

Commerce Select Committee

Gambling (Gambling Harm Reduction) Amendment Bill 2010

Submission of the New Zealand Racing Board



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**THE NEW ZEALAND RACING BOARD'S SUBMISSION ON THE GAMBLING
(GAMBLING HARM REDUCTION) AMENDMENT BILL 2010**

1. We wish to speak to our submission.

EXECUTIVE SUMMARY

2. The Gambling Act 2003 is a very thorough and detailed piece of legislation. The Gambling (Gambling Harm Reduction) Amendment Bill 2010's ("the Bill") provisions are not well drafted and do not dovetail with the principal Act. A number of the Bill's provision will create anomalies and conflicts of interest. The majority of the Bill's provisions are not necessary.
3. It is submitted that the Bill should be replaced with a Government Bill (possibly an expanded Gambling Amendment Bill (No 2)). The Gambling Amendment Bill (No 2) is already before Parliament. This Bill contains several policy and technical amendments to allow the Gambling Act 2003 to operate as originally intended. Bringing the Gambling Amendment Bill (No 2) forward will close the loopholes, provide greater clarity and help to improve integrity within the industry.
4. The New Zealand Racing Board strongly opposes any change to the authorised purpose definition to exclude racing purposes. The percentage of authorised purpose funds used for racing purposes is small (approximately 6%). The funding received is essential to the racing industry, an industry that provides significant entertainment and contributes to employment, export sales and New Zealand's GDP.
5. The New Zealand Racing Board does not believe that it is necessary or appropriate to transfer the grant distribution role to council committees. This role is outside council's core function. The role would create unnecessary costs for councils and place them in a position of conflict of interest. Furthermore, no changes proposed to the grant distribution role should relate to societies such as the New Zealand Racing Board and clubs (RSAs and chartered clubs), that are societies that mainly apply funds, rather than distribute funds.
6. The New Zealand Racing Board opposes any change that would enable territorial authorities to remove gaming from existing venues. Territorial authorities already have the ability to adopt sinking lid policies. A more expansive power will interfere with established businesses and unfairly affect property values and create general uncertainty.
7. The New Zealand Racing Board supports the adoption of any cost effective system that will assist to reduce problem gambling (as opposed to reducing gambling generally, which is a lawful entertainment activity). It is submitted that any decision regarding player tracking systems and pre-commitment cards should not be a political decision, but a decision made by the Department of Internal Affairs, based on an objective cost/benefit analysis.
8. Current legislation does not attend to increasing gambling spend directed to offshore internet sites which offer unregulated access to 'online slots' and poker etc. While it is illegal to advertise overseas gambling in New Zealand, it

is not illegal to participate in gambling on an overseas based website or mobile application.

9. If a reduction in gaming machines only redirects gamblers to offshore based internet gambling there is no harm minimisation advantage in that strategy. In addition, there are further disadvantages in the fact that no community funding is generated for New Zealanders, no tax revenue is generated for the New Zealand Government and no contributions are made via the New Zealand problem gambling levy.
10. The New Zealand Racing Board strongly supports inclusion of legislative provisions that would reduce problem gambling and the economic costs associated with spending on offshore gambling websites.

THE BILL'S FAILURE TO ALIGN WITH PRINCIPAL ACT

11. The Bill's provisions do not fit well with the substantial provisions of the Gambling Act 2003. In order to make the current Bill workable numerous changes to the Bill and further changes to the principal Act would need to be made. It would be more efficient to include any changes in a new Bill, rather than attempt to amend each of the current clauses and insert numerous other amendments and additions.
12. The anomalies and drafting errors are too extensive to detail in full. However, at a glance:
 - a. The Bill in the explanatory note refers to removing the role of "conducting class 4 gambling" from gaming societies. This would require all the current gaming societies to wind down and cease all gaming related activity. The provisions of the Bill (sections 110A and 110B) however appear to relate only to the removal of the grant distribution role;
 - b. The Bill does not appreciate that the words "apply" and "distribute" have a defined and specific meaning. Gaming societies either distribute funds to third parties via grants or apply funds for their own purposes. The New Zealand Racing Board, workingmen's clubs, RSAs and end user trusts are examples of societies that mainly apply funds. Clause 6(1)(ca) requires all gaming societies to distribute 80% of funds. This would bring to an end the current club model. The Bill however has a subsequent contradictory clause 9(1A) that requires all societies to apply at least 80% of funds;
 - c. The Bill in some places refers to "proceeds" and in other places "net proceeds". Section 110B(4) of the Bill currently requires the Auckland Council to ensure that at least 80% of the proceeds (i.e. gross revenue, not net proceeds) from class 4 gambling is distributed to local communities. This is not possible given the requirement to pay 20% in gaming duty, a 1.48% problem gambling levy, 15% GST, and a significant sum each year in Department of Internal Affairs' licencing fees;
 - d. The Bill proposes that the grant role be transferred to council committees. The Bill does not however amend the requirement on

each gaming society to have a unique authorised purpose which is set by the gaming society's trustees. An authorised purpose statement can be very narrow and relate to one or two select purposes, e.g. water safety. The council committee would have to abide by each authorised purpose statement. Failure to do so would be a criminal offence (section 106). A conviction under section 106 results in the gaming society immediately losing its class 4 operator's licence without any right of appeal; and

- e. The Bill does not make any changes to the extensive obligations that will remain with gaming societies. For example, each gaming society will remain responsible for publishing grants and formulating and reviewing annually a grants policy.
13. The Gambling Act 2003 received the royal assent on 18 September 2003. The Act is therefore due for a ten year review. The Gambling Amendment Bill (No 2) contains several policy and technical amendments that will ensure the Act operates as originally intended. This Gambling Amendment Bill (No 2) was introduced to the house on 6 August 2007, had its first reading on 22 August 2007, its second reading on 12 May 2009, but has since languished.
 14. It is submitted that the Gambling Amendment Bill (No 2) should be prioritised and used as the vehicle to include any changes considered appropriate as part of the ten year review and any other minor changes to the Act considered necessary as part of the select committee hearing process.

