

Gambling Amendment Bill (No 3)

Government Bill

As reported from the committee of the whole House

Key to symbols used in reprinted bill

As reported from the committee of the whole House

text inserted

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Hon Peter Dunne

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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 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 paragraph (b)(iva) with:
- (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: 30
 - (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, 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
- (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:

- (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.
- (3) The amounts referred to in **subsection (1)(b)** are—
- (a) the actual, reasonable, and necessary costs, levies, and taxes incurred in conducting the gambling; and 5
- (b) the actual, reasonable, and necessary costs incurred in complying with any of the following in relation to the gambling:
- (i) this Act or any other relevant enactment:
- (ii) an operator's licence:
- (iii) a venue licence; and 10
- (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
- (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 15
- (c) any payments made in compliance with regulations made under **section 371(1)(dd)**.
- 5A New section 8AA inserted (Transitional, savings, and related provisions)** 20
After section 8, insert:
- 8AA Transitional, savings, and related provisions**
The transitional, savings, and related provisions set out in **Schedule 1AA** have effect according to their terms.
- 6 Section 30 amended (Meaning of class 4 gambling)** 25
Replace section 30(b) with:
- (b) either—
- (i) no commission is paid to or received by a person for conducting the gambling; or
- (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 30
- 6A Section 33 amended (Status of New Zealand Racing Board and racing clubs)** 35
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.~~
- 6A Section 33 amended (Status of New Zealand Racing Board and racing clubs)** 5
- 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 that racing club)— 10
- (a) holds a class 4 venue licence for the venue; or
- (b) held a class 4 venue licence for the venue at any time during the 5-year period immediately before the date on which the application for the licence is made.
- 6B Section 46 amended (Appeal to Gambling Commission regarding class 3 operator’s licence)** 15
- Replace section 46(5) with:
- (5) The Gambling Commission must give notice of—
- (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). 20
- 6C Section 47 amended (Consequences of appeal regarding class 3 operator’s licence)**
- In section 47(2)(b), replace “outcome of an appeal,” with “date that the Gambling Commission specifies under **section 46(5)**,”. 25
- 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:
- (d) any other matter that the Secretary considers relevant.
- 7 Section 53 amended (Content and conditions of class 4 operator’s licence)** 30
- (1) In section 53(1)(b), delete “(which must be not later than 18 months after the commencement date)”.
- (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. 35

- 7A Section 61 amended (Appeal to Gambling Commission regarding class 4 operator’s licence)**
- (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. 5
- (2) Replace section 61(5) with:
- (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). 10
- 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)**,”. 15
- 7C Section 68 amended (Determining suitability for class 4 venue licence)**
- (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)** 20
- Replace section 69(1)(b) with:
- (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)(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 25
- 9 Section 70 amended (Content and conditions of class 4 venue licence)**
- (1) In section 70(1)(b), delete “(which must be not later than 18 months after the commencement date)”.
- (2) After section 70(1), insert: 30
- (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)**
- (1) After section 77(1), insert: 35

- (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:
- (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).
- 9B Section 78 amended (Consequences of appeal regarding class 4 venue licence)** 10
- In section 78(2)(b), replace “outcome of an appeal,” with “date that the Gambling Commission specifies under **section 77(5)**.”
- 9C Section 104 amended (Gaming machine profits must be banked)**
- In section 104(1), delete “directly”.
- 10 Section 108 amended (Contents of annual report)** 15
- After section 108(1), insert:
- (1A) The financial statements included in the annual report must comply with regulations made under **section 371(1)(dc)**.
- 11 Section 110 amended (Publication requirements for corporate societies)**
- (1) Replace section 110(4) with: 20
- (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:
 - (b) details disclosing, for each application that has been determined during the reporting period,— 25
 - (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: 30
 - (c) every amount of net proceeds from class 4 gambling distributed in the reporting period and the applicant to whom that amount relates:
 - (d) any interest that any member of a corporate society’s net proceeds committee has in any applicant who is a recipient of a grant that— 35
 - (i) has been made by that committee; and
 - (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.
- (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— 5
- (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 part of the immediate family of the recipient; or
- (c) where the recipient is an organisation, club, society, or association, the member is— 10
- (i) an officer or a member of the recipient; or
- (ii) a part of the immediate family of an officer or a member of the recipient; or
- (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 15
- (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
- (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. 20
- (4B) A corporate society must, in accordance with the regulations, provide the Secretary with an electronic version of every statement published under **subsection (4)**. 25
- (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 30
- 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— 35
- (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.

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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—

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(i) in a stated manner, location, or form:

(ii) in an electronic form as well as, or instead of, a non-electronic form:

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(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 that statement:

(g) prescribing the form of the electronic version required to be provided under **section 110(4B)** and the manner in which, and the time within which, it must be provided:

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(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(4)** must be published, and different intervals may be specified for different cases:

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(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:

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(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:

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(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:

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- (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. 5
- (2) Repeal section 114(3).
- 13 Section 115 amended (Payment of commission prohibited)**
- After section 115(1), insert:
- (1A) Subsection (1) does not apply to commission payments made to a venue operator if the payment complies with regulations made under **section 371 (1)(dd)**. 10
- 14 Section 116 replaced (Secretary may limit or exclude costs of corporate society)**
- Replace section 116 with: 15
- 116 Secretary may limit or exclude operating costs of corporate society**
- (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,— 25
- (a) as a specific amount:
- (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. 35
- (6) In this section, **operating costs**—
- (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 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, 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 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:

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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 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) 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:
- (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:
- (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, class 4 operator's licence, or class 4 venue licence.
- (3) In this section, **apply for judicial review** means—
- (a) to make an application for review of 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.

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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.

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18 Section 371 amended (Other regulations)

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

- (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: 5
- (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: 10
 - (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: 15
- (de) prescribing the manner in which payments prescribed under **paragraph (dd)** are to be set out in class 4 venue agreements: 20

20 New Schedule 1AA inserted

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

Schedule
New Schedule 1AA inserted in principal Act

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Schedule 1AA
Transitional, savings, and related provisions

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s 8AA

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

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. 10

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. 15

3 Certain venue agreements deemed to be amended

A venue agreement that is in force on the commencement of regulations made under **section 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— 20

- (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 25
- (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.

4 No judicial review unless and until appeal rights exercised 30

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

Gambling Amendment Bill (No 3)

Legislative history

21 May 2014	Introduction (Bill 216–1)
6 November 2014	First reading and referral to Government Administration Committee
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