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13 February 2019

REPORT ON THE PROPOSED PROBLEM GAMBLING LEVY: 2019-2022

1. INTRODUCTION

- 1.1 This Report is submitted by the Gambling Commission (the "**Commission**") pursuant to section 318(5) of the Gambling Act 2003 (the "**Act**"). It makes recommendations on the total annual amount of the Problem Gambling Levy for the period 1 July 2019–30 June 2022, and the levy rate for each gambling sector subject to the levy.
- 1.2 The purpose of the levy is to recover the cost of developing, managing and delivering the integrated problem gambling strategy proposed by the Ministry of Health (the "**Ministry**").
- 1.3 Section 319(1) of the Act contemplates that, after considering this Report, recommendations will be made that the Governor-General make regulations by Order in Council, requiring gambling operators to pay a levy to the Crown.

2. EXECUTIVE SUMMARY

- 2.1 The Commission's recommendations are as follows:
 - (a) The total amount of the levy for the 3-year period 1 July 2019–30 June 2022 should be set at \$48.381 million. The sum comprises the \$60.339 million estimated actual cost to the Government of the integrated problem gambling strategy during the levy period, less the estimated \$11.958 million over-recovery from previous levy periods.
 - (b) Consistent with its recommendation in 2015, Component R should be calculated by hindsight adjustment of earlier estimates of both Components C and D to produce the previously expected relative contribution from each sector to a corrected calculation of the actual cost of the strategy to the end of the previous levy period.
 - (c) The weightings of W1 (expenditure) and W2 (presentations) should be set at 30:70.
 - (d) Applying a 30:70 weighting to the other values calculated in accordance with the Commission's view of the correct methodology, the sector levy rates should be set as follows:

| | NCGM | Casinos | NZRB | Lotteries |
|---------------------------------------|-------------|----------------|-------------|------------------|
| Sector levy rates (%) | 0.78 | 0.56 | 0.51 | 0.43 |
| Expected levy (\$ millions, excl GST) | 22.967 | 11.213 | 6.056 | 7.906 |

Adjustment may be required to reconcile the total of the amounts in the above table with the total levy amount set out in (a) above.

- 2.2 Although the Ministry proposed two different options for the calculation of Components C and R, on the basis that either option was lawful under the legislation, the Commission endorses only what is described as option 2, being the option proposed by the Ministry in 2015 and supported by the Commission in its 2015 Report to Ministers. The Commission considers that what was proposed as Option 1 is not consistent with the text or objective intent of the 2015 amendments to the Act and would be less fair in application than option 2 (as over-recovery adjustments would not be credited in the same proportions as received).

3. BACKGROUND

- 3.1 As contemplated in the Act, there was a two-step consultation process to developing the recommended levy and levy rates, involving consultation by the Ministry and then by the Commission.
- 3.2 The Ministry prepared a consultation document entitled "Strategy to Prevent and Minimise Harm 2019/20 to 2021/22".
- 3.3 On 20 August 2018, the Ministry published the consultation document and invited submissions on it by 21 September 2018. As required by section 318 of the Act, a wide range of stakeholders and potentially affected groups were consulted on the proposal.
- 3.4 As part of the consultation process, the Ministry convened 10 consultation meetings in Auckland, Hamilton, Wellington, Christchurch and Dunedin, including one each for Māori, Pacific and Asian viewpoints, one for the Gambling Industry and one in Auckland for people affected by gambling harm.
- 3.5 Following the consultation meetings, the Ministry published additional information on its website

...[in order] to assist submitters and respond to questions raised during and after the meetings. ...

In particular, the Ministry received questions regarding the proposal to carry over \$5 million of underspent appropriation into the next Levy period for the purpose of ... [piloting new approaches to addressing problem gambling in New Zealand evaluating those new approaches] ...

The indicative cost for these services is \$5m ... [which] means that in practice the total funding required to fulfill the proposed strategy is \$60.339 million over three years. ..."¹

- 3.6 Following the publication of the additional information on its website, the Ministry extended the consultation period by one week, to 28 September 2018.
- 3.7 The Ministry received 82 written submissions on its proposal.
- 3.8 Following consultation, the Ministry reconsidered and amended the consultation document, taking into account the submissions made and the feedback at the consultation meetings and updated gambling expenditure figures received.
- 3.9 On 27 November 2018, the Ministry submitted the resulting Proposals Document to the Commission. The Proposals Document set out the proposed strategy and proposed levy rates, as required by section 318(2). The Ministry also provided the Commission with a Submissions Analysis (prepared for the Ministry by Allen + Clarke) and a table summarising the Ministry's response to some of the key issues raised by parties in submissions.
- 3.10 The Commission provided all three documents to the invitees to its consultation meeting which had been tentatively scheduled to be held in Christchurch on 7 December 2018. In its accompanying letter dated 27 November 2018, the Commission asked invitees to indicate whether the period of notice was insufficient and, if so, to set out the reasons why. On 28 November 2018, the Commission received an email from the Lotteries Commission ("**NZLC**"). NZLC advised that, owing to the short notice, its intended representative would be unable to attend the meeting on 7 December 2018. It also said that the time between receiving the invitation and the meeting would be insufficient to allow it to prepare properly for the meeting in any event. It asked the Commission to consider changing the date of the meeting to a later date, so that its representative could attend, suitably prepared.
- 3.11 In light of the response by NZLC (which comprises one of the four levied sectors), the Commission rescheduled the meeting to 30 January 2019, notifying invitees of the new date by email on 30 November 2018.
- 3.12 As required under section 318(4) of the Act, the Commission requested the attendance at that meeting of the Ministry, the Department of Internal Affairs ("**Department**"), representatives of gambling operators who will be subject to the levy, representatives of providers of problem gambling services, and representatives of other groups which the Commission believes are likely to be significantly affected by the levy.

