

Gambling (Gambling Harm Reduction) Amendment Bill

Member's Bill

As reported from the Commerce Committee

Commentary

Recommendation

The Commerce Committee has examined the Gambling (Gambling Harm Reduction) Amendment Bill and recommends by majority that it be passed with the amendments shown.

Introduction

The bill seeks to amend the Gambling Act 2003 in order to reduce harm to communities and families caused by gambling. It aims to ensure that the proceeds of gambling are distributed back into the community from which they came, and to give communities greater control over gambling and gambling operations.

Our commentary covers the main amendments we recommend to the bill. It does not cover minor or technical amendments proposed to improve workability, clarity, and legal efficacy.

Content and conditions of licences

Clause 6(1) of the bill as introduced would make it a condition of class 4 operators' licences that at least 80% of all funds derived from

gambling are distributed back into the same territorial authority district in which they were raised. Clause 6(2) would allow the Secretary for Internal Affairs to impose licence conditions requiring the use of devices designed to permit responsible gambling, such as pre-commitment cards and player tracking devices.

Distribution of funds

We recommend deleting clause 6(1) and replacing it with new clause 18, which proposes amendments to the regulation-making powers in section 114 of the Gambling Act relating to the application or distribution of the net proceeds of class 4 gambling. The amendments would allow the making of regulations to prescribe requirements for the distribution of net proceeds taking into account the geographical area where the proceeds were generated.

We support the principle of returning net proceeds to the area where the gambling took place, as long as national or regional organisations are not disadvantaged. Requiring all class 4 societies to distribute their net proceeds to locally-defined areas would also create other complications; for example, gaming machines are not evenly spread across electoral districts, and restricting distributions as the bill prescribes would result in little or no proceeds being distributed in some areas.

As introduced, the bill does not take account of gaming machines being used by people from outside the area. It would also allow societies to appeal licence conditions to the Gambling Commission, so that a licence condition requiring local distribution might be removed anyway.

The regulation-making power we propose would offer a flexible approach to regulations and help prevent such anomalies. National and regional organisations provide benefits to the community defined more widely. The regulation-making process would require consultation with the sector and others likely to be substantially affected by the change. We believe this would mitigate any potential adverse effects.

Criminal liability

We recommend deleting as no longer necessary clause 9, which requires the local distribution or application of at least 80% of the net

proceeds of gambling. New clause 18 would allow regulations to be made imposing such requirements. Failure to comply with the regulations would affect licence applications and renewals.

Harm minimisation technology

We recommend inserting new clause 19 to replace clause 6(2). Where clause 6(2) proposed directly imposing conditions on licences, requiring the use of pre-commitment, player tracking, or other harm minimisation devices in class 4 gaming machines, we recommend an amendment to the regulations relating to gaming machines in class 4 venues (section 314 of the Gambling Act) to allow regulations to do the same. We believe that regulations would allow a more robust and flexible response to changing technology.

Currently there is no requirement for gaming machine operators in New Zealand to use pre-commitment, player tracking, or other devices designed to minimise gambling-related harm. In addition, no specific research on pre-commitment or player tracking for class 4 gambling has yet been undertaken in New Zealand. While we support the use of technology to help minimise gambling harm, we believe it would be premature to mandate specific approaches. Because research continues to become available, and technologies continue to improve and change, we believe that a regulation-making power rather than prescribing specific measures is the right approach.

The bill as introduced requires the use of pre-commitment and player tracking devices only as a licence condition. As noted in our comments on new clause 18, the risk with this approach is that this condition could be removed on appeal to the Gambling Commission.

Proposed territorial authority requirements

We recommend inserting new clauses 16 and 17 to replace clauses 7 and 8, as we consider that the proposed requirements do not improve upon the current requirements.

Clauses 7 and 8 would require territorial authorities to review class 4 policies every 3 years and provide consents on an on-going basis, which we consider would be unduly expensive for venues and territorial authorities.

As introduced, clauses 7 and 8 would allow territorial authorities to include policies that reduce or prohibit venues, taking into account

public sentiment. It would be difficult to decide on a principled basis, for example, which venues should cease to operate, and the bill offers no guidance or criteria for making these decisions.

We believe the amendments we propose in clauses 16 and 17 would create certainty for venue operators and allow them to make investment decisions with confidence. Clause 16 would allow territorial authorities to include relocation policies in their class 4 venue policies, which would set out if and when new venues could be granted consent in place of existing venues. Clause 17 would require territorial authorities, at the next review of their class 4 venue policies, to consider whether or not to include a relocation policy. When developing a relocation policy, territorial authorities would have to consider the social effects of gambling in high-deprivation communities.

