

Gambling Amendment Bill (No 3)

Government Bill

As reported from the Government Administration Committee

Commentary

Recommendation

The Government Administration Committee has examined the Gambling Amendment Bill (No 3) and recommends by majority that it be passed with the amendments shown.

Introduction

The bill seeks to amend the Gambling Act 2003 by increasing the transparency of grant-making from the proceeds of Class 4 gambling; reducing the incidence of potential conflicts of interest arising between Class 4 gambling operators (societies), venues, and grant recipients; and improving transparency regarding management companies that provide societies with services. It also seeks to streamline the appeals framework for Class 3 and Class 4 licences.

This commentary covers the key amendments that we recommend to the bill. It does not cover minor or technical amendments.

Key persons

We recommend amending clause 4(2) by extending the exception provisions relating to a “key person” in new section 4(1)(b)(iva) to new section 4(1)(b)(ivb). In the bill as introduced, licensing trust board members and trustees of community trusts would be captured by the new definition of “key person”. This is unintentional, and the amendment we propose would remedy it.

We recommend also amending new section 4(1)(b)(ivb) by removing the words “or who may reasonably be perceived to have that ability”. We believe that a reasonable perception provision is unnecessary, as only those who could in fact exert (undue) influence on a “key person” need to be captured.

Suitability of key persons

We recommend inserting new clauses 6D and 7C to amend sections 52 and 68 of the Act so that, when assessing the suitability of a “key person”, the Secretary for Internal Affairs could take other relevant factors into account, and would not be limited to those listed in sections 52(4) and 68(1) of the bill as introduced.

We propose these amendments to avoid doubt such as arose from a recent decision by the Gambling Commission. The decision specifically raised uncertainty as to exactly which factors relevant to determining the suitability of a “key person” could be considered by the Secretary for Internal Affairs.

Operator’s licences and venue licences

For the avoidance of doubt, we recommend inserting new clauses 7A(1) and 9A(1) to make it clear that the lengths of Class 4 operator’s licences and Class 4 venue licences would not be among the conditions of licences that may be appealed to the Gambling Commission; they are to be decided by the Secretary for Internal Affairs. The intention is that longer licences should act as an incentive for best practice and compliance among societies and venues.

A consequential amendment to clause 17 relating to Class 3 and Class 4 gambling would then be necessary.

We recommend inserting new clauses 6B, 6C, 7A(2), 7B, 9A(2), and 9B to allow the Gambling Commission to delay the effective date of a decision. This would

- allow affected parties time to seek a judicial review
- avoid the situation where a licence became invalid between the decision being made and the initiation of a judicial review
- allow societies that lose their licences time to wind down their gambling operations.

Definition of relative

We recommend amending clause 11 by replacing the definition of “relative” with a new one: “part of the immediate family”. The definition as introduced is too broad, and might result in people being held responsible for not declaring an interest because of members of their extended families with whom they may have very little contact, and therefore little knowledge of their activities. We consider it more likely that people would be aware of the activities of immediate family members.

We also recommend deleting the terms “direct” and “indirect” in new section 110(4)(d). We consider that the extent of any interest a member may have in any applicant is sufficiently defined in new section 110(4A) and this distinction is therefore unnecessary.

Net proceeds

We recommend amending clause 12 by inserting new paragraph (ic) to provide for a new power to make regulations prescribing criteria for deciding the situations in

which a corporate society may retain net proceeds to maintain financial viability. We also recommend various amendments to clause 5 to clarify what should and should not be considered net proceeds.

The Gambling (Class 4 Net Proceeds) Regulations 2004 require societies to distribute their net proceeds regularly during the year. Absolute compliance with this provision would see societies operating with no liquidity and a zero balance sheet, which flies in the face of basic financial viability principles. As the administering agency, the Department of Internal Affairs has taken the approach that societies need to hold some funds as equity to ensure their financial viability; whereas the Gambling Commission has taken the approach that societies cannot hold undistributed net proceeds. These approaches are incompatible, and the amendments we propose are intended to help resolve this.

Local proceeds

We recommend amending clause 12 by inserting new paragraphs (ia), (ib), (id), and (ie). This would align the bill with regulation-making powers introduced into the primary legislation by the Gambling (Gambling Harm Reduction) Amendment Act 2013. It would also fulfil the policy objective of applying local return requirements to the proceeds from Class 4 gaming machines.

Benefits with conditions attached

We recommend amending clause 16 by inserting condition-attached provisions into section 118 of the Act. The bill as introduced seeks to remove all such provisions relating to benefits exchanged between society key persons and venue key persons. In relation to section 118 of the Act, however, this could reasonably be interpreted as prohibiting any benefit, including standard commercial terms and conditions, and thus capture any routine transaction where money is exchanged for goods and services at market value.

Our proposed amendments would prevent the unfair effect of exposing a “key person” to a potential criminal offence for routine legal activities, when the issue is the use of improper conditions rather than conditions in general. Therefore, and for the sake of clarity, we also recommend inserting the term “improper” before each reference in section 118 of the Act to “condition attached”.

New Zealand Racing Board

We recommend inserting new clause 6A so that the New Zealand Racing Board could not acquire a Class 4 venue licence if another society holds, or has held, a licence at the venue in question. Under section 33 of the Act the board may only be issued a Class 4 venue licence if the venue is owned or leased by the board; and is used mainly for race or sports betting, or is a racecourse. The amendments we propose would maintain these constraints as intended.

