

Document 1

ACTION POINTS

Outcomes & Advisory Board Meeting
Gambling Compliance Group, CIPU and Taupo
Harbourmaster

Date: Monday 10 April 2017
Time: 2pm-3:30pm
Venue: Room 803, 147LQ/Kauri, Auck

Attendees: **Sue Ingram**, Acting Director Gambling Compliance (Co-Chair)
Marie Costello, Acting Manager Regulatory Investigations (Co-Chair)
Stefan Pishief, Manager Gambling Compliance
Trish Millward, Manager Licensing Compliance
Neove Christoforou, Acting Manager Sector Initiatives
Peter Cowsill, Manager Casino Compliance Operations

Ex Officio: **Marty Robinson**, Senior Solicitor
Mike Osmond, Principal Policy Advisor
Pete Collins, Senior Casino Gambling Inspector
Daniel Dominey, Gambling Inspector
Naomi Williams, Gambling Inspector (Meeting Support)

Apologies: **Charlotte Stanley**, Team Leader Gambling Compliance Nrthn
Lance Daly, Team Leader Licensing Auckland
Sonya Karatau-Neeson, Acting Team Leader Gambling Compliance Sthrn

Items for Discussion:

Out of scope

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<p>3.</p>	<p>PAPER - Licensing Trusts (Decision) <i>Author:</i> Daniel Dominey <i>Decision Maker:</i> Stefan Pishief</p> <p>PURPOSE The purpose of this paper was to provide better visibility for the role Licensing Trusts play in the Class 4 sector and identify any issues, concerns and/or risks that may exist with the roles and operations of the trusts with societies and venues.</p> <p>DECISION</p> <ul style="list-style-type: none">• OAB members agreed legislative reform was the most appropriate way to manage the position the Licensing Trusts and their Management Service Providers had been placed in following recent changes to the Gambling Act. It is likely to be a couple of years before legislative reform is made.• In the interim, the Department will speak to the Licensing Trusts involved and encourage them to voluntarily change their structure to manage any risk. OAB members believed this was particularly relevant to Trust House Foundation, given the commercial element of Trust House Ltd.	<ul style="list-style-type: none">• Stefan to provide on-going updates about progress with Licensing Trusts.
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No.	Discussion	Action Points
	<ul style="list-style-type: none"> • The Department is to advise the NZLTA of this decision. • Daniel to draft a stakeholder management plan and present it to OAB on 8 May 2017. <p>RATIONALE</p> <ul style="list-style-type: none"> • The Department considers Licensing Trusts (with no commercial element) to be low risk, given members are elected by the community. • Policy have confirmed they are aware of this issue, and are considering it as part of the Class 4 review. • 9(2)(g)(i) [REDACTED] 	<ul style="list-style-type: none"> • Daniel to draft a stakeholder management plan and present it to OAB on 8 May 2017.

Out of scope

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No.	Discussion	Action Points
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Out of scope



Next Meeting: Wednesday 26 April 2017 @ 12pm-1pm in rooms 803 147LQ/Kauri Auckland

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Document 2

AGENDA

Outcomes & Advisory Board Meeting
Gambling Compliance Group, CIPU and Taupo
Harbourmaster

Date: Monday 10 April 2017
Time: 2pm-3:30pm
Venue: Room 803, 147LQ/Kauri, Auck

- Attendees:** Sue Ingram, Acting Director Gambling Compliance (Co-Chair)
Marie Costello, Acting Manager Regulatory Investigations (Co-Chair)
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Mike Osmond, Principal Policy Advisor
Lance Daly, Team Leader Licensing Auckland
Pete Collins, Senior Casino Gambling Inspector
Daniel Dominey, Gambling Inspector
Naomi Williams, Gambling Inspector (Meeting Support)
- Optional:** Charlotte Stanley, Team Leader Gambling Compliance Nrthn
Stacey Hayward, Team Leader Gambling Compliance Cntrl
Stuart Fuller, Team Leader Gambling Compliance Sthrn
Sonya Karatau-Neeson, Acting Team Leader Gambling Compliance Sthrn
Liz Hibbs, Team Leader Licensing Wellington
Swati Bhim, Solicitor

Items for Discussion:

Out of scope

2. Matters for discussion:

Paper Name	Author	Type	Cohesion
Returning: Out of scope	Pete Collins	Decision	Link
Licensing Trusts	Daniel Dominey	Decision	Link
Out of scope	Trish Millward	FYI	Link

Out of scope

- Upcoming OAB papers/items for discussion
- General Business

Next Meeting: Monday 24 April 2017, 2pm-3:30pm, Rms 803 / Kauri, Auck

Document 3

Communications with Licensing Trusts over MSP related issues

Key Messages

- The Department's position is that ILT, MLT and THL are MSPs that are included within the provisions of the Act and therefore breach the Act.
- The Department recognises that generally licensing trusts are low risk regarding the integrity of gaming operators, and the intent of the changes to the Act regarding MSPs was not to capture licensing trusts in this way.
- The Department is investigating a legislative solution as part of the class 4 strategic review to resolve this matter – this is the long-term solution given any regulatory reform is some way off. Licensing trusts will be involved in this consultation.
- In the interim The Department needs to consider what options are available to it. Although we prefer not to take an enforcement orientated approach for the existing breaches of the Act, we also can't ignore the current status.
- We want to work with licensing trusts in finding an interim solution and we'd like you to consider changes to your structure that may remove these breaches and potential risks before getting back to us. We see this as part of an ongoing engagement.
- We have appreciated the good levels of engagement from licensing trusts to get us to this point, and we are eager for this to continue.

Individual Licensing Trust information

ILT

9(2)(h)

Low Costs/ARN – ILT is one of the lowest costs MSPs and its overall costs would be considered to be ARN.

Sole Entity – ILT is sole entity and ILT Foundation can be considered part of that entity but separated by a legal fiction as required by the Gambling Act.

Staff and venues – ILT has three staff and 10 venues

Good model – ILT could be considered a good model of a LT and MSP.

Charitable entity – ILT is a charitable entity and provides a wide range of grants to the Invercargill community.

MLT

Legal position – MLT has no Legal position but does not consider themselves to be a MSP.

Costs/ARN - MLTs costs are low to medium but as MLT do not cover the full range of MSP services there may be reason to investigate for possible ARN issues.

Part of a larger entity – MLT is Part of larger entity (TTCF) which has contracted some services to ILT

Staff and venues – MLT has 55 venues and three staff.

Acceptable model – MLT can be considered an acceptable model of a LT acting as a MSP. Also it is a medium sized LT in the NZ LT sector.

Charitable entity – MLT is a charitable entity and provides grants to the Clutha community.

9(2)(ba)(i)

THL

9(2)(ba)(i)

High costs, definite ARN issues – THL has the highest costs of the entire MSP sector and there are definite ARN issues. Further investigation will likely be required.

Commercial entity – THL is a commercial profit making entity but Trust House Foundation, which THL is contracted to, is a charitable entity.

Staff and venues – THL has 10 venues and 14 staff and is owned by two LTs.

9(2)(g)(i)

Legal Representation – Jarrod True represents THL at this time

General Considerations

Currently there is no common consensus among the three LTs as to their position as MSPs in the C4 sector. Additionally the differing situations and concerns regarding the three mean that the same approach may elicit different responses from the LTs. For example:

- ILT does not accept that it is a MSP and may resist attempts to restructure its contract with ILT Foundation but otherwise may be amenable to changes as any changes required would be the easiest to implement to its structure
- MLT does not accept that it is a MSP and may resist the loss of income from TTCF resuming functions it had contracted to MLT
- THL accepts that it is in breach of the Act and therefore be amenable to making changes but the serious ARN issues mean that it may resist changes to its contractual or costs structures as likely changes would see a significant decline in profit from servicing THF
- It is important to remember that there are three separate contracts, each between two legally separate contracting parties and that any resolution will need to include consideration of both sides positions to achieve a satisfactory outcome
- All three MSP contracts have break clauses

As there is no guarantee that all three LTs will act or behave the same or accept the chosen outcome or even be willing to engage further with the Department once its initial messages have been communicated it is important to retain options for other actions in the event of this occurring.