Responsibility for distributing funds

We recommend deleting clause 10, as we do not consider territorial authorities should be responsible for distributing the proceeds of gambling. It is outside the core function of local government and would create a conflict of interest because territorial authorities can themselves apply for grants.

Relocation of venues

We recommend inserting, by new clause 13, new section 97A into the Gambling Act to preserve the rights attaching to previous venues when a licence is transferred to new premises. The new venue would be permitted to operate the same number of gaming machines as was permitted at the old venue. This would apply only if the territorial authority had given consent for the new venue in accordance with its relocation policy.

Venues that were licensed before 17 October 2001 have maintained the right to operate more than nine machines, which is the current legislative limit. A venue currently loses this right if it moves premises, as the licence is attached to the physical venue. This discourages venues from moving to a more suitable location.

New clause 12 provides that no compensation is payable by the Crown or territorial authorities for any loss arising from the enactment of amendments made by clause 17.

Racing clubs

We recommend deleting clause 5, which would remove racing as an “authorised purpose” for class 4 gambling. In *New Zealand Racing Industry Board v The Attorney General*, the High Court found that racing clubs have a non-commercial purpose. They are non-profit organisations, which provide facilities to community groups at low or no cost, and in this way they are similar to other sports clubs. We consider the removal of funding would have an adverse effect on communities and racing-related economic activity.

Commencement date

We recommend replacing “1 July 2011” in clause 3 with “the day after the date on which the bill receives the Royal assent”.

New Zealand Labour Party view

The Labour Party reserved its position.

Green Party of Aotearoa New Zealand minority view

Gambling (Gambling Harm Reduction) Amendment Bill

The original bill set out to:

- Give councils and communities the power to cut the number of pokie machines in their area or eliminate them altogether.
- Ensure that at least 80% of the distributable funds be returned to the area where the gambling took place.
- Replace the trusts that currently distribute the funds from gambling with more accountable organisations set up by local authorities.
- Remove horse racing from the list of charitable purposes which may receive gambling proceeds.
- Introduce harm-minimisation mechanisms like player-tracking and mandatory pre-commit cards to put controls on the amount of time and money lost by gamblers.

It is the Green Party’s view that the bill as it will be reported back to the House does not achieve any of the aims listed above and in one part will restrict the right for councils wanting to reduce the number of pokies through their own transfer policies.

The select committee's decision to amend the original Act by inserting a new clause 97A to enable councils to be able to encourage venue operators to relocate their gambling machines from one site to another cuts across some council's desires to use relocation as a method to also reduce machine numbers, which was the policy of the former Auckland City Council. We see this as regressive and contrary to the original purposes of the bill.

The Green Party is also concerned that the provisions to ensure the allocation of funds in the areas where the gambling took place will not become an enforceable piece of law. The recommendation that this provision be contained in new regulations in the Act effectively leaves this decision up to the government of the day and the gambling sector.

We have the same concerns around the provisions in the bill around actual harm minimisation through player-tracking and pre-commit cards and other harm minimisation technology because the select committee suggests that these also be added to the regulations rather than being prescribed in the Act itself.

We are also disappointed that the provisions to prevent gambling funds being utilised by the racing industry, including being used as stake money, will be dropped from the bill along with provisions requiring venues to have their licenses reviewed three-yearly.

Appendix

Committee process

The Gambling (Gambling Harm Reduction) Amendment Bill was referred to the committee on 9 May 2012. The closing date for submissions was 21 June 2012. We received and considered 4,944 submissions and many supplementary submissions from interested groups and individuals. We received 29,438 form submissions. We heard 159 submissions, which included holding hearings in Wellington, Christchurch, and Auckland. We received advice from the Department of Internal Affairs and the Ministry of Health.

Committee membership

Jonathan Young (Chairperson)

Kanwaljit Singh Bakshi

Dr David Clark

Hon Clayton Cosgrove

Clare Curran

Peseta Sam Lotu-liga

Mojo Mathers

Mark Mitchell

Dr Jian Yang

Hon Trevor Mallard, Hon Ruth Dyson and Moana Mackey replaced Clare Curran and Denise Roche replaced Mojo Mathers for this item of business.

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

Key to symbols used in reprinted bill

As reported from a select committee

text inserted by a majority

~~text deleted by a majority~~

Te Ururoa Flavell

Gambling (Gambling Harm Reduction) Amendment Bill

Member's Bill

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The Parliament of New Zealand enacts as follows:**1 Title**

This Act is the Gambling (Gambling Harm Reduction) Amendment Act **2010**.

2 Commencement

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This Act comes into force on ~~1 July 2011~~ the day after the date on which it receives the Royal assent.