¹ MoH website.

- 3.13 On 12 December 2018, the Ministry provided the Commission with an updated Proposals Document ("**Proposal**") and a cover letter. The cover letter advised that the Ministry had revised aspects of its Proposal, particularly in relation to Component R of the levy formula. At the Ministry's request, the Commission circulated the amended document and the cover letter to the invitees to the consultation meeting.
- 3.14 The Commission held its consultation meeting in Auckland on 30 January 2019. **Attached** as Annex 1 is a list of those who attended the meeting, and those who were invited but did not attend. A summary of submissions made at the meeting is **attached** as Annex 2.
- 3.15 As contemplated in section 318(6) of the Act, the Commission engaged an expert, Synergia Limited, to advise it on the Ministry's proposed Service Plan and levy calculations. Synergia's report to the Commission is **attached** as Annex 3.
- 3.16 Within 10 working days of its consultation meeting, the Commission is required to report to responsible Ministers with recommendations on the total annual amount of the problem gambling levy for the next three years, and the proposed levy rate for each gambling sector subject to the levy. This Report is submitted in accordance with that requirement.

4. APPROACH TO ANALYSIS

- 4.1 Section 318(5) of the Act directs the Commission to make recommendations on the total annual amount of the Problem Gambling Levy for the next three year period and the levy rate for each gambling sector. The consultation undertaken by the Commission, the expert advice received by the Commission, and its own deliberations focused principally on those two key matters.
- 4.2 In making its recommendations, the Commission has considered each of the component values of the formula used to calculate the proposed levy rates. The formula is set out in section 320(1) of the Act, as follows:

$$\text{levy rate} = \frac{((A \times W1) + (B \times W2)) \times C \pm R}{D}$$

- 4.3 The top line of the formula determines the share that each sector must contribute to the levy requirement, while the bottom line of the formula establishes how much, per dollar of expected revenue (or player expenditure), a sector is required to pay by way of levy to the Inland Revenue Department ("**IRD**").

4.4 The component values to which reference is made in the formula are described in section 320(2) as follows:

- A** is the estimated current player expenditure in a sector divided by the total estimated current player expenditure in all sectors subject to the levy;
- B** is the customer presentations to problem gambling services that can be attributed to gambling in a sector divided by total customer presentations to problem gambling services in which a sector that is subject to the levy can be identified;
- C** is the Ministry's funding requirement for the period for which the levy is payable;
- D** is the forecast player expenditure in a sector for the period during which the levy is payable;
- R** is the estimated under-recovery or over-recovery of levy from a sector in previous levy periods; and

W1 and W2 are weights, the sum of which is 1.

4.5 In addition, section 320(3) provides further statutory guidance on the sources of information which must be taken into account in setting the component values.

5. ANALYSIS OF COMPONENT A – CURRENT PLAYER EXPENDITURE

5.1 Component A represents the estimated percentage of total player expenditure for each of the four sectors subject to the levy. Section 320(3)(b) provides that the Component A amount "must take into account the latest, most reliable, and most appropriate sources of information". Although the Act does not specify a time period over which to estimate the Component A percentage, section 320(5)(a) provides that the period used "may be for less than a year (for example, a week, a month, or a quarter)".

5.2 When asked, the Ministry advised that the period used for calculation of Component A had been the entire current levy period (July 2016 to June 2019). As a result, the estimated percentages had used a mixture of actual data available and projections to estimate relative player expenditure by sector across the entire period. The actual expenditure data for the Non-casino Gaming Machine ("**NCGM**") sector were the most current (with figures to 30 June 2018 used) but the actual data used for the other three sectors were to 30 June 2017.

5.3 A submission made by NZLC took issue with the fact that the player expenditure amounts used did not represent the total gross revenue (or amounts gambled) in each sector but used revenue after deduction of prizes. At the meeting, NZLC submitted that Component

A should be defined as turnover of total sales. The Proposal did not disclose the basis for calculation, but the contention that prizes were deducted was not disputed by the Ministry and Department. No explanation for the practice was offered. The Commission considers that there is some merit in NZLC's criticism of the practice of deducting prizes.

- 5.4 The Department estimated current player expenditure using a variety of sources of information, including its NCGM electronic monitoring system, gambling operators' annual and half-yearly reports and information from the IRD.
- 5.5 As with past proposals, the Department did not disclose the actual Component A source data as doing so would result in the disclosure of tax details of individual taxpayers, which is prohibited under the Tax Administration Act 1994. The Department reported the Component A share for each sector, as follows:

| | NCGM | Casinos | NZRB | Lotteries |
|-----------------------------|-------------|----------------|-------------|------------------|
| Sector share of Component A | 0.373 | 0.245 | 0.145 | 0.238 |

- 5.6 Player expenditure data are available from the Department's website. The data from 2009/10-2016/17 are shown in the table below:

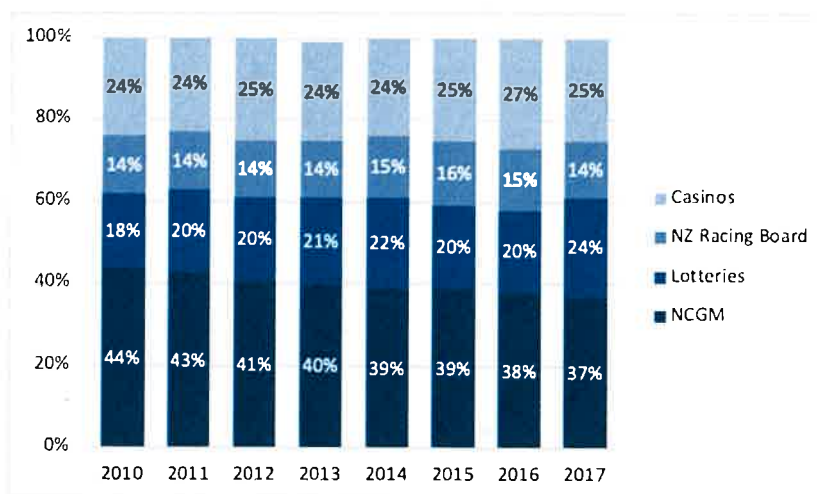
Gambling Expenditure Statistics 2009/10-2016/17

| Gambling Sector | 2009/10 (\$m) | 2010/11 (\$m) | 2011/12 (\$m) | 2012/13 (\$m) | 2013/44 (\$m) | 2014/15 (\$m) | 2015/16 (\$m) | 2016/17 (\$m) |
|------------------------|----------------------|----------------------|----------------------|----------------------|----------------------|----------------------|----------------------|----------------------|
| NCGM | 849 | 856 | 854 | 827 | 806 | 818 | 843 | 870 |
| Casinos | 440 | 448 | 483 | 490 | 486 | 527 | 586 | 572 |
| Lotteries | 347 | 404 | 419 | 432 | 463 | 420 | 437 | 555 |
| NZRB | 278 | 273 | 283 | 294 | 310 | 325 | 342 | 338 |
| Total | 1914 | 1982 | 2038 | 2042 | 2065 | 2091 | 2209 | 2334 |

Source: Department of Internal Affairs' website 2019

- 5.7 The diagram below, prepared by Synergia, shows the percentage of total player expenditure (or gambling revenue) for each of the four sectors subject to the levy for the past eight years.

Share of gambling expenditure 2010-2017



- 5.8 The table and diagram above show that revenue in the NCGM sector has declined as a percentage of overall revenue (from 44% to 37%) over the 2010-17 period and generally has tracked downwards in dollar terms, until increasing again in 2017. NZLC revenue has increased from 18% to 24% as a percentage of overall revenue, and in dollar terms (from \$347m to \$555m). New Zealand Racing Board (“**NZRB**”) revenue has remained consistent at around 15%, and increased in dollar terms from \$278m to \$338m. Casino revenue has increased in dollar terms, from \$440m to \$572m, but remained relatively static in percentage terms.

6. ANALYSIS OF COMPONENT B – CUSTOMER PRESENTATIONS TO PROBLEM GAMBLING SERVICES

- 6.1 Component B represents the customer presentations to problem gambling services attributed to gambling in a sector. Section 320(3)(b) provides that the amount must take into account the latest, most reliable, and most appropriate sources of information. As with Component A, the Act does not indicate the applicable time period but, as it is not expressly current, future nor an estimate, it is presumed to require recent actual data.
- 6.2 The data for Component B are generated by the Ministry from data collected by its psychosocial intervention service providers and recorded in the Client Information Collection database (“**CLIC**”). The numbers cover all clients who received a full, facilitation or follow up intervention session and exclude brief screening interventions and all presentations from persons whose primary problem gambling modes did not include one of the levied sectors. Each qualifying client seen in the period counts as one presentation, regardless of how many sessions in fact occurred. Since October 2011, if a client reported more than one primary problem gambling mode, the presentation has been shared proportionally between the nominated sectors. Previously, all presenting individuals could only be attributed to a single sector.

- 6.3 At the meeting, NZLC submitted that the current method of calculating Component B was unfair; distributing presentations across all modes identified by the presenting gambler meant that Lotto's indicative contribution was disproportionately high. It contended that the focus should be on the primary sector only. The current method is in accordance with earlier recommendations made by the Commission. The Commission does not recommend reversion to the earlier method used, as advocated by NZLC.
- 6.4 Although the Proposal stated that presentations over a 9 year period had been used in calculating Component B, when questioned, the Ministry advised that, in fact, only a 12 month period, from 1 July 2017 to 30 June 2018 had been used. The 2017-2018 total of 4,941 represents the number of individuals who attended a qualifying session in that period.
- 6.5 Below is a table setting out the historical presentations attributed to each of the four levy paying sectors from 2004/05-2017/18.

Presentations attributed to the four levy-paying sectors, 2004/05 to 2017/18

| | NCGM | | Casinos | | NZRB | | NZLC | | Total |
|---------|------|----|---------|----|------|----|------|----|-------|
| | n | % | n | % | n | % | n | % | n |
| 2004/05 | 2386 | 75 | 505 | 16 | 237 | 7 | 52 | 2 | 3179 |
| 2005/06 | 2307 | 71 | 641 | 20 | 243 | 7 | 64 | 2 | 3255 |
| 2006/07 | 2981 | 71 | 814 | 19 | 311 | 7 | 76 | 2 | 4182 |
| 2007/08 | 3063 | 71 | 849 | 20 | 328 | 8 | 97 | 2 | 4337 |
| 2008/09 | 3933 | 69 | 1050 | 18 | 413 | 7 | 304 | 5 | 5700 |
| 2009/10 | 4160 | 69 | 1131 | 19 | 449 | 7 | 332 | 5 | 6072 |
| 2010/11 | 3945 | 68 | 1073 | 18 | 476 | 8 | 332 | 6 | 5825 |
| 2011/12 | 3708 | 64 | 1188 | 21 | 548 | 9 | 339 | 6 | 5783 |
| 2012/13 | 3721 | 59 | 1403 | 22 | 568 | 9 | 652 | 10 | 6344 |
| 2013/14 | 3871 | 59 | 1413 | 22 | 651 | 10 | 590 | 9 | 6525 |
| 2014/15 | 3674 | 57 | 1448 | 22 | 730 | 11 | 624 | 10 | 6476 |
| 2015/16 | 3251 | 54 | 1221 | 20 | 696 | 12 | 812 | 14 | 5980 |
| 2016/17 | 3060 | 54 | 1240 | 22 | 593 | 10 | 820 | 14 | 5713 |
| 2017/18 | 2635 | 53 | 1135 | 23 | 515 | 10 | 657 | 13 | 4941 |