Offences

We recommend inserting new clause 17A so to increase the limitation period for bringing proceedings under sections 113 and 118 of the Act from two years to five.

The bill seeks to reduce the potential for conflicts of interest. Conflict of interest offences can be difficult and time-consuming to uncover and prove, and the existing two-year limitation period has constrained the prosecution of such offences. Extending the limitation period to five years would improve the ability of the Department of Internal Affairs to prosecute, and act as an incentive for the sector to avoid conflicts of interest.

Other matters

The Regulations Review Committee reported to us on the powers contained in clause 2. Commencement by Order in Council is available where there is clearly good reason for it, and we are satisfied that in this instance it would provide the most certainty for all the parties affected, particularly societies and venue operators.

We also note that subclause (3) would require any outstanding provisions to be brought into force one year after the date on which Royal Assent had been obtained.

New Zealand Labour Party minority view

Introduction

The Labour Government passed the Gambling Act 2003. This brought major reforms to the gambling sector, including a moratorium on casinos, a reduction in the number of Class 4 gaming machines and new venues, and a significant shift in focus towards the minimisation of gambling associated harm.

Because this bill, by and large, makes changes which are designed to increase transparency and further support the objectives of the Gambling Act, the Labour Party voted to send it to the Government Administration Committee, so that submissions from interested communities, organisations, and individuals could be heard.

Many submitters articulated their concerns with the lack of measures to address harm caused by gambling. Many submitters also addressed their concerns with changing to a commission payment system for Class 4 venue operators.

Commission payments

The bill introduces a new regulation-making power for regulations to be made to specify a new system for these payments. The bill also provides for the removal of the prohibition on commission-based payments.

Submitters argued that the increased competition for venues to host Class 4 gaming machines (pokies) amongst societies has been a principal cause of bad practice. Also that many venues have become dependent upon pokie machine revenue. This has been due at least in part to changing habits and to stricter drink driving laws. We have

subsequently seen the traditional pub business model becoming outdated in many locations.

In 2014 the Department of Internal Affairs shifted from the approach described as “inform and persuade” to a more rigorous compliance regime. This increased compliance examination has highlighted inconsistent and unacceptable practices in venues claiming costs.

The Labour members of the committee are concerned that by removing the prohibition on commission payments to venues, that this would create the incentive for venues to maximise gambling. It would be in their financial interests to have as much money as possible going into pokie machines, which would act against the requirements of good host responsibility and customer care. We recommend that the current system which provides for cost recovery only, be retained.

Gambling harm minimisation

At the end of 2014 the Department of Internal Affairs carried out its “mystery shopper” study. This had the result of only one out of the 102 venues intervening with the problem gambler. This shows a strong need for more and better host responsibility. Host responsibility is the main consumer protection measure for Class 4 gaming machines which are the major cause of gambling harm in New Zealand.

The Labour members of the committee agree with the recommendation from several submitters that greater harm minimisation measures should have been included in the bill to strengthen consumer protection and mitigate the addictive design of these products. We further agree with the suggestion of the introduction of a pre-commitment system whereby players can set their own limits on duration, frequency, and losses from their gambling. We understand that the technology to enable this is already available.

Conclusion

Commission payments to Class 4 gambling venues will incentivise gambling and act against the requirements of good host responsibility and customer care; this is contrary to the objectives of the Gambling Act.

This is a missed opportunity to further address the harm caused by gambling. The organisations that deal with problem gambling are adamant that the introduction of a pre-commitment system would reduce problem gambling in New Zealand.

Green Party minority view

The Green Party believes that a number of the amendments as proposed in the bill will undermine the purpose of the original Gambling Act 2003 which is outlined in section 3. Specifically we maintain that these amendments in this bill cut across the purposes outlined in section 3(b) to prevent and minimise harm from gambling, including problem gambling; and section 3(d) to facilitate responsible gambling and also 3(g) which is to ensure that money from gambling benefits the community.

While we support the bill's aims to increase the transparency of grant-making by societies, reduce conflicts of interest, and improve the transparency around management company operations, we remain concerned about the bill's provisions that would open the door to commission-based payments to venue operators. These would provide a real incentive to pub owners to maximise revenue from the pokie machines on their premises including from money lost by at-risk and problem gamblers. This could well impact on operators' host responsibilities to gamblers and potentially increase problem gambling.

We acknowledge that the current regulations that assess the "actual, reasonable and necessary costs" of conducting gambling are not simple. However, we also note that the Department of Internal Affairs has been working with gambling societies since 2009 on standardising venue cost schedules. The recommendations from this work did not suggest the radical and really risky move to remove the restriction in the current legislation that would allow for commission-based payments.

A large proportion of the submissions were from ordinary individuals and specialists in the provision of services for problem gambling who outlined their concerns about the lack of host responsibility by venue operators. Most referred to the "mystery shopper" project that the Department of Internal Affairs Gambling Compliance Teams conducted in 2014. The project involved the department testing 102 gambling venues on their host responsibility programmes by sending in customers who deliberately displayed problem gambling behaviours. With only one venue actually intervening appropriately and complying with the regulations about problem gambling in this experiment, submitters suggested that venue payments through a commission-based system would incentivise poor host responsibility compliance and result in increased gambling related harm. The Green Party agrees with this assessment.