As noted in the main review there are also a number of perceptions (C4 sector, wider public) that need to be considered when discussing any further approach to the three LTs.

Joint coms matters

Auditor General's report on LTs

The 2014 Auditor-General report on all LTs in NZ noted that they were "concerned that licensing trusts are one of the least scrutinised part of the public sector" and that "there is no comprehensive oversight of licensing and increasing number of LTs were struggling financially with profitability and financial viability".

The report also noted that trustees of licensing trusts are subject to the Local Authorities (Members Interests) Act 1968 which helps to ensure that personal interests do not affect trustees when they participate in decision making. The two specific rules noted in the report are that trustees cannot:

- Enter into contracts worth more than \$25,000 in a financial year with the licensing trust they have been elected to govern; or
- Participate in matters before the licensing trust in which they have a pecuniary interest, other than an interest in common with the public.

In the case of ILT there is unlikely to be any breaches of this Act. In the case of THL and MLT there may be breaches of this Act.

Some of these matters (noted concerns and legal considerations) may directly relate to the LT review while others are peripheral but inform the overall position.

NZLTA conference in June 2017

The Department has been invited to the New Zealand Licensing Trust Association (NZLTA) annual conference in June 2017 to speak about changes in the C4 sector.

This would be an excellent opportunity to connect with all LTs in the C4 space but would not be the most appropriate forum to discuss matters relating to LTs which contract MSP services to themselves.

Licensing Trusts in the general Media

Licensing trusts appear from time to time in the media including a recent article where David Seymour – leader of ACT, criticised the monopoly of ILT. Previous articles have included the Waitakere LT (over its use of funding for advertising) and Trust House (in relation to some sculptures that had been funded in part by THL).

Based on the general tone of the media and comments made by the LTs themselves it would be fair to assume that LTs are sensitive about their role in the community (ie gambling and alcohol) in much the same way as the C4 sector are about gambling.

Legislative Tools Available

The 2009 Gambling Commission decision (The Trusts Charitable Foundation decision GC11/10) and *The Secretary for Internal Affairs v Administrative management Services Ltd.*

These two outcomes from the Gambling Commission upheld the Departments position regarding the following and could prove useful in regards to dealing with the three LTs:

- The use of contractors (MSPs) rather than employees was acceptable but only when the society could show that the use of contractors was more efficient. The onus was on societies to justify the cost of third party contractors
- MSP rate of charge had to be reasonable and excessive rates were a source of concern
- Cost structures and supporting documentation had to be itemised and sufficient to clearly show a breakdown of costs
- A 2011 issue of Gambits provided advice on the structure of MSP contracts which it would like to see and which sections and clauses it would not want to see
- MSP contract buyout clauses are allowed but must be reasonable
- The Department has previously established benchmarks for such costs

The Approach Team

In making any approach to the LTs it is best to consider not only the message but also who would be delivering that message.

To do this it is essential that not only is the Departments message well thought out, logical and consistent but also supported by various individuals who can provide the appropriate level of authority and expertise to ensure that the message is delivered in the best possible fashion.

Therefore the following individuals should be considered as part any approach team, or if such individuals are not deemed necessary then the appropriate level of messaging/information be available to supplement.

- Policy – to discuss the mechanics of how the act might be changed
- Legal – to support the departments legal position and discuss the LTs legal position
- Technical support – regarding any LT specific details and information
- Sector initiatives – regarding any general liaison and communications
- Senior Management – Director of GC

Finally it may be worth considering how this process will be managed and how the messages will be communicated. Will the Department approach formally first and then begin discussion after or will an informal start be more productive and then later be formalised?

Next Steps

If legislative solution is decided upon then the following will need to be considered:

- Will any legislative changes made affect the integrity of the Act?
- How wide will any legislative changes be in regards to allowing exemptions under Key Person provisions? Will it include commercial entities?
- Is there a minimum baseline for midterm changes required by the LTs to avoid being in breach of the Act?
- What if LTs refuse to implement any changes or do not implement sufficient change to meet the Departments expectations?
- How long will the Department give LTs to make the required changes?
- If the LTs refuse to change or time has expired what other options does the Department have available?

If a process of moderated change is decided upon by all parties then it is recommended that each LT initially be approached individually but with the option for a joint forum afterwards to help focus any consultation and develop an open format for dialog between the Department and the LTs.

Any approach by the Department to the LTs would need to have a level of information sufficient to answer any potential questions by the LTs, such as:

- What is the scope of proposed/planned legislative change?
- When will the changes occur?
- What will the Department do in the interim?
- What will the Department do if I (a LT) change my structure but another LT does not?

If these and other potential questions are not able to be answered then this may undermine the position of the Department with individual LTs and across the three LTs as a whole.

While the differing positions of the LTs do need to be considered the overall approach needs to be consistent and holistic enough to retain the integrity of the Act, the Department and the wider C4 sector.

Memo to OAB

To	Cath Anyan, GCG OAB
From	Daniel Dominey, Gambling Compliance Group, Christchurch
Governance committee	OAB
Date of OAB meeting	01/09/2017
Subject	Licensing Trusts acting as Management Service Providers for Class 4 gaming societies

Purpose of the Memo

This memo is to highlight the issue of Liquor Licensing Trusts operating as Management Service Providers (MSPs) to Class 4 (C4) gaming societies where a licensing trust is a key person at both the MSP and society levels and therefore breaching the 2003 Gambling Act (the Act).

This issue appears to have arisen from previous amendments to the Act regarding licensing trusts and the passing of the gambling Amendment Act (No 2) in 2015 which included the definition of MSP.

Additionally a decision regarding what action the Department needs to take in order to address these breaches is required.

Summary

The issues relating to licensing trusts operating as MSPs to themselves is one of significant concern as there are a range of issues which, if not properly addressed, have the potential to create further concerns for the both the Department and the Class 4 sector.

Previously the issue of licensing trusts being in breach of the Act as key people has been considered mitigated by a provision put into the Act in 2005, which exempted elected members of licensing trusts from being considered key people. However as the exemption explicitly covers only elected members and not any other person employed by the licensing trusts or the licensing trusts themselves there remains issues that are unaddressed.

Further as the three affected licensing trusts have structures and operations which are much closer to that of other C4 societies rather than clubs or NZRB venues it is advised that any move made to allow licensing trusts to operate with similar would, in effect, be waiving the key person restrictions for a C4 society.

It is recommended that this matter be resolved in the short to medium term, by taking steps to address the current issues of licensing trusts being in breach of the Act within the current framework of the Act but also by considering changing the relevant sections of the Act in the long term so that the identified issues would be removed.

Background

Three licensing trusts have been identified as providing MSP services to gaming societies directly linked to themselves and therefore breach the Act by placing them as key people at both the society and venue level.

They are Invercargill Licensing Trust (ILT), Matura Licensing Trust (MLT) and Trust House Ltd (THL) which respectively provide MSP services to ILT Foundation, TTCF and Trust House Foundation.

Sections 52, 67 and 113 of the Act prohibit key people being at both the society and the venue level. These sections exist to prevent conflicts of interest within the C4 sector. The only exceptions to these prohibitions relate to Clubs, C4 venues operated by the NZ Racing Board and to licensing trusts **but** only to board members elected by the public to the licensing trust board.

