

Hon Peter Dunne

9 December 2015

REPORT ON THE PROPOSED PROBLEM GAMBLING LEVY: 2016-2019

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 2016–30 June 2019, 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**”). This report should be read alongside the Ministry’s proposed nine-year Strategic Plan for 2016/17 to 2024/25 (the “**Strategic Plan**”) and its proposed three-year Service Plan 2016/17 to 2018/19 (the “**Service Plan**”).

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.

1.4 This Report begins with an Executive Summary, followed by comments setting out the background to the Report and the Commission’s approach to its analysis. The Report then addresses the individual components of the levy formula, including the new Component, R.

2. EXECUTIVE SUMMARY

2.1 The Commission’s recommendations are as follows:

(a) That the total amount of the levy for the 3-year period 1 July 2016–30 June 2019 be set at \$56,202,000. This sum comprises the \$55,339,000 sought by the Ministry, together with the net under-recovery from previous levy periods of \$863,000.

(b) That the annual amounts for each of the 3 years be as follows:

Year	2016/17	2017/18	2018/19
Total (\$m) (GST excl)	18.685	18.799	18.719

(c) That the weightings attached to W1 (expenditure) and W2 (presentations) be set at 20:80.

2.2 A 20:80 weighting is appropriate as:

- (a) The Act's definition of "harm" is very broad. Presentations represent only a small subset of gambling harm and one that tends to be at the acute end of the continuum. Those who seek help represent only a small subset of those who experience harm. Presentations data comprise a head count of those who received a full intervention of some kind in the period, without regard to the degree of harm suffered or the number of sessions provided to treat that harm. Too heavy a weighting on presentations fails to recognise that presentations are not a sound proxy for the harm associated with gambling.
- (b) The Act specifies that in addition to intervention services, the Strategy must include measures to promote public health, independent scientific research associated with gambling and evaluation. A gambling sector's share of presentations is not necessarily an appropriate indicator for determining the share that a sector should bear of these costs. The weighting between expenditure and presentations should spread the burden fairly across the four levy paying sectors.
- (c) Increasing the weighting on expenditure is consistent with the public health approach required by the Act. A weighting of either 5:95 or 10:90 is inconsistent with a public health approach.
- (d) As the non-casino gaming machine ("**NCGM**") sector generates the most expenditure and presentations, it will contribute the most to the cost of the strategy at a range of weightings.
- (e) The NCGM sector's share of overall expenditure and presentations is declining, while expenditure and presentations are increasing for the three other sectors subject to the levy; casinos, New Zealand Lotteries Commission ("**Lotteries**") and the New Zealand Racing Board ("**NZRB**"). However, the effect of the new Component R means that only the reduction in expected expenditure and not the reduction in presentations is taken account of in hindsight readjustment

2.3 Although different interpretations of Component R are available on the language of the Act, the Ministry's interpretation is most likely the one intended by the 2015 amendment that introduced Component R.

2.4 Applying a 20:80 weighting and the Ministry's interpretation of R, the levy rates for collection be set as follows:

	NCGM	Casinos	NZRB	Lotteries
Sector levy rates (%)	1.26	0.89	0.54	0.44
Expected levy (\$ millions, excl GST)	30.708	14.381	5.346	5.655

3. BACKGROUND

3.1 As contemplated in the Act, there was a two-step consultation process to setting the levy and levy rates, involving consultation by the Ministry and then the Commission.

3.2 The Ministry drafted a consultation document entitled "Strategy to Prevent and Minimise Harm 2016/17 to 2018/19" within the context of a draft 9 year Strategic Plan for 2016/17 to 2024/25.

3.3 The Ministry sought submissions on the draft Service Plan from 31 July 2015 to 11 September 2015. 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 this process, the Ministry convened 10 consultation meetings; five general meetings (which were held in Auckland, Hamilton, Wellington, Christchurch and Dunedin), three meetings designed to obtain Māori, Pacific and Asian viewpoints (all in Auckland), while two meetings were held with the Gambling Industry; one in Wellington and one in Auckland.

3.5 The Ministry received 47 written submissions on its proposal.

3.6 Following its consultation, the Ministry reconsidered its draft documents in light of the submissions made and the feedback at the consultation meetings.

3.7 On 29 October 2015, the Ministry submitted its Service Plan to the Commission, which 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 the Ministry's response to issues raised in the submissions.

3.8 The Commission provided all three documents to the invitees to its consultation meeting, which was held in Auckland on 27 November 2015.

