

## In Confidence

Office of the Minister of Internal Affairs

COVID-19 Ministerial Group

## Policy proposal to mitigate the impact of COVID-19 on Class 3 operators by amending the Gambling Act 2003

### Proposal

1. Lotteries conducted by community organisations such as the Heart Foundation and Coastguard New Zealand provide vital income for their continued operation and ongoing services to communities. The operation of such lotteries is regulated under the Gambling Act 2003 (the Act), which places restrictions on remote interactive gambling. This means organisations must operate these lotteries in person or by post and cannot operate the lotteries electronically.
2. I am proposing to amend the Act to allow the three main existing licensed community organisations (Class 3 operators) to sell lottery tickets by electronic means. These existing Class 3 operators include <sup>9(2)(f)(iv)</sup> [REDACTED]. Between them they run 14 lotteries per year. This will be for a period of 18 months to enable them to continue to operate lotteries as a means of fundraising in light of COVID-19 Alert level restrictions, which are, and will continue to place limitations on in person sales and the processing of postal lotteries.
3. The proposal is limited to the three main providers named above. It does not apply to any other organisation. The other safeguards that have been built into the proposal is that this restriction applies only to lotteries – not housie or instant scratch cards, and there is no increase in advertising from what is allowed under these organisation's current licence conditions.

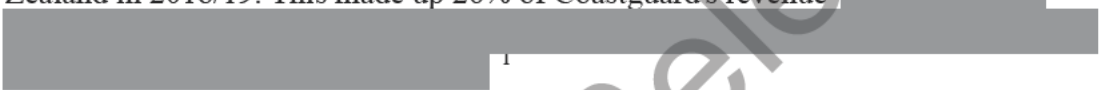
### Relation to government priorities

4. This proposal is in response to the COVID-19 pandemic. It aims to assist in alleviating the negative impacts in maintaining fundraising income experienced by these Class 3 operators in periods where Alert level restrictions apply.

### Executive Summary

5. These Class 3 operators in New Zealand run lotteries as a means of fundraising for their operations to support members of the community. These lotteries cannot be run online or by phone due to restrictions under Section 9 of the Act. This means they are limited to selling lottery tickets via post or in person and receiving payment by cash or cheque.
6. While these limitations have been challenging for these Class 3 operators for a long time, the COVID-19 Alert Level four lockdown is adding difficulty in maintaining

fundraising levels as street appeals, another channel for receiving donations, have stopped. Further, cheques, the main method of payment used by purchasers, are being phased out, which makes payment during Alert Level four even more difficult as Class 3 operators cannot take payments electronically.

7. There is a risk that prolonged restrictions under the alert levels, imposed in response to the COVID-19 pandemic, will further limit the fundraising revenue of these Class 3 operators through the gambling system. I propose amending the Act to remove some of the restrictions on these Class 3 operators selling their lottery tickets electronically or by digital means for a period of 18 months until the wider online gambling review is completed. This will enable these Class 3 operators to have an avenue of selling lottery tickets and allow them to continue supporting themselves, and members of the community that rely on their services.
8. Lottery ticket sales generate a large amount of revenue that is used to fund their services. For the year ended 2019, lottery ticket sales generated \$10 351 000 for the Heart Foundation. This figure made up 41.2% of the Heart Foundation's revenue for that year. Similarly, lottery ticket sales generated \$3,276,000 for Coastguard New Zealand in 2018/19. This made up 26% of Coastguard's revenue <sup>9(2)(ba)(i)</sup>  

9. While there are some risks associated with this proposal, I do not consider these outweigh the benefits associated with these Class 3 operators being able to support themselves financially and passing this on to New Zealanders through support provided by these community organisations. Further, the Ministry of Health has assessed these Class 3 lotteries as low risk in terms of gambling harm.

## Background

10. These Class 3 operators that run lotteries for fundraising purposes are prohibited under Section 9 of the Act, to conduct remote interactive gambling. This means they cannot run fundraising lotteries by any interaction through a communication device, including online through web-based payments, electronically by email, or over the phone.
11. Prior to COVID-19, these Class 3 operators were already experiencing fundraising difficulties due to the:
  1. restrictions placed on them by the Act, by not being able to sell tickets by electronic means; and
  2. phasing out of cheques, which is the only real payment method left for these operators to receive money and comply with the Act.
12. These difficulties are now exacerbated by the COVID-19 Alert Level four lockdown, because they are not able to run street appeals, have people selling their tickets in person, or have people processing postal ticket purchases. This is affecting their financial viability.

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<sup>1</sup> These figures come from the annual statements of the respective organisations available on their website or through the annual statements filed with Charities Services.