3 Principal Act amended

This Act amends the Gambling Act 2003 (the principal Act).

4 Purpose

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The purpose of this Act is to provide additional measures to implement the following purposes of the Gambling Act 2003:

(a) to prevent and minimise the harm caused by gambling, including problem gambling (section 3(b)):

(b) to ensure that money from gambling benefits the community (section 3(g)):

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(c) to facilitate community involvement in decisions about the provision of gambling (section 3(h)).

5 Interpretation

Section 4(1)(b) is amended by omitting “paragraph (a)(i) to (iii)” and substituting “paragraph (a)(i) and (ii)”.

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6 Content and conditions of class 4 operator’s licence

(1) Section 53(1) is amended by inserting the following paragraph after paragraph (c):

“(ca) a condition that at least 80% of all funds derived from gambling under the licence must be distributed for purposes that are located in the same territorial authority district or, where such electoral subdivisions exist, in the smallest of the local council ward, local board subdivision, or community board area; and”.

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(2) Section 53(2) is amended by inserting the following paragraph after paragraph (f):

- ~~“(fa) conditions requiring the use of player tracking devices, pre-commit cards or other devices designed to permit responsible gambling and—~~
 - ~~“(i) maximise player knowledge about, and control over, their gambling; or~~
 - ~~“(ii) minimise gambling related harm originating at the venue.”~~

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7 When territorial authority consent is required

- (1) Section 98 is amended by omitting paragraph (c) and substituting the following paragraph:

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- ~~“(c) if a corporate society applies for a class 4 venue licence and—~~
 - ~~“(i) a class 4 venue licence has not been held by any society for the venue within the last 6 months; or~~
 - ~~“(ii) the corporate society holds or has held a class 4 venue licence to which **subsection (2)** applies.”~~

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- (2) Section 98 is amended by adding the following subsections:

- ~~“(2) If a territorial authority adopts a class 4 gambling venue policy under section 101(3)(c) that prohibits or reduces the number of venues in a district or area, and applies the prohibition or reduction in numbers to venues operating before this Act came into force, the licences for those class 4 venues expire 1 year after the date the policy enters into force.~~

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- ~~“(3) A consent for a class 4 gambling venue that is subject to a policy adopted under section 101(3)(c) may be issued for a period not exceeding 3 years.”~~

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8 Territorial authority must adopt class 4 venue policy

- (1) Section 101 is amended by omitting subsection (2) and substituting the following subsection:

- ~~“(2) In adopting a policy, the territorial authority must, in respect of the territorial authority district, have regard to—~~
 - ~~“(a) the social impact of gambling; and~~
 - ~~“(b) evidence of harm from gambling; and~~
 - ~~“(c) public sentiment about the extent and location of gambling venues.”~~

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- (2) Section 101(3) is amended by adding the following paragraph:

~~“(e) may specify that class 4 venues are prohibited or reduced in numbers in all or specified parts of the district and that any prohibition or reduction shall apply to existing venues, including venues that operated on the date this Act came into force.”~~ 5

9 Corporate society must apply or distribute net proceeds from class 4 gambling to or for authorised purpose

(1) Section 106 is amended by inserting the following subsection:

~~“(1A) A corporate society must apply at least 80% of such net proceeds to societies or for purposes located in the same territorial authority district or, where such electoral subdivisions exist, to the smallest of the local council ward, local board subdivision, or community board area, as that in which the class 4 venue from which the proceeds originated is located.”~~ 10

(2) Section 106(2) is amended by omitting “subsections (1)” and substituting “subsections (1) and ~~(1A)~~”. 15

10 New sections 110A and 110B

The following sections are inserted after section 110:

~~“110A Corporate societies to cease to distribute proceeds from class 4 gambling~~ 20

~~Any corporate society whose principal purpose or activity is to distribute proceeds from class 4 gambling must cease to distribute proceeds from class 4 gambling and must have distributed all its proceeds from class 4 gambling by 30 June 2012.~~ 25

~~“110B Corporate societies to be succeeded by council and local board committees~~

~~“(1) A territorial authority is responsible for the distribution of proceeds from class 4 gambling venues located in its district from 1 July 2012.~~ 30

~~“(2) A territorial authority must consult the community, iwi, and community organisations about suitable members of the council or local board committee which shall be responsible for the distribution of such proceeds for community purposes.~~

~~“(3) The council committee responsible for the distribution of such proceeds must have a majority of its members who—~~

~~“(a) live or are active in the local district; and~~

~~“(b) are not members of the local council, local board, or community board.~~

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~~“(4) The Auckland Council must ensure that at least 80% of the proceeds from class 4 gambling are distributed by committees of the local boards from whose area the class 4 gambling proceeds originated; and such local board committees must have a majority of members who—~~

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~~“(a) live or are active in the local board area; and~~

~~“(b) are not members of the Auckland Council or local board.”~~

11 Section 90 amended (Register of class 4 venue licences must be maintained)

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In section 90(1), after “17 October 2001”, insert “, and, if a new place is substituted for such a place in accordance with a relocation policy, must amend the register accordingly”.