3.9 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 gambling services, and representatives of other groups which the Commission believes are likely to be significantly affected by the levy.

- 3.10 The Commission's consultation meeting on 27 November 2015 was poorly attended, with no attendance by parties significantly affected by this process, including casinos, Lotteries or researchers. **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.
- 3.11 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.
- 3.12 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 three year period and the levy rate for each gambling sector. The consultation undertaken by the Commission, expert advice received by the Commission, and its own deliberations has focused principally on these two key matters.
- 4.2 In making its recommendations, the Commission has focused on each of the component values of the formula used to calculate the proposed levy rates. This is set out in section 320 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 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.

5. ANALYSIS OF COMPONENT A – CURRENT PLAYER EXPENDITURE

5.1 Component A represents the percentage of total expenditure for each of the four sectors subject to the levy. The Act does not indicate the relevant time period for the Component A data, but section 320(3)(b) provides that the Component A amount “must take into account the latest, most reliable, and most appropriate sources of information.” The Department used expenditure data for the period 1 July 2014 to 30 June 2015 provided by the IRD.

5.2 Consistent with past years, the Department did not disclose the actual Component A data as doing so would result in the disclosure of tax details of individual taxpayers, which is prohibited under the Tax Administration Act, but it did provide the Component A share for each sector, as follows:

	NCGM	Casinos	NZRB	Lotteries
Sector share of Component A	0.397	0.258	0.157	0.189

5.3 The Commission notes that expenditure data are available from the Department’s website. The Department’s data differ slightly from that used by the IRD, but provide useful guidance. Expenditure data for the past five years for each of the four sectors subject to the levy are shown in the table below.

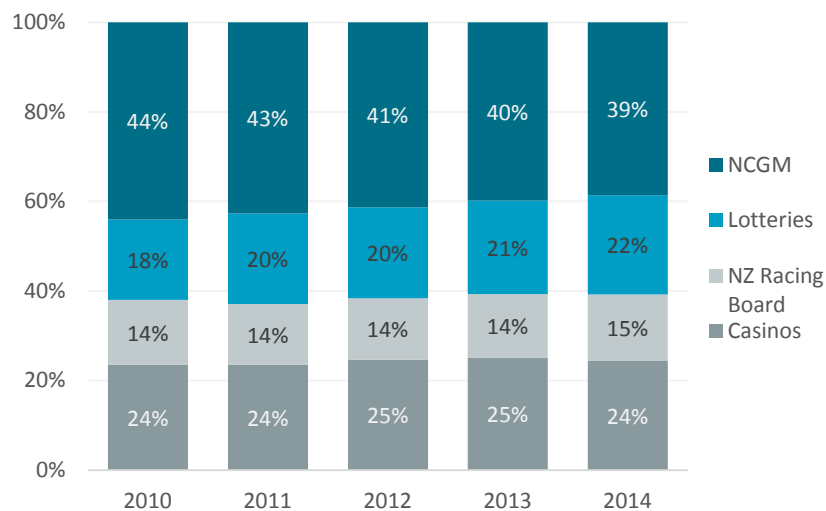
Gambling Expenditure Statistics 2010-2014

Gambling Sector	2010 (\$m)	2011 (\$m)	2012 (\$m)	2013 (\$m)	2014 (\$m)
NCGM	849	856	854	826	806
Casinos	454	471	509	520	509
Lotteries	347	404	419	432	463
NZRB	278	273	283	294	311
Total	1928	2005	2065	2072	2091

Source: Department of Internal Affairs' website 2015

5.4 The diagram below shows the percentage of total expenditure for each of the four sectors subject to the levy for the past five years.

Share of gambling expenditure 2010-2014



5.5 The table and diagram above show that expenditure in the NCGM sector has declined both in dollar terms (from \$849m to \$806m) and as a percentage of overall expenditure (from 44% to 39%) over the 2010-14 period. Conversely, Lotteries expenditure has increased (from \$347m to \$463m and from 18% to 22%), as has NZRB expenditure (from \$278m to \$311m and from 14% to 15%). Casino expenditure has increased in dollar terms (from \$454m to \$509m) but remained static in percentage terms (on 24%).

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

6.1 Component B represents the percentage of customer presentations to problem gambling services attributed to gambling in a sector. As with Component A, the Act does not indicate the relevant time period for use but section 320(3)(b) provides that the amount must take into account the latest, most reliable, and most appropriate sources of information.

