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| Consultation:Proposal for Casino Venue Licence Renewal Fee Regulations Department of Internal Affairs June 2017 |
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# What is this consultation document about?

The Department of Internal Affairs is seeking your views on proposed regulations setting the fee for a casino venue licence renewal application (renewal fee). This will be done by amendment to the Gambling (Fees) Regulations 2015.

This consultation document sets out options that have been developed for cost recovery regulations setting the fee for the application process. It describes the costs expected to be incurred by the Gambling Commission (the Commission) for which detailed costings data and a diagram of the application process are provided as appendices.

## Consultation requirements

Section 372 of the Gambling Act 2003 requires that, before regulations are made, persons and organisations that are likely to be substantially affected by the regulations must be consulted and given reasonable opportunity to respond. Submissions will be given adequate and appropriate consideration.

## Sending us your submission

Please send your submission to the Department of Internal Affairs by **30 June 2017**.

Please note that all submissions may be made publicly available. Even if you request confidentiality, we may have to release your submission at a later date if a request is made under the Official Information Act 1982. In your submission, please highlight the information you would prefer was withheld should a request be made.[[1]](#footnote-1)

Your submission can be sent in the following ways:

Email: Casino.Renewals@dia.govt.nz

Post: Safer Communities Policy Team

 Policy Group

 Department of Internal Affairs

 PO Box 805

 Wellington 6140

*Although all reasonable steps have been taken to ensure the accuracy of the information contained in this document, the Department of Internal Affairs disclaims responsibility for any inaccuracy in relation to the information; and fully excludes liability of any kind to any person or entity that chooses to rely upon the information.*

# Introduction

1. Gambling regulatory functions undertaken by the Department of Internal Affairs (the Department) and the Gambling Commission (the Commission) are funded through fees paid by gambling operators. The Commission is responsible for considering all licensing decisions related to casinos and operates independently of the Department in performing its functions under the Gambling Act 2003 (the Act).
2. Under the Act, no new casino venue licences can be issued, however existing licence holders retain their licences granted under the now repealed Casino Control Act 1990. A casino venue licence expires 25 years after the date the casino commenced operating and, at the expiry of this period, may be renewed under the Act for a further 15 years.[[2]](#footnote-2)
3. The Act sets out the requirements for the casino venue licence renewal application process (application process). This requires:
* a Casino Impact Report to be tabled, prepared by an approved person, independent of the applicant;[[3]](#footnote-3)
* community participation at public hearings and through community polls or consultation processes;[[4]](#footnote-4) and
* the applicants to show how the proposed licence renewal will benefit the local and regional communities and New Zealand generally.[[5]](#footnote-5)
1. These provisions ensure that communities have a say in the licensing of casinos in their area and that social and economic impacts are considered.
2. There are six casinos in New Zealand that currently hold venue licences, four of which are operated by SKYCITY Entertainment Group Limited. The venue licence expiry dates for each casino are:
* Christchurch Casino November 2019
* Dunedin Casino October 2024
* SKYCITY Wharf Casino Queenstown September 2024
* SKYCITY Queenstown December 2025
* SKYCITY Hamilton September 2027
* SKYCITY Auckland June 2048
1. To help you consider your response, questions are provided at the end of the document, and the Department welcomes your comments and suggestions on any aspect of the development of the renewal fee.

# Problem, authority and scope

## Problem for resolution

1. The current Gambling (Fees) Regulations 2015 set out annual casino fees and fees for venue licence applications, but not for renewal of casino venue licences.
2. When a casino venue licence is nearing expiry, an application for renewal can be made between 24 and 12 months prior to the date of expiry. The first casino venue licence able to be renewed under the Act is due for expiry in November 2019.
3. The earliest possible date for a renewal application is November 2017, therefore there is a need for Regulations setting the renewal fee, or the method of assessing the fee, to be in place before then.