Source: Ministry of Health 2018

- 6.6 By reason of the change in recording practice in October 2011, the Commission considers the presentation figures from 2012/13 onwards to be more reliable than those collected in prior years.
- 6.7 The data show that the NCGM sector is responsible for over half of all presentations from levyable sectors, casinos are responsible for almost one quarter, with NZRB being responsible for around 10% and NZLC for around 13%.

- 6.8 The Proposal made a number of important observations about the occurrence of gambling harm and its relationship to presentations:
- (a) The Problem Gambling Severity Index (PGSI) recognises 3 levels of harm or risk - severe or high risk (problem gambling), moderate risk and low risk².
 - (b) Importantly, the harm attributable to gamblers participating in low-risk gambling was significant, at nearly 50% of all gambling harm. 2017 estimates suggest that 37,000 people were high risk or problem gamblers; about 47,000 were moderate risk and a further 106,000 were low risk who would experience gambling harm
 - (c) The estimated numbers and proportions of the population in each category, and the fourth category of non-gamblers, are set out in the Proposal at section 2.8, Figure 2.
 - (d) Although the level of harm in the population is thought to have remained relatively stable and the number of persons harmed has increased with population growth, the number of people presenting for gambling support and treatment has not increased in line with population growth³. Those presenting represent only a small fraction of the estimated numbers experiencing harm⁴.
- 6.9 A number of problem gambling services noted at the hearing that presentations are not an accurate proxy for harm. Lisa Campbell (from Salvation Army Oasis) noted that presentations only captured acute cases of harm (it is estimated that only 10% of people suffering gambling harm access services) and that the continuing trend of reduction in presentations reflected low service uptake rather than reduced rates of harm. Kelly Feng (from Asian Family Services) submitted that presentation figures did not accurately reflect gambling harm in the Asian community. Colin Bridle (from Feed Families not Pokies) submitted that presentation figures are low for a number of reasons, including because gambling is often one of a number of reasons affecting those that seek help and the massive under reporting of gambling harm.
- 6.10 The extent to which presentations are attributable to non-levied sectors can be seen from data on the Ministry's website on presentations attributable to all forms of gambling (including those not subject to the levy) for 2016/17. The data are shown below and indicate that there were 558 other sector presentations, in addition to the 5,713 presentations attributable to the four levied sectors.

² Section 2.1.2, page 9.

³ In fact, the numbers have declined in each of the last 4 years.

⁴ Section 2.7, page 16.

Total unique clients by gambling mode – 2016/ 2017

| Gambling mode | 2016/17 |
|-----------------------------|----------------|
| NCGM | 3,060 |
| NCGM % | 48.8% |
| Casino Gaming Machines | 678 |
| Casino Gaming Machines % | 10.8% |
| Casino Tables | 563 |
| Casino Tables % | 9% |
| NZRB | 593 |
| NZRB % | 9% |
| Lotteries | 820 |
| Lotteries % | 13% |
| Housie | 119 |
| Housie % | 1.9% |
| Cards | 103 |
| Cards % | 1.6% |
| Other | 335 |
| Other % | 5.3% |
| Total unique clients | 6,271 |
| Total % | 100% |

Source: Ministry of Health 2018

7. COMPONENT C – MINISTRY OF HEALTH FUNDING REQUIREMENT

- 7.1 Component C is the “funding requirement” for the 2019-2022 levy period. The amount “must take into account the approximate cost to Government of the integrated problem gambling strategy”⁵ in the levy period.
- 7.2 The Proposal nominated an amount of \$55.339 million but expressed the amount, not in the terms used in the Act (as outlined above), but as “the amount that the Ministry considers it requires by way of an appropriation to implement the strategy”. In section 4.2, table 15, the Ministry showed a higher total figure, \$60.339. That figure included \$5 million which was estimated to be underspent in the current levy period but which would be transferred from the current appropriation to the following period. Further detail

⁵ Section 320(3)(c)

concerning treatment of the expected \$5 million underspend was presented in the section of the Proposal dealing with Component R, the estimated over-recovery or under-recovery of levy in previous levy periods.