REMOVAL OF RACING AS AN AUTHORISED PURPOSE

15. Section 4(1) of the Act currently includes, promoting, controlling and conducting race meetings under the Racing Act 2003, including the payment of stakes within the definition of an authorised purpose.
16. The Bill proposes to delete racing purposes and racing-stake money as an authorised purpose. This amendment is strongly opposed by the New Zealand Racing Board. Although the funding that goes to racing is a small percentage (6%) of total grants made by class 4 charitable trusts, the funding however remains essential to the wellbeing and long-term viability of the racing industry in New Zealand, and therefore essential to the entertainment, employment, export sales and GDP contribution that racing makes.
17. There is a very significant community interest in the racing industry in New Zealand. The racing industry provides considerable benefit to the New Zealand economy and New Zealand community:
 - a. Racing contributes more than \$1.6 billion to the New Zealand economy;
 - b. The industry generates the equivalent of 16,930 full time jobs;
 - c. The industry involves over 52,000 people who participate in the racing industry via employment or as a club member, volunteer or owner. This amounts to one in every 83 New Zealanders;

- d. The industry produces export sales of \$167 million;
 - e. The industry pays more than \$39 million to the Government each year from wagering taxes alone;
 - f. There are more than 1 million raceday public attendances at over 1,000 race meetings per year; and
 - g. Over 400 community groups and charities benefit from the sharing of racing club facilities and resources.
18. In economic terms, the New Zealand racing industry (\$1.6 billion) is comparable in size to the wine industry (\$1.5 billion) and the seafood industry (\$1.7 billion).
 19. The above findings are set out in full in an October 2010 report, *Size and Scope of the New Zealand Racing Industry*.¹
 20. The above factors are also reflected in comments made in the Department of Internal Affairs' briefing paper dated 17 September 2010 to the Honourable Nathan Guy. The Department notes:

The Gambling Act 2003 recognises the benefits of racing for New Zealand society and the economy. Racing clubs, particularly those in rural areas, provide their communities with important infrastructure. They also contribute to the wider racing industry, which employs over 18,000 people and generates \$130m in export receipts. All racing clubs are not-for-profit organisations and a grant can assist with their on-going viability and help maintain the quality and standards of racing in New Zealand.

21. The figures quoted above by the Department are from an earlier June 2004 report on the racing industry.
22. It is unfair to treat racing differently from other sports that benefit from access to grant money. Under the 2003 Gambling Act, racing was specifically included as an authorised purpose to address an anomaly in the previous legislation. The express inclusion of racing in section 4 placed racing back on an equal playing field with other sporting bodies.
23. The inclusion of racing as an authorised purpose in the 2003 Gambling Act was not simply a political decision. The foundation for racing's inclusion was provided by the High Court in 2000. In the High Court decision *New Zealand Racing Industry Board v Attorney General* HC Wellington CP 67/00, 13 July 2000 the court confirmed that racing clubs are not organisations established or conducted for commercial purposes, but rather non-profit organisations that return their revenues back into their objective of promoting and conducting race meetings. Justice Goddard stated:

[49] The sport of racing combines the skills of breeding, training and riding with the element of chance. This combination of the test of skills with the element of chance in a social environment, has been part of New Zealand's social history since the early days of its colonisation. Over the ensuing

¹ http://static.tab.co.nz/control/data/nzrb-other-reports/NZRB_Size_and_Scope_Final.pdf.

century and a half, the sport has metamorphosed into a national industry and become a major revenue producer.

[50] Race meetings are pivotal to the existence of the industry. They 'showcase' the sport. The racing clubs' role is to provide the venue at which to 'showcase'. Without race meetings there would be no sport and therefore no industry.

...

[53] ... the racing clubs have no commercial function or responsibility within the industry...

...

[55] The sole purpose of the racing clubs is to provide the venue and facilities for the conduct of race meetings and to promote and control those meetings. The clubs have no other purpose – not even a secondary purpose. Their task is complete when the race meeting is concluded and the proceeds returned. Thus they have no commercial function and are little more than conduits within the industry for money expended on on-course betting. They are not established for the purpose of making a profit out of racing, only for the purpose of holding the race meetings. Any profit derived is ploughed back into fulfilling their objective: namely, to promote, conduct and control race meetings.

...

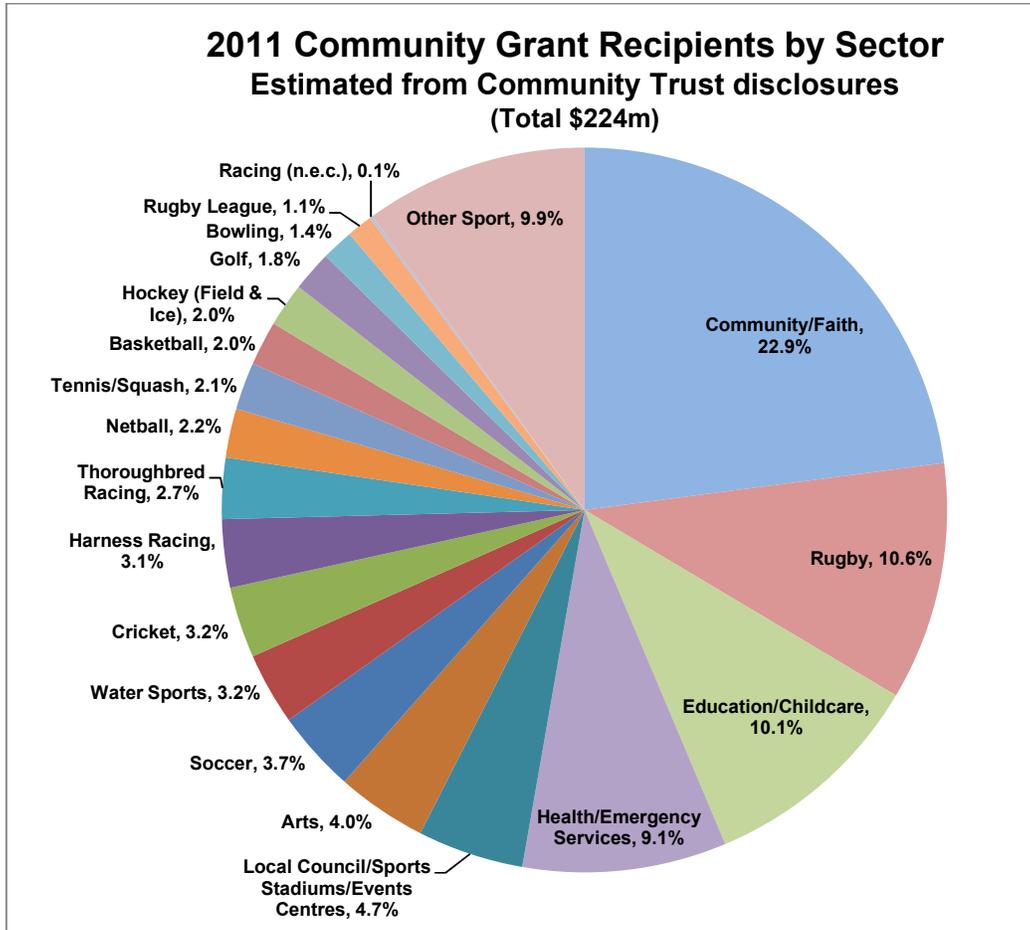
[58] The essential answer to the declarations sought is that racing clubs are "societies" within the meaning of s 2 of the Gaming Act, their sole purpose being to promote, conduct and control race meetings. That is not a commercial purpose. The clubs are not established or operated for any other reason. None of their ancillary trading activities nor the operation of gaming machines on-course derogates from the non-commerciality of their sole purpose.