## Authority to charge a fee

1. Powers are provided for in the Act for the making of regulations to recover the costs of the Commission in performing its statutory functions.
2. Section 370 of the Act provides that regulations may be made prescribing fees or charges payable to enable the recovery of the direct or indirect costs of the Department, the Commission or the Police in:
3. publishing and informing people about the Act;
4. administering the Act;
5. enforcing and monitoring compliance with the Act; and
6. doing anything else authorised or required by the Act.
7. The object and intent of charging fees for the application process is to recover the full costs of the Commission’s services in processing the renewal application. If an application is not successful, the renewal fee will not be refunded.
8. Treasury instructions require that where departments provide services on a full cost recovery basis, the department is required to operate a memorandum account. The memorandum account records the accumulated surplus or deficit arising from the provision of the service. The memorandum account begins with an opening balance, and is adjusted each year by end-of-year surplus or deficit in relation to the fees covered by the memorandum account.[[6]](#footnote-6)
9. Section 228 of the Act requires the Department to service the Commission to perform its functions. As such, the Department’s memorandum account for administering gambling fees includes the costs of the Commission to consider casino venue licence renewal applications.
10. The Department’s under-recovery of costs to regulate the gambling sector generally is reflected by a deficit in the Department’s memorandum account. To prevent this deficit from growing significantly, full cost recovery of the application process is necessary. It is also not appropriate for the burden of regulatory costs to fall on the taxpayer. The Treasury *Guidelines for Setting Charges* *in the Public Sector* (Treasury guidelines) note that those that give rise to costs should be responsible for covering them and that a key aim of fees is to reduce the reliance on funding from tax. [[7]](#footnote-7)

## Scope – what the renewal fee covers

1. The proposed renewal fee will be strictly isolated to the fee payable by casinos for the consideration by the Commission of an application for the renewal of their venue licence.

# Criteria and principles for assessing fee options

1. The Department undertook the development of options presented in this document with the objectives of:
* meeting the Commission’s reasonable and necessary costs to fulfil its statutory obligations to process casino venue licence renewal applications; and
* ensuring that costs are accurately and transparently accounted for in the setting of the renewal fee.
1. The options presented in this document have been developed by the Department with reference to the principles set out in the Treasury guidelines[[8]](#footnote-8) and the Office of the Auditor-General Good Practice Guide, *Charging fees for public sector goods and services* (OAG guide)[[9]](#footnote-9).
2. The Treasury guidelines outline policy considerations when setting fees with a focus on efficient resource allocation, minimising transaction costs, equity among those that give rise to costs, and reducing costs and taxpayer burden. The OAG guide directs government departments and other public entities to apply the principles of authority, efficiency and accountability in fee-setting decisions.
3. The following criteria have been used to assess the options against the objectives:
* fairness between fee payers: we have looked at how to develop a fee that fairly reflects the actual costs of the renewal process for a particular applicant;
* effectiveness: this concerns the need for the fee to support the policy intent of cost recovery for the Commission’s services in processing the renewal application;
* efficient implementation: when and how the renewal fee is charged needs to work for both the fee payer and the Commission in terms of practicability and certainty; and
* transparency: the Department has collected detailed costings data from the Commission for each activity that will form the basis for the renewal fee.

# What are the options?

1. Two options for setting the renewal fee have been identified:
* Option one: fixed fee payable upon application and based upon estimated costings for each casino based on a set number of days to complete the application process; and
* Option two: two-tiered fee comprised of an initial, fixed fee and the option for:
	+ repayment of excess funds to the applicant where the fee paid exceeds the actual costs incurred; and
	+ additional payment by the applicant where the fee paid is less than the actual costs incurred, subject to an upper limit.
1. The Department’s preferred option for setting the fee is Option Two.

## Discussion of the options

1. The Department has developed the options below having regard to the design of similar fees in other regulations.
2. The Commission and the Department recognise that fees charged should meet actual costs. However, as with any fees set in advance of payment, assumptions have had to be made about the expected costs and drivers of the renewal fee.
3. In the development of options for the renewal fee, the following assumptions have been made relating to the:
* level of complexity in processing applications;
* the number of public hearings required;
* human resourcing requirements; and
* availability and cost of other resources (i.e. advertising, travel, accommodation and venue hire).
1. Costs under each approach have been calculated where possible according to the daily rate for each activity involved in the application process. Where not possible (e.g. travel costs), calculation is based on the assumption of the average cost of that activity.