- 7.3 The Ministry's decision to nominate \$55.339 million when the total estimated cost to the Government over the levy period was \$60.339 million is addressed in detail in the section below relating to Component R. For reasons set out in that section, the Commission is satisfied that the correct value of C is **\$60.339 million** and the suggested deduction of \$5 million, expected to be underspent in the current period and retained for expenditure in the next period, is not in accordance with the provisions and apparent intent of the Act after a 2015 amendment.
- 7.4 The annual sums estimated by the Ministry for each year of the three year period are set out below.

| | \$m (GST excl) |
|--------------------|-----------------------|
| 2019/20 | 19.655 |
| 2020/21 | 20.099 |
| 2021/22 | 20.585 |
| Total (\$m) | 60.339 |

- 7.5 The table below sets out the Ministry's requirement for the next period in each of its four categories of spend, as follows:

Costs for categories of funding

| Service | 2019/20 (\$m) | 2020/21 (\$m) | 2021/22 (\$m) | Total (\$m) |
|-----------------------------------|----------------------|----------------------|----------------------|--------------------|
| Public health services | 6.870 | 6.790 | 6.870 | 20.530 |
| Intervention services | 8.433 | 8.405 | 8.405 | 25.243 |
| Research contracts | 2.060 | 2.219 | 2.350 | 6.629 |
| New Service and Technology Pilots | 1.335 | 1.695 | 1.970 | 5.000 |
| Ministry's operating costs | 0.957 | 0.990 | 0.990 | 2.937 |
| Total | 19.655 | 20.099 | 20.585 | 60.339 |

Source: Ministry of Health 2018

- 7.6 Each of the four categories of spend is considered below.

Public health

- 7.7 The Ministry is proposing to spend \$20.530 million on public health in the 2019-2022 period, an amount similar to the current 2016-2019 period. The individual service lines are also very similar to those for the current period.

Intervention services

- 7.8 The Ministry's budget for Intervention Services for the next levy period is \$25.243 million, an amount largely unchanged from the current period budget.
- 7.9 Lisa Campbell (from the Salvation Army Oasis) submitted that difficulties could be expected if the current level of funding was retained. The amount fails to take into account cost pressures on intervention services, such as salary increases and training requirements. Ms Campbell's observation is consistent with observations made by Synergia in its report.
- 7.10 A number of providers of problem gambling services (Paula Snowden, from the Problem Gambling Foundation; Rebecca Ruwhiu-Collins, from Hapai Te Hauora; Colin Bridle, from Feed Families not Pokies) made similar submissions at the meeting regarding the inadequacy of current funding to meet the needs of service providers.

Research

- 7.11 The Ministry's indicative budget for research is \$6.629 million for the 2019-22 period. The amount is the same as that budgeted for the current levy period.
- 7.12 At the meeting, reservations were expressed about the need for the foreshadowed research. Helen van Druten (from The Lion Foundation) did not support prioritising research and secondary analysis of that research. Jarrod True (speaking for the Gaming Machine Association of New Zealand) observed that the planned research proposals offered nothing new or innovative to warrant a 20% increase. Jarrod True (speaking for Trust House, Dragon Community Trust, BlueSky Community Trust and Akarana Community Trust) questioned the value of secondary studies. Lisa Campbell (from the Salvation Army Oasis) said that the planned research could not be done if the research budget were reduced, and that in any event, not everything can be researched.

New Service and Technology Pilots

- 7.13 The Ministry has budgeted a total of \$5 million for new service and technology pilots. The amount is the same as the predicted underspend in the current period, addressed at section 4.2 of the Proposal. Although the commentary indicates that the resulting increase in funding was justified for a number of reasons, it appears that the increase arising from the estimated underspend has virtually all been allocated to this category. The detail is set out in section 4.6 of the Proposal.
- 7.14 A number of the submitters were critical of the proposed expenditure. The range of comments included the following:

- (a) Technology is key. There should be no further pilots as there is “no need to pilot the pilot” (Helen van Druten for The Lion Foundation).
- (b) There is no need for trial after trial – get the technology in today (Mike Knell, for New Zealand Community Trust).
- (c) There is strong support for implementing new technologies but no support for funding more trials and pilots (Jarrod True for Trust House, Dragon Community Trust, BlueSky Community Trust and Akarana Community Trust).
- (d) Additional technology funding would be welcomed but further piloting of various technologies is unnecessary (Rob Smith for BlueSync Limited).
- (e) A pilot of facial recognition technology has already been done by societies at about 19-20 venues, meaning there is no need for further pilots (Chris Yu for Torutek Limited).
- (f) Facial recognition technology has been successfully used for the last 15 months, as trialed by C4. \$3.5 million of the \$5 million underspend should be allocated to a technology fund, specifically to cover the ongoing licensing costs of facial recognition technology over the next three years (Paul Andrew for COMS Systems Limited).

Ministry’s operating costs

- 7.15 The Ministry’s proposed budget for 2020-2022 is \$2.937 million, the same as for the current levy period (which in itself was the same as for the previous two periods).

8. COMPONENT D – FORECAST PLAYER EXPENDITURE

- 8.1 Component D provides the forecast player expenditure in a sector for the period during which the levy is payable. The Department undertakes the forecast and reports its results to the Ministry.
- 8.2 The Department’s forecasts of player expenditure for each of the four levied sectors is shown in the table below:

Forecast player expenditure by sector, 2019/20 to 2021/22

| Forecast expenditure | NCGM | Casinos | NZRB | Lotteries |
|-----------------------------|-------------|----------------|-------------|------------------|
| 2019/2020 (\$m) | 951.143 | 645.345 | 383.428 | 593.9 |
| 2020/2021 (\$m) | 981.184 | 667.463 | 395.794 | 606.8 |
| 2021/2022 (\$m) | 1,012.173 | 689.581 | 408.161 | 638.0 |

Source: Ministry of Health 2018

8.3 The Department's rationale for its forecasts is set out in full at pages 79-81 of the Proposal. It is forecasting increased player expenditure in all four sectors.

8.4 At the meeting, NZLC submitted that the forecast player expenditure in a sector figures do not take into account online offshore gambling by New Zealand residents, which is estimated to involve player expenditure from \$36 million to \$270 million (or even double that figure).