...

[60] Racing clubs are established and conducted entirely for purposes other than a commercial purpose.

24. Racing clubs are therefore akin to other sporting clubs such as rugby clubs, cricket clubs and tennis clubs. The racing clubs are non-profit bodies that use all the funds they generate to promote and control their sport. It is also valid to note that Racing Clubs collectively provide a regular venue for more than 400 community groups and public organisations².
25. Racing does not receive a disproportionate amount of grant money when compared with other sports groups. Harness racing in 2011 received only 3.10% of all grants, thoroughbred racing 2.70% and other racing interests 0.10%. The grant distribution is outlined in the graph below:

² Size and Scope of the New Zealand Racing Industry, October 2010



Note: Aggregated from public disclosure statements of Class 4 Charitable Societies

NZ RACING BOARD CLASS 4 VENUES & EXISTING HARM REDUCTION MEASURES

26. Much of the gaming revenue received for racing purposes is now generated through gaming machines at NZ Racing Board Venues (TAB Venues). The players who participate in class 4 gambling at TAB Venues tend to have an interest in the racing industry. The class 4 offering at TABs is a way that people who have an interest in the racing industry can support the industry.
27. From a harm minimisation perspective there is also no justification in introducing steps that may reduce the number of gaming machines located at TABs. TAB Venues are well recognised as having very high levels of host responsibility. Reasons for this include:
- a. The lack of alcohol at TAB Venues;
 - b. Staff not being distracted by other responsibilities – such as serving food and alcohol;
 - c. The New Zealand Racing Board having developed its policy on problem gambling minimisation in conjunction with the Problem Gambling Foundation;

- d. The training of all TAB Venue staff by the Problem Gambling Foundation;
- e. TAB Venues being prohibited from having any ATM machines on site;
- f. All TAB Venues are connected via closed circuit television to a central monitoring office;
- g. All TAB Venues are subject to regular audits and spot checks by the New Zealand Racing Board's audit team;
- h. When a problem gambler is excluded from a TAB Venue, they are excluded from all TAB venues in New Zealand and all race courses in New Zealand; and
- i. TAB Venues have considerably lower trading hours than most other class 4 venues. The standard trading hours of TAB Venues are:

Monday: 11am - 7pm
 Tuesday: 11am - 7pm
 Wednesday: 11am - 8pm
 Thursday: 11am - 10pm
 Friday: 11am - 10pm
 Saturday: 9am - 8pm
 Sunday: 11am - 7pm

28. In 2007 the New Zealand Racing Board applied to the Hamilton City Council to obtain consent to host nine gaming machines as its TAB venue in Te Rapa. The then Chief Executive of the Problem Gambling Foundation, John Stansfield, commented on the application in his email of 22 November 2007 as follows:

... we oppose any expansion of gambling machine numbers in Hamilton until such time as machines can be made safe. We acknowledge the significant effort of NZRB in improving their host responsibility policy and agree **it is one of the best and probably the best operating in Hamilton...**

The consent application was subsequently granted by the Hamilton City Council.

29. In 2011 the New Zealand Racing Board applied for territorial authority consent to host nine gaming machines at its TAB Venue in Albany. Applications for the nine available machines were also made by three other societies.
30. The Council appointed an independent commissioner to assess the competing applications. The process required each application to be assessed on its individual merits. Of foremost importance were the harm minimisation measures in place at each venue. After a full independent assessment the consent was granted to the Albany TAB due to the unparalleled harm minimisation measures that would be put in place.

31. It makes little practical sense from a problem gambling perspective to introduce initiatives that may result in the removal of gaming machines from the venues with the highest harm minimisation standards.

PHASING OUT OF GAMING SOCIETIES AS DISTRIBUTORS OF GRANT MONEY

32. The Bill proposes introducing two new sections, section 110A and section 110B, to remove the grant distribution role from gaming societies and to place this responsibility with council committees made up of members of each territorial authority and others appointed by the territorial authority.
33. This proposed amendment could dramatically reduce the size of the gaming industry. Many gaming societies are unlikely to wish to continue to operate if they are prevented from distributing their society's net proceeds. This is because the ability to make grants is a key motivation behind many gaming societies' existence. Gaming societies will not wish to carry all the burdens of owning gaming machines (administration, responsibility for compliance with the Act, participation in audits etc.) if they do not have the corresponding benefit of making grant decisions.
34. If gaming societies are removed from the grant distribution role, the immediate impacts are likely to be:
- a. A swift reduction in the size of the charitable gaming industry;
 - b. A corresponding swift loss of tax revenue; and
 - c. A corresponding swift loss in the funding available to community groups.
35. Up to 49% of the council committee will be made up of members of the territorial authority. The territorial authority will be charged with selecting the other committee members. This means that each territorial authority will have influence over the make-up of the distribution committee.
36. Each territorial authority would be placed in a position of a significant conflict of interest. On one hand, through the council committee, the council will be responsible for seeing that grant recipients (including council as a grant recipient) receive long term funding. However, at the same time, the council will also be responsible for deciding whether or not policies to prohibit or reduce gaming machine numbers are required. If a council committee has made a very large multi-year grant to support the building of a new council swimming pool complex, would the same council members then vote to eliminate gaming machines from the local area, and thus eliminate the funding for the swimming pool complex? The councils themselves have acknowledged the conflict of interest the Bill would impose. A recent Auckland Council staff report on the Bill notes:

The Bill continues the role of council's as a regulator of Class 4 Gambling, but also involves them in the distribution of the proceeds of that gambling. This dual role could create an internal conflict that might better be avoided.

A recent South Waikato District Council staff report on the Bill notes:

There is potential for “conflict of interest” arising out of the allocation of funds. An example being the option to increase rates to complete a new community project/development or to direct proceeds from Class 4 Venues into that new project/development.

