

Online Casino Gambling Bill

Submission of the New Zealand Law Society Te Kāhui
Ture o Aotearoa

15 August 2025

1 Introduction

- 1.1 The New Zealand Law Society Te Kāhui Ture o Aotearoa (**Law Society**) welcomes the opportunity to comment on the Online Casino Gambling Bill (**Bill**), which seeks to establish a licensing regime for online casino gambling which will protect consumers and prevent or minimise harm from online casino gambling.
- 1.2 This submission has been prepared with input from the Law Society's Criminal Law and Public Law Committees.¹ The Law Society supports the Bill's intention to protect consumers and prevent or minimise harm arising from online casino gambling.
- 1.3 The Law Society recommends some amendments to improve clarity and address practical workability concerns. Where possible, we have suggested alternative solutions to address these concerns.
- 1.4 We do not wish to be heard in relation to this submission.

2 Extraterritoriality: clauses 4 and 66

- 2.1 Clause 4(5) of the Bill provides that the offence in section 66 has extraterritorial application:

4 Territorial application

- (5) The offence in **section 66** applies to a person who engages in the conduct described in that section—

- (a) regardless of whether the person is in or outside New Zealand; and
- (b) regardless of whether the person engages in any of the conduct in or outside New Zealand.

- 2.2 The principle of asserting extraterritorial application is not new and is not objectionable in itself. However, the Law Society considers that where extraterritorial application is asserted in respect of an offence provision, that should be made as clear as possible in the legislation.
- 2.3 We suggest the extraterritorial element is also incorporated in clause 66 itself, consistent with the approach taken in other legislation. For example, section 105A of the Crimes Act 1961 provides:

Every official is liable to imprisonment for a term not exceeding 7 years who, whether within New Zealand or elsewhere, corruptly uses or discloses any information, acquired by him or her in his or her official capacity, to obtain, directly or indirectly, an advantage or a pecuniary gain for himself or herself or any other person.

- 2.4 Clause 66 could be re-worded as follows:

66 Online casino gambling on behalf of person under 18 years

- (1) A person commits an offence if the person—

¹ More about these Committees can be found on the Law Society's website: www.lawsociety.org.nz/branches-sections-and-groups/law-reform-committees/.

- (a) participates in online casino gambling, whether within New Zealand or elsewhere, on behalf of a person in New Zealand who is under the age of 18; and
 - (b) knows, or is reckless as to whether, that person is under the age of 18.
- (2) A person who commits an offence against **subsection (1)** is liable on conviction to a fine not exceeding \$10,000.

3 Refusal to grant licence: clauses 21 and 35

- 3.1 Clauses 21 and 35 of the Bill provide for an applicant's right to appeal a decision made by the Secretary for Internal Affairs (**Secretary**) to refuse to grant a licence.
- 3.2 It is unclear what would happen if an unsuccessful applicant were to appeal such a decision, and this decision is subsequently overturned on appeal, but the Secretary is then unable to issue a licence to the applicant on the basis that doing so would result in more than 15 licences being issued. This would mean that, while the appellant was successful in their appeal (and likely incurred costs in achieving that outcome), the Court's decision is ultimately nugatory.
- 3.3 We invite the select committee to seek advice from officials on this point, and to make necessary changes to the Bill to avoid unsatisfactory outcomes for unsuccessful applicants who succeed on appeal.

4 Review process: clauses 32 to 34

- 4.1 Clause 32 to 34 of the Bill provides for the review of decisions made by the Secretary under clause 23 to impose or amend conditions on licences.
- 4.2 It is not clear who can be appointed as a reviewer: clause 33(1)(b) simply states this must be a person other than the person who made the original decision. This could be problematic from a practical perspective if the reviewer is also an employee of the Department of Internal Affairs, as they would be required to review decisions made by the Secretary: i.e., a person higher up their organisational structure.
- 4.3 The Law Society recommends that the Bill be amended to provide for the appointment of external, independent, properly qualified reviewers to address this issue, and ensure that there is no actual or apparent bias in the review process. An example might be the appointment process for Development Contribution Commissioners under the Local Government Act 2002.

