in Australia.

In response Ms Hackshaw advised

"Remote access to documents is now very easy with the ability for documents to be scanned and emailed or scanned and uploaded to a dropbox. Meetings can easily be conducted via Skype. When my personal attendance is required, a flight from Australia to New Zealand is often the same price as a domestic flight within New Zealand.

"It appears clear from your letter that the Department would prefer the chair to be a person based in New Zealand. In light of these comments, my fellow director, Malcolm Gordon will assume the role of the chair.

"I spent approximately 12 months working out of the same office as Janu. It was clear to me that in order for Janu to keep up with the workload requirements a 40 hour working week was required. Janu keeps in regular contact with all directors. We have regular email and phone contact. It will very quickly become apparent to us if Janu gets behind in his duties or is not performing his duties satisfactory [sic]"

⁴ Chairperson's email 21 October 2013.

Conflicts of interest

In the email of 1 October 2013, the Department asked whether Ms Hackshaw in her capacity as a lawyer had ever represented the Dheil brothers or Akarana's grant recipients.

Ms Hackshaw responded that she had acted for the Dheil brothers on commercial and property matters (but not grant recipients) but she was no longer the holder of a practicing certificate.

Audit of financial Statements

In his report of 12 April 2013, the auditor of the financial accounts⁵ commented that

"At the moment all the functions of the organization are carried out by the General Manager and there is no segregation of duties or functions.

"In any organization it is important that no single person has control over, or access to, all aspects of recording and control of Trust's funds. I Have noted that significant portions of the day to day accounting functions are under sole control".

"Not only does this provide opportunity for abuse of the entity's funds, but also puts a great responsibility and burden of trust upon that person who has this control. The separation of key accounting responsibilities is a critical internal control in any system to prevent misappropriation of funds, error, or unrecorded transactions. I recommend that the responsibility of recording and control over Trust funds be delegated between two individuals".

The issue here is whether the Department can continue to be satisfied that Akarana is independent of the venue operator and key persons in relation to the venues given previous concerns expressed. This is particularly so now that Janu Singh, who left employment of the Dheil brothers in order to become General Manager of Akarana, has recently become a director of Akarana. Another issue is that there is no longer any direct oversight of the operation, one of the directors permanently resides in Australia, and the other resides in the Bay of Plenty.

The problem from the Department's perspective is not that perceived conflicts exist, it is the extent to which they exist and the extent to which they impact the Department's assessment of the Boards' ability to genuinely minimise operational costs and maximize net proceeds and whether there is any influence (overt or covert) by venue key persons on the grants process, and indeed being involved in decisions about who will provide goods or services to recipients of grants.

Akarana has advised that it will now start a process of looking for an additional Auckland based director, to be appointed before the end of 2014.

MINIMISING COSTS & MAXIMISING NET PROCEEDS

Introduction

Societies (except clubs and end user trusts) that conduct Class 4 Gambling exist to raise funds for distribution to appropriate lawful purposes. They do not exist for any

⁵ The Akarana Community Trust Limited audit findings for the year ended 31 March 2013- Auditor: Vijay Talekar

financial benefit or for any purpose that is not an authorised one. In particular, they are not vehicles by which society officers, employees or venue owners may financially enrich themselves. Officers and venue operators are entitled to reasonable recompense of costs associated with gambling related obligations and their labour.

The Act requires that the Society's officers maximise net proceeds (that may be used to benefit its authorised purposes) by minimising costs.

Net proceeds are defined in section 4 of the Act as the turnover of gambling less the actual, reasonable and necessary costs of conducting gambling and complying with the Act. The Society is required to distribute net proceeds to its authorised purpose and for no other purpose.

For the Society to be licensed for Class 4 Gambling (or to remain licensed) the Department must be satisfied all costs are actual, reasonable and necessary only, and that net proceeds are being maximised wherever possible.

General Manager - Employment contract- quantum

Janu Singh was employed under a contract dated 1 May 2012 for ██████████ per annum.

It was noted in meeting minutes that the directors agreed to increase Janu Singh's fees from ██████████ to ██████████ from April 2013. There was no amendment to the employment contract.

Subsequent minutes reduced the figure down to ██████████ being the average amount specified in the National Employers Wage and Salary Survey dated 25 January 2013 for a General Manager.

An undated employment contract was signed with a commencement date from 1 August 2013 at a salary of ██████████ per annum, an increase of 86% from the previous contract.