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 data relate to all clients who received a full, facilitation or follow up intervention session during the 12 month period from 1 July 2014 to 30 June 2015. Brief interventions are not included.

6.3 Below is a table setting out the presentations attributed to each of the four levy paying sectors from 2004/05-2014/15.

Presentations attributed to the four levy-paying sectors, 2004/05 to 2014/15

	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

Source: Ministry of Health 2015

6.4 At the Commission’s consultation meeting, these figures generated debate about the manner in which a presentation attributed to a sector has changed over time, with the result being that the presentation data for one year may not necessarily be comparable with data from another year. Mr True (on behalf of Dragon Community Trust Limited, BlueSky Community Trust Limited and First Sovereign Trust Limited) suggested that it was like comparing speeds with some data recorded as miles per hour, and others recorded as kilometres per hour.

6.5 Mr Cheer (from Pub Charity Limited) submitted that the Ministry should not present the above table because by doing so it suggests that it is a comparative table, when it is not.

6.6 The Ministry acknowledged these observations at the meeting, but stated that the table does not purport to show trends or to provide comparative data.

6.7 The Commission’s view is that all parties involved know, or ought to know, that the methods of attributing presentations have changed over time. The Ministry has never tried to hide this. It was made plain by the Ministry in its consultation document, in its

draft Service Plan and at the Commission's consultation meeting. At pages 49 and 50 of the Service Plan, the Ministry set out the current approach, as follows:

From 1 October 2011, the Ministry simplified the CLIC database by changing the criterion for a PPGM from whether the mode was causing 'significant harm' to whether the mode was causing 'harm', to align with the Act, and by removing the facility to record secondary modes of problem gambling. The current system for attributing presentations to gambling sectors, after those changes, is described below.

Each qualifying client within each service provider counts as only one presentation for any specified time period (for example, during the course of a given 12-month period).

If a clinician concludes that more than one type of gambling is causing a client harm, the service provider records all those types of gambling (up to a maximum of five) by way of a tick in the session record; as a result, these types become PPGMs. Each PPGM is automatically allocated an equal weighting for that session and subsequent sessions. If a clinician concludes in a subsequent session that the harmful types of gambling for that client have changed, the process is repeated. Each PPGM in the new mix is automatically allocated an equal weighting for the session in which the clinician concludes that there has been a change and for the sessions that follow it.

The share of each presentation (ie, the share of each client) that is attributed to each type of gambling depends on the client's number of PPGMs and the number of sessions for which each is recorded. All that the service provider needs to do is record the types causing harm as outlined above, then enter the new mix (by again ticking the types causing harm) in the record for any subsequent session in which the clinician concludes that there has been a change. The Ministry's system automatically performs all the necessary calculations.

...

The Ministry considers that the new system is both more responsive to subtleties and better aligned with the purposes and wording of the Act than the old system. As a result, the Ministry considers that its presentation figures from 2012/13 onwards are more reliable and more appropriate sources of information than its earlier figures.

- 6.8 The Ministry's observation that the presentation figures from 2012/13 onwards are more reliable appeared to be accepted by attendees at the Commission's meeting with Mr Smulders (from Woodlands Trust) congratulating the Ministry for the 2011 changes and noting that the presentation data is becoming increasingly accurate. He said that "the bottom numbers [in the table above] are probably more reflective of what the top numbers should have been."
- 6.9 As noted above, section 320(3)(b) provides that the latest, most reliable information from the most appropriate sources must be taken into account when considering Component B. The Commission observes that the data from 2012/13 onwards do indeed appear to present reliable information, with the latest data, for 2014/15, being remarkably consistent with the data for the two preceding years. The data show that the NCGM sector is responsible for over half of all presentations from levyable sectors, casinos are responsible for almost a quarter and NZRB and Lotteries are responsible for around 10% each. The table below shows the data for these three years, as follows:

Presentations attributed to the four levy-paying sectors, 2012/13 to 2014/15

	NCGM		Casinos		NZRB		NZLC		Total
	n	%	n	%	n	%	n	%	n
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

6.10 These figures differ significantly from those for earlier years. For example, the presentations data for 2004/05 show that the NCGM sector generated three quarters of all levyable presentations, while Lotteries generated only 2%, as follows:

	NCGM		Casinos		NZRB		NZLC		Total
	n	%	n	%	n	%	n	%	n
2004/05	2386	75	505	16	237	7	52	2	3179

6.11 In addition to the abovementioned data on the four levy paying sectors, the Ministry also provided data on presentations attributable to all forms of gambling (including those not subject to the levy) for the 2014/15 year. That data are shown below.