In the case of licensing trusts, these exemptions do not extend to individuals employed by licensing trusts or those who are associated with licensing trusts in any way.

The exemption regarding key people at licensing trusts was added in 2005 due to the 2003 Gambling Act not addressing the matter of licensing trusts operating as MSPs to themselves. At the time the Department was satisfied that this mitigated any issue as MSPs were not considered key people.

In 2015, MSPs were added to the Act and licensing trusts were again in breach of it.

Additionally, in 2016 the Department initiated a sector wide audit of MSPs in the C4 space (including the three licensing trusts) and one of the findings of that audit was that several MSPs (Trust House and 9(2)(b)(ii) [redacted] which had close links to the gaming societies they acted for had much higher costs and much less robust contractual arrangements than other MSPs (9(2)(b)(ii) [redacted]) which were clearly separated from those they were contracted to work for.

Trust House Ltd was found to have the highest costs of any MSP in the C4 sector, at a rate of \$800,000 per annum, which was well in excess of both the industry average (see APPENDIX

Discussion

As licensing trusts meet the definition of both key person and MSP there is a clear breach of the Act occurring.

The previous position put to the Department on this matter (a memo from Operation Policy dated September 2016) made the argument that the "mischief" the respective sections of the Act were designed to prevent did not exist in the case of licensing trusts because they were similar to clubs and NZRB venues, where key person restriction did not apply. This argument was based on two premises:

- Licensing trusts are not for profit bodies that raise funds for philanthropic purposes
- The structure and organisation of licensing trusts was similar to that of clubs and NZRB venues and as such there was a practical imperative to allow such an arrangement

However any and all legally operating C4 societies are not for profit bodies which generate funds for philanthropic purposes (ie to return to the community) and the structure of the three licensing trusts in question is much closer to that of other C4 societies than a club or a NZRB venue.

All three licensing trusts have C4 operations which encompass multiple venues, and in the case of two (TTCF and Trust House Foundation) across multiple areas or territories.

Also, unlike clubs which are limited to a single 18 machine venue, there is no restriction on any licensing trust to a single venue or a capped number of venues or machines.

In addition both clubs and NZRB venues use C4 machines to raise funds for themselves and have no obligation to return any funds to the wider community while the three gaming societies associated with licensing trusts must distribute funds to the greater community and are expressly prohibited from making grants to themselves under the Act.

Therefore removing the key person restrictions from licensing trusts acting as MSPs would, in effect, be granting a key person waiver to the three C4 gaming societies. Such an arrangement would not only remove core prohibitions of the Act for these societies but it would also fundamentally alter the C4 landscape by creating an uneven playing field due to any licensing trusts based society no longer having to abide by the key person requirements of the Act while other C4 societies would remain restricted by them.

Finally, as the Act does not allow licensing trusts to operate as they currently do, and there is no short or mid-term option to change the Act, legitimating their current state of affairs would leave the Department open to challenge by other actors in the C4 space as well as the wider public.

The risks of allowing the current state of affairs to continue or seeking to expand the current exemptions licensing trusts have without altering the Act would be far greater than any benefits the potential solution of allowing or legitimating the current state of affairs could provide.

While it can be argued that the "mischief" which the relevant sections of the Act prevent does not arise in relation to licensing trusts operating as MSPs, and that removal of this restriction for licensing trusts would be similar to clubs or racing board venues such mischief has occurred within the C4 space (operation Chestnut) and the structure and organisation of licensing trust related gaming societies is almost identical to mainstream C4 societies rather than clubs or NZRB venues (which are either singular entities with a cap on the number of gaming machines (18) or organisations which raises funds purely for racing and with no ability to return funds to the greater community).

Further, while the means of electing board members to licensing trusts can provide some mitigation to the risks noted, that mitigation does not extend to other individuals employed by licensing trusts or prevent licensing trust related gaming societies from taking on C4 venues not connected to that licensing trust (as is noted in the case of TTCF).

Suggested further action

It is recommended that the Department seek to address the current breaches of the Act as they exist by considering options three; four and six as set out in the OAB paper from April 2017 (see APPENDIX) in the short to mid-term while considering changing the related legislation in the long term.

These options entailed writing to the affected licensing trusts/gaming societies and setting out that the Department considers them to be in breach of the Act, inviting comment from them on this matter and requesting they propose how to address the issue.

The Department would provide a reasonable timeframe for this to take place and would only enforce legislation if a licensing trust had not undertaken any action in this regard.

These options have the advantage of both engaging with the licensing trusts, setting a workable timeframe for action and making clear what possible outcomes exist.

Further such an approach would minimise any disruption to both the related gaming society and funding to the community.

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How much do Licensing Trusts distribute in grants to the community compared to the rest of the sector and the sector overall?

Society	Distributions GMAS 2016	Rate of Return
Invercargill Licensing Trust (ILT)	\$4,080,329	43.44%
Trust House Foundation (THF)	\$3,843,465	44.47%
TTCF	\$14,301,150	47.11%
Mt Wellington Licensing Trust	\$1,115,718	49.30%
Licensing Trusts Sub-Total	\$23,340,494	46.08%
Other Non-Club Operators	\$249,340,662	42.34%
Total	\$273,093,494	42.64%

Where are those grants going?

PGF Grants database shows \$30.8M grants from these operators in 2016 as follows:

Territorial Area	Amount	%
Ashburton	\$ 7,303	0.02%
Auckland City	\$ 19,259,403	62.43%
Buller	\$ 432,874	1.40%
Carterton	\$ 19,400	0.06%
Central Otago	\$ 158,414	0.51%
Christchurch City	\$ 648,850	2.10%
Clutha District	\$ 955,369	3.10%
Dunedin City	\$ 428,837	1.39%
Franklin District	\$ 3,850	0.01%
Gisborne	\$ 1,000	0.00%
Gore	\$ 626,892	2.03%
Hamilton City	\$ 47,953	0.16%
Hurunui	\$ 104,317	0.34%
Invercargill City	\$ 4,099,283	13.29%
Lower Hutt	\$ 10,400	0.03%
Manawatu District	\$ 56,220	0.18%
Masterton	\$ 668,722	2.17%
National	\$ 819,661	2.66%
Nelson	\$ 30,000	0.10%
New Plymouth	\$ 17,501	0.06%
Palmerston North	\$ 46,742	0.15%
Porirua	\$ 6,368	0.02%
Shared TLAs	\$ 1,417,479	4.60%
South Taranaki	\$ 11,799	0.04%
South Wairarapa	\$ 26,470	0.09%
Southland	\$ 49,838	0.16%
Stratford	\$ 38,060	0.12%
Tararua	\$ 4,000	0.01%
Tasman District	\$ 5,000	0.02%
Waikato District	\$ 176,126	0.57%
Waimakariri District	\$ 38,492	0.12%
Waitaki District	\$ 86,572	0.28%
Wellington City	\$ 312,260	1.01%
Whakatane	\$ 10,000	0.03%
Whangarei	\$ 221,698	0.72%
Total	\$ 30,847,153	100.00%

What are the Number of venues and machines of the LTs compared to the rest of the sector and as part of the sector as a whole?