In the email of 1 October 2013, the Department asked for justification and evidence relating to increased payments to Janu Singh from April 2013.

The Chairperson responded that when Janu was employed Akarana had only two venues and initially had only a modest number of grant applications to consider and audit each month.

She explained that Akarana now had four venues and received a large number of grant applications. Akarana's turnover is now approximately \$4,000,000.00 annually. Akarana's turnover is due to increase to \$6,800,000.00 annually with the introduction of a new high banking venue (The Alamo).

The Chairperson also stated that, although the new employment agreement was dated 1 August 2013, the increased rate applied from 1 April 2013 (as per the resolution passed).

It is noted that an application by Akarana to operate machines at the Alamo was not made until 4 November 2013. It is also noted that the venue operator at the Alamo is also Dheils Limited. At the time of this report, a licence has not yet been granted.

As a comment, it is noted that the wage and salary survey notes that a General managers "supervises: Functional Managers and/or specialists" whereas Akarana has no other staff, Janu Singh is the sole employee.

Janu Singh – Motor Vehicle Expense

The auditor's report notes that there were payments to an employee for the lease reimbursement of a vehicle. It notes concerns that the \$1,000.00 was paid monthly with no deduction of PAYE or Fringe Benefits tax. Payments were made at \$1,000.00 per month up until March 2013.

The Department has been provided with notes of a meeting held on 30 June 2012 and signed by the three then directors that the directors approved \$1,000.00 monthly to Janu Singh "as per motor vehicle expense". No other details or supporting documentation has been provided.

The Chairperson was asked to comment on the auditors findings that it was a lease, and that it was annotated as a lease in Akarana's bank statements.

The Chairperson was asked how this lease was determined and what documentary evidence (if any) was required to be maintained relevant to this cost (eg: vehicle mileage sheets).

In response, the Chairperson advised that the directors were aware that a lease vehicle would cost approximately \$1,100.00 per month before fuel. It was also clear that at least 400 km per week would be incurred due to the number of grant recipient visits that would be undertaken (many grant recipients based on the North Shore).

The Chairperson advised that \$1,000.00 per month was offered to Janu for the use of his car for work related travel as it was less than obtaining a lease vehicle and paying a travel rate and confirms that this was minuted by the directors. The Chairperson also confirmed that no logbooks or mileage records were maintained.

The Department considers that the quoted comparative cost of a lease vehicle, would seem to be high.

The Department also notes that without any supporting/corroborating documentation (eg. vehicle logbooks) it cannot determine whether the cost meets the requirement of being actual, reasonable, or necessary. [REDACTED]

Akarana has acknowledged that the documentation regarding this expense was not as complete as it could have been but remains of the view that the cost was reasonable.

Mr Singh has waived any on-going payment for the use of his vehicle and is currently receiving no payment. This offer has been accepted and has been in place for several months.

Legal Services Agreement

In the earlier days of the trust, there were a number of specific invoices paid to Harkness Henry, (Akarana's lawyer) for various services which would not appear to be normal services provided by a lawyer. These include attending designing grant application forms, directors meetings, grants advice, auditing of grants policies, opinions on grant applications, correspondence with grant applicants, assistance with licensing applications and renewal queries, provision of harm minimisation training to the general manager and subscription to the New Zealand Gambling Act guide (written by Jarrod True).

On 17 July 2013, Akarana and Harkness Henry entered into an arrangement in relation to the provision of all Akarana's class 4 legal requirements. Whilst this was signed on 18 July 2013, it was effective from 1 May 2013. This arrangement was capped at \$7,200.00 for 12 months to 30 April 2014 (\$600.00 plus GST per month).

The Department does not consider agreements such as these to meet the actual, reasonable, and necessary test in that they are not necessarily for work that has been undertaken at the time it is paid. It is noted that the agreement states that Harkness Henry is to issue a credit notice if the work in those 12 months was less than the annual amount of \$7,200.00. Even so, payments are made on a monthly basis for work that at that time has not necessarily been performed. This also temporarily reduces the amount available for authorised purposes on a monthly basis.

Akarana has commented that in this case there was never a period when the amount paid under the agreement exceeded the actual work in progress but has ended the contract and legal fees will now be charged on a traditional time and attendance basis.

