



## ***Overview of gaming machine sector and community funding***

September 2020

### **Purpose**

Community distributions from gaming trusts are of significant interest to Philanthropy New Zealand's members as they consider the wider philanthropic and grantmaking system that they operate in. Some are concerned about how this significant funding stream addresses the diversity of community needs, and question whether the current operating models and frameworks support best practice in the delivery of funding.

It is not easy to access information on the operation of the system and the spread and impact of this funding in a single place.

The purpose of this brief therefore is to:

- collate information to broadly inform our membership about the use of gaming machine monies: the collection, and distribution of profits, and regulation and governance of gaming trusts; and
- support future discussions around any considerations for change (including a potential review of the current system of distributions).

We acknowledge that there are a range of views on this topic (as well as on problem gambling rates and Class 4 gambling venues which we do not seek to cover in this paper) and we do not seek to represent any agreed position of our members. In the interests of supporting better giving however, we hope that the information contained in this paper facilitates greater discussion of the issues.

We would also like to provide a channel for people to provide further feedback. We encourage you to send your views in a format that we can collate and make publicly available in a supporting paper to: [info@philanthropy.org.nz](mailto:info@philanthropy.org.nz).



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## 1. Legislative and regulatory overview

Gambling in New Zealand is regulated by the [Gambling Act 2003](#), the [Gambling \(Harm Prevention and Minimisation\) Regulations 2004](#) and [Gambling \(Class 4 Net Proceeds\) Regulations 2004](#) which replaced the Gaming and Lotteries Act 1977, and the Casino Control Act 1990.

The purpose of the Gambling Act 2003 is to:

- a) control the growth of gambling;
- b) prevent and minimise harm from gambling, including problem gambling;
- c) authorise some gambling and prohibit the rest;
- d) facilitate responsible gambling;
- e) ensure the integrity and fairness of games;
- f) limit opportunities for crime or dishonesty associated with gambling and the conduct of gambling;
- g) ensure that money from gambling benefits the community; and
- h) facilitate community involvement in decisions about the provision of gambling.

The Act sets out a segmented regulatory approach with classification of gambling based on the mode of gambling, amount of money spent, and the risk of problem gambling associated with a particular gambling activity.

Classes of gambling range from Class 1 and 2, representing low-stake, low-risk gambling such as lotteries or prize competitions where the total prize pool is less than \$5,000, through to Class 3 (common forms include larger-scale lotteries, housie, instant games and other forms of gambling such as 'gaming sessions (also known as 'casino evenings') to Class 4, which includes any activity that involves the use of a gaming machine (pokies) outside a casino. Casino operations and lotteries run by the New Zealand Lotteries Commission are treated as separate classes within the Act. The Act also defines private gambling. Although part of the wider "gambling system", racing is regulated under its own Act.

The specific rules that govern Class 4 include that the net proceeds from gambling are: either applied to, or wholly and mainly distributed for authorised purposes, which are identified as (i) a charitable purpose and (ii) a non-commercial purpose that is beneficial to the whole or a section of the community.

The two types of class 4 operators are:



1. Gaming Trusts (also known as Corporate Societies or non-club societies, gaming machine societies, and Class 4 societies) operate gaming machines in commercial venues such as bars. *Gaming trusts **wholly or mainly distribute** the generated revenue to communities via contestable grant processes.*
2. Clubs are societies that operate gaming machines in their own premises. These include chartered clubs, Returned and Services' Associations and sports clubs (such as bowling and squash clubs). *They are considered to **apply** the profits to authorised purposes within their organisations (but also beyond).*

Funding from gaming trusts or societies that wholly or mainly distribute money (generally from gaming machines in pubs, hotels, and clubs that are licenced under Class 4) generate around 90% of proceeds within Class 4 and will be the focus of this brief.

Regulation 10 of the Gambling (Class 4 Net Proceeds) Amendment Regulations 2016 requires those societies that wholly or mainly distribute funds (essentially Gaming Trusts) to distribute 40% of the gaming proceeds for authorised purposes. This replaces the 37.12% minimum requirement from Gambling (Class 4 Net Proceeds) Regulations (2004). It is important to note that a recent amendment to the regulations has temporarily suspended 10(1) and 11 of the Gambling (Class 4 Net Proceeds) Regulations 2004. This means that if Gaming Machine Trusts cannot meet the minimum requirement of 40%, they will not be penalised for 2020 and 2021 financial years. This is one of several remedies introduced to support the financial viability of operators after Covid-19 related losses.

Those holding a Class 4 Operator's Licence must establish a net proceeds committee to make decisions on the application or distribution of net proceeds to or for an authorised purpose specified in the licence.

A number of gaming machine societies are registered under the Charitable Trusts Act 1957, which requires a trust's purposes to be principally or exclusively charitable. Other societies are registered under different Acts (Incorporated Societies or Companies) but have purposes that are charitable.

