



Internal Affairs briefing

Hon Jan Tinetti
Minister of Internal Affairs

Title: Gambling report: A calculated injustice

Date: 22 November 2021

Key issues

Last week, you, the Prime Minister and the Ombudsman were sent David Hay's report *A Calculated Injustice: an inquiry into how and why The Department of Internal Affairs failed to prosecute a class 4 (pokies) venue owner*.

The report focuses on the failed prosecution of the case Department of Internal Affairs v Defendant (Barrett case) by the Department. It is based on limited information and draws some conclusions about what the Department could have done differently. The report is broadly correct in terms of statements of fact regarding the Barrett case. However, we reject his assertions regarding regulatory capture and that the Department set out to sabotage the litigation.

As we have previously discussed with you, there are lessons to be learned from the Barrett case. We will be commissioning independent assurance on some of the matters raised in the report. The Department is committed to making improvements in terms of regulatory practice and ensuring future prosecutions are successful. The pokies discussion document, with options to address harm in venues, is a key step in strengthening the regulations in the Gambling Act. The new Gambling Strategy is also very clearly focused on reducing gambling harm.

You have previously indicated you do not want to make any public announcements about the regulatory work until it has been approved by Cabinet. If this is approved in December as planned, you could address wider concern regarding the harm caused by pokies as part of your announcement on the upcoming public consultation.

The media may approach you for comment once this report is released. Talking points are attached. However, we recommend you refer any media requests to the Department.

Action sought

Timeframe

Note the recommendations at the end of this briefing, and that officials are available to discuss this with you at tomorrow's Officials meeting.

24 November 2021

Contact for telephone discussions (if required)

Name	Position	Contact Number	Suggested 1 st contact
Maarten Quivooy	General Manager Regulatory Services	9(2)(a)	✓
Suzanne Doig	General Manager Policy Group	9(2)(a)	

Return electronic document to:	Monica.Rogers@dia.govt.nz
Cohesion document reference	YXQARP2T7VWH-2087447659-49
Ministerial database reference	IA202101822

Purpose

1. This briefing provides information and talking points in response to David Hay's report, *A Calculated Injustice: an inquiry into how and why The Department of Internal Affairs failed to prosecute a class 4 (pokies) venue owner*. It was sent to you, the Prime Minister and the Ombudsman on 19 November 2021.

Who is David Hay?

2. David Hay is a public policy consultant and anti-pokies advocate.¹ He was asked by PGF Services to write a letter about why the Department of Internal Affairs v defendant (the Barrett case) prosecution failed, and what further action Paul Barrett, Morgan Barrett's son, might take to seek redress. In Mr Hay's words, it turned into something more.
3. He intends to release this report to the media in the next few days. He has given you and the Prime Minister a short window to review the report and check for any 'serious errors of fact' regarding the prosecution. It is possible that the media could report on this, following other media articles regarding the Barrett case.² Attached in **Appendix A** is some talking points to help with any media responses. We recommend that media enquiries are referred to the Department.

The report is based on limited information about the Barrett case and criticises the Department's approach to gambling regulation

4. The report (attached as **Appendix B**) focuses on the failed prosecution the Department took against the venue manager of the pub, where the late problem gambler Morgan Barrett lost much of his insurance pay-out from the Christchurch earthquakes. It sets out to address:
 - why the trial was dismissed and what could have been done differently;
 - why the venue manager, the regulator and the regulatory system failed; and
 - contributing wider systemic issues in the gambling system.
5. Mr Hay also makes several serious allegations about the conduct and integrity of Department officials. He believes the Department has been captured by the Class 4 industry, alleges the Department set up the Barrett prosecution to fail, and the Department is regulating the sector in a manner contrary to the principles of the Gambling Act 2003 and the intent of Parliament. The allegations appear to be based on Mr Hay's opinion and lack any supporting evidence.
6. Based on his opinion, Mr Hay concludes that:
 - DIA should have suspended or cancelled the venue licence, rather than choosing to take a prosecution against the venue manager;
 - DIA laid charges against the defendant in such a way that the judge could not have found the defendant "guilty as charged" beyond reasonable doubt;

¹ He is a founder of the incorporated society 'Feed Families Not Pokies Aotearoa', the purpose of which is to "rid Aotearoa New Zealand of pokie machines and venues, by peaceful and legal means". He appeared in a Stuff news article on 3 May 2019 as one of the "Pokies Avengers", a diverse group set up to protest against the "proliferation of alcohol and pokies".