## Option One: fixed fee

1. The renewal fee under option one is a fixed fee based upon the estimated costs involved in completing the application process. The costs incurred by the Commission in the application process are estimated to be the same for each renewal application.
2. The total fee will be fixed by Regulations and payable upon application.
3. The tables in **Appendix B** set out the costs data, as at 20 June 2017, setting out the estimated renewal fee for all renewal applications and underlying rate assumptions for costs. This demonstrates how the renewal fee is calculated under this option and the distribution and quantum of costs.
4. Based on these estimates, the renewal fee under this option will be $151,000.
5. A fixed fee is a recognised and common approach to setting a renewal fee. It is consistent with the approach taken elsewhere in the Gambling (Fees) Regulations 2015.
6. Because the renewal fee will only apply to a very small and specific pool of stakeholders, the risk of a disproportionate impact that can sometimes occur with a flat fee is limited.

### Benefits and risks of option one

1. The benefit of option one is that it offers the greatest certainty to applicants as to the fee payable in advance of making an application. It is relatively simple to set and can be implemented effectively and efficiently.
2. This option does not take into account differences between applicants and that some applications might cost more to process than others.
3. The risk of setting a fixed fee in circumstances where the Commission has yet to consider a renewal application is that there could be a discrepancy between the renewal fee paid and the actual costs of the Commission to complete the application process. It is difficult, if not impossible, to predict the exact cost of an application. However, the Department has based its detailed costings upon specific information provided by the Commission relating to the expected work involved in the application process.

## Option Two: two-tier fee structure: fixed fee + variable adjustment

1. This option would calculate the renewal fee using a combination of two fee types:
2. an initial, fixed fee would be payable by all applicants upon application; and
3. an adjustment once the application had been decided, resulting in:
	1. a reimbursement to the applicant if the actual costs incurred were less than the fee already paid; or
	2. an additional payment by the applicant if the actual costs incurred were less than the fee already paid.
4. The fixed fee will be $151,000, based on the same estimates as under option one.
5. In terms of the adjustment, a cap will be put in place specifying the maximum amount over which the total renewal fee must not exceed, regardless of the Commission’s total costs.
6. The cap will be set at $200,000.
7. The tables in **Appendix B** set out the data and estimated costs, as at 20 June 2017, upon which the renewal fee is calculated under this option.

### Benefits and risks of option two

1. This option offers the greatest fairness both to applicants and the public generally. It recognises that the cost of processing applications could vary depending on the specific application and ensures that the full cost is paid by the applicant and does not fall on the taxpayer.
2. The provision for adjustment of the renewal fee where it differs from the initial fixed fee acts as a safeguard against over or under-recovery of costs by the Commission. This will enable more effective cost recovery and will be fully transparent as to actual costs.
3. However this option offers the applicant less certainty than option one as to the total renewal fee payable. Implementation of this option will be slightly less effective because of the uncertainty as to the amount of the adjustment that may fall due upon completion of the application.

# Monitoring, evaluation and review

1. The Department will monitor the effect of the renewal fee following its implementation. The Department’s intention is to review the renewal fee as part of the next review of all gambling fees in 2017/18, or earlier if necessary.

**Questions for you**

What do you think about the two options?

Are there other options that we have not considered? If so, what are they?

Which option do you prefer?

Any other comments?

1. Casino venue licence application process



1. Detailed costing tables

In line with government policy aimed at increasing transparency, the Department has followed an open book approach in disclosing costs.

The key costs attached to the application process all relate to direct costs of the Commissioners, other human resources, and travel related and other expenses (such as venue hire and travel) incurred in the application process.

The following tables set out the estimated costs for the application process that will provide the basis for setting the renewal fee.

The costs demonstrated in the tables have been calculated on the following assumptions:

* two public hearings will be held, each of one to two days length;
* three days of Commissioner and Secretariat time per hearing, comprised of the hearings, travel and preparation and debrief; and
* one and a half days of legal advisor time per hearing.