## 2. Agencies involved in the gambling regulatory system

The **Department of Internal Affairs (DIA)** has policy and delivery responsibilities for the gambling regulatory system and "to ensure that New Zealanders can enjoy safe and fair gambling that efficiently and equitably contributes to community wellbeing". It licenses, regulates and enforces gambling laws in New Zealand. The Department also audits and investigates all class 1-4 gambling along with casino gambling and issues certificates of approval for non-casino gambling licenses.

The **Gambling Commission** is an independent statutory decision-making body that was established under section 22 of the Gambling Act 2003. It is responsible for licencing casinos and hearing appeals against decisions made by DIA relating to Class 3 and 4 gambling.

While the **Ministry of Health** does not directly regulate gambling in New Zealand, it is responsible for funding and coordinating [services](#) around gambling harm prevention and minimisation. These are funded through the Problem Gambling Levy on gambling operators. The levy is collected from the



profits of the four main forms of gambling: gaming machines in pubs and clubs; casinos; the NZ Racing Board and the NZ Lotteries Commission. The **Health Promotion Agency** also provides information and education services to prevent and respond to harmful gambling in New Zealand communities.

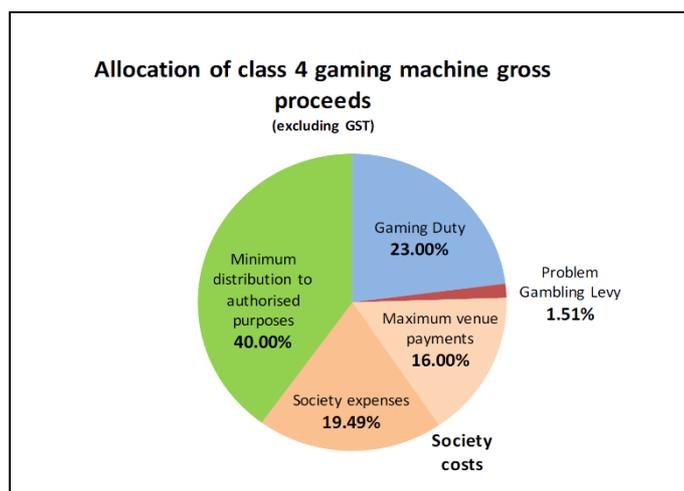
**Territorial Authorities** set local policies that shape the growth of gambling by determining the availability and location of non-casino gaming machines in their localities.

### 3. Allocation of class 4 gaming machine gross proceeds

As of June 2020, there are 32 trusts and societies in New Zealand which hold licences for 14, 847 Class 4 machines. [DIA figures](#) over the last five years show a significant decrease in gaming machine numbers (from 16,393 in 2015 to 14, 856 end of 2019), but [an increase in revenue](#) (from approximately \$828 million in 2015 to \$939.1 million in the year ended 2019<sup>1</sup>). In the year ended 31 December 2019, returns to the community from all gaming machines totalled around \$345.5 million. Non-club societies and trusts distributed \$304.3 million of these funds (given they generate around 90% of revenue).

As per the Gambling Act 2003, Gaming Trusts must allocate proceeds to various fixed-costs. A [DIA guide from 2016](#) presents this breakdown (also reflected in the chart below):

- 19.48 % towards Society/Gaming Trust expenses, which are identified as money towards ‘actual, reasonable and necessary’ costs to run the businesses<sup>2</sup>
- 40% (37.12 after GST) as the (minimum) amount distributed to communities
- 16% as the ( maximum) amount to venues that host the gaming machines
- 23% for Gaming Machine Duties (GMD) (which is collected by Inland Revenue)
- 1.51% for the Problem Gambling Levy



<sup>1</sup> As seen in the comparison in the GMP Dashboard ending June 2020.

<sup>2</sup> A [paper by J. True & M. Cheer](#) provides a further breakdown of society expenses which includes around 8% for gaming machine depreciation, and around 3% for repairs and maintenance.



#### 4. Distribution of proceeds into communities

Research commissioned by the Gaming Machine Association of New Zealand (GMANZ) shows that at the end of [2018 calendar year](#), funds distributed through Class 4 society grants totalled more than \$276 million, made up of \$150 million (54%) to Sports, \$30 million (11%) to Education and Research, \$27 million (10%) to Health and Welfare, \$15 million (around 5%) to the Arts and Culture sector, and \$54 million (20%) to Community and Other. This profile of spend can be compared to a 2011 [DIA report on distributions](#) where together spend on culture, sport and recreation totalled around 55% and education and research totalled around 14%.

According to J B Were's 2020 The New Zealand Support [Report](#), after personal donations and estimated business giving through Corporate Social Responsibility (CSR), Gaming Machine Trust proceeds are the third largest funding philanthropic/grantmaking source for the non-profit sector.