Additionally we are opposed to the provisions in the bill that would extend the duration of licences for gambling operators to be for three years. We note that the purpose of this clause in the bill is to reduce costs and be a reward for highly-compliant operators. We believe that, given the high level of non-compliance across the sector, the industry should first demonstrate that it is capable of meeting the current standards before a "reward" system is put in place.

We also remain concerned that this bill has missed the opportunity to include effective harm minimisation and consumer protection measures for users of electronic gaming machines. We urge, in particular, that a comprehensive pre-commitment system be introduced. This would protect and empower players by their setting limits on the losses, duration, and frequency of their gambling sessions before they began, and the technology is now available to do this effectively. It just needs the will of Parliament as regulators and people concerned for the interests of players to bring it into being.

Appendix

Committee process

The Gambling Amendment Bill (No 3) was referred to the committee on 6 November 2014. The closing date for submissions was 30 January 2015. We received and considered 127 submissions from interested groups and individuals. We heard 33 submissions, and held hearings in Auckland and Wellington.

We received advice from the Department of Internal Affairs. The Regulations Review Committee reported to the committee on the powers contained in clause 2.

Committee membership

Hon Ruth Dyson (Chairperson)

Sarah Dowie

Brett Hudson

Mojo Mathers

Mark Mitchell

Adrian Rurawhe

Mojo Mathers was replaced by Denise Roche.

Key to symbols used in reprinted bill

As reported from a select committee

text inserted by a majority

~~text deleted by a majority~~

Hon Peter Dunne

Gambling Amendment Bill (No 3)

Government Bill

Contents

	Page
1 Title	3
2 Commencement	3
3 Principal Act	3
Part 1	
Class 4 gambling	
4 Section 4 amended (Interpretation)	3
5 New section 5A inserted (Meaning of net proceeds)	4
5A Meaning of net proceeds	4
<u>5A</u> <u>New section 8AA inserted (Transitional, savings, and related provisions)</u>	<u>5</u>
<u>8AA</u> <u>Transitional, savings, and related provisions</u>	<u>5</u>
6 Section 30 replaced (Meaning of class 4 gambling)	5
30 Meaning of class 4 gambling	5
<u>6</u> <u>Section 30 amended (Meaning of class 4 gambling)</u>	<u>6</u>
<u>6A</u> <u>Section 33 amended (Status of New Zealand Racing Board and racing clubs)</u>	<u>6</u>
<u>6B</u> <u>Section 46 amended (Appeal to Gambling Commission regarding class 3 operator's licence)</u>	<u>6</u>
<u>6C</u> <u>Section 47 amended (Consequences of appeal regarding class 3 operator's licence)</u>	<u>6</u>
<u>6D</u> <u>Section 52 amended (Grounds for granting class 4 operator's licence)</u>	<u>6</u>
7 Section 53 amended (Content and conditions of class 4 operator's licence)	7
<u>7A</u> <u>Section 61 amended (Appeal to Gambling Commission regarding class 4 operator's licence)</u>	<u>7</u>

Gambling Amendment Bill (No 3)

<u>7B</u>	<u>Section 62 amended (Consequences of appeal regarding class 4 operator’s licence)</u>	<u>7</u>
<u>7C</u>	<u>Section 68 amended (Determining suitability for class 4 venue licence)</u>	<u>7</u>
8	Section 69 amended (Form and content of class 4 venue agreement)	7
9	Section 70 amended (Content and conditions of class 4 venue licence)	8
<u>9A</u>	<u>Section 77 amended (Appeal to Gambling Commission regarding class 4 venue licence)</u>	<u>8</u>
<u>9B</u>	<u>Section 78 amended (Consequences of appeal regarding class 4 venue licence)</u>	<u>8</u>
10	Section 108 amended (Contents of annual report)	8
11	Section 110 amended (Publication requirements for corporate societies)	8
12	Section 114 amended (Regulations regarding application or distribution of net proceeds from class 4 gambling)	11
13	Section 115 amended (Payment of commission prohibited)	12
14	Section 116 replaced (Secretary may limit or exclude costs of corporate society)	12
116	Secretary may limit or exclude operating costs of corporate society	12
15	Section 117 amended (Secretary may investigate and audit licensees, grant recipients, and businesses at class 4 venues)	13
16	Section 118 amended (Certain persons must not seek, receive, or offer benefits with conditions attached)	13
Part 2		
Miscellaneous matters		
17	New section 235A inserted (No review <u>of Secretary’s decisions concerning class 3 or class 4 gambling</u> until right of appeal exercised)	14
235A	No review of Secretary’s decisions concerning class 3 or class 4 gambling until right of appeal exercised	14
<u>17A</u>	<u>Section 355 amended (Proceedings for offences)</u>	<u>15</u>
18	Section 371 amended (Other regulations)	15
19	New section 378 inserted	16
378	Application, savings, and transitional provisions	16
20	New Schedule 1AA inserted	16
Schedule		
New Schedule 1AA inserted in principal Act		

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Gambling Amendment Act **(No 3) 2014**.