Where possible, the figures have been calculated according to assumptions made by the Commission and the Department about the dollar rate applying to each activity. In some cases these rates are certain, such as Commissioners’ fees. Other rates such as flights and accommodation costs have been assumed based on the average cost of that activity.

**Table 2: Estimated costs by activity and duration**

|  |  |  |  |
| --- | --- | --- | --- |
| Activity | Estimated duration (days) | Cost for total duration | Total estimated cost |
| **Pre-application** |  |
| Commissioners’ fees (Chief Gambling Commissioner and 4 Commissioners) | 1 |  | $2,650.00 |
| Legal expenses and advice  |  |  | $3,750.00 |
| Chief Gambling Commissioner and Executive Director travel to meet local Council: | 1 |  |  |
| * Fees
 |  | $750.00 |  |
| * Travel related expenses
 |  | $1,400.00 | $2,150.00 |
|  | 2 |  | $8,550.00 |
| **Application** |  |
| External expert advisor on CIR and renewal process | 12 |  | $18,000.00 |
|  |  |  | $18,000.00 |
| **Public consultation** |  |
| Advertising |  | $3,000.00 | $3,000.00 |
| Commissioners’ travel (Chief Gambling Commissioner and 4 Commissioners) | 6 |   |  |
| * Fees
 |  | $15,900.00 |  |
| * Travel related expenses
 |  | $13,775.00 | $29,675.00 |
| Legal Advisor in attendance | 3 |  |  |
| * Fees
 |  | $9,360.00 |  |
| * Travel related expenses
 |  | $1,790.00 | $11,150.00 |
| 1 Secretariat in attendance | 6 |  |  |
| * Fees
 |  | $3,000.00 |  |
| * Travel related expenses
 |  | $5,710.00 | $8,710.00 |
| Venue hire | 2 | $4,000.00 |  |
| Transcriptionist | 2 | $5,000.00 |  |
|  | 18 |  | $61,535.00 |
| **Decision** |
| Additional legal advice | 8 |  | $24,960.00 |
| Commissioners’ consideration of application (Chief Gambling Commissioner and 4 Commissioners) | 5 |  | $13,250.00 |
|  | 25 |  | $38,210.00 |
| **Other** |  |  |  |
| Secretariat support fees (2 people) | 24  | $24,000.00 | $24,000.00 |
| **TOTAL**  | **45** |  | **$150,295.00** |

**Table 3: Rate assumptions for estimated costs**

|  |  |
| --- | --- |
| Activity | Rate |
| Chief Gambling Commissioner fees (includes time processing application, meetings, etc) | $750.00 per day |
| Gambling Commissioners’ fees | $475.00 per day |
| Secretariat fees (time/overheads) | $500.00 per day |
| Legal fees | $3,120.00 per day |
| External expert fees | $1,500.00 per day |
| Transcriptionist | $2,500.00 per day (includes hours used, set up and down, finalisation of records) |
| Advertising | $3,000 total (average assumed) |
| Flights (return) | $500.00 per person (average assumed) |
| Travel related costs  | $355.00 per day per person  |
| Venue hire | $2,000.00 per day  |

1. While you may indicate the information you would like withheld, it can only be withheld if it meets the relevant criteria under the Official Information Act 1982. [↑](#footnote-ref-1)
2. This does not apply to SKYCITY Auckland Casino which has had its casino venue licence extended to 2048 under the New Zealand International Convention Centre Act 2013. [↑](#footnote-ref-2)
3. Gambling Act 2003, s 134(3) [↑](#footnote-ref-3)
4. Gambling Act 2003, s135 [↑](#footnote-ref-4)
5. Gambling Act 2003, s 134(3)(a) [↑](#footnote-ref-5)
6. Treasury Instructions 2013. [↑](#footnote-ref-6)
7. *Guidelines for Setting Charges in the Public Sector*, The Treasury, April 2017. [↑](#footnote-ref-7)
8. *Guidelines for Setting Charges in the Public Sector*, The Treasury, April 2017. [↑](#footnote-ref-8)
9. *Charging Fees for Public Sector Goods and Services. Good Practice Guide*, Office of the Auditor-General, June 2008. [↑](#footnote-ref-9)