37. The grant distribution process could become politicised. There is a high probability that a territorial authority will persuade their council committee to support grant applications that the territorial authority favours. What this could mean is that territorial authority-backed projects (typically large infrastructure projects) would receive increased funding corresponding in a large number of smaller applications by community groups being declined.
38. The Bill's assumption is that council committees will provide a *better informed and democratically accountable distribution method*. However, whether this outcome would be achieved is questionable. There is generally no basis for assuming that council committees, influenced by territorial authorities, will be better at managing grants than gaming societies. Territorial authorities are not immune from making bad spending decisions. Cabinet Ministers have commented on the dysfunctional performance of some territorial authorities.
39. All the territorial authorities spoken to to date have indicated that they do not want the grant distribution role. The councils do not feel that distribution of gaming machine proceeds is part of their core role and are very concerned with the costs and conflicts that will arise. The role requires not only approving grants but declining grants. For every one grant approved, typically up to 10 are declined due to funding constraints or due to non-compliant applications. From a political viewpoint it will be unpalatable advising numerous worthy applicants each month that their grant application has been declined.
40. The costs that the Bill will impose on territorial authorities could be considerable. In Auckland alone 21 new committees would need to be established; one region-wide committee and 20 local board committees. A recent Auckland Council staff report describes this as a *significant additional cost to council*.
41. Some councils have taken a strong moral stand on gaming funding and decided not to apply for or receive any funding that is generated from gaming machines. For example, the Christchurch Earthquake Relief Mayoral Fund recently declined to receive significant funding from gaming societies on moral grounds. It is ironic that the Christchurch City Council committee now faces the possibility of being appointed the sole distributor of all the city's gaming proceeds.
42. Councils do not have the specialist expertise and staff resources to manage and audit the grant distribution process. Determining whether an item falls within the definition of an authorised purpose can be difficult. For example, the members of the council committee are unlikely to know that a grant application made by Make a Wish Foundation (a registered charitable trust) for a computer for a terminally ill 13 year old would not be an authorised purpose, as the funding would not provide a community benefit.

43. Each territorial authority and all members on the council committees will become society key persons under the Act. They will therefore be prevented from having any involvement in gaming venues including being a gaming venue landlord or a financier to a venue operator. There are currently dozens of gaming venues located on leasehold land owned by territorial authorities. The amendment would require these venues to immediately cease their gaming offering. This would have an unfair and arbitrary effect on existing business owners.

REMOVAL OF GAMING FROM EXISTING VENUES

44. The Bill proposes giving territorial authorities the ability to remove gaming from existing, well established businesses. The ability to interfere significantly with existing property rights is virtually unprecedented in New Zealand. Any venue targeted would suffer an immediate loss in value. It is unnecessary and unfair to introduce such an interference with property rights when territorial authorities already have the option of adopting policies that naturally reduce machine numbers without interfering with existing use rights.
45. Territorial authorities will also be placed in a very difficult position if they are forced to decide between competing well-established venues as to which venue will be required to cease their gaming offering and which venue may retain its gaming offering. Such decisions will invariably be arbitrary and expose territorial authorities to expensive and lengthy legal challenges.
46. The proposed amendment will also interfere with a grant distributor's ability to make multi-year grants. Grant distributors are unlikely to wish to commit to multi-year grants if there is any uncertainty hanging over the continued operation of their venues in a particular area. This could have a very detrimental impact on long term projects (typically large infrastructure projects) that are relying on on-going access to community funding.

AMENDING THE TERRITORIAL AUTHORITY REVIEW TEST

47. The Bill proposes the inclusion of additional criteria that needs to be applied when developing a gambling venue policy. Territorial authorities would be required to expressly consider:
- a. Public sentiment about the extent and location of gambling venues; and
 - b. Evidence of the harm from gambling.
48. The proposed amendments to section 101 are unnecessary. They do not add any additional considerations to the existing test. Public sentiment and evidence of the harm from gambling are both factors that a territorial authority can already take into account when considering the social impact of gambling. These are matters that are naturally taken into account when the territorial authority carries out a special consultative procedure when adopting or amending its class 4 gambling venue policy.
49. The criteria could cause outcomes and/or difficulties that the Bill's authors may not have considered. One of the major issues in this area is an absence

of consistent surveys into problem gambling in New Zealand and, particularly, any conclusive evidence as to a connection between gambling machine numbers and problem gambling prevalence rates. Given that conclusive evidence does not yet exist, a territorial authority could be in a difficult position seeking to introduce a policy to prohibit or reduce gaming machine numbers if *evidence of harm from gambling* is made an express requirement. A territorial authority might be forced to concede there is no evidence of any correlation between gaming machines and problem gambling (as opposed to gambling generally – which is a legal activity) and, therefore, feel bound to conclude that there is no justification for any policy prohibiting or reducing gaming venues or gaming machine numbers. This could lead to a relaxation of existing policies.

50. A specific reference to *public sentiment* is also a very vague and subjective measure to include in any legislation. No other New Zealand legislation refers to a *public sentiment test*.
51. The public sentiment test could result in territorial authorities incurring significant additional costs. It is unlikely to be acceptable to simply rely on the public submissions made to measure public sentiment as such submissions are normally made by interest groups. Territorial authorities may be required to take steps such as conducting polls, referenda or surveys. The Auckland Council staff report on the Bill observed:

Clause 8 of the Bill would require local authorities to take into account “*evidence of harm from gambling*” and “*public sentiment about the extent and location of gambling venues*”, when adopting a Class 4 Venue policy.

This is additional to the current requirement in Section 101(2) of the current Gambling Act, which requires that: “*In adopting a policy, the territorial authority must have regard to the social impact of gambling within the territorial authority district.*” Depending on how councils have interpreted “the social impact of gambling” in the past, and how they interpret “evidence of harm” and “public sentiment” in the future, this could increase the research requirements and the associated costs of research to Councils.

The South Waikato District Council staff report on the Bill notes:

This additional focus pertaining to social impact, harm, and public sentiment is likely to add further costs to Council during our policy review period.

Due to our sinking policy these amendments do not appear to add any material benefit.

52. If a territorial authority were to seek to conduct polls, referenda or surveys it may be very difficult to frame a survey question in such a way as to obtain a reliable assessment of what *public sentiment* is and to avoid any criticism of bias. The findings of any such poll is unlikely to be based on any sound evidence. The poll is likely to have a predictable result similar to polls that call for harsher sentences for criminals or lesser perks for politicians.

80% RETURN TO LOCAL COMMUNITIES

53. The Bill proposes requiring 80% of gaming machine proceeds to be returned to the communities in which they are raised, down to the local council ward, local council board subdivision, or community board area (whichever is the smallest).
54. Most gaming societies that mainly distribute net proceeds have a policy of returning at least 80% of funds to the local community in which they are generated.
55. The requirement to distribute 80% within local wards and local board areas will effectively prohibit community groups located in wards and board areas where there are no gaming machines from receiving grant money. It is common for gaming machines to be clustered in central business districts, while it is common for sporting bodies and community groups to be located outside the central business district.
56. Gaming societies are required to apply or distribute all or nearly all of their net proceeds every quarter. If sufficient quality applicants are not received from recipients within each ward or board area each quarter, the distribution committee will be forced to make grants to potentially less worthy purposes to meet the grant distribution timing requirements.
57. In order to be workable and enforceable any 80% requirement should be based on the territorial authority area, not any smaller sub area. This will align the statutory requirement with the Department's soon to be introduced Integrated Gambling Platform, that will record gaming machine net proceeds and grants at a territorial authority level. A territorial authority wide based provision will ensure that worthy community groups that are not located close to gaming venues will still have access to vital funding.
58. Any requirement to distribute a certain sum locally should only apply to societies that mainly distribute funds, not to societies that mainly apply funds. The societies that mainly apply funds are clubs, end user trusts and the New Zealand Racing Board.
59. There is no need to impose any local distribution rule on clubs as almost all clubs currently spend over 90% of the gaming funds generated on maintaining and operating the very clubrooms in which the machines are located.
60. The New Zealand Racing Board may wish to apply its funding for the promotion of racing via the services it provides from its head office or services that maintain confidence in the integrity of racing such as the Racing Integrity Unit, the Judicial Control Authority or laboratory testing of horse or greyhound urine samples. These services have a national benefit, but the head office functions of these agencies are located in Auckland or Wellington.
61. Excluding societies that mainly apply funds will not lead to an increase in the number of end user trusts. The Gambling Amendment Bill (No 2) severely limits the ability to operate as an end user trust. The Gambling Amendment Bill (No 2) will introduce a new section (section 52A(1)), which provides that a society may only apply some or all of its net proceeds to an authorised purpose if the Department is satisfied that the society's primary activity itself