See summary table, based on numbers as at 30 June 2017:

Societies	EGMs	% EGMs	Venues	% Venues
Licensing Trusts	946	7%	77	8%
Rest of Sector	11819	93%	859	92%
Grand Total	12765	100%	936	100%

Details for each operator as at 30 June 2017 are outlined in the following table:

Societies	EGMs	% EGMs	Venues	% Venues
AIR RESCUE SERVICES LIMITED	483	4%	36	4%
BLUE WATERS COMMUNITY TRUST	27	0%	2	0%
BLUESKY COMMUNITY TRUST LIMITED	90	1%	6	1%
CERT Your Local Gaming Trust Limited	139	1%	9	1%
CONSTELLATION COMMUNITIES TRUST LIMITED	80	1%	5	1%
DRAGON COMMUNITY TRUST LIMITED	117	1%	7	1%
FIRST LIGHT COMMUNITY FOUNDATION LIMITED	62	0%	4	0%
FIRST SOVEREIGN TRUST LIMITED	518	4%	33	4%
FOUR WINDS FOUNDATION LIMITED	401	3%	26	3%
GRASSROOTS TRUST LIMITED	513	4%	36	4%
ILT FOUNDATION	163	1%	10	1%
INFINITY FOUNDATION LIMITED	223	2%	15	2%
KAIWAKA SPORTS ASSOCIATION INCORPORATED	8	0%	1	0%
MAINLAND FOUNDATION LIMITED	220	2%	14	1%
MANUKAU COUNTIES COMMUNITY FACILITIES CHARITABLE TRUST	90	1%	5	1%
Milestone Foundation Limited	18	0%	1	0%
MT WELLINGTON FOUNDATION LIMITED	36	0%	2	0%
New Zealand Community Trust	2060	16%	152	16%
New Zealand Racing Board	476	4%	42	4%
OXFORD SPORTS TRUST INC	209	2%	13	1%
PELORUS TRUST	404	3%	26	3%
PUB CHARITY LIMITED	1688	13%	131	14%
REDWOOD TRUST INCORPORATED	18	0%	1	0%
SOUTHERN VICTORIAN CHARITABLE TRUST INC	41	0%	4	0%
THE AKARANA COMMUNITY TRUST LIMITED	63	0%	4	0%
THE BENDIGO VALLEY SPORTS AND CHARITY FOUNDATION	145	1%	11	1%
THE LION FOUNDATION (2008)	1780	14%	129	14%
THE NORTH AND SOUTH TRUST LIMITED	169	1%	11	1%
THE PEGASUS SPORTS FOUNDATION LIMITED	38	0%	3	0%
THE SOUTHERN TRUST	734	6%	63	7%
THE TRUSTS COMMUNITY FOUNDATION LIMITED	566	4%	54	6%
THE WHITEHOUSE TAVERN TRUST BOARD	18	0%	1	0%
TRILLIAN TRUST	558	4%	36	4%
TRUST AORAKI LIMITED	134	1%	13	1%
TRUST HOUSE FOUNDATION	181	1%	11	1%
YOUTHTOWN INCORPORATED	295	2%	19	2%
Grand Total	12765	100%	936	100%

Document 5

Analysis of Masterton Community Trust and Non- compliance Issues

June 2021

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IN-CONFIDENCE



Te Tari Taiwhenua
Internal Affairs

Contents

Introduction	2
Background	2
Structure of Masterton Community Trust and its relationship to Trust House Foundation	2
Trust House Limited	2
Trust House Foundation	3
Non-compliance issues.....	3
Previous approach to non-compliance	4
Discussion.....	4
Issues and risks in relation to conflicts of interest.....	4
First conflict of interest	5
Second conflict of interest	5
Potential options and their risks.....	6
Option one: No action.....	6
Option two: Legislative amendment.....	6
Option three: Start a process to implement independent MSP services	7
Implications for other licensing trusts	8
Appendix A: Decision-making table	9
Appendix B: Legal advice.....	10
Appendix C: MSP costs across a range of MSPs	17
Appendix D: Letters sent to trusts that provide their own management services.....	19

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Introduction

Trust House Foundation has applied to renew its class 4 operator's licence. As a result of the renewal, the Department has become aware of a number of breaches of the Gambling Act that have persisted over a number of years without resolution.

The breaches in question relate to the conflict of interest in the structure of Masterton Community Trust as a result of the venue company and society having the same key persons. This is contrary to the Act which states that a key person at a society must not also be a key person at a venue. This is designed to prevent conflict of interests from occurring and to maintain the integrity of community funding.

These issues also have implications for other community and licensing trusts that operate under a similar structure to Trust House Foundation.

Background

Structure of Masterton Community Trust and its relationship to Trust House Foundation

Masterton Community Trust is a community trust that was established in 1947 and operates under the requirements of the Sale and Supply of Alcohol Act 2012.

The trustees are elected every 3 years and oversee the governance of the trust's operations including Trust House Limited and Trust House Foundation.

Trust House Limited

Masterton Community Trust is a majority shareholder of Trust House Limited¹. Trust House Limited operates a range of businesses, including gambling venues, and distributes the profits from those businesses to the community. It also provides other services such as affordable housing for members of the community.

Trust House Limited is the venue operator for seven class 4 venues that operate under Trust House Foundation. These venues are listed in the table below.

Trust House Limited Venues:	Jackson Street Bar	Kuripuni Tavern
	Post Office Hotel	The Farriers Bar and Restaurant
	The Ledge (Tavern)	Flaxmere Tavern
	Pukemanu Tavern	

¹ Masterton Community Trust owns 94.26% of shares in Trust House Limited with the remaining shares owned by Flaxmere Licensing Trust (3.97%) and Flaxmere Licensing (Charitable) Trust (1.77%).

Trust House Foundation

Trust House Foundation is a charitable trust set up by Trust House Limited to perform the functions of an incorporated society under the Act which includes the distribution of community grants from the net proceeds of class 4 gambling. Trust House Foundation contracts services from Trust House Limited to perform the functions of a society. This arrangement means that Trust House Limited is classified as a management service provider (MSP) under the Act².



Structure of Masterton Community Trust

Non-compliance issues

The relationship between Trust House Limited and Trust House Foundation presents several longstanding compliance issues. These issues arose in 2016 when the Gambling Act was amended to include MSPs as part of the definition of key persons³.

As a result of the amendment, a licensing trust that provides management services to itself is captured by the key person requirements that state a key person must not be the same key person for both a venue and a society. This means that Trust House Foundation and Trust House Limited are potentially in breach of these requirements.

9(2)(h)

² Section 4, Gambling Act 2003– definition of key person.

³ Gambling Act Amendment Bills No 2 & No 3.

9(2)(h)

Previous approach to non-compliance

In late 2017, following a meeting with Masterton Community Trust and two other licensing trusts (Mataura Licensing Trust and Invercargill Licensing Trust), letters were issued to the trusts and Jarrod True, acknowledging long-standing issues of non-compliance in relation to the trusts providing their own management services.

The letters, dated between 24 November to 1 December 2017, state that an agreement was made by the Department and the trusts that the best way to address the non-compliance was legislative change. It was agreed that until legislative change occurred, the Department would take a pragmatic view and not take compliance action against any of the trusts providing the existing arrangements within the trusts stayed in place. Copies of these letters are provided in [Appendix D](#).

A letter to Jarrod True acting on behalf of Trust House Foundation and Trust House Limited dated 24 November 2017, has provided confidence to the Trust that although the Act is being breached, the Trust can continue to operate without the Department taking enforcement action against it.

Discussion

Issues and risks in relation to conflicts of interest

There are two primary conflicts of interest resulting from the breaches of the Act. Both present risks with the integrity of Trust House's gambling operations.

First conflict of interest

The legal separation of a venue and society is to separate a venue's commercial interests from a society's distribution of community funding, which should be impartial and focused on providing social benefit for communities.

Having the same key person involved in both Trust House Limited and Trust House Foundation creates a conflict of interest. Allowing this conflict to continue means there is a risk that key persons who are involved in the commercial interests of Trust House Limited may either be directly involved in or are in a position to influence decisions about the distribution of community funding by Trust House Foundation.