² 'An avoidable tragedy': A problem gambler blew his life savings, then dropped dead | Stuff.co.nz, Steve Kilgallon, 8 August 2021.

- DIA provided an “expert witness” whose testimony supported the defence case and undermined the prosecution;
 - DIA did not oppose the defendant’s application for name suppression, so the Court went ahead and issued a name suppression order, contrary to the intent of section 200 the Criminal Procedure Act 2011; and
 - DIA failed to adhere to section 200(6) of the Criminal Procedure Act 2011, which required it to seek and represent the views of Mrs Morgan Barrett, who the Judge had identified as a victim of the defendant’s alleged offending.
7. Mr Hay’s summary of the case is broadly correct in terms of the facts of the case. However, we disagree with his assertions and conclusions regarding the conduct of the prosecution, including that had the charges been laid differently, the prosecution may have had a successful outcome. There may have been grounds to suspend or cancel the licence, but a decision to prosecute was taken instead.
8. There are lessons to be learned from the Barrett case, including the time taken to understand gaps in the regulations. The Department is committed to making improvements in terms of regulatory practice and ensuring future prosecutions are successful. The pokies discussion document, with options to address harm in venues, is a key step in introducing improvements to the regulations in the Gambling Act. The Gambling Group’s new Gambling Strategy is also very clearly focused on reducing gambling harms.
9. We note that Mr Hay has only had access to a limited set of information i.e. court documents and information released under the Official Information Act. The information he has drawn on for the report does not accurately reflect how the situation played out in the run up to the prosecution and the Judge’s decision.
10. With this limited information, the report makes several wide-reaching recommendations, including:
- the Secretary of Internal Affairs should apologise to the Barrett family for the failed prosecution;
 - Ministerial responsibility for gambling should be transferred out of the Internal Affairs portfolio, potentially into the Health or Justice portfolios;
 - current members of the Gambling Commission should be asked to resign, and new members appointed;
 - remove gambling regulation from the Department to a different agency or department. If the Government wanted to take a step further, create a new regulatory agency to regulate all harmful products, such as gambling, alcohol, tobacco and psychoactive substances collectively;
 - prohibit all class 4 gambling in New Zealand; and
 - make and amend regulations to give greater effect to the purposes of the Gambling Act 2003 i.e. prevent and minimise harm.
11. There appears to be little basis for any of Mr Hay’s recommendations. Recommending both prohibiting all class 4 gambling and making and amending regulations is contradictory.

The pokies discussion document seeks to address the failings of the Barrett case

12. While the Barrett case is not the key driver of the pokies discussion document and work by officials was already underway, the discussion document addresses the failings of the Barrett case. The draft discussion document, which you received last week (IA202101772 refers), directly addresses aspects of the Judge's statement. The purpose of the discussion document is to find out how regulations can best be used to:
 - set more explicit direction for venues and societies on how they can reduce harm;
 - make pokie machines safer through information and game features; and
 - strengthen compliance with supporting offences and penalties.
13. Part one of the discussion document proposes a range of ways that the Gambling (Harm Prevention and Minimisation) Regulations 2004 could be strengthened to set clearer, more prescriptive, expectations for both gambling operators and the regulator, to ensure harm minimisation rules are understood and being followed by venue staff. The document proposes and seeks feedback on how to:
 - identify problematic gambling better in pubs and clubs and how venue staff can respond appropriately. A range of tools to be consulted on include mandatory sweeps of the gambling areas at certain time intervals, and limiting ATM access in venues (access to ATMs in venues is something Mr Hay points out is at odds with the harm minimisation regulations);
 - improve record keeping by venue staff, including recording prescribed signs of gambling harm; and
 - improve training of venue staff who supervise gambling.
14. By making the regulations more specific it will be easier for the Department to prosecute a venue manager for breaching a venue's policy. If the Department can stipulate what must be in a venue's harm minimisation policy, cases such as that of Mr Barrett are less likely to happen. In addition, the Department is making operational improvements following the outcome of this case.