2 Commencement

- (1) Except as provided in **subsections (2) and (3)**, this Act comes into force on the day after the date on which it receives the Royal assent. 5
- (2) **Sections 6, 8, 10, 11, 13, and 14** come into force on a date to be appointed by the Governor-General by Order in Council, and 1 or more orders may be made appointing different dates for different provisions.
- (3) If any provision referred to in **subsection (2)** has not earlier been brought into force under ~~subsection (2)~~ that subsection, it comes into force 1 year after the date on which this Act receives the Royal assent. 10

3 Principal Act

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

Part 1**Class 4 gambling** 15**4 Section 4 amended (Interpretation)**

- (1) In section 4(1), definition of **key person**, replace paragraph (a)(iii) with:
- (iii) exercises significant influence in the management of a corporate society that is an applicant for, or a holder of, a class 4 operator's licence: 20
 - (iv) is a management services provider for a corporate society that is an applicant for, or a holder of, a class 4 operator's licence:
 - (v) is the chief executive (or performs that function) of a management services provider for a corporate society that is an applicant for, or holder of, a class 4 operator's licence: 25
 - (vi) exercises significant influence in the management of a management services provider for a corporate society that is an applicant for, or holder of, a class 4 operator's licence; and
- (2) In section 4(1), definition of **key person**, replace ~~paragraphs~~ paragraph (b)(iva) ~~and (v)~~ with: 30
- (iva) a person who has a significant interest in the management, ownership, or operation of a venue operator, except for the following persons holding office, elected, or appointed under the Sale and Supply of Alcohol Act 2012:
 - (A) a member of a licensing trust elected in accordance with sections 308 to 314 of that Act or appointed under section 315 of that Act; or 35

- (B) a trustee of a community trust holding office under section 369 of that Act or elected in accordance with sections 370 to 373 of that Act or appointed under section 374 of that Act:
- (ivb) a person who has the ability, directly or indirectly, to exert a significant degree of influence over the management or operations of a venue-operator or who may reasonably be perceived to have that ability; operator, except for the following persons holding office, elected, or appointed under the Sale and Supply of Alcohol Act 2012:
- (A) a member of a licensing trust elected in accordance with sections 308 to 314 of that Act or appointed under section 315 of that Act; or
- (B) a trustee of a community trust holding office under section 369 of that Act or elected in accordance with sections 370 to 373 of that Act or appointed under section 374 of that Act; and
- ~~(v) a person who services gambling equipment at a class 4 venue; and~~
- (3) In section 4(1), insert in its appropriate alphabetical order:
- management services provider**, in relation to a corporate society that is an applicant for, or a holder of, a class 4 operator’s licence, means a person who, under a contract or arrangement, provides to the corporate society ongoing services that—
- (a) directly relate to the conduct of class 4 gambling; and
- (b) are not solely confined to servicing gambling equipment at a class 4 venue; and
- (c) would, in the absence of that contract or arrangement, be performed by the corporate society itself
- (4) Replace the definition of **net proceeds** in section 4(1) with:
- net proceeds** has the meaning given by **section 5A**
- 5 New section 5A inserted (Meaning of net proceeds)**
- After section 5, insert:
- 5A Meaning of net proceeds**
- (1) In this Act, **net proceeds**, in relation to any gambling, means—
- (a) the sum of the amounts described in **subsection (2)**; less
- (b) the sum of the amounts described in **subsection (3)**.
- (2) The amounts referred to in **subsection (1)(a)** are—
- (a) the turnover of the gambling concerned (less prizes):

- (b) any interest or other investment return on that turnover:
- ~~(e) any proceeds from the sale of fittings, chattels, and gambling equipment purchased from that turnover or investment return.~~
- (c) any gain from selling or disposing of a gambling asset at a price or value above the gambling asset's book value at the time of the sale or disposal. 5
- (3) The amounts referred to in **subsection (1)(b)** are—
- (a) the actual, reasonable, and necessary costs ~~(including prizes)~~, levies, and ~~taxes,~~taxes incurred in conducting the gambling; and
- (b) the actual, reasonable, and necessary costs incurred in complying with any of the following in relation to the gambling: 10
- (i) this Act or any other relevant enactment:
- (ii) an operator's licence:
- (iii) a venue ~~licence;~~ licence; and
- (ba) the amount by which any gambling asset is depreciated in each year in accordance with generally accepted accounting practice (as defined in section 108) and, where applicable, the depreciation rates set under section 116; and 15
- (bb) any loss from selling or disposing of a gambling asset at a price or value below the gambling asset's book value at the time of the sale or disposal; and 20
- (c) any payments made in compliance with regulations made under **section 371(1)(dd)**.

5A New section 8AA inserted (Transitional, savings, and related provisions)

After section 8, insert:

8AA Transitional, savings, and related provisions 25

The transitional, savings, and related provisions set out in **Schedule 1AA** have effect according to their terms.