9. COMPONENT R – ESTIMATED LEVY UNDER-RECOVERY OR OVER-RECOVERY

9.1 Component R is the estimated under-recovery or over-recovery of levy from a sector in the previous levy periods. Component R was introduced as a new component in the levy formula by a 2015 amendment and was considered by the Commission for the first time in its 2015 Report.

9.2 As noted in the Commission's 2015 Report, the amended Act is not explicit about how R should be applied. It does not define "under-recovery" or "over-recovery". It does not define "levy" and the closest guidance to the meaning of "levy" (section 320(4)) is not helpful in interpreting the term in the context of R. Section 320(3) sets out guidance for the assessment of all component values except for Component R.

9.3 In 2015, the Ministry advocated assessing over-recovery and under-recovery (Component R) by re-calculating certain prior estimates with the benefit of hindsight. Hindsight adjustments would be made to the original forecast player expenditure by sector (Component D) and the Ministry's estimated funding requirements (Component C). The value of Component R would reflect the difference between the original estimates and the hindsight adjustments to those components. The apparent intent was an adjustment to produce a fairer reflection of what each sector should have paid.

9.4 Several submitters in 2015 advocated for a matching hindsight adjustment to Component B (presentations) as well. The rationale was that historical presentations were intended to act as an indicator of expected future harm, that the prior levies struck were a product of weighting both Components A and B, multiplying by Component C and dividing by Component D. They submitted that fairness required Component B to be adjusted as well as Components C and D.

9.5 Despite agreeing that adjusting Component B as well as Components C and D would likely produce a fairer result, the Commission ultimately agreed with the statutory interpretation advanced by the Ministry and made recommendations accordingly. It was therefore surprised to see that the Ministry adopted a different interpretation in the Proposal.

- 9.6 The Ministry's initial calculation of Component C adjusted the budgeted future cost by deducting \$5 million, which it expected to underspend in the current period, but to retain and spend during the levy period, rather than calculating Component C on the entire estimated expenditure in the levy period and adjusting for the expected current period underspend in Component R (as it had done in 2015). In other words, the Ministry initially calculated Component R by adjusting only previous Component D with the benefit of hindsight and not previous Component C as well. In the light of NCGM submissions during the earlier consultation, however, it ultimately put forward an alternative, Option 2, to reflect the approach taken by it, and endorsed by the Commission, in 2015.⁶ The option differences do not affect the total levy amount; the effect is limited to the relative contribution by each sector to the same total levy.
- 9.7 The Ministry suggested both that two different approaches were legally possible and that it had, in fact, adopted the approach taken in 2015. Because the Commission is not provided with the underlying workings, it assumes that the calculations are carried out as described by the Ministry in its proposal documents and in response to questions asked at consultation meetings. The oral explanation given at the 2015 consultation meeting confirmed that, in addition to checking how much each sector paid compared to what it was expected to pay, Component R also involved recalculation of how much the Ministry had actually spent so that each sector got the benefit of any Ministry under-expenditure. The 2015 Proposal did not indicate that the calculation of Component C had been adjusted for an expected under-spend which would be retained. The description of Component R indicated that the Ministry's appropriations to the end of the then current period would amount to \$216.360 million but actual expenditure would be only \$211.615 million and "(i)t is the latter figure that the levy should have recovered from the four levy-paying gambling sectors".⁷ The Commission is satisfied that the explanations offered by the Ministry in 2015 conform to Option 2. It is the approach in Option 2 that it endorsed in 2015.
- 9.8 The submissions made in 2015 mean that the Commission did not need to express views on an interpretation of section 320 which had not been advanced by any party. The Ministry's change of position and assertion that either approach was available under section 320 (unfortunately, without providing much supporting analysis) has required the Commission to do so in this Report.
- 9.9 Prior to the 2015 amendment, section 320(3)(c)(iii) provided that the calculation of Component C "must take into account ... any under-recovery or over-recovery in the

⁶ At the hearing, the Gaming Machine Association of New Zealand submitted that its preference was for the underspend of \$5 million to be accounted for under Component R, as this deals with over-recoveries and is more accurate because it looks at actual revenue. Although the difference between inclusion under Component C and Component R is not large, for the non-casino gaming machine sector the difference amounts to \$300,000.

⁷ Paragraph 3.4.5.

previous levy period". As a result, prior to 2015, an over-spend or under-spend by the Ministry in the previous levy period was reflected in an adjustment to Component C in the following period. The adjustment was accordingly global, rather than sector, in nature and the resulting benefit or burden was shared in accordance with the effective sector proportions struck for the next levy period, not for the period in which the levy had been over or under paid.

- 9.10 The 2015 amendment removed section 320(3)(c)(iii) and replaced it with an amended formula containing R and a description of Component R, being "the estimated under-recovery or over-recovery of levy from a sector in previous levy periods". It made a consistent change to section 318(1)(e) by adding the words "(gambling sector by gambling sector)" and changing "previous levy period" to "previous levy periods".
- 9.11 Consistent with section 320(3)(c)(iii), prior to the 2015 amendment, under-recovery and over-recovery was treated as being solely focused on Ministry expenditure. That approach, consistent with the statements of purpose in sections 319(2) and 320(1), saw the provisions as aimed at ensuring that actual Ministry spending matched actual levy recovery over time on a global basis and adjustment was restricted to consideration of the prior period only.
- 9.12 Having regard to the terms of the 2015 amendments, the Commission considers that the 2015 changes were aimed at ensuring that shortfalls or surpluses in actual recoveries against actual expenditure would be attributed and applied to individual sectors, rather than globally as before. For the reasons set out below, it considers that the approach taken by the Ministry, and endorsed by it, in 2015 is correct and that assessment of R requires hindsight reconsideration of the previous values of Components C and D (not Component D only as the Ministry now contends in Option 1, with a matching adjustment to the new Component C):
- (a) It is more consistent with the statements of purpose in sections 319(2). As the objective is to fund the problem gambling strategy, under-recovery and over-recovery should be assessed against actual cost, not earlier forecast cost, of the strategy.
 - (b) It is more consistent with the 2015 amendments to section 320. In that regard, the Ministry proposed to treat an expected underspend by making an adjustment to Component C, the provision for which adjustment (s 320(3)(c)(iii)) was repealed by the 2015 amendment.
 - (c) The Ministry's approach to Component C is Ministry-centric, asking what further funding the Ministry requires rather than considering total cost to the Government