12 Section 91 amended (No compensation)

In section 91, after “89 to 101”, insert “or **section 102(5A)**”.

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13 New clause 97A inserted (Effect of relocation)

After section 97, insert:

“97A Effect of relocation

“(1) This section applies when—

“(a) a territorial authority has adopted a relocation policy (as defined in **section 101(5)); and**

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“(b) in accordance with that policy, the territorial authority grants consent in respect of a venue (the **new venue) to replace an existing venue (the **old venue**); and**

“(c) a new class 4 venue licence is granted in respect of the new venue.

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“(2) When this section applies,—

“(a) the Secretary must cancel the class 4 venue licence that relates to the old venue, in which case—

- “(i) the cancellation takes effect on the date on which the new class 4 venue licence takes effect; and
 “(ii) there is no right of appeal against the cancellation; and
 “(b) despite section 100(1)(b)(i), the maximum number of gaming machines permitted to operate at the new venue at the time when the new class 4 venue licence takes effect is the same as the maximum number of gaming machines permitted to operate at the old venue immediately before the licence relating to the old venue is cancelled; and
 “(c) for the purposes of this Act,—
 “(i) if the old venue was a venue to which section 92 applied, the new venue must be treated as a venue to which section 92 applies; and
 “(ii) the old venue must be treated as if no class 4 venue licence had ever been held by any society for that venue (which means that, under section 98, consent will be required for that venue if a class 4 venue licence is subsequently applied for in relation to it).”

14 Section 98 amended (When territorial authority consent is required)

After section 98(d), insert:

- “(e) a society proposes, in accordance with a relocation policy of the territorial authority, to change the venue to which a class 4 venue licence currently applies.”

15 Section 99 amended (Application for territorial authority consent)

After section 99(2), insert:

- “(3) An application for consent in accordance with a relocation policy may be made only with the agreement of the venue operator of the existing venue.”

16 Section 101 amended (Territorial authority must adopt class 4 venue policy)

- (1) In section 101(3)(b), after “venue”, insert “; and”.

- (2) After section 101(3)(b), insert:
“(c) may include a relocation policy.”
- (3) After section 101(4), insert:
- “(5) A relocation policy is a policy setting out if and when the territorial authority will grant consent in respect of a venue within its district where the venue is intended to replace an existing venue (within the district) to which a class 4 venue licence applies (in which case **section 97A** applies).” 5
- 17 Section 102 amended (Adoption and review of class 4 venue policy)** 10
After section 102(5), insert:
- “(5A) The first time that a territorial authority commences a review of a policy after the **Gambling (Gambling Harm Reduction) Amendment Act 2010** comes into force, the territorial authority must (and may at any other time) consider whether to include a relocation policy (as defined in **section 101(5)**) in its class 4 venue policy. 15
- “(5B) Whenever a territorial authority is considering whether to include a relocation policy in its class 4 venue policy, it must consider the social impact of gambling in high-deprivation communities within its district.” 20
- 18 Section 114 amended (Regulations regarding application or distribution of net proceeds from class 4 gambling)**
After section 114(2), insert:
- “(3) Regulations may also be made under subsection (1) for the following purposes: 25
- “(a) requiring that a specified portion of the net proceeds of class 4 gambling be applied or distributed to or for authorised purposes in, or operating in, the geographical area from which those net proceeds were derived: 30
- “(b) limiting the amount of the proceeds of class 4 gambling that may be applied or distributed to or for authorised purposes in, or operating in, any specified geographical areas, or all geographical areas, that are outside the geographical area from which those net proceeds were derived: 35

“(c) setting out how geographical areas are to be identified or defined for the purposes of the regulations; and different definitions may be adopted for different purposes:

“(d) imposing rules about the application or distribution of net proceeds that are not required to be, or are not prohibited from being, applied or distributed to or for authorised purposes in, or operating in, a particular geographical area.” 5

19 Section 314 amended (Regulations relating to gaming machines in class 4 venue) 10

After section 314(1)(g) insert:

“(ga) prescribing the use of pre-commitment, player tracking, or other harm-minimisation devices, technology, or systems in or associated with gaming machines:”

Legislative history

9 September 2010
9 May 2012

Introduction (Bill 209–1)
First reading and referral to Commerce Committee