6 Section 30 replaced (Meaning of class 4 gambling)

Replace section 30 with—

30 Meaning of class 4 gambling 30

In this Act, **class 4 gambling** is—

- ~~(a) gambling that is not gambling of another class and that utilises or involves a gaming machine and satisfies the following criteria:~~
- (i) ~~the net proceeds from the gambling are applied to or distributed for authorised purposes:~~ 35

- (ii) ~~no commission, other than a commission that complies with regulations under **section 371(1)(db)**, is paid to, or received by, a person for conducting the gambling;~~
- (iii) ~~the gambling satisfies relevant game rules; or~~
- (b) ~~gambling categorised by the Secretary as class 4 gambling.~~ 5
- 6 Section 30 amended (Meaning of class 4 gambling)**
- Replace section 30(b) with:
- (b) either—
- (i) no commission is paid to or received by a person for conducting the gambling; or 10
- (ii) the only commission that is paid to or received by a person for conducting the gambling is a commission payment to a venue operator that complies with regulations made under **section 371(1)(dd)**; and
- 6A Section 33 amended (Status of New Zealand Racing Board and racing clubs)** 15
- After section 33(2), insert:
- (3) However, a class 4 venue licence may not be issued to the New Zealand Racing Board or a racing club if another corporate society (other than the New Zealand Racing Board or a racing club) holds, or has held, a class 4 venue licence for that venue. 20
- 6B Section 46 amended (Appeal to Gambling Commission regarding class 3 operator’s licence)**
- Replace section 46(5) with:
- (5) The Gambling Commission must give notice of— 25
- (a) its decision, with reasons, to both the society and the Secretary; and
- (b) the date on which its decision takes effect (which may be a date that is later than the date on which it makes the decision).
- 6C Section 47 amended (Consequences of appeal regarding class 3 operator’s licence)** 30
- In section 47(2)(b), replace “outcome of an appeal,” with “date that the Gambling Commission specifies under **section 46(5)**.”
- 6D Section 52 amended (Grounds for granting class 4 operator’s licence)**
- (1) In section 52(4)(c)(iv), replace “Act.” with “Act; and”.
- (2) After section 52(4)(c)(iv), insert: 35
- (d) any other matter that the Secretary considers relevant.

- 7 Section 53 amended (Content and conditions of class 4 operator’s licence)**
- ~~In section 53(1)(b) replace “not later than 18 months” with “a date, determined by the Secretary at the Secretary’s absolute discretion, that is not more than 3 years”.~~
- (1) In section 53(1)(b), delete “(which must be not later than 18 months after the commencement date)”. 5
- (2) After section 53(1), insert:
- (1A) The Secretary may specify any expiry date for a class 4 operator’s licence that is not more than 3 years after the commencement date of that licence.
- 7A Section 61 amended (Appeal to Gambling Commission regarding class 4 operator’s licence)** 10
- (1) After section 61(1), insert:
- (1A) To avoid doubt, the specification of an expiry date under **section 53(1A)** is not a decision that may be appealed to the Gambling Commission.
- (2) Replace section 61(5) with: 15
- (5) The Gambling Commission must give notice of—
- (a) its decision, with reasons, to both the corporate society and the Secretary; and
- (b) the date on which its decision takes effect (which may be a date that is later than the date on which it makes the decision). 20
- 7B Section 62 amended (Consequences of appeal regarding class 4 operator’s licence)**
- In section 62(2)(b), replace “outcome of an appeal,” with “date that the Gambling Commission specifies under **section 61(5)**.”
- 7C Section 68 amended (Determining suitability for class 4 venue licence)** 25
- (1) In section 68(1)(c)(iv), replace “Act.” with “Act; and”.
- (2) After section 68(1)(c)(iv), insert:
- (d) any other matter that the Secretary considers relevant.
- 8 Section 69 amended (Form and content of class 4 venue agreement)**
- Replace section 69(1)(b) with: 30
- (b) the payments to be made by the holder of the class 4 venue licence to the venue operator, which must be payments that comply with regulations made under ~~**section 371(1)(db)**~~ **371(1)(dd)** or, if no such regulations are in force, payments in respect of an itemised list of costs associated with the operation of class 4 gambling at the venue; and 35

- 9 Section 70 amended (Content and conditions of class 4 venue licence)**
- ~~In section 70(1)(b), replace “not later than 18 months” with “a date, determined by the Secretary at the absolute Secretary’s discretion, that is not more than 3 years”.~~
- (1) In section 70(1)(b), delete “(which must be not later than 18 months after the commencement date)”. 5
- (2) After section 70(1), insert:
- (1A) The Secretary may specify any expiry date for a class 4 venue licence that is not more than 3 years after the commencement date of that licence.
- 9A Section 77 amended (Appeal to Gambling Commission regarding class 4 venue licence)** 10
- (1) After section 77(1), insert:
- (1A) To avoid doubt, the specification of an expiry date under **section 70(1A)** is not a decision that may be appealed to the Gambling Commission.
- (2) Replace section 77(5) with: 15
- (5) The Gambling Commission must give notice of—
- (a) its decision, with reasons, to the corporate society, or the parties to the venue agreement, and the venue manager and the Secretary; and
- (b) the date on which its decision takes effect (which may be a date that is later than the date on which it makes the decision). 20
- 9B Section 78 amended (Consequences of appeal regarding class 4 venue licence)**
- In section 78(2)(b), replace “outcome of an appeal,” with “date that the Gambling Commission specifies under **section 77(5)**.”
- 10 Section 108 amended (Contents of annual report)** 25
- After section 108(1), insert:
- (1A) The financial statements included in the annual report must comply with regulations made under ~~section 371(1)(da)~~ **371(1)(dc)**.
- 11 Section 110 amended (Publication requirements for corporate societies)**
- (1) Replace section 110(4) with: 30
- (4) A corporate society must publish at least annually, or at any shorter intervals specified by regulations, a statement that discloses the following matters:
- (a) details of all applications received from applicants during the reporting period ~~from applicants~~;
- (b) details disclosing, for each application that has been determined during the reporting period,— 35