Second conflict of interest

The Act also specifies that venue key persons should not be involved in decisions about who provides goods and services to societies. This is to separate a venue's commercial interests from a society's obligation to minimise its operating costs and maximise its return to the community.

Although the risk of this conflict of interest seems low due to Trust House Limited returning its profits back to the community, there is still potential for conflict of interest to occur. Key persons employed by the businesses owned by Trust House Limited have a self-interest in the function of the businesses such as the income they claim as a result of their employment. Further, key persons working across Trust House Limited and Trust House Foundation may have the potential to determine their own income by determining or influencing the cost of an MSP contract.

Of concern is a draft analysis of MSP rates done in 2017 for an Outcomes Advisory Board (OAB) paper on licensing trust issues that indicates that Trust House charges for MSP services may be unreasonably high⁴. A copy of that analysis is provided in [Appendix C](#).

Further, Trust House Limited's MSP contract provided with Trust House Foundation's current renewal application dated from 4 December 2019 to 4 December 2023 does not provide a schedule of costs that show how the total cost of the contact for services was determined. This means it is not possible to determine whether these costs are actual, reasonable and necessary.

⁴ This analysis was challenging due to the range of services provided by MSPs across the sector, and therefore the difficulty of comparing costs across MSPs for the services provided per venue or per EGM. The full OAB report can be located at <https://dia.cohesion.net.nz/Sites/COB/GCT/layouts/15/DocIdRedir.aspx?ID=453MVHNNJSQ-1354891029-106>

Potential options and their risks

Three options are available as a response for the issues raised in this memo and are presented below. A decision-making framework that lists the benefits and risks of each option is provided in [Appendix A](#).

Option one: No action

No action would allow Trust House to continue to act in non-compliance indefinitely or until a legislative change occurred. The benefits of this approach are that it would not have any disruption on the gambling operations of Trust House and no further work would need to be done by the Gambling Group to address the issue. This would save resources of the Gambling Group to focus on other matters considered to be higher priority.

There are two risks associated with this option:

Firstly, taking a position on what parts of the Act we will enforce or not may be perceived as going beyond our mandate as the primary regulator of the Act. This presents a legal and reputational risk to the Department.

Secondly, not acting allows any potential conflicts of interest to continue which could undermine the integrity of Trust House Foundation and Trust House Limited's gambling operations.

Benefits	Risks
<ul style="list-style-type: none">• Minimal disruption to Trust House's gambling operation.• Low resource cost to the Department.	<ul style="list-style-type: none">• May have reputational impact on Department by being seen as going beyond mandate to enforce Gambling Act.• Allows potential conflicts of interest to continue.

Option two: Legislative amendment

A legislative amendment could include an exemption under the key persons definition of the Act for persons employed by a licensing trust.

The Department's Policy team is responsible for developing policy options and legislative changes in conjunction with government, subject to priorities and available resourcing. Currently, this issue is not marked as a priority for change.

If we wish to pursue this option, then we will need to meet with Policy and present the case for why we think legislative change is the best option.

The benefits of this approach are that ultimately it would bring Trust House and other licensing trusts into compliance with the Act and remove the reputational risk associated with not acting against cases of non-compliance. It would also recognise the unique structure of licensing trusts and their non-commercial nature.

However, Policy may not agree that this is a priority. Further, even if Policy agree that the legislation should be changed, it will take some time for the Gambling Act to be amended and the risks associated with the conflicts of interest would continue until a legislative amendment took place.

Benefits	Risks
<ul style="list-style-type: none"> • Brings Trust House and other non-compliant licensing trusts into compliance with Act. • Resolves reputational issue associated with not acting against non-compliance. • Recognises the unique structure of licensing trusts and their non-commercial nature. 	<ul style="list-style-type: none"> • Allows breaches of the Act to continue until legislative change occurs which may have reputational impact. • Allows potential conflicts of interest to continue. • Policy may not agree Act needs to be amended.

Option three: Start a process to implement independent MSP services

Other MSP service providers exist that are capable of providing MSP services to Trust House Foundation. Contracting out for an independent MSP would bring Trust House Foundation into compliance with the Act and remove the conflicts of interest.

Going to market for an MSP may have the additional benefit of bringing the cost of Trust House Foundation’s MSP services down and provide higher returns to the community.

There are two risks that need to be considered with this approach.

Firstly, there is a risk that requiring Trust House Foundation to seek an independent MSP may place a burden on them as a result of them having to restructure their business which may jeopardise both their gambling operation and ability to distribute funds for a significant period of time.

9(2)(h) [Redacted]

[Redacted]

[Redacted]

[Redacted]

In order to mitigate both these risks, the Department could take a collaborative approach, which would involve working alongside Trust House to understand the impact of outsourcing its MSP function while seeking to find solutions to any problems that arise as a result.

For example, a reasonable approach may be to approve their licence renewal on the proviso that Trust House will implement a plan to contract out MSP services, within a reasonable timeframe.

Benefits	Risks
<ul style="list-style-type: none"> • Brings Trust House and other non-compliant licensing trusts into compliance with the Act • Resolves reputational issue associated with not acting against non-compliance. • Resolves potential conflicts of interest. • May reduce operating costs and provide better return to community. 	<ul style="list-style-type: none"> • May significantly disrupt the gambling operations of Trust House and other licensing trusts due to change in organisational structure and processes • 9(2)(h) [REDACTED] [REDACTED] [REDACTED]

Implications for other licensing trusts

According to the OAB report from 2017, there are also two other licensing trusts that remain in breach of the Act for the same reasons as Trust House – Invercargill Licensing Trust and Mataura Licensing Trust.

Working with all three at once may be difficult due to the fact that each licensing trust is structured differently and will require the Department to be responsive to the needs of each trust. Therefore, it is recommended that, if we adopt this approach, we work with each trust on a one-by-one basis to respond to the needs of each.

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Appendix A: Decision-making table

Option one: No action	Option two: Legislative amendment	Option three: Implement an independent MSP and bring Trust House and other non-compliant licensing trusts into compliance
<p>Benefits:</p> <ul style="list-style-type: none"> • Minimal disruption to Trust House’s gambling operation. • Low resource cost to the Department. 	<p>Benefits:</p> <ul style="list-style-type: none"> • Brings Trust House and other non-compliant licensing trusts into compliance with Act. • Resolves reputational issue associated with not acting against non-compliance. • Recognises the unique structure of licensing trusts and their non-commercial nature. 	<p>Benefits:</p> <ul style="list-style-type: none"> • Brings Trust House and other non-compliant licensing trusts into compliance with the Act • Resolves reputational issue associated with not acting against non-compliance. • Resolves potential conflicts of interest. • May reduce operating costs and provide better return to community.
<p>Risks:</p> <ul style="list-style-type: none"> • May have reputational impact on Department by being seen as going beyond mandate to enforce Gambling Act. • Allows potential conflicts of interest to continue. 	<p>Risks:</p> <ul style="list-style-type: none"> • Allows breaches of the Act to continue until legislative change occurs which may have reputational impact. • Allows potential conflicts of interest to continue. • Policy may not agree Act needs to be amended. 	<p>Risks:</p> <ul style="list-style-type: none"> • May significantly disrupt the gambling operations of Trust House and other licensing trusts due to change in organisational structure and processes. <p>9(2)(h) [REDACTED] [REDACTED] [REDACTED] [REDACTED]</p>