Next steps

15. Attached as **Appendix A** are talking points for you to respond to the media. However, we recommend that media enquiries are referred to the Department given this is an operational matter.
16. You are currently undertaking Ministerial consultation on the draft discussion document and Cabinet paper. Once the pokies discussion document has been approved by Cabinet, scheduled for the Social Wellbeing Committee on 8 December 2021, you will be able to announce the consultation and address wider concerns around reducing harm in pubs and clubs more directly.
17. We also intend to seek independent assurance on some of the matters raised in the report, given the seriousness of some of the allegations and to ensure that the Department has not missed any opportunities for improvement.



Recommendations

18. We recommend that you:

- a) **note** our view of Mr Hay's report and our recommendation not to engage with him about any aspects of the report;
- b) **note** the media may approach you for comment on this issue. Talking points are attached as **Appendix A**, but we recommend any media enquiries are referred to the Department;
- c) **note** that work is underway on strengthening regulations to give greater effect to policy and purposes of the Gambling Act 2003, and the discussion document is due to be considered by Cabinet's Social Wellbeing Committee on 8 December 2021; and
- d) **note** the Department will be commissioning independent assurance on some of the matters raised in the report.

Marilyn Little
Deputy Chief Executive

Hon Jan Tinetti
Minister of Internal Affairs

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Appendix A: Taking points

General talking points

- The Department of Internal Affairs is the gambling regulator and the case was an operational issue.
- I extend my sympathies to the Barrett family.
- My expectation is that the Department will continue to take a firm stance on minimising harm to gamblers.

Regarding the Judge's decision

- It is not appropriate for me to comment on a Judge's decision.

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Updates

IA Status Report WE 2 April 2019

<p>Problem gambling prosecution</p> <p>Responsible DCE : Marilyn Little</p> <p>Contact: Chris Thornborough</p> <p>9(2)(a)</p>	<p>Recent activities</p> <ul style="list-style-type: none">•The Department has charged a gambling venue manager for failing to take all reasonable steps to identify a problem gambler. This is the first prosecution of its kind and was announced via media release. <p>The Gambling Act 2003 requires staff at gambling venues to take all reasonable steps to identify actual or potential problem gamblers and offer assistance, in line with harm minimisation policy.</p> <p>The maximum penalty is \$5,000.</p> <p>The media release has been widely picked up and noticed around the gambling industry. It sends a strong message to gambling operators that harm minimisation must be taken seriously.</p> <p>Next steps</p> <p>A charge has been filed in the Christchurch District Court with a first appearance date of 9 May 2019.</p> <p>We will not provide further comment until the court case has been completed.</p>
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<p>Gambling Prosecution</p> <p>Responsible DCE: Marilyn Little</p> <p>Contact: Dave Robson 9(2)(a)</p>	<p>Recent activities</p> <p>We took prosecution action against a gambling venue operator under section 308 of the Gambling Act 2003. This was for failing to take all reasonable steps to implement a harm minimisation policy to identify the problem gambling of a named individual.</p> <p>On 14 June 2021, the hearing commenced at the Christchurch District Court. This was our first prosecution of this type.</p> <p>During the hearing, the evidence strongly suggested that the harm minimisation policies that we approved for this venue were not specifically actionable.</p> <p>Due to the charges requiring an element of prescription that is actionable, and for the Crown to prove that these were not undertaken, the charges were dismissed by the judge. We have advised the family of the named individual of the action.</p> <p>Next steps</p> <p>We are keen to understand what improvements could be made to current practices, and how this case can inform the current policy work on gambling harm minimisation. We are reviewing the judge's decision and advice from the Crown.</p> <p>There may be media interest in this prosecution. As this is an operational matter, we will respond to any queries relating to the prosecution.</p>
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Departmental Official Information Act request