is an authorised purpose. The Gambling Amendment Bill (No 2) sets criteria to determine which societies may apply net proceeds to their own purposes and which may only distribute net proceeds. Societies will have to satisfy the Department that the conduct of gambling is merely incidental to the activity of operating for authorised purposes. This is likely to prevent the mainstream gaming societies from applying any funds directly, and reserves the right to pure end user trusts such as rescue helicopter trusts.

INTRODUCTION OF REFERENCES TO PLAYER TRACKING AND PRE COMMIT DEVICES

62. The New Zealand Racing Board supports any cost effective measure that will reduce problem gambling. Currently however, the New Zealand Racing Board has concerns around the overall effectiveness of player tracking and pre commit devices. The New Zealand Racing Board also has concerns that the cost of implementing such systems may be significant.
63. It is submitted that the introduction of player tracking and pre commit devices should not be a political decision, but a matter left to the Department of Internal Affairs. The Department is monitoring the availability and effectiveness of such devices overseas and already has the ability to require such devices to be installed in New Zealand if it believed they were warranted on a cost-benefit analysis.

JUSTIFICATIONS FOR THE BILL

Controls on "Rorts"

64. It is not necessary to amend the Act in the interests of controlling *rorts*. The Act already has sufficient controls in place to prevent abuses. Sections 113 and 118 prohibit conflicts of interest between venues and grant recipients and prevents relationships that may influence grant decisions.
65. The Act prevents gaming societies from spending on items which are not *actual, reasonable and necessary* in conducting the gambling operation. If a cost is incurred that is not an *actual, reasonable and necessary* cost this amounts to the misapplication of net proceeds. It is an offence under section 106 to misapply net proceeds and, if a gaming society is convicted of an offence under this section, it is liable to a fine of up to \$10,000.00. In addition, a conviction under section 106 results in automatic cancellation of a gaming society's class 4 operator's licence and all its class 4 venue licences, without any right of appeal.
66. The Act gives the Department extremely wide powers to investigate and enforce the Act's extensive provisions including:
- a. A power to investigate and audit the generation and distribution of net proceeds: section 117;
 - b. Powers for gaming inspectors to serve notices seeking information: section 333;

- c. Powers for gambling inspectors to enter venues and societies' offices at all times: section 334; and
 - d. Powers for gambling inspectors to obtain a search warrant: section 340.
67. Past problems with breaches of the Act, are not a result of the provisions of the Act being inadequate but were more an issue with the enforcement of the Act. Lower enforcement rates in the past were likely due to:
- a. The Department becoming familiar with new legislation;
 - b. The Department giving the industry a period of time to become familiar with the new legislation; and
 - c. Low staffing rates at the Department.
68. Over the last 24 months the Department's enforcement role has increased considerably. There are numerous recent examples of societies being sanctioned for historical breaches. The sanction action has had a dramatic impact on the gaming industry, as gaming societies now have a much better understanding of the legal requirements, and know that any indiscretion will be identified and duly punished. By way of example, The Southern Trust was one of the first gaming societies to receive an operator's licence suspension (five days in 2010) for incurring inappropriate costs and failing to maximise its return to the community. Following the sanction The Southern Trust immediately changed the way it operated. In the March 2012 edition of Gambits the Department recently praised The Southern Trust for its excellent performance. The front page article stated:

The Southern Trust (TST) is an example of a society working hard to increase community funding from the proceeds of gaming machines (GMP),

Under the Gambling Act 2003 societies must return a minimum of 37.12 per cent of GMP to the community. Societies report their returns to the Department at licence renewal time.

TST's returns to the community have risen steadily from 38.73 per cent in 2008 to 45.25 per cent in 2009 and 45.57 per cent in 2010. The return in the last financial year was 42.98 per cent.

While the percentage figures show a community return in excess of the required minimum, the dollar amount declined in line with the national trend of diminishing GMP.

Gambling Compliance Director, Debbie Despard, says TST illustrates that societies' primary role is to maximise the amount of gaming machine money they return to authorised purposes and emphasises the importance of ensuring that costs claimed are actual, reasonable and necessary.

TST Chief Executive, Karen Shea, said the trustees understand TST's core function is to maximise the return to the community.

"They have set targets for the Trust to achieve in excess of the minimum statutory requirement of 37.12 per cent," Ms Shea said.

“The Trust has explored all options to reduce administrative overheads where possible to ensure the maximum possible is distributed to a wide variety of community organisations.”

Additional industry controls

69. The New Zealand Racing Board has introduced initiatives to address the historic concerns regarding the integrity of racing grants. The New Zealand Racing Board requires an independent audit, undertaken by a Chartered Accountant, seeking information from racing clubs about:
- a. Whether they have a class 4 operator’s licence or class 4 venue licence;
 - b. Whether they have any ownership or financial interests, directly or indirectly, in any class 4 venue;
 - c. Whether they have any ownership or financial interests, directly or indirectly, in any class 4 venue operator; and
 - d. Whether they have used any grant funds received for the purpose for which the grant was made and in accordance with the policies of the gaming society who provided the grant.
70. The Department has referred to the above initiatives in its briefing paper on the Bill:

The New Zealand Racing Board is working with racing industry organisations to ensure greater integrity. For example, the Board has started requiring racing clubs to submit independent audits setting out funding received from non-casino gaming machines, and setting out any investments in the non-casino gaming machine sector. The Board intends to advise the Department of any questionable activity.

