

Departmental Disclosure Statement

Gambling Amendment Bill (No 3)

The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Department of Internal Affairs.

The Department of Internal Affairs certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

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Contents

Contents..... 2

Part One: General Policy Statement 3

Part Two: Background Material and Policy Information 5

Part Three: Testing of Legislative Content..... 7

Part Four: Significant Legislative Features 10

Part One: General Policy Statement

The Gambling Act 2003 (the Act) creates a regulatory framework for gambling in New Zealand (excluding racing, which is regulated under the Racing Act 2003). The Act divides gambling into classes according to risk, plus provides for casino and lotteries gambling. Class 4 gambling refers to gambling on non-casino electronic gaming machines (“pokies”) in bars and clubs. These venues are entitled to be paid by the corporate societies (societies), which are licenced gambling operators, for costs associated with hosting the gaming machines.

Key purposes of the Act include ensuring that money from gambling benefits the community and limiting opportunities for crime and dishonesty associated with gambling.

Purpose and overview of the Bill

The Gambling Amendment Bill (No 3) makes a small number of important improvements to the Act, focusing on Class 4 gambling, to help fulfil the purposes of the Act. The Bill’s policy objectives are to—

- increase transparency of grant-making from the proceeds of Class 4 gambling;
- reduce potential conflicts of interest situations between Class 4 gambling operators (societies), venues and grant recipients;
- improve transparency surrounding management companies that provide societies with services (for example, contract negotiation with venues, administrative and financial management or grant application processing);
- simplify compliance and reduce costs for societies and venue owners in some areas; and
- ensure the efficiency of the appeals process is not undermined.

Transparency of grant-making by societies

To make more comprehensive information on grants available to communities, and allow financial comparisons between societies to be made, the Bill’s amendments introduce new regulation-making powers prescribing:

- the publication requirements for societies’ grants, specifically the manner, location and forms for publication under section 110 of the Act, and any matters to be disclosed, including that disclosure may be in electronic form; and
- how societies’ financial information and key indicators of operational efficiency should be published.

Societies will also need to report on whether grant decision-makers had any direct or indirect interest in a successful grant applicant.

Reducing conflicts of interest

The Act currently has two conflict of interest provisions with associated summary offences. The conflict of interest provisions are important because they help to ensure that gambling is undertaken to benefit the community rather than enable personal gain.

The Bill’s amendments strengthen the conflict of interest provisions in the Act by:

- changing the definition of a venue “key person” so that the indirect interests and relationships of venue operators to grant recipients are captured;
- simplifying the test for determining if a person has an interest in a venue such that he or she is in essence a venue “key person”;
- prohibiting payments, gifts, or other benefits between societies and venues even where there is no “condition attached” to the money, gift or benefit; and
- prohibiting a “key person” in a society or a venue from receiving any benefits that a reasonable person would believe could influence the grant-making process.

Improving transparency of management company operations

Some societies use management companies in their gambling operations, with these companies providing societies with services such as contract negotiation with venues, administrative and financial management or grant application processing. The Bill brings these management companies within the gambling regulatory framework by:

- providing the Secretary for Internal Affairs with a new power to audit these companies; and
- widening the “key person” definition so that people running management companies are considered when an application is made for a Class 4 operator’s licence (and the expanded conflict of interest regime will also apply).

Simplifying compliance with the venue payments system

There is currently a very complex system for the payments that are made by societies to Class 4 venues. The Bill introduces:

- a new regulation-making power for regulations to be made to specify a more simplified system for these payments;
- amendments that would allow a change to the current system so the new regulations can operate as intended; and
- a removal of the prohibition on commission-based payments (which is one option that is being considered for the new regulations).

Reducing costs associated with licensing

The Bill amends the Act so that the Secretary for Internal Affairs can issue licences for gambling operators for up to three years (rather than the current 18 months). Requiring less frequent renewals could be used as a reward for highly-compliant operators and would help reduce their costs.

Simplifying compliance with publication requirements

The Bill removes the requirement that societies publish grant information in at least one newspaper, which can be costly for societies. Other amendments enable the requirements for the publishing of grant information to be specified in regulations and subsequent regulations could be more specifically tailored to meet the needs of stakeholders (for example, where information online is sufficient).