of its strategy during the levy period. The levied sectors understandably prefer to focus on actual expenditure, unaffected by Ministry appropriations and transfers.

- (d) The terms “over-recovery” and “under-recovery” are not defined but appeared in the Act both prior to and after the 2015 amendment. Prior to the 2015 amendment, the term clearly applied to Component C and could only have had application by reference to the Ministry’s expenditure. There is nothing to indicate that the terms should cease to have that application after the amendment.
- (e) The description of the new component R indicates the need for adjustment to reflect allocation by sector but that can be done by additional adjustment to former assessments of Component D. There is nothing to indicate that the assessment of R should not reflect departures from forecast Ministry expenditure (C) as well as forecast player expenditure by sector (D).
- (f) Assessing R by adjustment of both C and D sees the effect of the adjustment matching the proportionality struck for the earlier levy periods from which the assessment arises. The Ministry’s approach preserves past proportionality for hindsight adjustments to D only. The effect of its proposed adjustment to C would be distributed in accordance with the proportionality adopted for the forthcoming period, not the prior periods in which the levy was under or over paid.

9.13 Accordingly, the Commission recommends that the levy be calculated in accordance with what the Ministry describes as Option 2. Under that approach, Component C is \$60.339 million (ie, not reduced to reflect the expected retained underspend), the global target recovery is the sum of actual and estimated Ministry expenditure in all levy periods down to 30 June 2019 (\$261.992 million), and each sector’s target share of that total is determined by the expected levy collections and the resulting proportions previously struck for each levy period (up to an including the current period), including the previous weightings used.

9.14 Component R in each case is the difference between the sector’s target share up to 30 June 2019 and the sector’s total levy payments in the same period. The Commission did not receive the underlying calculations to check them but, assuming that they were done in accordance with the methodology outlined above, the calculated target for each sector by value and percentage recovery is as follows:

| Sector | Value | Percentage |
|---------------|--------------|-------------------|
| NCGM | 172.133 m | 65.72% |
| Casino | 51.014 m | 19.48% |
| NZRB | 22.745 m | 8.68% |
| NZLC | 16.029 m | 6.12% |

- 9.15 Comparing the actual amounts recovered from (or paid by) each sector to the target recovery amount for each sector indicated that there would be over-recoveries from all four sectors, as follows:

| Sector | \$m (GST excl) |
|---------------|-----------------------|
| NCGM | 6.213 |
| Casinos | 2.845 |
| NZRB | 0.940 |
| Lotteries | 1.961 |
| Total | 11.958 |

10. WEIGHTINGS

- 10.1 The weighting, and its application to Components A and B, is fundamental to the formula and to determining the final share of levy payable by each of the four sectors. The selected weighting shifts the balance between sectors paying according to their relative gambling revenue or player expenditure (in the current three year levy period, in this case), or according to the relative number of people presenting for treatment attributable to each sector (in one prior year).
- 10.2 The only legislative guide to what they should be is the general requirement in section 319(2) – that the levy is “to recover the cost of developing, managing, and delivering the integrated problem gambling strategy.” Section 320(2) provides that W1 and W2 must total 1 but gives no guidance on the allocation of value to each.
- 10.3 While recognising that all past weightings adopted have been 10:90 (revenue:presentations), the Ministry has proposed a 30:70 weighting for the 2019-22 levy period. The Ministry advanced several reasons for its recommendation:
- (a) Harm is broadly defined. Presentations are limited to only a small sub-set of gambling harm, at the acute end of the continuum. They are not representative of all those who suffer harm. There is no sound reason to think that the harm that each sector is associated with will be reflected in the presentations to intervention services from each sector.
 - (b) The strategy is not limited to intervention services. It is required to promote public health and to encourage and support gambling research and evaluation (not limited to problem gambling). The share of presentations to intervention services attributable to a sector is not necessarily an appropriate basis for determining each sector’s share of the public health, research and evaluation costs incurred.