- (i) whether it has been accepted in full or declined in full:
- (ii) whether it has been accepted in part and declined in part:
- (iii) if it has been declined in full or in part, the reasons for that decision:
- (c) every amount of net proceeds from class 4 gambling distributed in the reporting period and the applicant to whom that amount relates: 5
- (d) any ~~direct or indirect~~ interest that any member of a corporate society's net proceeds committee has in any applicant who is a recipient of a grant that—
- (i) has been made by that committee; and 10
- (ii) is required to be disclosed under **paragraph (c)**:
- (e) the results of the corporate society's annual review of the criteria, methods, systems, and policies it uses for considering the distribution of net proceeds from class 4 gambling:
- (f) any other matters prescribed by regulations. 15
- (4A) For the purposes of **subsection (4)(d)**, a member of a corporate society's net proceeds committee has an **interest** in a recipient of a grant (a **recipient**) if—
- (a) the member may derive a financial benefit from the grant or may have a financial interest in the recipient; or
- (b) the member is a ~~relative of the recipient~~ part of the immediate family of the recipient; or 20
- (c) where the recipient is an organisation, club, society, or association, the member is—
- (i) an officer or a member of the recipient; or
- (ii) ~~is a relative~~ part of the immediate family of an officer or a member of the recipient; or 25
- (d) the member is, or has been, the recipient's lawyer or is under a professional obligation to the recipient in another professional capacity; or
- (e) the member is, or has been, employed by the recipient, or is, or has been, indebted to the recipient, or is, or has been, involved in business or financial dealings with the recipient; or 30
- (f) the member is otherwise connected or involved with the recipient in a way that can reasonably be perceived as having influenced the decision to make the grant to the recipient.
- (4B) A corporate society must, in accordance with the regulations, provide the Secretary with an electronic version of every statement published under **subsection (4)** ~~to the Secretary~~. 35
- (2) Replace section 110(6) with:
- (6) In this section,—

applicant means persons or groups who have applied to the corporate society for grants of net proceeds from class 4 gambling

net proceeds committee means a committee established under the regulations to make decisions on the application or distribution of net proceeds to or for an authorised purpose specified in the licence

part of the immediate family, in relation to an officer or a member of a corporate society's net proceeds committee, means a person—

(a) who is the member's—

(i) spouse, civil union partner, or de facto partner; or

(ii) parent, child, sister, or brother; or

(b) who is the parent, child, sister, or brother of the member's spouse, civil union partner, or de facto partner

publish means to publish in accordance with the regulations

regulations means regulations made under section 114

reporting period, in relation to a statement of any kind required to be published under **subsection (4)**, means the period prescribed by the regulations for a statement of that kind.

~~**relative, in relation to a member of a corporate society's net proceeds committee, means a person—**~~

~~(a) who is the member's—~~

~~(i) spouse, civil union partner, or de facto partner; or~~

~~(ii) parent, step parent, or grandparent; or~~

~~(iii) child, stepchild, or grandchild; or~~

~~(iv) sister, half sister, stepsister, brother, half brother, or stepbrother; or~~

~~(v) aunt or uncle; or~~

~~(vi) nephew or niece; or~~

~~(vii) first cousin; or~~

~~(b) whose relationship with the member's spouse, civil union partner, or de facto partner is that of—~~

~~(i) parent, step parent, or grandparent; or~~

~~(ii) child, stepchild, or grandchild; or~~

~~(iii) sister, half sister, stepsister, brother, half brother, or stepbrother; or~~

~~(iv) aunt or uncle; or~~

~~(v) nephew or niece; or~~

~~(vi) first cousin.~~

12 Section 114 amended (Regulations regarding application or distribution of net proceeds from class 4 gambling)

- (1) Replace section 114(1)(e) and (f) with—
- (e) prescribing requirements for the publication of information about the application and distribution of net proceeds from class 4 gambling, which may, without limitation, include requirements that information of that kind, or any class of information of that kind, be published—
 - (i) in a stated manner, location, or form:
 - (ii) in an electronic form as well as, or instead of, a non-electronic form:
 - (f) prescribing any matter to be disclosed in a statement published under **section 110(4)**, and the form in which those matters must be disclosed in ~~such a~~ that statement:
 - (g) prescribing the form of the electronic version required to be provided under ~~section 110(4A)~~ **110(4B)** and the manner in which, and the time within which, it must be provided:
 - (h) specifying the reporting period to which a statement published under **section 110(4)** must relate, and different reporting periods may be specified for different cases:
 - (i) specifying intervals that are shorter than 12 months at which a statement under ~~section 110~~ **110(4)** must be published, and different intervals may be specified for different cases:
 - (ia) requiring that a portion of the proceeds of class 4 gambling (which may be specified or determined by a specified formula or definition) be applied or distributed to or for authorised purposes in, or operating in, the geographical area from which those proceeds were derived:
 - (ib) 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:
 - (ic) prescribing the criteria or circumstances under which a corporate society may retain net proceeds to maintain financial viability:
 - (id) limiting the amount of the net 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:
 - (ie) 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:

- (j) prescribing any other matters concerning the management, application, or distribution of net proceeds.
- (2) Repeal section 114(3).
- 13 Section 115 amended (Payment of commission prohibited)**
- After section 115(1), insert: 5
- (1A) Subsection (1) does not apply to ~~commissions paid~~ commission payments made to a venue operator if the payment complies with regulations made under ~~section 371(1)(db)~~ 371(1)(dd).
- 14 Section 116 replaced (Secretary may limit or exclude costs of corporate society)** 10
- Replace section 116 with:
- 116 Secretary may limit or exclude operating costs of corporate society**
- (1) ~~The Secretary may, by notice in the *Gazette*, set limits on, or exclude, the operating costs that may be incurred by a corporate society that conducts class 4 gambling.~~ 15
- (1) The Secretary may, by notice in the *Gazette*,—
- (a) set limits on, or exclude, the operating costs that may be incurred by a corporate society that conducts class 4 gambling;
- (b) set the rates of depreciation for gambling assets acquired by a corporate society in respect of class 4 gambling. 20
- (2) A notice under **subsection (1)** may apply to specified licence holders or to classes of licence holder.
- (3) A limit may be expressed in any way that the Secretary considers appropriate, for example,—
- (a) as a specific amount: 25
- (b) as a percentage:
- (c) as an amount for each gaming machine.
- (4) A contract or other arrangement or obligation entered into by a corporate society, whether before or after the enactment of this Act, that does not comply with limits set under **subsection (1)** is an illegal contract for the purposes of the Illegal Contracts Act 1970. 30
- (5) A notice given under **subsection (1)** is a disallowable instrument, but not a legislative instrument, for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.
- (6) In this section, **operating costs**— 35
- (a) includes the following:

- (i) costs of operating the corporate society, including fees, salary, expenses, or any other payments to a key person, to a management services provider, or to another person involved in operating the corporate society:
- (ii) costs associated with repairing and maintaining gambling equipment; but
- (b) does not include any payment made to a venue operator.
- 15 Section 117 amended (Secretary may investigate and audit licensees, grant recipients, and businesses at class 4 venues)**
- (1) In the heading to section 117, after “**grant recipients,**” insert “**management service provider, services providers,**”.
- (2) After section 117(1)(b), insert:
- (ba) an investigation and audit of a management services provider:
- 16 Section 118 amended (Certain persons must not seek, receive, or offer benefits with conditions attached)**
- (1) ~~In the heading to section 118, delete “with conditions attached”.~~
- (2) ~~Replace section 118(2) to (4) with:~~
- (2) ~~A key person in relation to a class 4 venue licensee must not knowingly receive or seek money, a benefit, an advantage, a privilege, or gift from a holder of a class 4 operator’s licensee or a key person in relation to a class 4 operator’s licensee, whether the receipt is direct, indirect, formal, informal, or otherwise.~~
- (3) ~~A holder of, or key person in relation to, a class 4 operator’s licensee, or person that sells, repairs, services, or maintains gambling equipment must not knowingly offer money, a benefit, an advantage, a privilege, or a gift to a grant recipient or potential grant recipient if the receipt has a condition attached to it and whether the receipt or condition is direct, indirect, formal, informal, or otherwise.~~
- (3A) ~~A holder of, or key person in relation to, a class 4 operator’s licensee, or person that sells, repairs, services, or maintains gambling equipment must not knowingly offer money, a benefit, an advantage, a privilege, or a gift to a key person in relation to a class 4 venue licensee, whether the receipt is direct, indirect, formal, informal, or otherwise.~~
- (3B) ~~A holder of a class 4 operator’s licensee or a class 4 venue licensee, or key person in relation to a class 4 operator’s licensee or a class 4 venue licensee, must not knowingly receive any money, a benefit, an advantage, a privilege, or a gift that could reasonably be perceived as influencing decisions taken, or to be taken, on applications for grants, whether the receipt is direct, indirect, formal, informal, or otherwise.~~

- (4) ~~Subsection (2) or (3A)~~ does not prevent the holder of a class 4 operator's licence ~~paying a key person in relation to a class 4 venue costs associated with the class 4 venue if the payment—~~
- (a) ~~complies with section 115 and regulations made under **section 374**; and~~
- (b) ~~is consistent with the relevant venue agreement; and~~
- (c) ~~is otherwise lawful.~~
- (1) In the heading to section 118, after “benefits with”, insert “improper”.
- (2) In section 118(1), (2), (3), and (3A), replace “a condition attached” with “an improper condition attached”.
- (2A) In section 118(2)(a) and (b), delete “if the holder operates at that venue”.
- (2B) Replace section 118(4) with:
- (3B) A holder of a class 4 operator's licence or a class 4 venue licence, or a key person in relation to a class 4 operator's licence or a class 4 venue licence, must not knowingly receive any money, a benefit, an advantage, a privilege, or a gift that could reasonably be perceived as influencing decisions taken, or to be taken, on applications for grants, whether the receipt is direct, indirect, formal, informal, or otherwise.
- (4) To avoid doubt, subsections (2) and (3) do not prevent the holder of a class 4 operator's licence from paying a key person in relation to a class 4 venue the costs associated with the class 4 venue if the payment—
- (a) complies with section 115 and regulations made under section 371; and
- (b) is consistent with the relevant venue agreement; and
- (c) is otherwise lawful.
- (3) In section 118(6)(a), before “the condition is attached”, insert “where ~~a~~ an improper condition is an element of an offence,”.