Existing Harm Minimisation Initiatives

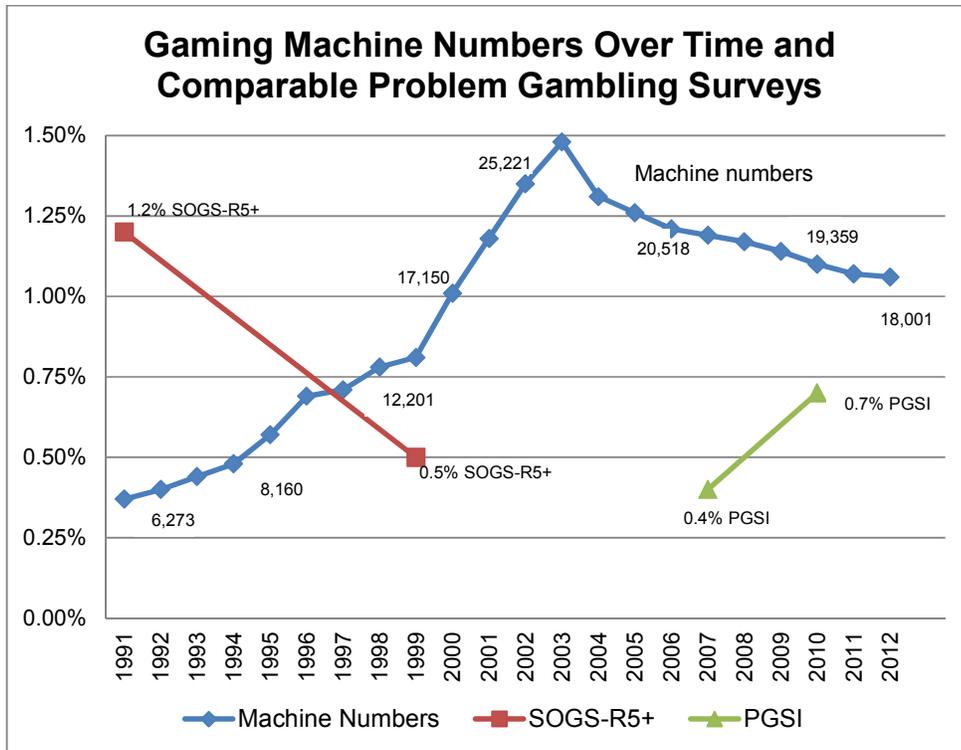
71. There is insufficient evidence for concluding that the existing harm minimisation initiatives in the Act are not working. The existing harm minimisation initiatives are extensive and are described by the Department as *world leading*.
72. Gaming machines have been operating legally in pubs and clubs in New Zealand for over 23 years.³ There has not been any recent event that would justify a significant policy change on harm minimisation grounds. The number of gaming machines in New Zealand is in steady decline, the amount of money spent on non-casino gaming machines is trending downward and gaming machine participation is in steady decline.
73. New Zealand’s Problem Gambling rate is one of the lowest in the western world. In 2006, Professor Max Abbott presented a comparison of New Zealand’s problem gambling rates. The comparison showed the results of several countries when the same consistent screen had been used (the

³ The first gaming licence was issued to Pub Charity on 25 March 1988.

comprehensive SOGS screen). The following table was shown by Professor Abbott:

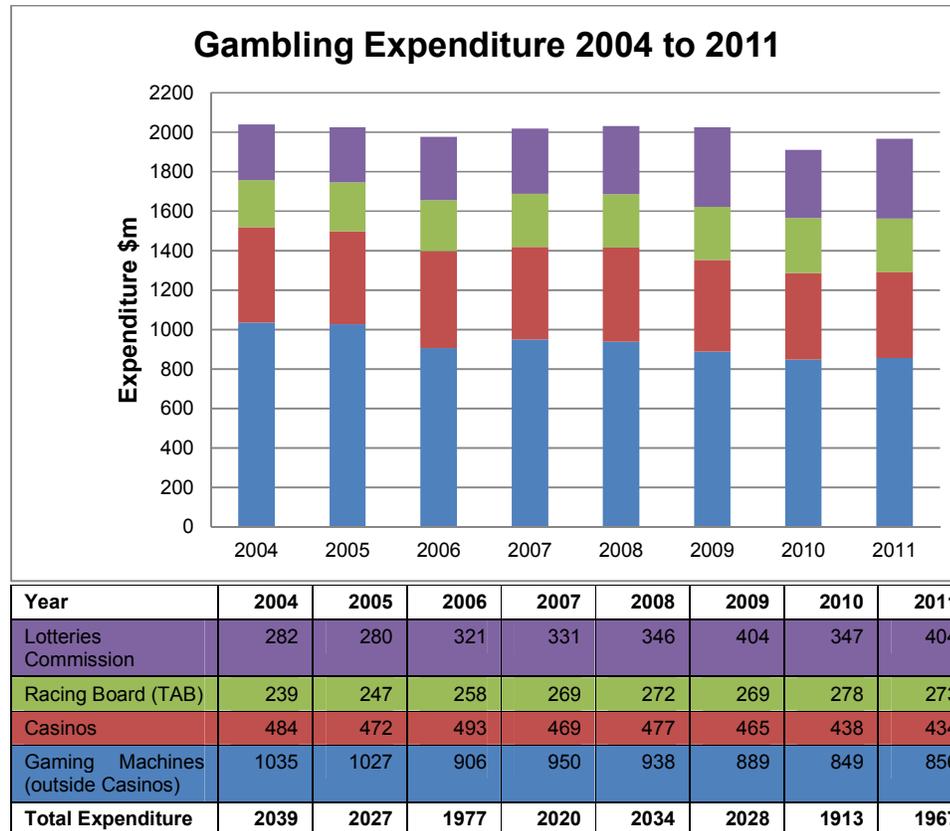
Jurisdiction	Year	SOGS-PY = 5+
Australia	1999	2.3%
United States	2000	1.9%
Spain	1996	1.4%
Great Britain	2000	0.8%
Sweden	1999	0.6%
New Zealand	1999	0.5%
Norway	2002	0.2%

74. Unfortunately there has not been a consistent series of problem gambling prevalence studies undertaken in New Zealand using the same screening method. Despite several surveys being undertaken there are only two sets of published studies that are directly comparable.
75. In 1991 a national survey found that the percentage of adult population that scored 5 or more using the SOGRS-R screen was 1.2%. When the same screen was used in 1999 in the national prevalence survey the problem gambling percentage of adult population that scored 5 or more using the SOGRS-R screen decreased to 0.5%. However, in the same period expenditure on gambling had doubled, electronic gaming machine expenditure had trebled, and two new casinos were opened (Christchurch in 1996 and Auckland in 1998).
76. In 2007, the New Zealand Health Survey used the PGSI screen. The survey found the problem gambling rate to be 0.4%. In 2010 the Health and Lifestyles Survey found the problem gambling rate to be 0.7% using the PGSI screen. During the period 2006 to 2010 the number of gaming machines in New Zealand fell considerably. The reduction in machine numbers did not however correlate with a fall in the problem gambling prevalence rate.