IA Status Report WE 21 July 2021

Name	Request	Date to Minister	Statutory due date	Key contact
9(2)(a) Stuff	Details regarding the GMP data of "name withheld" Venue and investigation details of 'named individual' prosecution case	2 August 2021	9 August 2021	Emma Atkins 9(2)(a)

IA Status Report WE 28 July 2021

Name	Request	Date to Minister	Statutory due date	Key contact
9(2)(a) Stuff	Details regarding the GMP data of "name withheld" Venue and investigation details of 'named individual' prosecution case	2 August 2021	9 August 2021	Emma Atkins 9(2)(a)

IA Status Report WE 4 August 2021

Name	Request	Date to Minister	Statutory due date	Key contact
9(2)(a) Stuff	Details regarding the GMP data of "name withheld" Venue and investigation details of 'named individual' prosecution case	2 August 2021	9 August 2021	Emma Atkins 9(2)(a)

IA Status Report WE 11 August 2021

Name	Request	Date to Minister	Statutory due date	Key contact
9(2)(a) Stuff	Details regarding the GMP data of "name withheld" Venue and investigation details of 'named individual' prosecution case	3 September 2021 (Extended)	10 September 2021 (Extended)	Emma Atkins 9(2)(a)

IA Status Report WE 18 August 2021

Name	Request	Date to Minister	Statutory due date	Key contact
9(2)(a) Stuff	Details regarding the GMP data of "name withheld" Venue and investigation details of 'named individual' prosecution case	3 September 2021 (Extended)	10 September 2021 (Extended)	Emma Atkins 9(2)(a)

IA Status Report WE 25 August 2021

Name	Request	Date to Minister	Statutory due date	Key contact
9(2)(a) Stuff	Details regarding the GMP data of "name withheld" Venue and investigation details of 'named individual' prosecution case	3 September 2021 (Extended)	10 September 2021 (Extended)	Emma Atkins 9(2)(a)

IA Status Report WE 1 September 2021

Name	Request	Date to Minister	Statutory due date	Key contact
9(2)(a) Stuff	Details regarding the GMP data of "name withheld" Venue and investigation details of 'named individual' prosecution case	3 September 2021 (Extended)	10 September 2021 (Extended)	Emma Atkins 9(2)(a)

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Royden Raka

From: Marty Greentree
Sent: Friday, 20 November 2020 3:23 pm
To: Charlotte Stanley; Chris Thornborough
Subject: FW: Request for Min: IA 20 517 Barrett - context chat
Attachments: FW: KEEN, Hamish - trial date set

FYI

From: Marty Greentree
Sent: Friday, 20 November 2020 1:32 PM
To: Emma Atkins <Emma.Atkins@dia.govt.nz>
Subject: RE: Request for Min: IA 20 517 Barrett - context chat

Hi Emma,

See below and attached. Briefly:

- Trial did not go ahead 7 September 2020 due to scheduling issues with the court.
- A new date has been set for 22 March 2021 at the Christchurch District court
- The Barrett family have been updated

Also worth noting that both Paul Barrett and his 9(2)(a) will be giving witness evidence for the prosecution . As Paul is Auckland based we are also covering his travel costs.

Hopefully that covers it?

Feel free to give me a call on 9(2)(a) if you need further.

Cheers

Marty Greentree | Manager Investigations
Regulatory Services | Te Tari Taiwhenua DEPARTMENT OF INTERNAL AFFAIRS
Direct Dial: 09 363 7612 Mobile: 9(2)(a)



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From: Emma Atkins <Emma.Atkins@dia.govt.nz>
Sent: Friday, 20 November 2020 1:15 PM
To: Marty Greentree <Marty.Greentree@dia.govt.nz>
Subject: FW: Request for Min: IA 20 517 Barrett - context chat

Hi Marty, would you please be able to update me on the situation of this case/trail?