5 Limitation period for charges: clause 67

- 5.1 Clause 67 provides that, despite anything to the contrary in section 25 of the Criminal Procedure Act 2011, the limitation period in respect of an offence under clause 66 ends on the date two years after the matter giving rise to the charge "first became known, or should have become known, to the Secretary". The effect of the section is to introduce a limitation period based on reasonable discoverability.
- 5.2 Limitation periods of this sort for criminal offences are unusual in New Zealand. The reasons for this are:

- (a) practicality, because the prosecutor will have to consider complex limitation issues; and
- (b) fairness to defendants, who will not know nor easily discover material that shows when the Secretary either knew, or ought to have known, of the matter giving rise to the charge.

5.3 A test that requires the defendant to ascertain when the Secretary either did, or should have, discovered the alleged offending before they can challenge the charging document as being out of time is both unfair to defendants and will cause considerable unnecessary administrative complexity and delay.

5.4 The Law Society recommends that clause 67 be amended to simply stipulate, for example, a two-year limitation period from the date of the alleged offence. That is twice the period that would usually apply to an offence with the proposed maximum penalty, under section 25(3)(b) of the Criminal Procedure Act 2011. There does not appear to be any good reason for adopting a different approach here.

6 Other drafting matters

6.1 We also make the following comments on some minor drafting matters, which could be addressed to improve the clarity of the proposed legislative framework:

Availability of capital: clause 12(2)(b)

6.2 The drafting of clause 12(2)(b), which currently refers to the “amount of capital that a person must have access to in order to conduct online casino gambling” could be improved if it is amended to reflect the wording in clause 14(i) (which refers to the “amount of capital available to the person to conduct online casino gambling”).

Amount payable for a licence: clause 17

6.3 Clauses 17(2) and (3) require prospective applicants to pay a licence fee before applying for a licence. Subclause (5)(c) also requires the payment of (presumably)² an additional application fee at the time the application is submitted. In order to improve the clarity of fee framework for this licensing regime, we suggest clearly distinguishing references to the licence fee from references to application (and other) fees, perhaps by referring to the fees in subclause (5)(c) as ‘additional prescribed fees’.

Right to seek review: clause 23

6.4 We suggest that the wording in clause 23(2)(c) (which refers to the operator’s right to seek “a review”) and clause 23(3)(c) (which refers to the operator’s right to seek “an internal review”) should be consistent. The term “a review” may be more suitable here if our recommendation at [4.3] above (to provide for an external independent review process) is accepted.

² The Regulatory Impact Statement for the Bill suggests this is likely to be the case (see: Department of Internal Affairs *Regulatory Impact Statement: Online gambling regulatory design - RIS 2* (30 October 2024)).

Renewal of licence: clause 26

- 6.5 Clause 26 does not contain an equivalent to clause 17(2), which requires payment of the licence fee that is notified to the applicant under clause 16(4)(b). The select committee may wish to seek advice from officials as to whether this omission is deliberate, or whether an application to renew a licence should similarly require the payment of a licence fee (noting licence fees are intended cover the establishment and ongoing costs of operating the scheme).³ If it is the latter, the select committee should amend the Bill to:
- (a) require the Secretary to notify the operator of the licence renewal fee that must be paid; and
 - (b) specify when a licence renewal fee should be paid.

Notification regarding new key officer: clause 48

- 6.6 We suggest amending clause 48 to provide for a requirement to notify the Secretary at the time a key person is appointed, rather than before, given there is no process to prevent appointment and no requirement for an interval between notification and appointment.



Jesse Savage
Vice-President

³ Cabinet Office *EXP-24-MIN-0066 Minute: Online Casino Gambling Phase 2 Decisions* (5 November 2024) at [54].