Ensuring the Act’s appeals process is efficient

Societies have a right of appeal to the Gambling Commission against the Department’s decisions to suspend, cancel, not issue or not renew Class 3 and 4 licences. The Bill streamlines the Act’s appeals framework so that an affected party may only seek judicial review after that party has exercised their right of appeal to the Gambling Commission and the appeal has been finally determined.

Part Two: Background Material and Policy Information

Published reviews or evaluations

2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?	NO
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Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	NO
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Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	YES
<p>Two regulatory impact statements were produced to inform the policy decisions that led to this Bill:</p> <ol style="list-style-type: none">1. <i>Government position on the Gambling (Gambling Harm Reduction) Amendment Bill</i>, April 20132. <i>Additional policy approval for the Gambling Amendment Bill (No 3)</i>, October 2013 <p>These RISs were prepared by the Department of Internal Affairs. They are accessible at the following link, under the 'Gambling' heading:</p> <p>http://www.dia.govt.nz/Resource-material-Regulatory-Impact-Statements-Index</p>	

2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?	NO
The RISs did not meet the threshold for Treasury RIA Team assessment.	

2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?	NO
The RIS on the Government position on the Gambling (Gambling Harm Reduction) Amendment Bill considered a number of discrete policy problems and options, and the preferred option for each relevant problem corresponds with the provisions in the Bill. In the second RIS, option 4 corresponds with the policy being given effect by this Bill.	

Extent of impact analysis available

2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?	NO
Clause 23 of the Bill introduces a new regulation-making power that will prescribe a payment system for venues. The Department released a consultation document in September 2013 that discussed retaining the status quo, changing the current system to a per-machine payment reimbursement to venues or introducing a commission-based payment system to venues. The majority of submissions received on this issue supported a commission-based system. The Department is working with representatives of the sector to develop a new system.	

2.5. For the policy to be given effect by this Bill, is there analysis available on:	
(a) the size of the potential costs and benefits?	NO
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	NO
<p>Clause 23 of the Bill introduces a new regulation-making power to establish a payment system for Class 4 venues. The potential impacts on venue owners of a new system will be further analysed during the development of new regulations.</p>	

2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:	
(a) the level of effective compliance or non-compliance with applicable obligations or standards?	YES
(b) the nature and level of regulator effort put into encouraging or securing compliance?	YES
<p>Class 4 gambling involves large amount of cash expenditure and because of the associated risks is heavily regulated. A voluntary compliance or light-handed approach to regulation is not appropriate.</p> <p>Achievement of the policy objectives of the Bill will be directly affected by the level of compliance by the Class 4 gambling sector with the new requirements. Non-compliance will result in less funding from this form of gambling benefiting the community.</p> <p>The benefits of the changes also rely upon the Department's efforts into encouraging or securing compliance. Some of the requirements necessitate more minor regulatory effort to determine whether compliance is occurring, for example, whether societies are publishing the correct information on their grants. Other aspects are very difficult to monitor for compliance because of the nature of the behaviour that is being targeted, such as the occurrence of conflicts of interest between societies, venue operators or grant recipients.</p>	

Part Three: Testing of Legislative Content

Consistency with New Zealand's international obligations

3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?
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No relevant international obligations were identified. (This was confirmed by referring to Appendix 3 of the Legislation Advisory Committee, <i>Guidelines on Process and Content of Legislation</i> , which contains a list of legislation that implements various treaties.)
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Consistency with the government's Treaty of Waitangi obligations

3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?

Te Puni Kōkiri was consulted on the Cabinet papers containing the policies to be implemented by this Bill, and no Treaty-related or other relevant issues were raised.
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Note that the Act contains a requirement that is intended to facilitate participation by Māori in the adoption of territorial authority Class 4 venue policies. The Bill does not amend this provision.

Consistency with the New Zealand Bill of Rights Act 1990

3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?

NO

Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:	
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(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?
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YES

(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?

YES

Section 117 provides that it is an offence for licensees or grant recipients not to comply with Internal Affairs' investigations or audits. Clause 16 of the Bill amends the provision so that management companies are included in the group of parties that are subject to the power. As already outlined in the general policy statement, amendments (in clauses 5 and 17) are expanding the grounds on which conflicts of interest are established. Section 118 contains the offence provision relating to these conflicts.
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Clause 22 of the Bill introduces a new section 235A that limits the ability to judicially review the decisions of the Secretary for Internal Affairs before an appeal from the Gambling Commission is sought and resolved.
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3.4.1. Was the Ministry of Justice consulted about these provisions?