If easier I am happy to discuss, thanks Emma

From: Hilary Richards
Sent: Friday, 20 November 2020 11:35 AM
To: Emma Atkins <xxxx.xxxxxx@xxx.xxx.xx>
Subject: RE: Request for Min: IA 20 517 Barrett - context chat

Hi Emma

For context;

- The case has been long-running with the initial complaint regarding the gambling addiction of Paul's father (Mr Barrett) reaching DIA in Feb 2018.
- The subsequent investigation recommended actions be taken against the venue's where Mr Barrett gambled to excess and in particular against the venue manager of 9(2)(a) (report [link](#))
- Paul has provided DIA with a range of documents and evidence to support the investigation which has since progressed to court action in March 2019.
- A four-day Judge Alone trial had been scheduled to commence Monday 7 September 2020 at the Christchurch District Court and pre-trial call-over had been set for Friday 14 August 2020 to finalise preparations (see email attached from Marty Greentree [SME Input] as to August 2020 status).
- Paul and his family feel aggrieved at the length of time the court action has taken to produce an outcome – especially considering the extensive loss of family wealth and the detrimental effects this has had on Mr Barrett's widow.
- I was under the impression that there may have been a previous response prior to mine but can't seem to find it.
- I would highly recommend a chat with Marty Greentree to discuss current situation. The status of the court is not something the Minister can interfere with, so the best we can really do is show compassion for the length of time this has taken and provide an update on the current status and 'next-steps' for the case. Marty will likely be able to expand on that.

Kind regards

Hilary Richards | Graduate Policy Analyst | Ministerial Advice, Monitoring, and Operations
Department of Internal Affairs Te Tari Taiwhenua
Mob: 9(2)(a) | Email: hilary.richards@dia.govt.nz
45 Pipitea Street | PO Box 805, Wellington 6140, New Zealand | www.dia.govt.nz



From: Emma Atkins <Emma.Atkins@dia.govt.nz>
Sent: Tuesday, 17 November 2020 4:52 PM
To: Cath Anyan <Cath.Anyxx@xxx.xxx.nz>
Cc: Alex Thursby <Alex.Thursby@dia.govt.nz>
Subject: RE: Request for Min: IA 20 517 Barrett

Hi Cath,

I can see a July 2020 ministerial that was drafted by Hilary Richards ([Paul Barrett July 2020](#)). But I see no reason why we could not respond to this one from RS.

In general we do them unless it is a matter you (min advice) is working on. We will do this one.

Thanks Emma

From: Alex Thursby
Sent: Tuesday, 17 November 2020 4:28 PM
To: Emma Atkins <xxxx.xxxxxx@xxx.xxx.xx>
Subject: FW: Request for Min: IA 20 517 Barrett

Can you please liaise with Cath? Thks

From: minadviceteam <minadviceteam@dia.govt.nz>
Sent: Tuesday, 17 November 2020 4:24 PM
To: Alex Thursby <Alex.Thursby@dia.govt.nz>
Subject: FW: Request for Min: IA 20 517 Barrett

Hi

This is about a gambling prosecution. Does RS do its own ministerials or do we do them for you? We get so few I can't remember who does them.

Cath


From: Erica Mangin (parliament) <erica.mangin@parliament.govt.nz>
Sent: Tuesday, 17 November 2020 3:34 PM
To: Ministerial Correspondence <Minixxxx@xxx.xxx.xx>; minadviceteam <minadviceteam@dia.govt.nz>
Subject: Request for Min: IA 20 517 Barrett

Min for processing: IA 20 517 Barrett

Erica Mangin | Private Secretary (Internal Affairs)
Office of Hon Jan Tinetti MP, Minister of Internal Affairs, Minister for Women, Associate Minister of Education

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Royden Raka

From: Marty Greentree
Sent: Monday, 7 September 2020 3:23 pm
To: 9(2)(a); Charles Wang; Daniel Dominey
Cc: Tess Cuthbert; Garry Dunseath; Ida Cheung-Tau
Subject: FW: KEEN, Hamish - trial date set

Kia ora team,

Please find the update below from the court. Looks like a firm(er) trial date has been set for this next year the week of 22 March 2021.

I will go ahead and rebook the travel for us out of towners.

Tess could you please advise the Barretts and Garry could you please let Kris know?

Thank you all for your assistance and patience and apologies for any conveniences this has caused.

Marty

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