Adverse Consequences – Increase in Internet and Mobile Phone Gambling

77. There is no question that if the Bill passed in its current form the size of the class 4 gambling industry would reduce considerably in a very short period. Numerous gaming societies would cease to operate due to the loss of the ability to distribute funds. Several territorial authorities would take action to greatly reduce the number of gaming machines in their district or eliminate them altogether.
78. The reduction in the gaming machine offering may however simply lead to a migration of the gambling spend to offshore internet and mobile based offerings. While it is illegal to advertise overseas gambling in New Zealand, it is not illegal to participate in gambling on an overseas based website or mobile application.
79. The graph below shows the total gambling expenditure for New Zealand from 2004 to 2011.



80. The above data shows a downward trend for expenditure on non-casino gaming machines and an upward trend on the amount spent on TAB offerings and Lotteries Commission offerings. The total amount gambled from 2004 to date has remained reasonably steady. This data suggests that a reduction in gaming machine numbers reduces non-casino gaming machine expenditure, but not total gambling expenditure, i.e. it may promote a migration to other forms of gambling. Other forms of gambling have a lower return to player and a lower return to the community.
81. Traditionally overseas based online gambling has not been available to people in lower socio-economic areas due to limited access to computers, the internet and access to credit cards. However, this has all changed. The internet is progressively becoming a normal feature of commercial and social exchange. Today even the most basic of prepaid smart phones includes internet access and the ability to download apps. The introduction of Visa debit cards and Prezzy Cards mean that a bad credit rating is no longer a barrier to being able to spend money online or via mobile apps.
82. It now takes only a simple search and a few minutes to download to your computer, tablet or mobile phone any type of casino game your imagination desires, including an exact replica of the gaming machine programs currently available in New Zealand venues. International Gaming Technology (an international provider of pokie machines with a New Zealand presence) has produced a 58 page brochure⁴ detailing their online and mobile offering. The catch phrase is "*The Playing Field is Now Everywhere, Online and Mobile Gaming by IGT, It's a whole new game*".

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http://media.igt.com/marketing/PromotionalLiterature/IGT_Online_Mobile_Games_Portfolio.pdf

83. In 2010 the number of people who had participated in internet gambling or mobile phone gambling was approximately the same total percentage as the number of people who had played table games at one of the six casinos.⁵
84. The Ministry of Health records the primary mode of gambling reported by new clients.⁶ The problem gamblers who report that their primary mode of gambling is internet or mobile phone gambling are currently recorded in the category “other”. In the 2007/2008 financial year 31 new clients were recorded as being in the other category. This amount has increased by a multiple of 14 times to 441 people in 2010/2011.
85. The Problem Gambling Foundation’s Research Director, Philip Townshend recently undertook a study on the harm caused by the various modes of Gambling. In Mr Townshend’s 2011 paper *Quantifying the Harms of Internet Gambling Relative to Other Gambling Products*⁷, he described offshore based internet gambling as the most harmful mode of gambling and the new *crack cocaine of gambling*.
86. In the article “Gambling billions flowing overseas” published by the New Zealand Herald on 17 June 2009 David Coom, the Problem Gambling Foundation spokesman was quoted as follows:

Problem Gambling Foundation spokesman David Coom said the survey confirmed that overseas online gambling was “a really fast-growing problem.

It’s basically totally unregulated and there’s no ability to do any host responsibility around it, he said.

One of the big issues with problem gambling is that it flourishes and thrives in secrecy, and of course online you can just sit at home and access it all you like.

We are starting to see cases come through where parents are bringing in their teenagers who are spending up to 60 hours a week online. We are just about to embark on some research with youth to see what actually is going on.

If the survey is correct, it means that about a sixth of New Zealand’s total gambling spending is going overseas, paying no New Zealand taxes and returning nothing to the community.

87. On 7 October 2011 the Nelson Mail printed the following article:

Internet Gambling seen as ‘threat’

Gambling has been on the rise again in Nelson and internet gambling is having more of a worrying impact, says an addiction specialist.

⁵ Gray, R 2011 *New Zealanders’ Participation in Gambling: Results from the 2010 Health and Lifestyles Survey* – Health Sponsorship Council.

⁶ http://www.health.govt.nz/our-work/preventative-health-wellness/problem-gambling/service-user-data/intervention-client-data#total_assisted

⁷ www.gamblinglaw.co.nz/research/Relative_Gambling_Harms_Townshend_2011.pdf

Nelson research director for the Problem Gambling Foundation, Philip Townshend, said the last few months had been quite a “busy period” for gambling in the region.

The foundation was also starting to see more internet gambling which was concerning, he said.

Research by Dr Townshend last year showed that while there were a much smaller number of internet gamblers, they were much more likely to need treatment for addiction compared with other gamblers.

“So although a lot less people use the internet [to gamble], it seems from the data it’s a much more dangerous product.”

He said it was likely more people would take up internet gambling.

Unlike in real life, where the most you can bet on a pokie machine is \$2.50 per spin, on the internet you could spend \$100 per spin, he said.

“A hundred dollars every three seconds ... that’s serious money going down the tube.”

The internet offered both the “best and the worst” in terms of a gambling environment, he said.

“You can have the best host responsibility because there’s so much information about a person’s gambling patterns, but because its also a highly unregulated environment, you can get the worst of ethics”.

He said he recently had a client who banned herself from an internet site, and immediately received about six emails from other gambling companies.

“Because she banned herself from that site, [the other companies] identified her as a problem gambler – or a really good customer – so that really is the low end of the ethics pool.”

While New Zealand internet gambling sites such as lotteries and TAB had good safeguards, the department had no jurisdiction over offshore sites, which were the “dodgy” ones, he said.

88. The total advertising spend⁸ by internet and mobile based providers is significant and increasing rapidly. Organisations like GrandReef.TV work around New Zealand’s prohibition on advertising overseas based online gambling by advertising a sister website that uses only play money. However, a Google search of GrandReef.TV leads you to grandreefcasino.com, a website that describes itself as Australia & New Zealand’s #1 online casino. This website allows you to use play money or gamble using real money. The inducement to deposit funds and gamble is strong with up to 100% matching bonuses for initial deposits.
89. This direct advertising spend is significant. Estimated advertising rate-card spend (pre-discount) for the year to January 2012 was \$0.9m and \$1.8m for ‘Pokerstars’ and ‘Grand Reef Casino’ respectively. An example of a Grand Reef Casino advertisement can be viewed at:
<http://www.youtube.com/watch?v=yiiqwaj5NAE&feature=channel&list=UL>

⁸ Nielsen TV commercial monitoring

Advertising spend of this magnitude indicates that the current offshore based providers have a viable business and that growth in the future is likely to be significant.