- (c) The Ministry presented comparative data for each sector based on a single (but not identical) year period for each to illustrate the extent to which sectors diverged between player expenditure (or revenue) and presentations.
- 10.4 The Ministry recognises that there is a case for reconsidering how the levy formula is configured to better reflect association with harm. It noted the availability of newer means to estimate prevalence of harm, such as use of screening instruments like PGSI and public health surveys that directly address the experience of harm. Those means tend to indicate that harm properly attributable to NZRB and NZLC may be higher than reflected in the presentation figures, especially in earlier periods.
- 10.5 For the reasons given by the Ministry, the Commission considers that a greater weighting should be given to presentations than to player expenditure. Like the Ministry, the Commission recommends that a 30:70 weighting be adopted for the next levy period. The Commission does not support a weighting higher than 70 percent for presentations.
- 10.6 Synergia addresses the weightings at page 38 of its report. Synergia also recommends a 30:70 weighting for the reasons set out below:
- A shift to a 5:95 weighting puts further emphasis on the acute end of gambling harm and runs counter to the Public Health approach required by the legislation.
 - There has been a steady decline in both expenditure and presentations attributed to NCGMs and the weighting needs to reflect this shift.
 - The NCGM sector accounts for a higher burden of gambling related harm, and the 30:70 weightings still give recognition to this.
 - A weighting formula that increases the weight on expenditure is consistent with the public health approach of the Gambling Strategy and Service Plan. A 30:70 weighting is an appropriate step in the direction of looking beyond the acute end of the harm continuum and takes into account the wider determinants of harm.
 - Expenditure on gambling, which is increasing, by those in highly deprived populations adds financial pressure to families already under stress. An increased weighting on expenditure would reflect this. This is of special significance, given that much of the harm resulting from this expenditure is experienced by children.
 - A substantial part of the gambling levy investment (around 34%) is on public health strategies that build resilience in the broader population to problem gambling, support safe gambling environments and supportive communities; a larger expenditure component would better reflect this aspect of how funds generated through levy are distributed.
 - Presentations do not of themselves fully capture the harms that are due to gambling; a greater weighting towards expenditure would reflect this.
- 10.7 Submissions to the Commission by levied sector representatives, unsurprisingly, reflected the financial interests of the sector represented, with NCGM representatives advocating weighting away from presentations towards player expenditure and the other sectors

advocating for the heaviest weighting towards presentations (and away from player expenditure). Interestingly, the representatives without a financial stake in the outcome (the problem gambling service providers) supported a 30:70 weighting on the grounds that, as presentation numbers did not fairly represent responsibility for harm, such a weighting would better reflect sector responsibility for harm.

10.8 The Commission's reasons for a 30:70 weighting include those advanced by the Ministry and Synergia as outlined above. In summary, its reasons for recommending a 30:70 weighting are as follows:

- (a) The potentially unrepresentative nature of presentations, which focus on high risk or problem gambling, is illustrated by the fact that estimates indicate that almost 50% of gambling harm is associated with low risk gambling. Concentration on the high risk category which produces presentations (to the exclusion of both low risk and medium risk gambling) means that more than half of the harm associated with gambling falls outside the ambit of the single harm indicator used (presentations).
- (b) Although presentations are heavily focused on high risk or problem gamblers, that category of gambling risk is not fully represented by the presentations that occur. Only a small (and declining) proportion of high risk gamblers receive interventions. It is not known whether those receiving interventions are representative of even the high risk or problem gambling category from which they are drawn.
- (c) Measurement of sector presentations has a subjective element absent from measurement of sector revenue or player expenditure. Accuracy of recording has improved since it was altered to allow recording of (and division between) more than one gambling sector per person receiving interventions but allocation of responsibility in such cases is arithmetical, rather than based on either intensity of treatment or attribution of harm actually suffered.
- (d) Presentations are recorded as a simple headcount of those receiving a sufficiently elevated intervention within the chosen 12 month period. The number reflects neither the number of interventions or sessions, nor their cost nor the extent of the harm suffered.
- (e) The Component R amount for each sector is calculated by adjusting both estimated Ministry cost (Component C) and estimated player expenditure (Component D) using hindsight information at the end of the levy period but does not involve adjusting historical presentations prior to the levy period (Component

B) using presentations during the period. Presentations have not remained constant over time, with NCGMs showing a steady decline and other sectors, especially NZRB and NZLC showing an increase over time.

- (f) Presentations ascribed to a sector are not a sound proxy for harm caused by a sector. Unfairness from excessive reliance on an unsound proxy is mitigated by weighting to some degree away from presentations and towards revenue or player expenditure. Even if one wished to ensure that sectors were levied purely according to associated harm, the weighting should not be so heavily directed to presentations that the final allocation does not reflect what is believed to be the actual association of the sector to the occurrence of harm.
- (g) Generally, heavy weighting to presentations is inconsistent with the wider public health requirements of the Strategy, including the promotion of resilience in the population and the undertaking of scientific research on gambling and evaluation generally which benefit all sectors.

Impact of weighting changes

- 10.9 Changing the weightings from the current 10:90 to the proposed 30:70 does not affect the total levy amount, but does reduce the burden on the NCGM sector (although it remains the heaviest sector levied by far), while increasing the burden on the other sectors. The Commission considers this outcome to be fair for the reasons set out above.
- 10.10 The result of the recommended weightings (30:70) on the recommended approach to Component C and R (option 2) for each sector, according to the Ministry at Table 30 of the Proposal, is shown in the table below:

Levy rate 30:70

| | NCGM | Casinos | NZRB | Lotteries |
|---------------------|--------|---------|-------|-----------|
| Sector levy rates % | 0.78 | 0.56 | 0.51 | 0.43 |
| Expected levy \$(m) | 22.967 | 11.213 | 6.056 | 7.906 |

11. RECOMMENDATIONS

- 11.1 The Commission is required by the Act to provide recommendations on the total annual amount of the problem gambling levy for the relevant three-year period. Deducting the correct net over-recovery (sum of the individual Component R values) of **\$11.958 million** from the correct Component C value of **\$60.339 million** produces a total levy amount of **\$48.381 million** (the amount shown in Table 24a on page 82 of the Proposal). The amount is slightly higher than the total of the sector levy amounts set out in the preceding table, which totals **\$48.142 million**.

12. CONCLUSION

- 12.1 The Commission thanks the Ministers for this opportunity to review and comment on the proposed levy and rates and is available to answer any questions that they may have in relation to this Report.



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