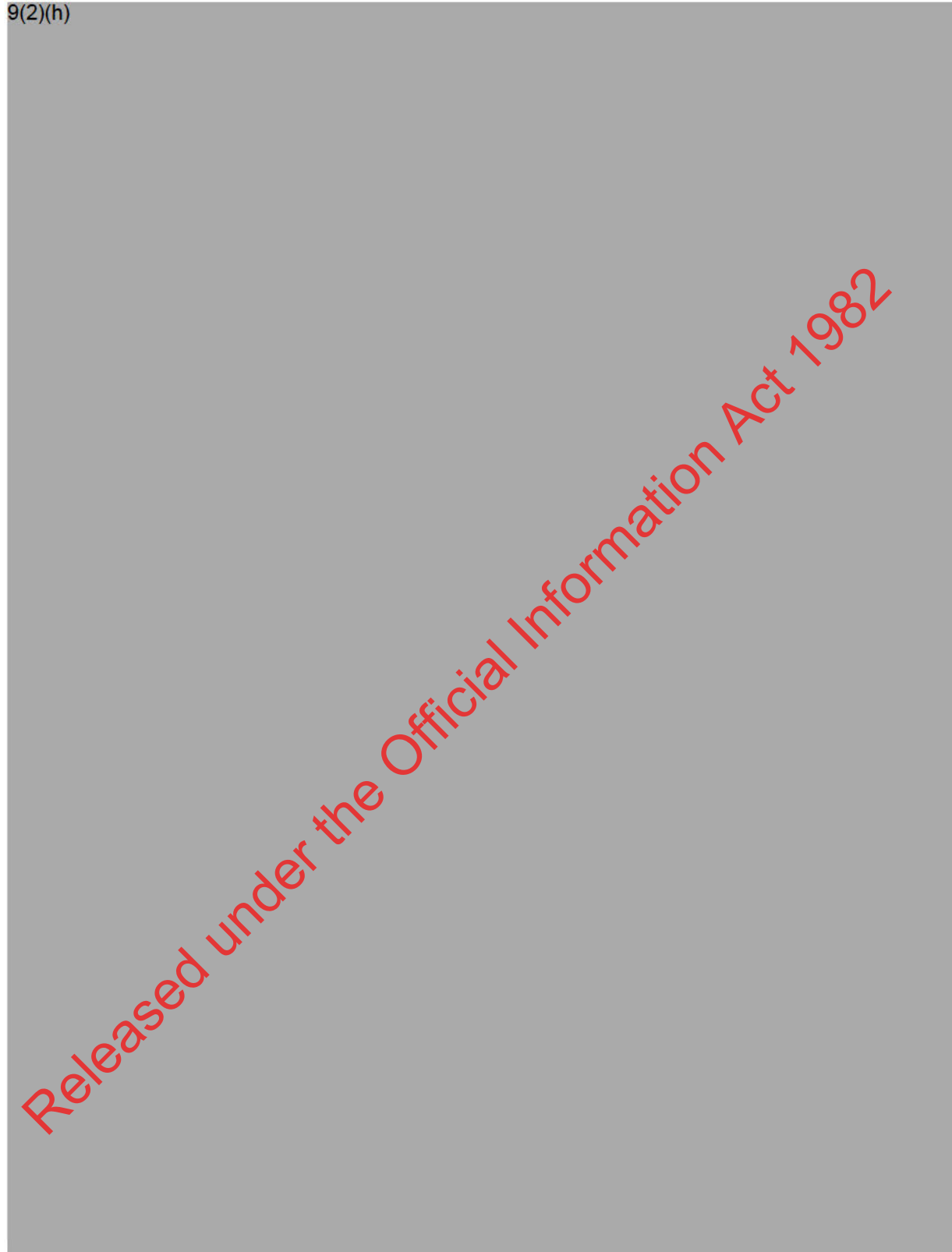
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9(2)(h)