13. Given the necessary physical restrictions still needed at lower Alert Levels, these difficulties are likely to continue to affect the ability of these Class 3 operators to fundraise using lotteries as we move down from Alert Level 4. This is because there will be limited volunteer numbers (a large number of volunteers are senior and would be advised to remain at home), cancellations of and limitations around public gatherings, and closure of public venues which will continue to impact the ability for these organisations to undertake face-to-face sales and street appeals for their lotteries.
14. In August and September 2019, as part of the online gambling review, the Department of Internal Affairs (the Department) consulted publicly on whether Class 3 operators should be able to run their lotteries online or via phone. <sup>9(2)(f)(iv)</sup>  
[REDACTED]
15. Policy work to develop a regulatory system for online gambling has begun, with the current timeline for legislation coming into force in 2022. From my correspondence and discussions with some Class 3 operators, 2022 is too far away for them to remain financially viable. COVID-19 has exacerbated the financial difficulties Class 3 operators are experiencing and, without the legislative amendment proposed in this paper, it is likely Class 3 operators will not have the funding they need to continue their crucial work. This could ultimately fall back on the Crown to consider shortfalls for these vital services, in the absence of the proposal I am seeking.
16. Community organisations will lose a lot of funding as a result of COVID-19, in part because there will be a significant decline in community funding as a result of the decrease in gambling during the lockdown. During and after lockdown, we need our charitable sector to be ready to support New Zealanders. It is crucial they can maintain their existing funding streams to provide this support.
17. There are some risks associated with this proposal. However, I do not consider these outweigh the benefits associated with these Class 3 operators being able to support themselves by generating fundraising revenue and passing this on to New Zealanders through support provided by these community organisations.
18. Subject to your approval, this amendment has been accepted for inclusion in the COVID 19 Omnibus Bill by the Department of the Prime Minister and Cabinet.

#### Analysis

19. I propose amending the Act to remove the prohibition for the next 18 months on remote interactive gambling for existing Class 3 operators <sup>9(2)(f)(iv)</sup>  
[REDACTED]),  
licensed to undertake lotteries in the year prior to the amendment coming into force, to the extent they can:
  1. send and receive order forms for their lotteries by email or by phone;
  2. take payments online or by phone; and
  3. send tickets by email.

**Associated risks and mitigation**

20. There are potential risks associated with this change. These are outlined below, though it is important to recognise that the Ministry of Health has assessed this type of lottery as low risk in terms of gambling harm. This assessment is based on the current frequency of lottery draws, which is <sup>9(2)(ba)(i)</sup> [REDACTED].
21. This proposed amendment is a fast-tracked amendment that was already being developed as part of the online gambling review. The 18 months that this proposal will be in force, is to allow time for the wider online gambling review to be completed. Limiting this proposal to these Class 3 operators licensed to under take lotteries in the previous year, will mean we can manage any risks associated with the amendment. My intention is not to grow this class of gambling, but to assist existing organisations maintain their current fundraising revenue. Making the amendment timebound (i.e. tied to certain Alert levels), would fail to give these Class 3 operators, and in turn the people reliant on their services, a sense of certainty.
22. I also intend to ensure that the current restrictions around promotion of the lottery are adhered to. Therefore, I am not proposing to allow these operators to advertise more widely than they are currently permitted to under existing licensing conditions.

*Potential for increase in gambling*

23. It is not expected that this proposal will substantially increase ticket sales compared to sales numbers before Alert Level four was implemented. This proposal is a mechanism for these Class 3 operators to maintain the sales they had prior to the COVID-19 situation.

*This proposal will only apply to existing Class 3 operators running lotteries*

24. As this proposal is about these organisation's survival and ongoing financial viability in the face of COVID-19, I am proposing that only <sup>9(2)(f)(iv)</sup> [REDACTED] will be able to sell tickets online or by phone. I do not envisage this proposal being used as a mechanism for substantial expansion of this type of gambling.

*Harm associated with Class 3 lotteries running by phone and email*

25. Large-scale and high-frequency lotteries could pose an increased risk for harm. The Act does not currently set a limit for the number of lotteries an organisation can run. However, these are not high frequency lotteries. For example, <sup>9(2)(ba)(i)</sup> [REDACTED]. This means there is no element of continuous gambling, where gamblers are immediately able to re-invest their winnings, which we know to be a particularly harmful form of gambling. Further, the proposed amendment is not intended as a mechanism to extend the number of draws these organisations currently run. The Department will provide guidance regarding draw frequency to these Class 3 operators.

26. The Act provides that the types of gambling currently allowed under Class 3 are lotteries, scratch cards and housie. Scratch cards and housie have higher associated harm potential than lotteries due to their high frequency. Even Lotto has a higher frequency with its twice-weekly draws than organisations mentioned above. This proposal applies only to the three named organisations, allowing operators to use more effective means to take orders and payments for their lottery tickets.
27. Additional disclosure requirements will be placed on these Class 3 operators in respect of any lotteries undertaken using electronic or digital means as part of their licensing conditions, to ensure appropriate harm minimisation requirements are in place. This power is already available to the regulator under Section 38 of the Act and does not require further legislative change.

*Advertising will not be extended*

28. Currently, these Class 3 operators can promote when their lotteries are open, and tickets are available. To mitigate the risk that may arise from wide spread advertising to promote email and phone ticket sales, I am not proposing to allow these operators to advertise more widely than they are currently permitted under existing licensing conditions.