Part 2

Miscellaneous matters

- 17 **New section 235A inserted (No review of Secretary's decisions concerning class 3 or class 4 gambling until right of appeal exercised)**

After section 235, insert:

235A No review of Secretary's decisions concerning class 3 or class 4 gambling until right of appeal exercised

- (1) A person who has a right to appeal to the Gambling Commission against 1 or more of the decisions ~~mentioned~~ specified in **subsection (2)** is not entitled to apply for judicial review of the decision unless—
- (a) that person exercises that right of appeal; and

- (b) ~~where that person exercises that right of appeal,~~ the appeal is finally determined.
- (2) The decisions referred to in **subsection (1)** are—
- (a) a decision by the Secretary to refuse to grant a class 3 operator’s licence, class 4 operator’s licence, or class 4 venue licence: 5
- (b) a decision by the Secretary to cancel or suspend a class 3 operator’s licence, class 4 operator’s licence, or class 4 venue licence:
- (c) a decision by the Secretary to amend or revoke a condition of, or add a new condition to, a class 3 operator’s licence, class 4 operator’s licence, or class 4 venue licence: 10
- (d) a decision by the Secretary to refuse to renew a class 3 operator’s licence, class 4 operator’s licence, or class 4 venue licence:
- (e) a decision by the Secretary to refuse to amend a class 3 operator’s licence, ~~a~~ class 4 operator’s licence, or ~~a~~ class 4 venue licence.
- (3) In this section, **apply for judicial review** means— 15
- (a) to make an application for review of ~~that~~ the decision under Part 1 of the Judicature Amendment Act 1972; or
- (b) to institute proceedings seeking any writ or order of, or in the nature of, mandamus, prohibition, or certiorari, or a declaration or injunction, in respect of that decision. 20

17A Section 355 amended (Proceedings for offences)

After section 355(1), insert:

- (1A) Despite subsection (1), the limitation period in respect of an offence against section 113 or 118 ends on the date that is 5 years after the date on which the offence was committed. 25

18 Section 371 amended (Other regulations)

After section ~~371(1)(d)~~ 371(1)(db), insert:

- ~~(d)~~ (dc) prescribing requirements relating to the presentation of financial reports by holders of class 4 operator’s licences, and specifying matters that must be included in those reports, including, without limitation, key indicators of operational efficiency: 30
- ~~(db)~~ (dd) prescribing the payments that corporate societies may make to venue operators in connection with class 4 gambling at the venue and, for that purpose, providing for 1 or more of the following:
- (i) the matters for which venue operators may or may not be paid, including (but not limited to) costs: 35
- (ii) any limit on the payment for a matter of a particular kind:

(iii) that, subject to any conditions that may be prescribed, the payment for 1 or more matters may be up to an amount that does not exceed a specified percentage of the turnover (exclusive of prizes and goods and services tax) of the class 4 gambling, for a stated period, at the venue:

5

~~(ede)~~ prescribing the manner in which payments prescribed under **paragraph (db) (dd)** are to be set out in class 4 venue agreements:

19 New section 378 inserted

~~After section 377, insert:~~

378 Application, savings, and transitional provisions

10

~~The application, savings, and transitional provisions set out in **Schedule 1AA** have effect for the purposes of this Act.~~

20 New Schedule 1AA inserted

Before Schedule 1, insert the **Schedule 1AA** set out in the Schedule of this Act.

15

Schedule
New Schedule 1AA inserted in principal Act

s ~~4920~~

Schedule 1AA
Transitional, savings, and related provisions

5

s ~~377A8AA~~

Part 1

~~**Transitional provisions relating to Gambling Amendment Act (No 3) 2014**~~

Transitional provisions relating to Gambling Amendment Act (No 3) 2014

10

1 Annual reports

Section 108 of the principal Act as in force before the commencement of **section 10** of the Gambling Amendment Act (**No 3**) **2014** continues to apply to any annual report that relates to a period that commenced before that commencement.

15

2 Publication requirements

A corporate society may, in respect of any matter that occurred before the commencement of **section 11** of the Gambling Amendment Act (**No 3**) **2014**, choose to comply with section 110 of the principal Act as in force before that commencement instead of section 110 of the principal Act as in force on that commencement.

20

3 Certain venue agreements deemed to be amended

A venue agreement that is in force on the commencement of regulations made under ~~section 371(4)(db)~~ **371(1)(dd)** is, to the extent of any inconsistency with those regulations, deemed, on and from that commencement, to be amended so as to make that agreement consistent with those regulations, and, in particular, any provision in that agreement—

25

- (a) is deemed to be deleted so far as it provides for the payment of a matter for which the venue operator may not be paid under those regulations; and
- (b) that provides for payment in excess of a limit prescribed by those regulations is deemed to be reduced so as not to exceed that limit.

30

4 No judicial review unless and until appeal rights exercised

Section 235A of the principal Act as inserted by **section 17** of the Gambling Amendment Act (**No 3**) **2014** applies to decisions by the Secretary made

35

on or after the commencement of that **section 17**, but does not apply to decisions made before that commencement.

Legislative history

21 May 2014
6 November 2014

Introduction (Bill 216–1)
First reading and referral to Government Administration
Committee