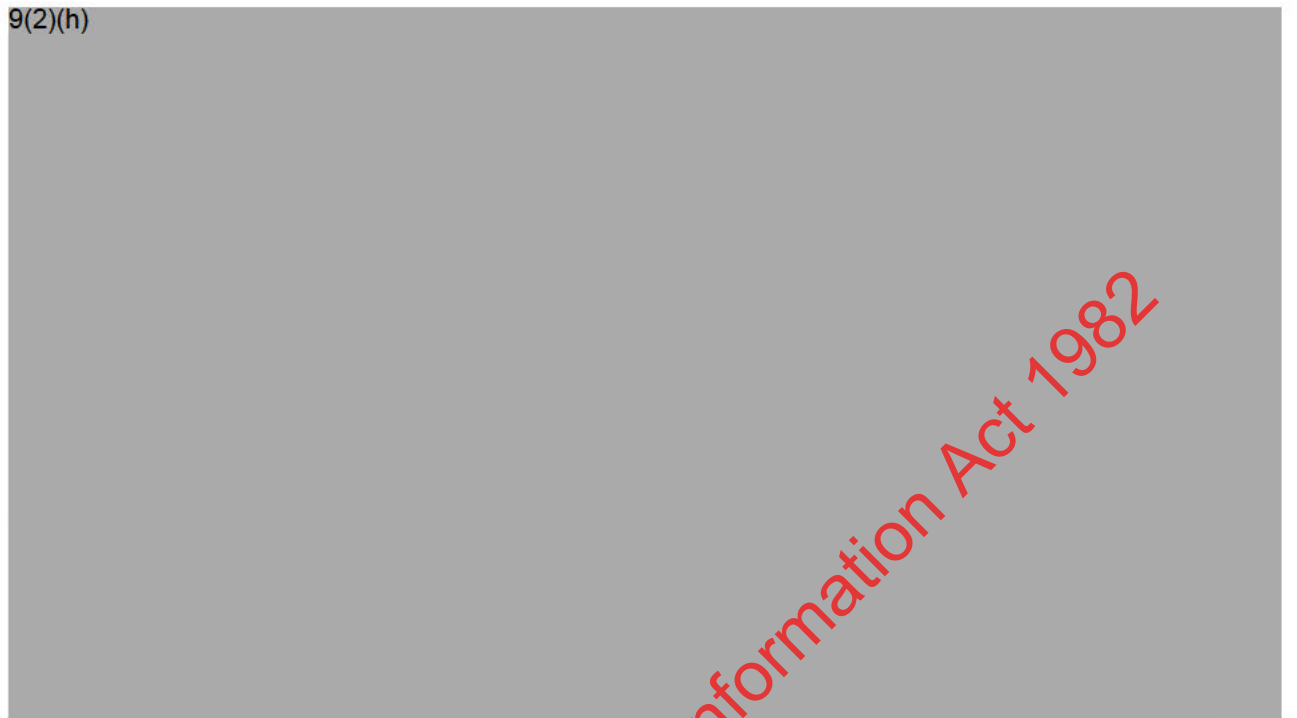


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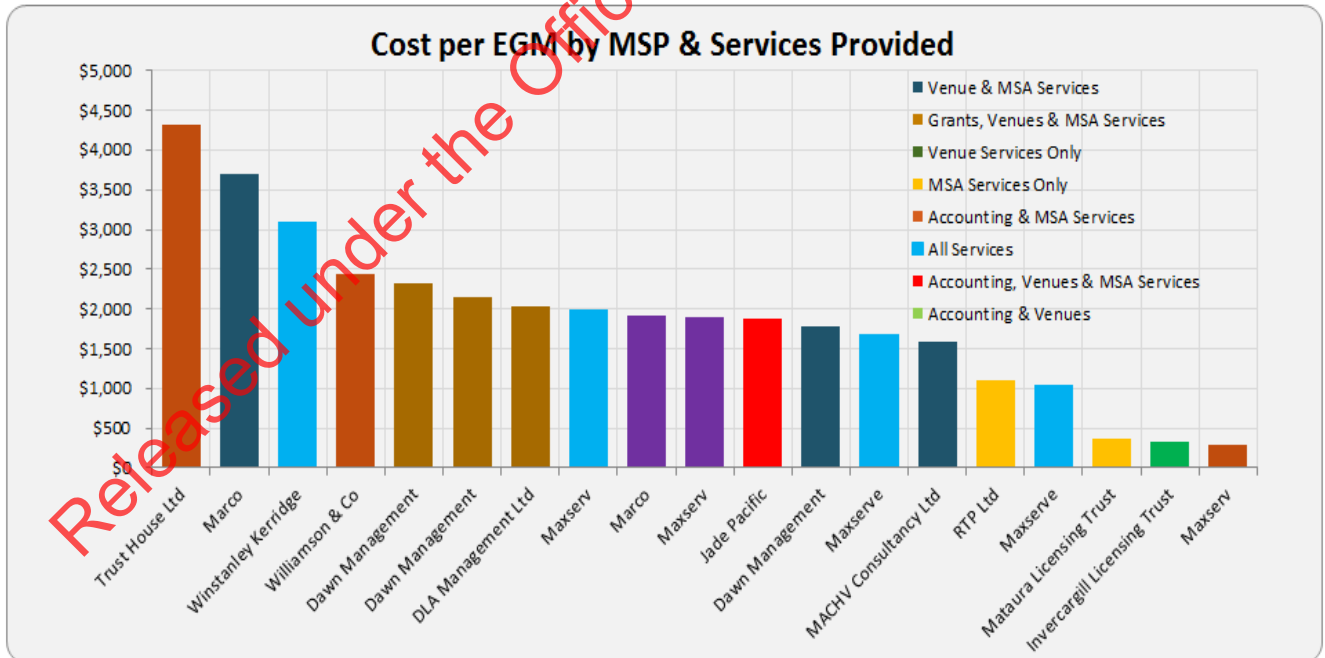
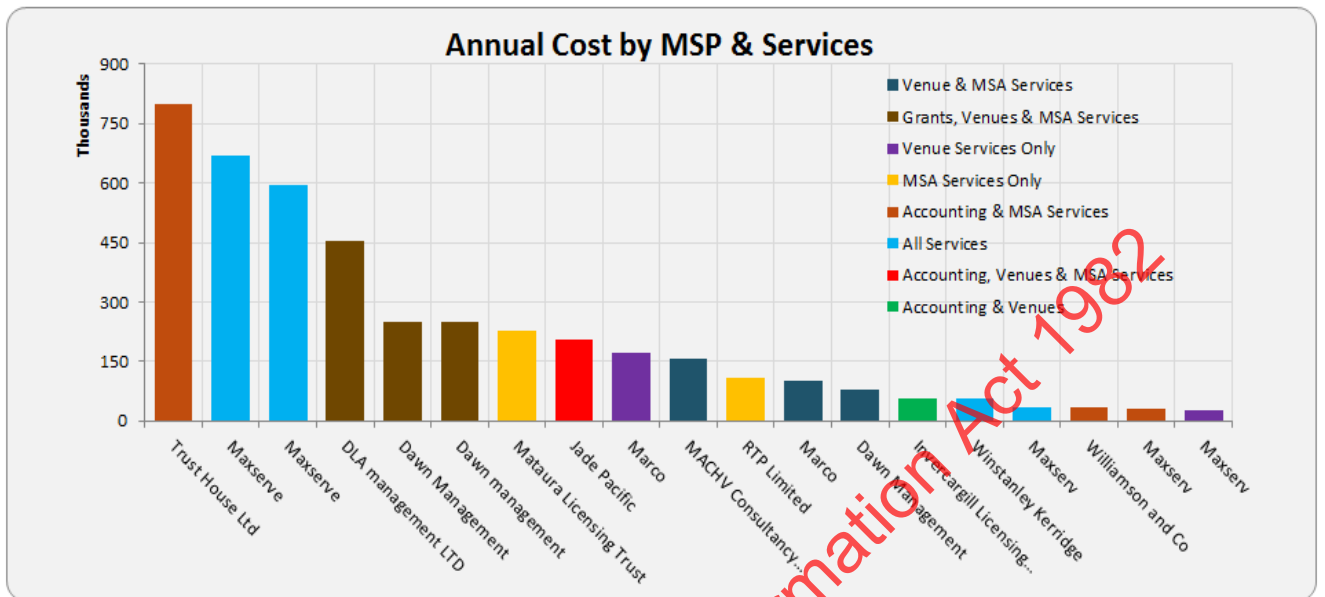
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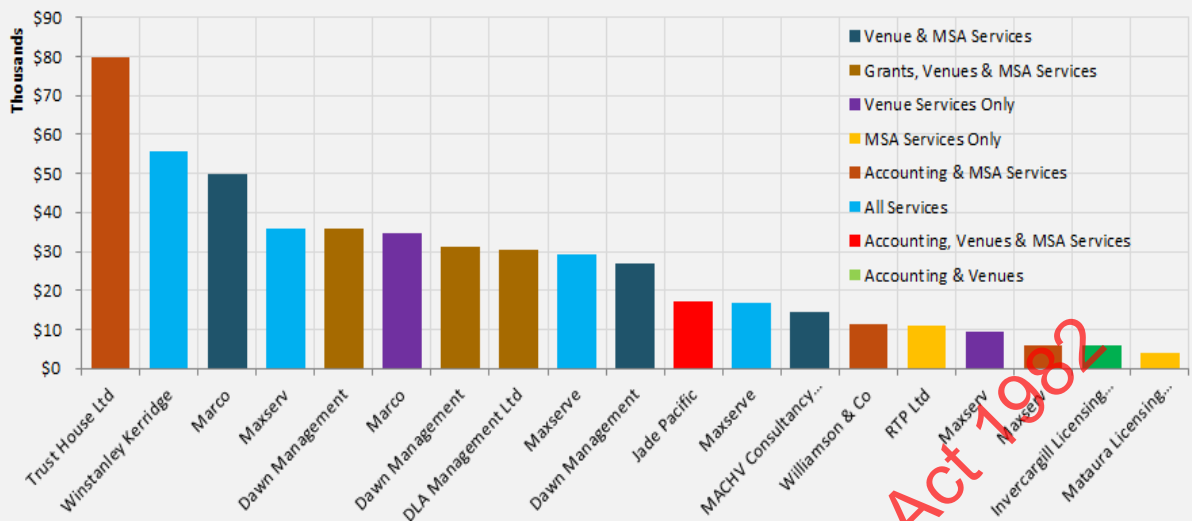
9(2)(h)