*Anti-money laundering*

29. Anti-money laundering requirements are not applicable to Class 3 operators. This is because participation in gambling is excluded from the definition of a transaction in the Anti-Money Laundering and Countering Financing of Terrorism Act 2009. Participants in lotteries directly buy a ticket, they do not have accounts with the operators in which they are able to deposit large amounts of money.
30. The types of gambling with lower prizes (i.e. lower than the \$5,000 threshold for Class 3) pose a higher risk for money laundering. This is the case for Class 4 pokie machines. Further, the types of prizes offered by Class 3 lotteries, for example houses and cars, are less suitable assets for money laundering purposes.

**Alternative options**

31. Given the blanket restriction on online gambling operations in the Act, there are no immediate operational or non-regulatory means of addressing the issue directly. Listed below are non-legislative options that are available to these organisations as an additional funding avenue, that may help alleviate some of the difficulties these Class 3 operators are facing due to COVID-19 restrictions.

*Direct donations*

32. The Department considers there is potential for these Class 3 operators to encourage their supporters to make direct donations on their websites. As this alternative form of fundraising is not connected to the operation of gambling, it is not restricted under the Act and can be undertaken online.
33. While this is an available option that these Class 3 operators are likely to promote, risk remains that the impact of COVID-19 on peoples' financial ability to donate will worsen the chances of the continuing financial viability for these operators. Enabling

lotteries to continue, offers a viable and practical alternative means of fundraising through the COVID-19 crisis. It also enables these Class 3 operators to continue to maintain existing revenue streams they would have had if not for COVID-19 restrictions. By maintaining these funds, they can support members of the community that rely on their services.

### **Financial Implications**

34. There are no financial implications arising from this proposal.

### **Legislative Implications**

35. This proposal will be given effect as part of the COVID-19 Omnibus Bill.

### **Impact Analysis**

#### **Regulatory Impact Statement**

36. The Treasury has determined that this is a direct COVID-19 response and has suspended the RIA requirements in accordance with Cabinet decision (CAB-20-MIN-0138). The Treasury has worked with the Department to ensure appropriate available analysis is included in this paper.

#### **Climate Implications of Policy Assessment**

37. There are no climate implications arising from this proposal.

#### **Population Implications**

38. Due to consultation limitations, it is unknown what, if any, implications there may be on population groups such as Māori or Pasifika. Te Puni Kokiri did not raise any issues in relation to Māori.

#### **Human Rights**

39. This proposal does not have any human rights or disability implications.

#### **Consultation**

40. The Department of the Prime Minister and Cabinet was consulted and agreed the amendment be accepted for inclusion in the COVID-19 Omnibus Bill.
41. The Treasury and the Ministry of Health have been consulted on this paper. Due to the rapidly changing situation with COVID-19 and the potential for a related Omnibus Bill, there has been little opportunity for wider consultation on the paper. However, as set out below, this issue was explicitly consulted on during the online gambling review in July-September 2019.
42. 9(2)(f)(i) have raised concerns directly with me since we moved into the Alert Level 4 lockdown. They are concerned that ongoing COVID-19 restrictions that prevent them from selling tickets in person, will result in significantly reduced funding.



43. Prior to the COVID-19 situation, the issues facing these Class 3 operators were included in the public discussion document "Online Gambling in New Zealand" released in late July 2019. The discussion document stated that the Government supported Class 3 operators being able to offer their gambling products by email and phone. Officials also held targeted consultation meetings on the discussion document with community organisations during the eight-week consultation period.

44. 9(2)(f)(iv) [REDACTED]  
[REDACTED]  
e. This proposal will not apply to all Class 3 operators, only 9(2)(f)(iv) [REDACTED], for a period of 18 months.

### Communications

45. I intend to release a press statement and communicate directly with the named Class 3 operators about these changes.

### Proactive Release

46. I intend to proactively release this Cabinet paper subject to any redactions consistent with the Official Information Act 1982.

### Recommendations

47. The Minister of Internal Affairs recommends that the COVID-19 Ministerial Committee:
1. **agreed** to amend the Gambling Act 2003 to allow 9(2)(f)(iv) [REDACTED] to operate remote interactive gambling but only to the extent they can:
    - 1.1 send and receive order forms for lotteries by email or by phone;
    - 1.2 take payments online or by phone; and
    - 1.3 send tickets by email;
  2. **noted** that this is a fast-tracked amendment as part of the current online gambling review;
  3. **noted that:**
    - 3.1 the Class 3 operators named in paragraph 1 above (the named Class 3 operators) can only sell lottery tickets online or by phone;
    - 3.2 other types of Class 3 gambling, such as housie and scratch cards, will be excluded;
    - 3.3 the amendment will apply only for a period of 18 months;
  4. **agreed** that the named Class 3 operators will not be allowed to advertise more widely than they are currently permitted to under existing licensing conditions;

5. **noted** that additional requirements will be placed on the named Class 3 operators in as part of their licensing conditions, to ensure appropriate harm minimisation requirements are in place;
6. **noted** that there is only a low risk associated with this type of gambling, and that this is because of the lack of continuous play that is known to be harmful;
7. **noted** that significant public consultation was undertaken on this issue last year as part of the wider online gambling review, and that there was overwhelming support for this change to be implemented.

Authorised for lodgement

Hon Tracey Martin

Minister for Internal Affairs

Proactively Released