Total unique clients by gambling mode – 1 July 2014 - 30 June 2015

Gambling mode	2014-15
NCGM	3674
NCGM %	51%
Casino Gaming Machines	788
Casino Gaming Machines %	10.9%
Casino Tables	661
Casino Tables %	9.2%
NZRB	729
NZRB %	10.1%
Lotteries	624
Lotteries %	8.7%
Housie	244
Housie %	3.4%
Cards	123
Cards %	1.7%
Other	367
Other %	5.1%
Total unique clients	7210
Total %	100%

Source: Ministry of Health 2015

- 6.12 Again, these figures generated discussion at the Commission’s meeting as they show that the non-levyable sectors (housie, cards and other) generated 734 presentations in this period, which represents over 10% of all presentations. Mr Smulders noted that the four levy paying sectors are paying for these ‘others’ and should be given credit for that. Mr Smulders also noted that the Department could levy the housie sector, but it elects not to do so.
- 6.13 Mr Cheer noted that the NCGM sector carries a significant burden in relation to the treatment of the non-levyable presentations because of the 10:90 weighting. He also submitted that greater emphasis should be placed on expenditure in the formula; “expenditure is probably by far and away the most reliable, because it is unequivocal” whereas presentations data are less reliable.

- 6.14 In response, the Ministry noted that the Act allows the Department to identify sectors to levy in addition to the current four.
- 6.15 The Ministry and submitters canvassed this area thoroughly. The Commission notes that collectively, the “other” category is reasonably significant at around 10% of presentations, but this sum is comprised of multiple small sectors rather than one easily levyable sector.
- 6.16 The Commission also notes that in April 2015, the Minister for Racing announced the formation of an Offshore Sports and Betting Working Group. This Working Group reported back to the Minister only a matter of days before the Commission’s consultation meeting with a number of recommendations. The Commission understands that one outcome of this may be that some offshore gambling providers could be required to contribute to the problem gambling levy. If so, this would reduce the “other” (non-levyable) presentations. The Commission will consider this with interest during future reviews.
- 6.17 The Commission thanks Mr Nahna (from the Racing Board) for his presentation on this matter at the consultation meeting.

7. COMPONENT C – MINISTRY OF HEALTH FUNDING REQUIREMENT

7.1 Component C comprises the Ministry’s funding requirement for the 2016-2019 period. The Ministry seeks \$55.339 million, which is almost identical to the Ministry’s funding requirement for the current (2013-16) period. The annual sums sought by the Ministry for each year of the 3 year period are set out below.

	\$m (GST excl)
2016/17	18.397
2017/18	18.511
2018/19	18.431
Total (\$m)	55.339

7.2 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	2016/17 (\$m)	2017/18 (\$m)	2018/19 (\$m)	Total (\$m)
Public health services	6.770	6.850	6.770	20.390
Intervention services	8.461	8.461	8.461	25.383
Research contracts	2.209	2.210	2.210	6.629
Ministry's operating costs	0.957	0.990	0.990	2.937
Total	18.397	18.511	18.431	55.339

Source: Ministry of Health 2015

7.3 Unlike previous consultation meetings, there was very little comment in relation to the Ministry's proposed funding requirement. Mr True queried whether the Ministry is investing sufficiently in new technology, such as smart-phone apps or facial recognition as a means of addressing problem gambling in New Zealand. He was of the view that additional funds could be made available to address this. Mr Cheer questioned the efficacy of the Ministry's overall spending to date, while in a written submission to the Commission, Mr Sullivan (from Abacus Counseling, Training and Supervision Limited) submitted that additional funds could be provided to assist better the family members and others who are adversely affected by a person's gambling. He also submitted that additional funds could be provided to address better the issue of online gambling.

7.4 The Commission considers the sum sought by the Ministry to be appropriate. In reaching this conclusion, the Commission noted Synergia's advice, as follows:

As with previous years, the funding requirement has been calculated using detailed 'bottom up' models which identifies the resource required to deliver the required services, with adjustments made for a range of factors, including population, availability of gambling opportunities, gambling expenditure, presentations and levels of deprivation. The model identifies the required FTEs by service type and also optimises the geographical and ethnic split across all 23 providers.