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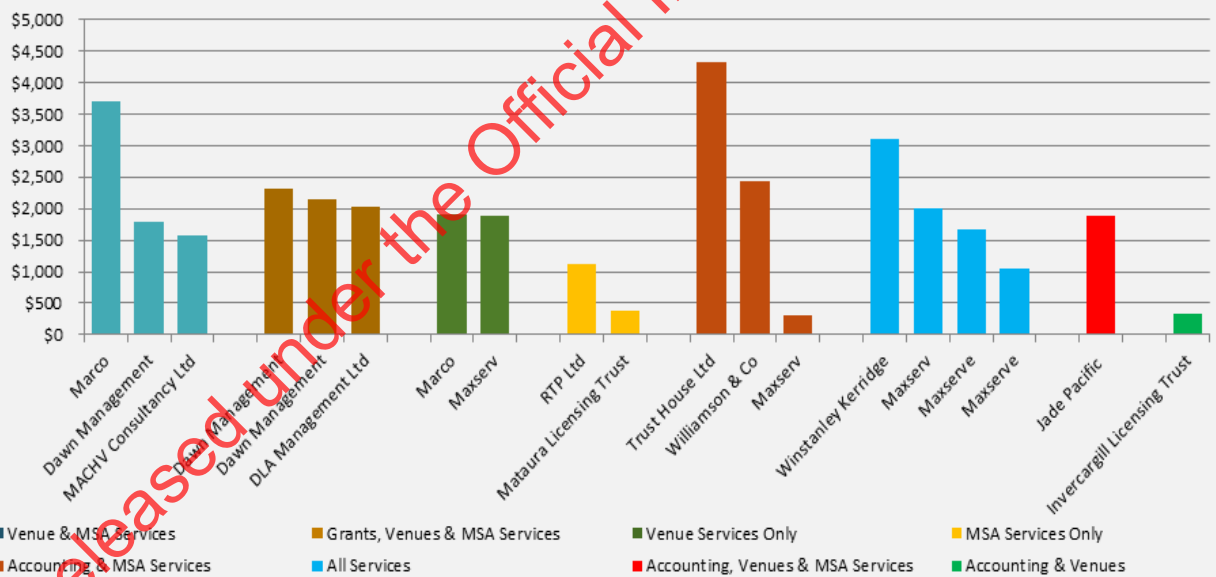
Appendix C: MSP costs across a range of MSPs



Cost Per Venue by MSP & Services Provided



Cost per EGM by MSP & Services Provided



Note: MSA refers to management, secretarial and administration services. Costs are based on limited information and may contain some inaccuracies. Costs above do not have a time period specified which makes a comparison against the current Trust House MSP contract in the licence renewal difficult as this is for a 3-year period.

Appendix D: Letters sent to trusts that provide their own management services



Te Tari Taiwhenua
Internal Affairs

24 November 2017

147 Lambton Quay
PO Box 805
Wellington 6140
Phone +64 495 7200
dia.govt.nz

Jarrold True
True Legal Ltd
jarrod.true@truelegal.co.nz

Dear Jarrod

Licensing trust issues

Thank you for meeting with the Department to discuss the various issues relating to the arrangements Trusthouse has made for the management of its gaming operations.

The Department acknowledges that the issues around licensing trusts are long-standing and agrees that best way to address these issues is through legislative change. At this stage it is unclear whether there will be an opportunity for legislative amendment in the short to medium term. Until such time as a legislative solution can be progressed the Department will take a pragmatic approach to this issue.

We acknowledge that the unique nature of licensing trusts has been explicitly addressed in the Gambling Act. We also acknowledge that the current arrangements have not led to any significant regulatory concerns.

The Department considers that the existing management arrangements that Trusthouse has in place, while a breach of sections 113 and 118 of the Gambling Act, represent a low risk. This reflects the unique nature of licensing trusts, including the fact that they are subject to public scrutiny and trustees are elected by the local community.

The Department is willing to exercise its discretion not to take compliance action in respect of the way Trusthouse has structured its affairs. This policy applies to the structure that exists as at the date of this letter.

If Trusthouse wishes to make changes to the current structure it should refer the proposed changes to the Department before they are implemented. This would allow the Department to identify any regulatory concerns and work with Trusthouse to resolve them before the changes are implemented.

To avoid any doubt, the Department does not consider the amount of fees paid to Trusthouse Limited by Trusthouse Foundation to be captured by the reference to "structure". Proposed changes to the fees charged do not need to be referred to the Department.

Yours sincerely



Cath Anyan
Manager Gambling Compliance
Regulatory Services

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**Te Tari Taiwhenua
Internal Affairs**

1 December 2017

Greg Mulvey
General Manager
Invercargill Licensing Trust
PO Box 208
Invercargill

147 Lambton Quay
PO Box 805
Wellington 6140
Phone +64 465 7200
dia.govt.nz

Dear Greg

Thank you for meeting with me in Queenstown last month and for your follow up letter.

As you know, the issues around licensing trusts are long-standing and the Department agrees that best way to address these issues is through legislative change. At this stage it is unclear whether there will be an opportunity for legislative amendment in the short to medium term. Until such time as a legislative solution can be progressed the Department will take a pragmatic approach to this issue.

We acknowledge that the unique nature of licensing trusts has been explicitly addressed in the Gambling Act. We also acknowledge that ILT's current administrative arrangements are long standing and have not previously led to any regulatory concerns.

The Department is willing to exercise its discretion not to take compliance action in respect of the services that ILT provides to the ILT Foundation. This policy applies to both the trust and its staff, and applies to the arrangements that exist as at the date of this letter.

If ILT wishes to make changes to the current arrangements it should discuss the proposed changes with the Department before they are implemented. This would allow the Department to identify any regulatory concerns and work with ILT to resolve them before the changes are implemented.

To avoid doubt, the Department does not consider a change in fees charged by ILT to the ILT Foundation to be a change in arrangements and would not require advance notice of a proposed change to the fees charged.

I would like to thank you for your constructive approach to working with the Department to resolve these matters.

Yours sincerely



Cath Anyan
Manager Gambling Compliance
Regulatory Services



**Te Tari Taiwhenua
Internal Affairs**

1 December 2017

Mark Paterson
General Manager
Mataura Licensing Trust
PO Box 43
Gore 9740

147 Lambton Quay
PO Box 805
Wellington 6140
Phone +64 465 7200
dia.govt.nz

Dear Mark

Thank you for meeting with me in Queenstown last month about the legislative issues relating to licensing trusts that operate gaming machines.

As you know, the issues around licensing trusts are long-standing and the Department agrees that best way to address these issues is through legislative change. At this stage it is unclear whether there will be an opportunity for legislative amendment in the short to medium term. Until such time as a legislative solution can be progressed the Department will take a pragmatic approach to this issue.

We acknowledge that the unique nature of licensing trusts has been explicitly addressed in the Gambling Act. We also acknowledge that MLT's current administrative arrangements are long standing and have not previously led to any regulatory concerns.

The Department is willing to exercise its discretion not to take compliance action in respect of the arrangements that MLT has in place for administrative services relating to its gaming machine operation. This policy applies to both the trust and its staff, and applies to the arrangements that exist as at the date of this letter.

If MLT wishes to make changes to the current arrangements it should discuss the proposed changes with the Department before they are implemented. This would allow the Department to identify any regulatory concerns and work with MLT to resolve them before the changes are implemented.

To avoid doubt, the Department does not consider a change in fees charged by MLT to the MLT Foundation to be a change in arrangements and would not require advance notice of a proposed change to the fees charged.

I would like to thank you for your constructive approach to working with the Department to resolve these matters.

Yours sincerely


Cath Anyan
Manager Gambling Compliance
Regulatory Services

Memo

To	Gambling Leadership Team (GLT)
Cc	Belinda Hussey – Manager – Service Design, Gambling Group
From	Matthew Sinclair – Operational Policy Analyst – Service Design, Gambling Group
Date	29 June 2021
Subject	Trust House Foundation Class 4 Operator’s Licence Renewal

Purpose

This memo provides a recommendation in relation to to an application we have received from Trust House Foundation for a renewal of its class 4 operator’s licence.

A report titled **Analysis of Masterton Community Trust and Non-compliance Issues** has been provided alongside this memo that examines the non-compliance issues in relation to Trust House Foundation’s application and provides options for responding to them.

Report attached as document 5

Recommendation

It is recommended that we contact Legal Services for advice on the options presented in the report to ensure all options are sound and the relevant risks have been identified and assessed.

Next steps

An updated report incorporating Legal Services’ input will be provided to GLT for its consideration of the issues, risks and options.

Matthew Sinclair
Operational Policy Analyst
Service Design – Gambling Group