

House of Representatives

Supplementary Order Paper

Tuesday, 27 May 2014

Gambling Amendment Bill (No 2)

Proposed amendments

Hon Peter Dunne, in Committee, to move the following amendments:

Clause 5

Replace *clause 5(2)* (lines 28 to 31 on page 6 and lines 1 and 2 on page 7) with:

- (2) Section 4(1) is amended by inserting the following definitions in their appropriate alphabetical order:

“**apply**, in relation to the application by a corporate society of net proceeds from class 4 gambling to an authorised purpose, means spending the net proceeds directly on the corporate society’s own authorised purpose

“**distribute**, in relation to the distribution by a corporate society of net proceeds from class 4 gambling to an authorised purpose, means the corporate society making a grant to another person for that person to spend on an authorised purpose

“**EFTPOS device** means an electronic funds transfer at point of sale device

“**gambling assets** means assets acquired to enable the conduct of gambling, including, but not limited to, any fittings or chattels”.

Delete *clause 5(4)* and *(5)* (lines 5 to 14 on page 7).

After *clause 5(9)* (after line 9 on page 8) insert:

- (9A) Section 4(1) is amended by repealing the definition of **net proceeds** in section 4(1) and substituting the following definition:

“**net proceeds**, in relation to gambling, means the turnover of the gambling (less prizes) plus interest or other investment return on that turnover plus any gain above the book value from the sale of gambling assets less—

- “(a) the actual, reasonable, and necessary costs, levies and taxes incurred in conducting the gambling; and
- “(b) the actual, reasonable, and necessary costs incurred in complying with whichever of the following apply to the gambling:
 - “(i) this Act or any other relevant Act:
 - “(ii) an operator’s licence:
 - “(iii) a venue licence; and
- “(c) 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
- “(d) 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”.

New clause 17C

After *clause 17B* (after line 12 on page 14) insert:

17C New section 38A inserted

The following section is inserted after section 38:

“38A Continuing obligations of class 3 operator

Every society that holds a class 3 operator’s licence must, in relation to class 3 gambling conducted by the society, ensure that at all times—

- “(a) the purpose of that gambling is to raise money for authorised purposes; and
- “(b) the net proceeds from that gambling are maximised and the operating costs of that gambling are minimised; and
- “(c) the costs incurred in conducting that gambling are actual, reasonable, and necessary; and
- “(d) the net proceeds from that gambling are applied to or distributed for authorised purposes; and
- “(e) all applicable regulatory requirements are complied with.”

Clause 18

In *clause 18* (after line 15 on page 14) insert as *subclauses (2) and (3)*:

- (2) Section 41(5) is amended by inserting, after paragraph (a), the following paragraph:
 - “(ab) the Secretary is not satisfied that the applicant complies with **section 38A**; or”.
- (3) Section 41(5)(b) is amended by inserting “including the obligations set out in **section 38A**,” after “relevant requirements of this Act,”.

New clauses 18A to 18C

After *clause 18* (after line 15 on page 14) insert:

18A Amending class 3 operator’s licence

Section 42 is amended by repealing subsection (5) and substituting the following subsection:

- “(5) The Secretary must refuse to amend a class 3 operator’s licence if—
- “(a) any investigations carried out by the Secretary cause the Secretary not to be satisfied about any of the matters specified in section 37; or
 - “(b) the Secretary is not satisfied that the applicant complies with **section 38A**; or
 - “(c) the Secretary is not satisfied that the applicant will comply with all relevant requirements of this Act, including the obligations set out in **section 38A**, minimum standards, game rules, and licence conditions.”

18B Suspension or cancellation of class 3 operator’s licence

- (1) Section 43(1) is amended by repealing paragraph (b) and substituting the following paragraph:

“(b) the society is failing, or has failed, to comply with the obligations set out in **section 38A** or with any other relevant requirements, minimum standards, game rules, or licence conditions of this Act; or”.

- (2) Section 43 is amended by adding the following subsection:

- “(3) The Secretary may exercise the power of suspension conferred by this section in respect of any breach that falls within any of paragraphs (a) to (c) of subsection (1), whether or not—
- “(a) the breach continues at the time that the power is exercised or is proposed to be exercised:
 - “(b) a penalty is prescribed for the breach.”

18C Procedure for suspending, cancelling, or refusing to amend or renew class 3 operator’s licence

- (1) Section 44(4) is amended by repealing paragraphs (c) to (e), and substituting the following paragraph:

“(c) the reason for the suspension.”

- (2) Section 44 is amended by inserting the following subsection after subsection (4):

“(4A) Where the licence is suspended because of a continuing breach, the Secretary must notify the society of—

- “(a) the matters to be dealt with in order for the Secretary to consider withdrawing the suspension before the end of the suspension period; and

- “(b) the consequences of not dealing with the matters identified.”