In addition, the Ministry has determined the service requirements based on the Gambling Harm Needs Assessment undertaken by the Allen and Clarke in 2015 and the Ministry's research agenda.

Consistent with the earlier reports to the Gambling Commission, the method used to establish the funding level appears well founded and valid.

There are clearly gains to be shown from the investment in gambling harm prevention and minimization, as discussed in previous sections. Nevertheless, the scale of the problem remains significant and requires a multi-faceted approach.

We can see that there has been a steady reduction in overall gambling since 2006/07 and the prevalence of problem gambling has remained steady, despite substantial population growth since the late 1990s (from 3.8 million people in 1999 to 4.5 million in 2014).

Furthermore, total presentation data indicates that there has been an increase in Māori and Pacific using gambling harm prevention services. ...

7.5 The Commission notes Synergia's advice that there is not a strong case for a funding reduction, particularly as expenditure and presentations continue to rise. Indeed, Synergia notes that in real terms, the funding requirement represents an 11% reduction over the last six years. Synergia queries the extent to which these cuts can be absorbed beyond the current funding cycle while maintaining the same service levels.

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

Public health

7.7 The Ministry is proposing to spend \$20.39 million on public health in the 2016-2019 period, which is similar to the current 2013-2016 period. The individual service lines are also very similar to those for the current period.

7.8 As noted above, the Act requires the Ministry to develop an integrated problem gambling strategy focused on public health. The Commission is of the view that the Ministry's proposal does this. This is consistent with purpose 3(b) of the Act; namely "to prevent and minimise the harm caused by gambling, including problem gambling."

7.9 The Commission also supports the Ministry's funding of primary prevention services directed at New Zealand's Māori, Pacific and Asian populations.

Intervention services

7.10 The Ministry's budget for Intervention Services for the next levy period is largely unchanged at \$25.383 million.

7.11 The Commission notes that the Gambling Helpline, which was once a standalone service, now operates as part of an integrated telehealth service. The current Helpline budget of \$1.1 million per annum helps fund this integrated service.

7.12 The Commission supports the Ministry's proposal to ensure that each gambling harm practitioner will be registered appropriately under the Health Practitioners Competence Assurance Act 2003; this issue generated debate at the Commission's 2012 meeting.

7.13 Lisa Campbell (from the Salvation Army) noted that there are difficulties with retaining the current level of funding as it fails to take into account any cost pressures when delivering intervention services, such as salary increases or training requirements. Ms Campbell's observation is consistent with Synergia's observation above. The Commission intends to revisit this issue at the next levy review.

Research

7.14 The Ministry's indicative budget for research is \$6.629 million for the 2016-19 period; again, a similar sum to the current levy period.

7.15 The Commission considers that the funding level for research is appropriate, but noted Synergia's advice as follows:

Understanding the causal drivers underpinning gambling harm should be a top research priority. Much of the research, referred to in the Plan and in the Needs Analysis conducted by Allen & Clarke, highlights the complex mix of interdependent variables that underpin gambling harm. Whilst there are longitudinal studies that will provide clarity, there exists a great deal of existing data and knowledge, which could be utilised to explore the web of causal factors that drive gambling and gambling harm. The Ministry should commission studies that are able to shed greater light on key drivers of gambling harm if they are to give further momentum to reducing negative impacts of gambling, both in the general population level and in key at-risk groups.

7.16 This was similar to a submission made by Mr Wemyss (from NZRB).

7.17 As noted above, Mr True queried the sum available for new technology. The Ministry responded by stating that it has historically had around \$1-1.5m available for provider initiated activity and that it conducts an open request for proposals. It therefore appears that some funding is available to assist with new technological approaches to problem gambling in New Zealand. The Commission encourages Mr True, and others, to explore this with the Ministry.

Ministry's operating costs

7.18 The Ministry's proposed budget for 2016-2019 is \$2.937 million, the same as for the current levy period (which in itself was the same as for the previous levy period). This sum appears reasonable to the Commission.

8. WEIGHTINGS

8.1 The weighting variables, and their application to Components A and B, are fundamental to the formula and determining the share of levy payable by each of the four sectors. 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, a matter which determines the extent to which the balance should be struck between sectors paying according to their gambling expenditure, or according to the number of people presenting for treatment attributable to each sector.