Other service providers and consultants

There were a significant number of service providers including, particularly consultants during the set up stage:

- Parkin Hospitality Limited - For the services of David Conroy and Jo Williams
- National Hospitality Limited
- JJ Consultant's for consultancy services
- Charity Check Limited
- Gaming Consultancy

Regulation 5(4) of the net proceeds regulations requires Akarana to ensure that an agreement or arrangement that it enters into for the provision of goods or services related to the conduct of class 4 gambling, is in writing and specifies the particular type of goods or services and itemises their cost.

There were no itemised agreements with the above service providers as is required. It is acknowledged that during the initial establishment phase of Akarana that there may have been some additional services required in order for the General Manager to come up to speed. However, now that the General Manager has been in the position for over one year, it is considered that additional consultancy services required would be minimal going forward.

It is noted that Parkin Hospitality has been paid a "standard" monthly consulting fee of \$100.00 (plus gst) since November 2012. There is no evidence of work actually completed for these payments⁶, nor is there a contract. The Department queries this expenditure going forward.

Akarana has acknowledged that the documentation regarding the various service providers and consultants was not as complete as it could have been and that they no longer use any of the consultants and service providers listed above.

⁶ A specific invoice for \$1276.50 (plus gst) was paid for services rendered in February and March 2013, this was in addition to the "standard" monthly consulting fee.

GRANT DISTRIBUTION PROCESS

The Auditor's findings of 12 April 2013 state that "...although the minutes of the meetings were available but all the minutes have not been signed by any of the directors of the company".

This was queried with the Chairperson as it was also apparent that none of the grant application forms were signed by the Directors, despite there being a space to do so, (as is required by NPR 17(b) and (e)). Nor did there appear to be contemporaneous minutes confirming approval by the directors at the time the grants were paid.

The Chairperson responded that the historical minutes were signed after the issue was raised by the auditor.

She further advised that hand written minutes were made at each meeting by the General Manager and that these minutes were typed up and subsequently presented to the directors for approval at the following meeting. The Chairperson indicated that there were Microsoft word files available showing when particular files are created and amended.

The Department expects that there be clear evidence of the Directors approving Authorised purpose payments prior to being paid. This is the purpose of NPR Regulation 17(4)(b) and (d).

To rely on word documents written up subsequent to the net proceeds committee meeting and in particular not signed by the directors (as is the case historically) is not acceptable.

A number of issues were found with some of the grants made during the audit period. Investigations are continuing and will be dealt with outside of this audit report.

Akarana has advised that it will ensure that a schedule of approved and declined grants is signed by the directors prior to grants payments being made.

BANKING PROCESS

GMP banking was sampled for three venues throughout the audit period.

The Department had some difficulty in reconciling deposits recorded in the Society's gaming account with WVAR data from the venues. Each venue banks GMP on an 'interim' basis. That is, each week's GMP is banked over time in multiple transactions.

Game Rule 127 requires that where more than a single deposit representing weekly gaming machine profits is made, a Weekly Banking Reconciliation report must be used⁷. This allows individual deposits to be reconciled to particular WVAR periods to ensure banking is done on a timely basis.

These were not initially maintained, however, when Game Rule 127 was brought to Akarana's attention, the reports were retrospectively completed. Samples of banking over the audit period indicate that banking is made within the requirements of Section 104 of the Act as required.

⁷ copies of the Weekly Banking Reconciliation report are available from the Department's website

VENUE COMPLIANCE

Summary of venue inspections

Sports Bar Glenfield

- Standard forms were not being used as is required per Game Rule 23.
- The Key register had not been used for two months, these are required to be maintained pursuant to Game rule 17(2).
- The Venue Costs Schedule attached to the venue agreement indicated that the venue was open on Sundays whereas enquires at the venue revealed that the venue was in fact closed on Sundays. Clearly the figures given in the schedule are incorrect. This has been brought to the attention of the Department's licensing unit.

Sports Bar 185

- An access issue was identified at the venue, at the time of the inspection patrons were observed entering and directly accessing the gaming area without staff having the opportunity to observe them. Necessary alterations have now been carried out at the venue.

Tui Club rooms

- Standard forms were not being used as is required per Game Rule 23
- The Department was not satisfied with the knowledge of venue staff with harm minimization requirements. Refresher training was suggested.

Akarana has advised that all the venue related issues have since been rectified.

OFFICIAL INFORMATION
RELEASABLE UNDER THE
ACCESS TO INFORMATION ACT