New clause 22AA

After *clause 22* (after line 29 on page 16) insert:

22AA New section 53A inserted

The following section is inserted after section 53:

“53A Continuing obligations of class 4 operator

Every corporate society that holds a class 4 operator’s licence must, in relation to class 4 gambling conducted by the corporate society, ensure that, at all times,—

- “(a) the purpose of conducting that gambling is to raise money for authorised purposes; and
- “(b) the net proceeds from that gambling are maximised and the operating costs of that gambling are minimised; and
- “(c) the costs incurred in conducting that gambling are actual, reasonable, and necessary; and
- “(d) the net proceeds from that gambling are applied to, or distributed for, authorised purposes; and
- “(e) the risks of problem gambling posed by that gambling are minimised; and
- “(f) all applicable regulatory requirements are complied with.”

Clause 22A

Replace *clause 22A* (lines 30 to 34 on page 16) with:

22A Renewal of class 4 operator’s licence

Section 56 is amended by repealing subsection (5) and substituting the following subsection:

- “(5) The Secretary must refuse to renew a class 4 operator’s licence if—
 - “(a) any investigations carried out by the Secretary cause the Secretary not to be satisfied about any of the matters specified in section 52; or
 - “(b) the Secretary is not satisfied that the applicant complies with **section 53A**; or
 - “(c) the Secretary is not satisfied that the applicant will comply with all applicable regulatory requirements of this Act, including the obligations set out in **section 53A**, minimum standards, game rules, *Gazette* notices, and licence conditions.”

22B Amending class 4 operator’s licence

Section 57 is amended by repealing subsection (5) and substituting the following subsection:

- “(5) The Secretary must refuse to amend a class 4 operator’s licence if—
- “(a) any investigations carried out by the Secretary cause the Secretary not to be satisfied about any of the matters specified in section 52; or
 - “(b) the Secretary is not satisfied that the applicant complies with **section 53A**; or
 - “(c) the Secretary is not satisfied that the applicant will comply with all relevant requirements of this Act, including the obligations set out in **section 53A**, minimum standards, game rules, *Gazette* notices, and licence conditions.”

22C Suspension or cancellation of class 4 operator’s licence

- (1) Section 58(1) is amended by repealing paragraph (b) and substituting the following paragraph:
- “(b) the corporate society is failing, or has failed, to comply with all relevant requirements of this Act, including the obligations set out in **section 69A**, minimum standards, game rules, *Gazette* notices, and licence conditions; or”.
- (2) Section 58 is amended by adding the following subsection:
- “(3) The Secretary may exercise the power of suspension conferred by this section in respect of any breach that falls within any of paragraphs (a) to (d) of subsection (1) whether or not—
- “(a) the breach continues at the time that the power is exercised or is proposed to be exercised;
 - “(b) a penalty is prescribed for the breach.”

Clause 23

Replace *clause 23* (lines 1 to 4 on page 17) with:

23 Procedure for suspending, cancelling, or refusing to amend or renew class 4 operator’s licence

- (1) Section 59(4) is amended by repealing paragraphs (c) to (e), and substituting the following paragraph:
- “(c) the reason for the suspension.”
- (2) Section 59 is amended by inserting the following subsection after subsection (4):
- “(4A) Where the licence is suspended because of a continuing breach, the Secretary must notify the society of—
- “(a) the matters to be dealt with in order for the Secretary to consider withdrawing the suspension before the end of the suspension period; and
 - “(b) the consequences of not dealing with the matters identified.”

Clause 26

After *clause 26(1)* (after line 23 on page 17) insert:

- (1A) Section 67(1)(l) is amended by omitting “for a class 4 venue that is not established before the commencement of this section,” and substituting “if the application relates to a venue for which a class 4 venue licence was not held at the time of commencement of this section.”.

New clause 27A

After *clause 27* (after line 16 on page 18) insert:

27A New section 69A inserted

The following section is inserted after section 69:

“69A Continuing obligations of corporate society in relation to class 4 venue licence

A corporate society that holds a class 4 venue licence must, in relation to class 4 gambling conducted at the class 4 venue for which the licence is held, ensure that, at all times,—

- “(a) the possibility of persons under 18 years old gaining access to class 4 gambling at the venue is minimised; and
- “(b) the corporate society owns all gambling equipment (except for electronic monitoring systems) that it operates at the venue; and
- “(c) the corporate society does not operate any gambling equipment that is financed by the manufacturer, distributor, or vendor of the equipment; and
- “(d) all gambling equipment operated at the venue meets relevant minimum standards; and
- “(e) the venue is not used mainly for operating gaming machines; and
- “(f) if the New Zealand Racing Board is the licensee, the venue is used mainly for racing betting or sports betting; and
- “(g) the risk of problem gambling is minimised.”