Released in 2017, [Pokies Proceeds- Building Strong Communities](#), provides a variety of examples of how gaming machine proceeds have been used in communities throughout New Zealand. An [earlier report](#) of the 12 month period leading up to April 2012 also shows some funding allocation does seem to be responsive to particular events, for example Canterbury earthquake relief organisations received the largest grants in 2011.

#### **Discussion Points**

##### **Reliance of community sector on gaming monies**

A recent white paper by Problem Gambling Foundation (PGF), Hāpai Te Hauora and the Salvation Army, raised the concern that the closure of hospitality businesses that hosted gaming machines during the Covid-19 lockdown level 4 highlighted the reliance of community organisations on Gaming Trusts for grants.

Reliance of the sector on gaming monies was also highlighted in an Auckland Council 2012 survey, [Community Funding: A focus on gaming grants](#). It found that 75% of those who received gaming funding (around 116 respondents) indicated that their organisation is moderately or totally reliant on this source to fund its core business. Of those respondents, 55% believed that there would be a high to extreme risk to their organisation and core business if they did not receive funding from this source. In the 2017 Gaming Sector Survey of Stakeholders (herein referred to as the DIA 2017 Survey), some stakeholders were concerned over how to ensure sustainable funding for communities and sector sustainability.

A particular concern has been raised by the sporting sector during the first country wide Covid-19 lockdown. Some estimated that amateur sports clubs gained around 20-40% of their annual income from gaming funding and the 2018 funding figures above show the significant funding of sport from gaming machine proceeds. During the Covid-19 pandemic and economic decline, this has been of particular concern given other funding sources such as corporate and local business sponsorship plus annual subscriptions are at risk of decreasing. A [recent Sport New Zealand report](#) has stated that "the decline of Class 4 gambling could have significant implications".



### **Balance between harm minimisation and funding for communities**

The balance of funds spread between harm minimisation and funding for communities was questioned by the DIA 2017 Survey, with many stakeholders believing a lot more could be done around harm minimisation. Some stakeholders also want to see more collaboration in the sector although specificities are not mentioned for either of these points.

### **Maximising community benefit from gaming income**

New Zealand's community model is relatively unique, with the majority of other countries not requiring that a percentage from the revenue of gaming machines be redistributed back into communities. More information can be found [here](#) and [here](#) (research paper).

We are not aware of a regulation that determines that money should be distributed back into the communities that it is derived from, although this practice may be the expectation of some. [DIA's Distribution of Non-Casino Gaming Machines Survey](#) for the year ending 2011 does include the geographic distribution for 40 societies, stating that three quarters of societies have a policy of returning funds to the communities where the money came from. However, not all gaming societies state the location of grant recipients in their published lists, and data showing the actual geographic allocation of gaming machine profits is not easily accessible. The DIA 2017 Survey highlights a sustained concern about how gambling returns are maximised for community benefit (although no specifics are provided).

The recent white-paper by PGF Hāpai Te Hauora and the Salvation Army, highlights that 55% of machines (7,700) are located in the most deprived communities. In 2005, the Ministry of Health also reported approximately 50% of all gaming machines were located in deciles 8-10. The wider question then raised is whether members of these communities benefit from gaming income and whether it also reaches those that are most in need.

## **5. Class 4 gaming trust governance and administration of funds**

From what we can determine, it appears that gaming trusts rely on their trustees or net proceeds committee to consider applications for grants. There is no mediatory body. The broad types of organisations that meet the 'authorised purposes' criteria means that gaming trusts have a substantial amount of autonomy over who will/will not receive funds.

Decision-making around applications is in part driven by gaming regulations which set out requirements around the process for distributions to the community. These include the timings required for application and distribution, multi-year grants, recovery of grants made in particular circumstances, and the minimum requirements for grant application forms.

Section 10 of the Gambling Act 2003 also sets out publication requirements for corporate societies which includes provisions around details of where to obtain an application form and statements that disclose details of all applications received and the decision on it, and grant amounts.

The Trusts Act 2019 which replaces the Trusts Act 1956 will come into effect on 31 January 2021 and will impact the operation of some gaming trusts. The main changes include new mandatory duties that all Trustees must comply with, including ensuring that they are well versed in the terms of the



Trust and providing beneficiaries access to information about all things relating to the Trust. Potential implications might include more rigorous administration and associated costs.

### **Discussion Points**

#### **Ensuring distribution rules work to maximise impact of community funding**

Anecdotally, there are views that some of the current regulations may place restrictions on gaming trusts' ability to maximise the impact of their funding. These include:

\*the need to distribute at least every quarter, all or nearly all of the net proceeds (Gambling Regulations 2004, s1). This suggests that the quality and quantity of applications would need to be high to get best value from the funding.

\*the requirement to not make a grant where funding has been received from another source for the same specific purpose (s16 (d)). This may be limiting for co-funding opportunities.