90. The prohibition on advertising is also circumvented by overseas based gambling providers sponsoring overseas sporting teams and sporting venues. The logos of overseas based gambling providers are painted on overseas sporting pitches and appear on side-line billboards and are clearly visible in New Zealand sporting broadcasts.
91. Without the need to cover GST and gaming duties, overseas based gambling providers are able to attract customers from New Zealand with a comprehensive gambling offer. Due to the lower margins and costs the overseas based providers can engage in extensive advertising and provide large rebates to players.
92. Current domestic research⁹ has estimated 174,000 New Zealanders gambled online with an offshore operator (all forms of gambling), with per annum customer losses estimated at \$110m.
93. Offshore based online gambling however poses considerable risks:
 - a. Offshore based online gambling is highly accessible, being available 24 hours a day from the comfort and privacy of your home;
 - b. Offshore based online gambling has no restrictions on bet sizes;
 - c. Offshore based online gambling has no capacity for venue staff to observe and assist people in trouble;
 - d. Offshore based online gambling reaches new groups of people who may be vulnerable to the medium;
 - e. Offshore based online gambling provides no guaranteed return to player;
 - f. Offshore based online gambling is more easily abused by minors;
 - g. Offshore based online gambling has reduced protection to prevent fraud, money laundering or unfair gambling practices. The most notable recent example being 'Full Tilt Poker' which is alleged by the US Attorney's Office to have diverted USD444m from customer accounts to its directors and shareholders, despite being regulated by the Alderney Gambling Control Commission (Guernsey); and
 - h. As an unregulated form of gambling, on-line gamblers are often encouraged to gamble more by being offered inducements or by being offered the opportunity to gamble on credit. E.g. many overseas sites offer sizable cash bonuses to a customer's account for each friend that they induce to also open an account and deposit funds.

⁹

Nielsen

94. If a reduction in gaming machines only redirects gamblers to offshore based internet gambling there is no harm minimisation advantage in that strategy. In addition, there are further disadvantages in the fact that no community funding is generated for New Zealanders, no tax revenue is generated for the New Zealand Government and no contributions are made via the New Zealand problem gambling levy.
95. In Australia, the issue of offshore gambling websites is recognised, and legislation change mooted:
- a. State Racing Ministers¹⁰ are currently seeking Federal Government support for legislation that would help protect Australian racing from unauthorised offshore operators. Recommended measures include restrictions on internet service providers (ISPs), and financial institutions, each as facilitators of this commerce.
 - b. MP Andrew Wilkie¹¹ supports legalising local casino-style gaming such as poker, roulette or blackjack on the basis of harm minimisation as it would avoid problems with overseas sites.
96. As noted by Hon Ministers Te Ururoa Flavell and Winston Peters in the first reading of this Bill, the rise in prevalence in offshore internet gambling was not anticipated in current legislation.
97. The internet respects no borders. Our appropriately regulated and taxed domestic gambling industry is at a competitive disadvantage, particularly since a responsible domestic operator such as the New Zealand Racing Board is unable to provide a full product range that customers seek.
98. The New Zealand Racing Board strongly supports inclusion of legislative provisions that would reduce problem gambling and the economic costs associated with spending on offshore gambling websites. Specifically:
- a. Enabling legislation to allow the New Zealand Racing Board to provide a full product suite, with high standards of gambling harm minimisation measures; and
 - b. Restrictions placed upon ISPs and financial institutions which limit the ability of unauthorised internet gambling operators from engaging with the New Zealand public.

CONCLUSION

99. If any of the Bill's provisions had wide political support they would need to be entirely redrafted before an amendment to the Gambling Act 2003 could be made. It is submitted that any change should therefore be part of a more comprehensive 10 year review of the Act or alternately as part of a slightly expanded Gambling Amendment Bill (No 2). For example, it appears that there could be general support for a legislative requirement upon societies that mainly distribute funds that 80% of their net proceeds must be returned within the same territorial authority region in which they are generated.

¹⁰ Media Release; MP Brian Green (Tasmanian Minister for Racing), May 11 2012

¹¹ The Telegraph, 24 May 2012

100. It is however important that any 80% requirement only applies to societies that mainly distribute funds, not societies such as clubs and the New Zealand Racing Board that mainly apply funds. An 80% local requirement upon the New Zealand Racing Board would prevent gaming funding being used for services that maintain confidence in the integrity of racing such as the Racing Integrity Unit, the Judicial Control Authority or laboratory testing of horse or greyhound urine samples.
101. The racing industry contributes significantly to New Zealand economy and provides a major source of entertainment. The gaming funding received is essential to the industry. The racing industry's share of the total funding available is modest (only 6%). The current legalisation confirms the High Court's finding that racing clubs are not organisations established or conducted for commercial purposes, but rather non-profit organisations that return their revenues back into their objective of promoting and conducting race meetings. The current legislation confirms that racing clubs may be treated the same as other non-commercial, non-profit clubs that exist to support their chosen sport.
102. The New Zealand Racing Board does not believe that it is necessary or appropriate to transfer the grant distribution role to council committees. It appears clear that the majority of territorial authorities do not want such a role as this role is outside their core function, would come at considerable cost and would create a conflict of interest. If a change to the grant distribution method is made, any change should not include societies such as the New Zealand Racing Board and clubs that mainly apply funds, rather than distribute funds. There is no concern with the current New Zealand Racing Board model and the current club model.
103. The New Zealand Racing Board opposes the expansion of territorial authorities' powers to enable gaming to be removed from existing venues. Territorial authorities already have the ability to adopt sinking lid policies. A more expansive power will interfere with established businesses and unfairly affect property values and create general uncertainty.
104. The New Zealand Racing Board supports steps that will be effective in reducing problem gambling. It is however too early to look to mandate player tracking systems and pre-commitment cards. These systems will come at considerable cost, affect casual recreational players who are not at risk of harm and be easily circumvented by problem gamblers who will exchange cards and/or set limits at maximum levels. It is submitted that the Department of Internal Affairs should be asked to keep apprised of this technology and recommend legislative change in the future if a proven system is subsequently identified that will be cost efficient.
105. Any further restrictive provisions on the class 4 sector will accelerate the migration to other forms of gambling, including offshore based online and mobile phone gambling. Offshore based online and mobile phone gambling is described by the Problem Gambling Foundation as the *most harmful mode of gambling* and a *really fast-growing problem*. Any legislative change aimed at harm reduction needs to address online and mobile phone gambling. Change can be made in this area. Restrictions can be placed upon ISPs and financial institutions which limit the ability of unauthorised internet gambling operators from engaging with the New Zealand public. New Zealanders'

participation in offshore based gambling can also be reduced by offering a reputable New Zealand based alternative, where harm minimisation measures can be put in place, players can be assured that any deposit made is safe and duty and taxes can be paid to the New Zealand Government. The New Zealand Racing Board is able to provide such an offering.

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