- 8.2 The Ministry has previously proposed a 30:70 weighting but proposes a 20:80 weighting for the 2016-19 levy period on the basis that the change in the pattern of presentations from 2012/13 onwards means that the arguments in favour of a 30:70 weighting are no longer as strong. The Ministry suggests that any weighting ranging from 30:70 to 05:95 would be reasonable.
- 8.3 The Commission is of the overall view that a 20:80 weighting would be appropriate for the next levy period. In reaching this decision, the Commission comments as follows:
- (a) The Act's definition of "harm" is very broad. Presentations represent only a small subset of gambling harm and one that tends to be at the acute end of the continuum. Those who seek help represent only a small subset of those who experience harm. Presentations data comprise a head count of those who received a full intervention of some kind in the period, without regard to the degree of harm suffered or the number of sessions provided to treat that harm. Too heavy a weighting on presentations fails to recognise that presentations are not a sound proxy for the harm associated with gambling.
 - (b) The Act specifies that in addition to intervention services, the Strategy must include measures to promote public health, independent scientific research associated with gambling and evaluation. A gambling sector's share of presentations is not necessarily an appropriate indicator for determining the share that a sector should bear of these costs. The weighting between expenditure and presentations should spread the burden fairly across the four levy paying sectors.
 - (c) Increasing the weighting on expenditure is consistent with the public health approach required by the Act. A weighting of either 5:95 or 10:90 is inconsistent with a public health approach.
 - (d) As the NCGM sector generates the most expenditure and presentations, it will contribute the most to the cost of the strategy at a range of weightings.
 - (e) The NCGM sector's share of overall expenditure and presentations is declining, while expenditure and presentations are increasing for the three other sectors subject to the levy. However, the effect of the new Component R means that only the reduction in expected expenditure and not the reduction in presentations is taken account of in hindsight readjustment.
- 8.4 Unlike the Ministry, the Commission can see no justification for either a 5:95 or 10:90 weighting. Synergia addresses this at page 33 of its report, which the Commission endorses. Synergia's comments are as follows:

- 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.
- ...
- A weighting formula that increases the weight on expenditure is consistent with the public health approach of the Gambling Strategy and Service Plan. A 20:80 or 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 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. As the Ministry point out, in their review of the research, this can occur through 'gambling-related neglect', 'poverty', 'impacts of arguments', anger and violence, and 'a higher risk of withdrawal, depression, anger and suicidality'.
- A substantial part of the gambling levy investment (around 37%) is in public health strategies that build resilience in the broader population to problem gambling, supports safe gambling environments and supportive communities; a larger expenditure component would better reflect this aspect of how funds generated through the 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.

Impact of weighting changes

8.5 Changing the weightings from the current 10:90 to the proposed 20:80 does not affect the overall sum sought by the Ministry, but does reduce the burden of the NCGM sector, while increasing the burden on the other sectors. The Commission considers this outcome to be fair for the reasons set out above.

8.6 The effects of the different weightings (including 20:80) on each sector are shown in the tables below.

Levy rate 30:70

	NCGM	Casinos	NZRB	Lotteries
Sector levy rates %	1.23	0.90	0.57	0.48
Expected levy \$(m)	29.977	14.543	5.643	6.169

Levy rate 20:80

	NCGM	Casinos	NZRB	Lotteries
Sector levy rates %	1.26	0.89	0.54	0.44
Expected levy \$(m)	30.708	14.381	5.346	5.655

Levy rate 10:90

	NCGM	Casinos	NZRB	Lotteries
Sector levy rates %	1.30	0.87	0.52	0.40
Expected levy \$(m)	31.683	14.058	5.148	5.141

Levy rate 5:95

	NCGM	Casinos	NZRB	Lotteries
Sector levy rates %	1.32	0.87	0.50	0.38
Expected levy \$(m)	32.170	14.058	4.950	4.884

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

9.1 Section 107 of the Gambling Amendment Act 2015 introduced a new component into the levy formula, Component R. Component R is the estimated under-recovery or over-recovery of levy from a sector in the previous levy periods. Prior to the 2015 amendment, under or over-recovery by any sector was shared by all sectors.

9.2 The Act does not make clear how R should be applied. It does not define “under-recovery” or “over-recovery”. It does not define “levy” – 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. The lack of clarity and guidance in the legislative language resulted in considerable debate before the Commission on the correct application of R, as discussed below.