\* the requirement that where the original activity could not proceed as planned, Section 12 asks that money must be returned if it cannot be used for the purpose for which it was distributed. Covid-19 demonstrated that flexible funding approaches and the ability to agree alternative purposes in certain situations are beneficial for both the grantmaker and grantholders.

Some within the funding sector have also reported concerns around the lack of community engagement within the current system. This mean that well-resourced and experienced groups who know the process can access more of the funds leading to potential inequities in distribution. There are also questions around the diversity of members in decision-making committees and their understanding of the breadth of community need.

Some of these restrictions are likely to relate to the current models for administration and distribution. Some community funders have suggested that there would be value in examining alternative models of allocation that offer greater community benefits and potentially save on administration costs.

## **6. Online gambling**

While online gambling and advertising online gambling in New Zealand is prohibited, it is legal to gamble on online casino sites that are located in overseas jurisdictions. In the 18 months prior to 2019, New Zealanders spent \$381 million overseas on online gambling over approximately 3,000 gambling websites. During the Covid-19 restrictions, there was an increase in the number of New Zealanders accessing offshore online gambling services.

The Government's motivation to reassess the Gambling Act 2003 is multi-fold. The dramatic change in gambling landscapes with technological advancement means that beyond the regulated New Zealand industry, online gambling functions without any of the principles that guide the NZ scene around minimising harm, using reputable providers and the redistribution of proceeds to communities.



In June 2020, DIA released the summary of public submissions from 2,997 groups, individuals and organisations in and out of NZ. Submissions from this consultation echo the DIA 2017 Survey on sector concerns that the lack of any regulatory control on the online gambling sector ‘circumvents the best intentions of the DIA relating to gambling.’

One priority for submitters in the consultation was to have consistent regulations between online and land-based gambling sectors, which is underpinned by the motivation to better minimise the harm caused by online gambling. A second priority was that communities should benefit from proceeds of online gambling, which they currently do not. There was most variation on who submitters believe might be suitable operators within a licensed online gambling model.

Submitters also had quite different views on who might be suitable operators within a licensed online gambling regime. For example, some submitters oppose a suggested avenue of TAB and Lotto NZ expanding their products because they believe it will only compound existing gambling harm. At the same time, Lotto and the Racing Industry Transition Agency (RITA) support the possibility for expansion, arguing that more control over the industry means more benefits to the community. The rationale is based on the argument that if NZ does not have a regulated online gambling market, people will use existing unregulated sites.

### **Discussion Points**

Some questions arising from this discussion are:

- How would a regulated online gambling industry influence the amount of money that is being redistributed to local communities?
- Who would have authority of distribution? Some of the submitters for the government’s consultation suggest that already established Gaming Trusts would be the best avenue because they already know what their communities need. Another potential avenue for distribution is other community funders.

## **Acknowledgements**

We would like to thank representatives from the member organisations who provided insights and information for his paper and we look forward to hearing others’ views as the discussion evolves.

## **Key references and further resources**

[Community Funding: A focus on Gaming Grants 2012](#)

[DIA Distribution for Non-Casino Gaming Machine Profits in NZ 2011](#)

[DIA Gambling Expenditure Statistics 2011-2019](#)

[DIA Gambling Sector Survey of Stakeholders 2017](#)

[DIA Submissions on Online Gaming](#)



Cabinet Paper DIA Urgent [amendments](#) to Gambling Regulations to mitigate the Impact of COVID-19 on class 4 (“pokie”) operators and casinos 2020

[DIA Class 3 Gambling Key Performance Indicators \(updated 2020\)](#)

[Gambling Act 2003](#)

[Gambling \(Class 4 Net Proceeds\) Regulations 2004](#)

[Gambling \(Class 4 Net Proceeds\) Amendment Regulations 2016](#)

[Gambling \(Class 4 Net Proceeds\) Amendment Regulations 2020](#)

[Gambling Commission](#)

[Gaming Machine Association NZ 2018 Community Distribution](#)

J B Were, 2020. The New Zealand Support [Report](#)

[MoH - Problem Gambling Services](#)

[New Zealand’s Pub Gaming Industry 2018](#)

[Pokies Proceeds – Building Stronger Communities Together 2017](#)

[Problem Gambling Foundation, Hāpai Te Hauora and Salvation Army, 2020. Ending Community Sector Dependence on Pokie Funding: a white paper.](#)

[Trusts Act 2019](#)

True, J. & Cheer M, 2020 (updated), Gaming Machine Gambling Statistics and Research Paper – Information for Territorial Authorities,

<http://www.gamblinglaw.co.nz/download/Research/TAInfo.pdf>

[Ward, A.D., Mclvor, J.T. & Bracewell, P. 2019. The geographic distribution of gaming machine proceeds in New Zealand.](#)