Clause 29A

Replace *clause 29A* (lines 4 to 8 on page 19) with:

29A Renewal of class 4 venue licence

Section 72 is amended by repealing subsection (5) and substituting the following subsection:

- “(5) The Secretary must refuse to renew a class 4 venue licence if—
- “(a) the applicant does not hold the associated operator’s licence; or

- “(b) any investigations carried out by the Secretary cause the Secretary not to be satisfied about any of the matters specified in section 67; or
- “(c) the Secretary is not satisfied that the applicant complies with **section 69A**; or
- “(d) the Secretary is not satisfied that the applicant will comply with all relevant requirements of this Act, including the obligations set out in **section 69A**, minimum standards, game rules, *Gazette* notices, and licence conditions.”

29B Amending class 4 venue licence

Section 73 is amended by repealing subsection (5) and substituting the following subsection:

- “(5) The Secretary must refuse to amend a class 4 venue licence if—
 - “(a) the applicant does not hold the associated operator’s licence; or
 - “(b) any investigations carried out by the Secretary cause the Secretary not to be satisfied about any of the matters specified in section 67; or
 - “(c) the Secretary is not satisfied that the applicant complies with **section 69A**; or
 - “(d) the Secretary is not satisfied that the applicant will comply with all relevant requirements of this Act, including the obligations set out in **section 69A**, minimum standards, game rules, *Gazette* notices, and licence conditions.”

29C Suspension or cancellation of class 4 venue licence

- (1) Section 74(1) is amended by repealing paragraph (b) and substituting the following paragraph:

- “(b) the corporate society is failing, or has failed, to comply with all relevant requirements of this Act, including the obligations set out in **section 69A**, minimum standards, game rules, *Gazette* notices, and licence conditions; or”.

- (2) Section 74 is amended by adding the following subsection:

- “(3) The Secretary may exercise the power of suspension conferred by this section in respect of any breach that falls within any of paragraphs (1)(a) to (1)(d) of subsection (1) whether or not—
 - “(a) the breach continues at the time that the power is exercised or is proposed to be exercised:
 - “(b) a penalty is prescribed for the breach.”

Clause 30

Replace *clause 30* (lines 9 to 12 on page 19) with:

30 Procedure for suspending, cancelling, or refusing to amend or renew class 4 venue licence

- (1) Section 75(4) is amended by repealing paragraphs (c) to (e), and substituting the following paragraph:

“(c) the reason for the suspension.”

- (2) Section 75 is amended by inserting the following subsection after subsection (4):

“(4A) Where the licence is suspended because of a continuing breach, the Secretary must notify the society of—

“(a) the matters to be dealt with in order for the Secretary to consider withdrawing the suspension before the end of the suspension period; and

“(b) the consequences of not dealing with the matters identified.”

Clause 34

Replace *clause 34(4)* (lines 21 to 30 on page 20) with:

- (4) Section 86 is amended by adding the following subsection:

“(6) A notice under **subsection (1)(b)** is a disallowable instrument for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.”

Clause 40: new section 98

After *paragraph (b)* of *new section 98* (after line 30 on page 22), insert:

- (c) if a corporate 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.

Clause 44

After *clause 44(1)* (after line 19 on page 23) insert:

- (1A) Section 104(2) is amended by omitting “The gaming machine profits must be banked ” and substituting “The venue manager must bank the gaming machine profits”.

After *clause 44(2)* (after line 2 on page 24) insert:

- (2A) Section 104(4) is amended by omitting “subsection (1) or (3)” and substituting “this section”.

Clause 45

In *clause 45*, *new section 105(1)*, replace “fittings, chattels, or gambling equipment purchased from those profits” (lines 16 and 17 on page 24) with “gambling assets”.

Clause 46, new section 105A(3)

Omit “summary” at line 9 on page 25.

Clause 54, new section 115A(2)

Omit “summary” at line 30 on page 27.

New clause 54A

After *clause 54* (after line 31 on page 27) insert:

54A Secretary may limit or exclude costs of corporate society

Section 116 is amended by repealing subsection (1) and substituting the following subsection:

- “(1) The Secretary may, by notice in the *Gazette*,—
- “(a) set limits on, or exclude, the 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.”

Clause 59

After the heading to *clause 59* (after line 31 on page 28) insert:

(1AA) Section 146 is amended by inserting the following subsection after subsection (1):

- “(1A) The Gambling Commission may exercise the power of suspension conferred by this section in respect of any breach that falls within section 144(1)(a) or (c) whether or not—
- “(a) the breach continues at the time that the power is exercised or is proposed to be exercised:
 - “(b) a penalty is prescribed for the breach.”