9.3 The Ministry set out its approach to the application of R at page 53 of the Service Plan. On its approach, it assesses over-recovery and under-recovery by comparison to a figured reached by adjusting for what a sector was expected to contribute in a period when the levy was set and for what the Ministry in fact spent in that levy period. The Ministry provided additional explanation at the Commission’s consultation meeting, as follows:

In the simplest explanation of what under-recovery or over-recovery means and the interpretation of it that the Ministry and DIA considers is that it means when you come to look at under-recovery, how much was each sector expected to pay in levy and how much did they pay in levy. And that's the interpretation that the Ministry's adopted. The only thing that we are recalculating is how much the Ministry has actually spent, and that's to give the sectors, each sector, the benefit of any Ministry under-expenditure.

9.4 On the Ministry’s approach, there were under-recoveries from the NCGM and casino sectors, and over-recoveries for the NZRB and Lotteries sectors, as follows:

Sector	\$m (GST excl)
NCGM	-1.308
Casinos	-1.567
NZRB	1.364
Lotteries	0.648

Source: Ministry of Health 2015

9.5 Component R generated robust debate at the Commission’s meeting, with Mr Cheer, Mr True and Mr Smulders all submitting that the Ministry’s approach is incorrect.

9.6 Mr Cheer was of the view that the Ministry's approach is unlawful, that the resulting amounts have been incorrectly assessed and that the overall outcome of adjusting for expenditure but not presentations with the benefit of hindsight is unfair. Mr Cheer also submitted that the Ministry's approach results in the legislation having a retrospective effect, contrary to section 7 of the Interpretations Act.

9.7 Messrs Cheer, True and Smulders submitted that the correct and fairest approach to applying Component R would be to use actual historical figures, including the Component B presentation figures, for calculating what each sector should have paid during the previous levy periods. In support of this submission, Mr Cheer referred to the levy formula at section 320 which suggests that actual presentations should be used for Component B, rather than estimations. He further asked "... why have a remedial figure if it only addresses one variable?"

9.8 Mr Smulders submitted as follows:

And it is an adjustment at the end of the period taking into account what happened over that period. The levy is not going to accurately forecast everything that happened. R is an adjustment. And that adjustment needs to be done on the data that you've now got which you didn't have before. Fine to put the estimates in, yes, levy all of that, but the R is an end of year adjustment, the same as my accountants do for me – or my staff. You do make the adjustment on now solid data that you didn't have before. And that includes, in Woodlands Trust view, presentation rates.

9.9 Mr True submitted that the language of the Act is sufficiently broad to allow either the approach advanced by the Ministry or the approach that he advanced, and suggested that his approach reflected the fairest outcome.

9.10 In response, the Ministry disagreed. It stated as follows:

When you work through section 318 of the Act it's a sequential process. First this is done, then this is done, then this is done. When you get to 318(1)(e), which is about estimating what R is, there's no reference in there to say use the formula. But when you get down to estimating the levy rates, which is a couple of steps further on, Parliament has specifically said use this formula to estimate the levy rates. Had Parliament intended the kind of partial recalculation that the non-casino gaming machine sector is suggesting, then up in 318(1)(e) it would have said use the actual figures for A and B to recalculate it.

So the first point we would make is that it's sequential and Parliament hasn't said use the formula there, but it has said further on in the process use the formula.

The second thing we'd say is that the item that has been left out of the formula by what the non-casino gaming machine sector is proposing is W1 and W2. If we put in the actuals for expenditure and the actuals for presentation, the one thing we can't do is go back to each of the sets of Ministers over the last four levy periods and say, look, if you'd been confronted with this set of numbers rather than that set of numbers, would you still have chosen the weighting that you did? So effectively it renders nugatory the sort of option for the Ministers to put in W1 and W2. Because it's saying we'll recalculate everything else but we won't change W1 and W2.

- 9.11 The Commission fully appreciates the submissions advanced by Messrs Cheer, True and Smulders, and accepts the submission that the statutory language and context would permit a number of different interpretations, including the one that they advanced. To some extent, any hindsight re-assessment of contribution will involve reconsideration of the values of the components used in the formula that guided the setting of a past levy. The Ministry’s approach does so by adjusting for departures from the assumed prior values of C and D. Ultimately, however, the Commission has decided to recommend the approach advocated by the Ministry.
- 9.12 In reaching this view, the Commission is cognisant that, in its 2009 report to Ministers, it expressed views on the proposed amendment to include +/- R into the levy formula that were similar to those now expressed by Messrs Cheer, True and Smulders, including as to what would be the most equitable approach to the assessment of over-recovery or under-recovery. However, as the Amendment Act was passed following receipt of its report containing the expression of those views, the Commission has formed the view that the approach advanced by the Ministry is the most likely to reflect legislative intent.
- 9.13 The Commission was not persuaded by Mr Cheer’s objections based on retrospectivity. The formula will be applied prospectively to a new levy period taking effect from 1 July 2016. Although it will take into account information from periods prior to the enactment of the legislation, this will be for the purpose of determining a prospective levy.
- 9.14 On the Ministry’s approach, there were under-recoveries from the NCGM and casino sectors, and over-recoveries for the NZRB and Lotteries sectors. Together, there was a net under-recovery of \$863,000, as follows:

Sector	\$m (GST excl)
NCGM	-1.308
Casinos	-1.567
NZRB	1.364
Lotteries	0.648
Total	-0.863

- 9.15 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. Applying the net under-recovery equally across the three years increases the sum sought by \$287,667. Adding this sum to the annual sums sought to be appropriated provides as follows:

Year	2016/17	2017/18	2018/19
Total (\$m) (GST excl)	18.685	18.799	18.719

10. COMPONENT D – FORECAST PLAYER EXPENDITURE

- 10.1 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 findings through to the Ministry.
- 10.2 The Department has forecast the following expenditure for each of the four sectors in the table below.

Forecast player expenditure by sector, 2016/17 to 2018/19

Forecast expenditure	NCGM	Casinos	NZRB	Lotteries
2016/2017 (\$m)	812.371	532.390	326.696	416.491
2017/2018 (\$m)	812.371	537.714	329.963	428.986
2018/2019 (\$m)	812.371	545.780	333.262	439.710

Source: Ministry of Health 2015

- 10.3 The Department's rationale for these forecasts is set out in full at pages 55-57 of the Service Plan. It is forecasting expenditure slightly above current levels for the NCGM sector, steady growth in the NZRB and casinos sector, and less expenditure than current levels in the Lotteries sector.
- 10.4 The Department's forecasts generated only minor debate at the Commission's meeting, with Mr Cheer submitting that the forecasts for the NCGM sector are too high given the steady decline in gaming machine numbers. Mr Cheer did not accept the Department's rationale that NCGM gamblers will simply relocate their gambling (if their venue closed); he stated that there is a clear correlation between infrastructure and revenue.
- 10.5 As the Commission has noted in previous reports to Ministers, forecasting is a very difficult exercise to undertake with accuracy. While the Commission noted Mr Cheer's submission, it considers the Department's rationale for the forecasts to be soundly based, and it has no basis to disagree.

11. OTHER ISSUE – PUBS/CLUBS SPLIT

- 11.1 In previous reports to Ministers, the Commission has commented on the possibility of separating the non-commercial NCGM sector from the commercial NCGM sector for levy purposes. The Ministry addressed this issue in detail on pages 45-47 of the Service Plan, concluding that no basis exists to support such a separation.
- 11.2 Clubs NZ Inc provided a written submission to the Ministry as part of the Ministry's consultation, but did not attend the Commission's consultation meeting.

11.3 The Commission concurs with the Ministry; namely that there is no compelling reason to split the sector.

12. RECOMMENDATIONS

12.1 Finally, the Commission notes a number of recommendations by Synergia in relation to “other issues” in the Service Plan. Those recommendations are as follows:

- Additional gambling products at the SkyCity Casino could have a substantial impact on the gambling environment in Auckland. Monitoring and evaluating these impacts should be an explicit part of the Service Plan's research agenda and funding.
- The service plan and the research it refers to comment on the impact of gambling on children, yet there is little in the Plan that says how this impact is going to be assessed or minimized. The importance of focusing on the needs of children was emphasized in the Vulnerable Children's Act 2014 and needs to be given a high profile in the plan.
- It is essential that the focus on meeting the needs of high needs populations (such as Māori, Pacific and Asian populations) is maintained, including developing tailored prevention initiatives, and building further on the growing responsiveness of treatment services.
- The contribution of other gambling sectors (including overseas-based internet gambling, and New Zealand based options – including free products) to both expenditure and harm should continue to be monitored, and assessed for the desirability and feasibility of their incorporation into gambling levy calculations.

12.2 The Commission endorses these recommendations.

13. CONCLUSION

13.1 The Commission thanks the Minister for this opportunity to review and comment on the proposed levy and rates, and is available to answer any questions he may have in relation to this Report.



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