YES

The Ministry of Justice was consulted on the draft Cabinet paper that proposed the limitation on access to judicial review by licensees or potential licensees, which is prime facie inconsistent with section 27(2) of the New Zealand Bill of Rights Act 1990. The Ministry agreed with the Department's assessment that the limitation was justifiable. The justification is on the basis that the change fulfils the original policy objectives in establishing the Gambling Commission, which are to provide a specialist, independent appellate body that hears appeals efficiently and avoids tying up court resources.
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Privacy issues

3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?	NO
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External consultation

3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?	YES
<p>The Department released a consultation document in September 2013 that discussed some of the changes to the requirements for the publication of grants by societies. The document also presented options for changing the venue payments system. The Department received 114 submissions in total on the document.</p> <p><i>Transparency on grant-making</i></p> <p>The document outlined proposed new information requirements for societies to publish about the grants they make, including geographic location and address of applicants, type of applicant, the purpose of the grant, where the grant funding will be used and the amount sought and granted.</p> <p>Approximately 70 per cent of submitters on this proposal supported or conditionally supported the changes proposed to the provision of grant information. Much of the conditional support involved adding or removing particular aspects of the information to be published.</p> <p>The main opposition to the transparency proposals came from community groups that apply for funding. They said current requirements were adequate and that it would add compliance costs and not add to transparency. Privacy and confidentiality concerns were also raised by some submitters. These issues can be addressed through some guidance about the level of detail that would be published. Other suggestions received aligned with the Bill's amendments to strengthen the conflict of interest provisions in the Act.</p> <p>The removal of the requirement to publish grant information in a newspaper was highly supported by submitters. Many submitters in support cited the increasing move towards online publication and the high costs of advertising in newspapers as good reasons to move away from this requirement.</p> <p><i>Simplifying compliance for Class 4 operators and venues</i></p> <p>This proposal discussed retaining the status quo venue payment system, changing the current system to a per-machine payment reimbursement to venues or introducing a commission-based payment system to venues.</p> <p>Of the 84 submissions on this proposal, seven submissions supported the status quo and nine submissions supported the per-machine payment (most of which were problem gambling support providers). The remaining majority supported some form of commission-based payment system. The responses on this issue, particularly from societies and venues, highlighted the complexities in designing a system that is workable and reasonable while also reducing compliance costs.</p> <p>Some form of tiered commission system received the most support overall (55 per cent). In contrast, 18 per cent of submitters supported a flat commission rate. Many societies also suggested alternative methods to calculate a commission-based system.</p>	

Other testing of proposals

3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?	YES
The Department's Regulatory Services branch is responsible for implementing the provisions of the Act and ensuring compliance by the gambling sector. Regulatory Services were involved in the developing the policy underlying the Bill and also in reviewing the workability of the Bill's provisions during drafting.	

Part Four: Significant Legislative Features

Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	NO
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Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	NO
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Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO
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Strict liability or reversal of the usual burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	NO
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	NO
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Significant decision-making powers

4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	NO
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Powers to make delegated legislation

4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	NO
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4.8. Does this Bill create or amend any other powers to make delegated legislation?	YES
<p>Clause 13 of the Bill amends section 114, which allows regulations to be made relating to the application or distribution of the net proceeds of Class 4 gambling.</p> <p>The changes to the power align with the amended publication requirements set out in the new section 110 (clause 12). The amended regulation-making power would allow the grant information from societies to be published in a way that helps communities understand where the money is being used. The information will also be able to be provided to the Department in electronic form, assisting with the analysis of grant information.</p> <p>Clause 23 of the Bill also amends section 371 by including a new power to prescribe the presentation of financial information by societies, including operational efficiency indicators. This will allow comparisons of societies' costs to be made more easily.</p> <p>In addition to the normal procedural safeguards that apply to the development of regulations, section 372 of the Act includes specific consultation requirements. This section states that people likely to be substantially affected by the regulations proposed to be made under section 114 and section 371 must be consulted on the proposals. Before regulations are made the Minister must be satisfied that the required consultation has taken place.</p>	

Any other unusual provisions or features

4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?	NO
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