Replace *clause 59(1)* (lines 32 and 33 on page 28) with:

- (1) Section 146(2) is amended by repealing paragraphs (c) and (d) and substituting the following paragraph:
- “(c) where the casino licence is suspended because of a continuing breach,—
- “(i) the matters to be dealt with in order for the Gambling Commission to consider withdrawing the suspension before the end of the suspension period; and
 - “(ii) the consequences of not dealing with the matters identified.”

New clause 73B

After *clause 73A* (after line 4 on page 35) insert:

73B Board of Lotteries Commission

Section 240(1) is amended by omitting “5 members” and substituting “at least 2, and not more than 9, members”.

Clause 74

Delete *clause 74* (lines 5 to 10 on page 35).

Clause 80, new section 308(6)

Omit “summary” at line 29 on page 35.

Clause 84, new section 312(5)

Omit “summary” at line 24 on page 39.

Omit “summary” at line 26 on page 39.

New clause 90A

After *clause 89* (after line 15 on page 42) insert:

90A New section 320A inserted

After section 320, insert:

“320A Levy may be calculated for period of less than 3 years

“(1) Sections 319 and 320 authorise (but do not require) the calculation of the levy on the basis that—

“(a) it will be payable only for a period that commences part-way through the 3-year period to which it relates; but

“(b) it is set at a rate sufficient to recover the full cost of the integrated problem gambling strategy for the whole of that 3-year period.

“(2) **Subsection (1)** is for the avoidance of doubt.”

Clause 107(1)

Replace *clause 107(1)* (lines 4 to 6 on page 47) with:

(1) Schedule 6 is amended by omitting the items relating to sections 104 and 105 and substituting the following items:

s 104	Banking and other related requirements for gaming machine profits	\$2,500
s 105	Banking requirements for interest, investment return, etc, on gaming machine profits	\$2,500

Clause 110

After *clause 110(1)* (after line 31 on page 47) insert:

(1A) Regulation 3(1) is amended by repealing the definition of **gross proceeds** and substituting the following definition:

“**gross proceeds**, in relation to gambling, means the turnover of the gambling, less prizes, plus interest or other investment return on that turnover, plus any gain above the book value from the sale or disposal of gambling assets”

New clauses 112 and 113

After *clause 111* (after line 12 on page 48) insert:

“Transitional provisions

“112 Notices under section 116(1)(b) to have prospective effect only

A notice under **section 116(1)(b)** of the principal Act, as enacted by **section 54A** of this Act, does not apply in respect of any financial year of a corporate society that commenced before the commencement of this Act.

“113 New definition of net proceeds to have prospective effect only

The net proceeds of a corporate society in any financial year that commenced before the commencement of this Act must be determined as if **section 5(9A)** had not been enacted.”

Explanatory note

This Supplementary Order Paper amends the Gambling Amendment Bill (No 2) to provide—

- that the power to suspend a class 3 operator’s licence, a class 4 operator’s licence, a class 4 venue licence, or a casino licence may be exercised in respect of a past breach, whether or not the breach continues at the time that the suspension is imposed and whether or not a specific penalty is prescribed for the breach. The provisions will apply to suspensions in respect of breaches that occurred before the provisions come into force. This is consistent, in relation to the question whether the power to suspend is available to penalise non-continuing breaches, with the recent decision of the Court of Appeal in *Secretary for Internal Affairs v Pub Charity* [2013] NZCA 627:
- that a society that has a class 3 operator’s licence, a class 4 operator’s licence, or a class 4 venue licence must ensure that it continues to meet certain of the criteria that it had to meet to obtain the licence; a failure to comply with that requirement may result in the society’s not having its licence renewed or amended or in the cancellation or the suspension of its licence:
- that in conducting class 3 gambling or class 4 gambling, a society is subject to an express obligation to incur only actual, reasonable, and necessary costs:
- that in calculating the net proceeds from gambling that must be applied or distributed for authorised purposes, the available deduction in respect of the purchase of gambling assets is limited to the depreciation charge for those assets in the relevant year. Similarly, on the sale of a society’s

gambling assets, gains from the sale above the book value of the assets are included in the society's net proceeds and any losses below the book value of the assets are deducted from those net proceeds:

- that gambling assets, which are widely defined in a new definition as assets acquired for the purpose of gambling, must be depreciated in accordance with generally accepted accounting practice and any limits prescribed by the Secretary for Internal Affairs:
- that the membership of the Lotteries Commission consists of a minimum of 2 members and a maximum of 9 members:
- that the problem gambling levy (which is payable to recover the costs of developing, managing, and delivering the integrated problem gambling strategy over successive 3-year periods) may be calculated on the basis that it—
 - will be payable only for a period that commences part-way through the 3-year period to which it relates; but
 - is set at a rate sufficient to recover the full cost of the strategy for the whole of that 3-year period.
- for a number of technical amendments.

Departmental disclosure statement

The Department of Internal Affairs considers that a departmental disclosure statement is not required to be prepared for this Supplementary Order Paper.
